

RESOLUTION NO. 2022 – 4000

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, APPROVING AN AGREEMENT WITH METRO EXPRESS, INC. FOR CONCRETE CURBSIDE/SIDEWALK CONSTRUCTION, MILLING, AND RESURFACING OF ASPHALT CONCRETE AND STRIPING SERVICES UTILIZING THE TERMS AND CONDITIONS OF THE CITY OF MIAMI BEACH CONTRACT AWARDED PURSUANT TO ITB-2018-033-ND PURSUANT TO SECTION 31-11(E)(5) OF THE CITY CODE; AUTHORIZING THE CITY MANAGER TO ISSUE A WORK ORDER TO METRO EXPRESS, INC. FOR THE CITYWIDE SIDEWALK COMPLETION AND ADA RAMP PROJECT IN AN AMOUNT NOT TO EXCEED \$89,772.50; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Miami Springs (the “City”) is in need of concrete curbside/sidewalk construction services on an as-needed basis (the “Services”); and

WHEREAS, the City requires the Services for installation of 3,367 linear feet of sidewalks across 22 areas within the City, including installation of ADA ramps, as part of its Citywide Sidewalk Completion and ADA Ramp Project (the “Project”); and

WHEREAS, the City of Miami Beach has an agreement with Metro Express, Inc. (the “Vendor”) for the Services pursuant to ITB-2018-033-ND (the “Miami Beach Contract”); and

WHEREAS, Section 31-11(E)(5) of the City’s Code of Ordinances (the “Code”) provides that purchases of supplies, materials, or contractual services under the provisions of state or local government, or private sector cooperative purchasing or not-for-profit companies, bids or contracts shall be exempt from the competitive bid requirements otherwise applicable to such purchases; and

WHEREAS, in accordance with Section 31-11(E)(5) of the City’s Code of Ordinances, the City Council seeks to authorize the City Manager to execute an agreement in substantially the form attached hereto as Exhibit “A” with the Vendor for the Services consistent with the terms and conditions of the Miami Beach Contract (the “Agreement”); and

WHEREAS, the Vendor has provided the City with a quote, consistent with the terms of the Agreement, to provide the Services for the Project in an amount not to exceed \$89,772.50, which quotes are attached hereto as composite Exhibit “B” (the “Quote”); and

WHEREAS, the City Council seeks to further authorize the City Manager to issue a work order to the Vendor for the provision of the Services for the Project consistent with the terms and conditions of the Agreement and the Quote in an amount not to exceed \$89,772.50; and

WHEREAS, the City Council finds that this Resolution is in the best interest and welfare of the citizens of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That the above recitals are confirmed, adopted, and incorporated herein and made a part hereof by reference.

Section 2. Approval and Authorization of Agreement. That the City Council hereby approves the Agreement with the Vendor for the Services pursuant to Section 31-11(E)(5) of the City Code and authorizes the City Manager to execute the Agreement in substantially the form attached hereto as Exhibit “A,” subject to the approval of the City Attorney as to form, content, and legal sufficiency.

Section 3. Authorization to Issue Work Order. The City Council hereby authorizes the City Manager to issue a work order to the Vendor for the Project consistent with the Quote and the terms of the Agreement in an amount not to exceed \$89,772.50.

Section 4. Implementation. That the City Manager is authorized to execute any purchase order, work order, or other required documentation for the Services described in this Resolution and to take any action that is reasonably necessary to implement the purpose of this Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon adoption.

The foregoing Resolution was offered by Councilman Best who moved its adoption. The motion was seconded by Vice Mayor Fajet and upon being put to a vote, the vote was as follows:

Vice Mayor Dr. Walter Fajet	<u>YES</u>
Councilman Bob Best	<u>YES</u>
Councilwoman Jacky Bravo	<u>YES</u>
Councilman Dr. Victor Vazquez	<u>YES</u>
Mayor Maria Puente Mitchell	<u>YES</u>

PASSED AND ADOPTED this 9th day of May, 2022.



MARIA PUENTE MITCHELL
MAYOR

ATTEST:



ERIKA GONZALEZ, MMC
CITY CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:



WEISS SEROTA HELFMAN COLE & BIERMANN, P.L.
CITY ATTORNEY

EXHIBIT A

Piggyback Agreement with Metro Express, Inc.

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF MIAMI SPRINGS
AND
METRO EXPRESS, INC.**

THIS AGREEMENT (this “Agreement”) is made effective as of the _____ day of _____, 2022 (the “Effective Date”), by and between the **CITY OF MIAMI SPRINGS, FLORIDA**, a Florida municipal corporation, (the “City”), and **METRO EXPRESS, INC.**, a Florida for-profit corporation (hereinafter, the “Contractor”). Collectively, the City and the Contractor are referred to as the “Parties.”

WHEREAS, the City is in need of concrete curbside/sidewalk construction services (the “Services”); and;

WHEREAS, the City of Miami Beach has an agreement with Metro Express, Inc. (the “Vendor”) for the Services pursuant to ITB-2018-033-ND which is attached hereto as Exhibit “A” (the “City of Miami Beach Contract”); and

WHEREAS, the Parties wish to incorporate the terms and conditions of the City of Miami Beach Contract in this Agreement, except as otherwise modified or amended herein; and

WHEREAS, Section 31-11(E)(5) of the City Code of Ordinances (the “Code”) provides that “All purchases of supplies, materials, or contractual services under the provisions of state or local government, or private sector Cooperative Purchasing or Not-For-Profit Companies, bids or contracts shall be exempt from the competitive bid requirements otherwise applicable to such purchases, provided that: (a) The terms and conditions of the original bid or contract by the state or local government are satisfactory to the City and that such terms and conditions are expressly extended to the City. (b) The bid or contract by the state or local government is in force prior to the proposed purchase of supplies or services by the City. (c) The purchasing agent has determined that purchasing materials, goods, supplies and contractual services under existing state or local government bids or contracts are in the best interests of the City.”; and

WHEREAS, pursuant to Section 31-11(E)(5) of the City Code, the City desires to engage the Contractor to perform the Services and provide the deliverables as specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the City and the Contractor agree as follows:

- 1. Incorporation of Contract.** The terms and conditions of the City of Miami Beach Contract is incorporated as though fully set forth herein. Except as otherwise specifically set forth or modified herein, all terms in the City of Miami Beach Contract are hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.

2. **Conflicts; Order of Priority.** This document without exhibits is referred to as the “Base Agreement.” In the event of a conflict between the terms of this Agreement and any exhibits or attachments hereto, or any documents incorporated herein by reference, the conflict shall be resolved in the following order of priorities and the more stringent criteria for performance of the Services shall apply:
 - A. First Priority: Base Agreement;
 - B. Second Priority: E-Verify Affidavit;
 - C. Third Priority: Exhibit A – City of Miami Beach Contract.
3. **Defined Terms.** All initial capitalized terms used in this Agreement shall have the same meaning as set forth in the City of Miami Beach Contract unless otherwise provided in this Agreement. All references to the City of Miami Beach shall be replaced with the City of Miami Springs where applicable.
4. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
5. **Ownership and Access to Records and Audits.**
 - A. Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the City which are conceived, developed or made by Contractor during the term of this Agreement (“Work Product”) belong to the City. Contractor shall promptly disclose such Work Product to the City and perform all actions reasonably requested by the City (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).
 - B. Contractor agrees to keep and maintain public records in Contractor’s possession or control in connection with Contractor’s performance under this Agreement. The City Manager or her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Contractor involving transactions related to this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the City.

- C. Upon request from the City's custodian of public records, Contractor shall provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
 - D. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City.
 - E. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the City Manager, at no cost to the City, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the City in a format that is compatible with the City's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
 - F. Any compensation due to Contractor shall be withheld until all records are received as provided herein.
 - G. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the City.
 - H. **Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.** IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: ERIKA GONZALEZ, MMC, 201 WESTWARD DRIVE, MIAMI SPRINGS, FL 33166, 305-805-5006, GONZALEZE@MIAMISPRINGS-FL.GOV.
6. **Notices/Authorized Representatives.** Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.
7. **E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the City requires all contractors doing business with the City to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The City will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how

to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the Contractor acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.

[Remainder of page intentionally left blank. Signature pages follow.]

EXHIBIT "A"

City of Miami Beach
With Metro Express, Inc.
Pursuant to ITB 2018-033-ND

MIAMI BEACH

Procurement Department, 1755 Meridian Avenue, 3rd Floor, Miami Beach, Florida 33139, www.miamibeachfl.gov, 305-673-7490

Submitted via E-mail to: efj600@yahoo.com

September 29, 2021

Ernesto Feliciano
Metro Express, Inc.
9442 Northwest 109 Street
Medley, Florida 33178

Subject: **RENEWAL OF AGREEMENT PURSUANT TO INVITATION TO BID (ITB) 2018-033-ND FOR PURCHASE OF CONCRETE CURBING/SIDEWALK CONSTRUCTION, MILLING AND RESURFACING OF ASPHALT CONCRETE, AND STRIPING OF CITY STREET AND PARKING LOTS.**


Dear Sir/Madam:

The current Agreement between the City of Miami Beach (the "City") and Metro Express, Inc. ("Contractor"), pursuant to ITB 2018-033-ND for purchase of concrete curbing/sidewalk construction, milling and resurfacing of asphalt concrete, and striping of city street and parking lots (the "Agreement"), expires November 7, 2021. This letter serves as notification that the City Manager has approved a one (1) year renewal of the Agreement through November 7, 2022.

Therefore, the City seeks concurrence from the Contractor to renew the Agreement at the same terms, conditions, and pricing as set forth pursuant to the above-referenced ITB.

Please indicate your acceptance of the aforementioned renewal by executing below as indicated. Should you have any questions or need additional information please contact Febe Perez at 305-673-7490 or febeperez@miamibeachfl.gov

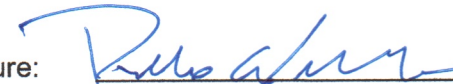
Thank you,

DocuSigned by:

FEE220F3B0ED4F0...

For Alex Denis
Procurement Director

Please sign below as your acceptance and return this letter via email to:
febeperez@miamibeachfl.gov

Printed Name: Delio A. Trasobares Title: President

Signature:  Date: 10/08/2021

AMENDED AND RESTATED CONTRACT

THIS IS A AMENDED AND RESTATED CONTRACT, by and between the City of Miami Beach, a municipal corporation of the State of Florida ("City"), and Metro Express, Inc. ("Contractor").

W I T N E S S E T H, that Contractor and City, for the considerations hereinafter named, agree as follows:

ARTICLE 1

SCOPE OF WORK

Contractor hereby agrees to furnish all of the labor, materials, equipment, services and incidentals necessary to perform all of the Work described in the Contract Documents, including Exhibit D-Supplemental Terms and Conditions, and any Purchase Order issued to Contractor for any Project hereunder, and shall perform all Work in accordance with the requirements of the Contract Documents, for the following categories:

Concrete Curbside/Sidewalk Construction

Upon execution, this Amended and Restated Contract shall supercede and replace the Contract between the City and Contractor, executed by Contractor on November 2nd, 2018.

ARTICLE 2

CONTRACT TIME

- 2.1 This contract shall remain in effect for two (2) years from date of contract execution by the Mayor and City Clerk. The City of Miami Beach has the option to renew the contract, at the sole discretion of the City Manager, for three (3) renewal periods of one (1) year each.

- 2.2 Contractor shall commence the Work upon written notice to proceed in the form of a Purchase Order issued by the City, , specifying the specific tasks to be performed by the Contractor for any Project. **A separate City issued Purchase Order shall be required prior to commencement of any Work on any Project.** Contractor shall commence scheduling activities, permit applications and other preconstruction work within five (5) calendar days after receipt of Purchase Order, which date shall establish the Project Initiation Date. The Purchase Order will not become effective until Contractor's submission to City of all required documents (including but limited to: Payment and Performance Bonds, and Insurance Certificate) and after execution of the Contract by both parties. Contractor shall have no entitlement to perform (or be compensated for) any Work under this Agreement, unless such Work is authorized, at the City's sole discretion, by a City issued Purchase Order. A draft Purchase Order is attached hereto as Exhibit "A", and the City reserves the right to amend the Purchase Order as may be required.
 - 2.2.1. The receipt of all necessary permits by Contractor and acceptance of the full progress schedule in accordance with technical specifications section, submittal

schedule and schedule of values is a condition precedent to mobilize on any Project site and commence with physical construction of the work.

- 2.3 Time is of the essence throughout this Contract. Unless otherwise specified in a Purchase Order, any project awarded to the Contractor pursuant to this Agreement shall be substantially completed within **thirty (30) calendar days** from the issuance of the City-approved Purchase Order , and completed and ready for final payment in accordance with Article 4 within **thirty (30) calendar days** from the date determined by Consultant or the City as the date of Substantial Completion.
- 2.4 Unless otherwise specified in a Purchase Order for any particular Project, upon failure of Contractor to substantially complete the Work within the time specified for Substantial Completion in any Purchase Order, plus any approved time extensions, Contractor shall pay to City the sum of **one hundred dollars (\$100.00)** for each calendar day of delay in achieving Substantial Completion. Contractor acknowledges and agrees that the foregoing amounts are not penalties but are liquidated damages to City for its inability to obtain full beneficial occupancy and/or use of the Project. Unless otherwise specified in a Purchase Order, liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by City as a consequence of such delay, and both parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of Contractor to complete the Contract on time.
- City is authorized to deduct liquidated damages from monies due to Contractor for the Work under this Contract or as much thereof as City may, in its sole discretion, deem just and reasonable.
- 2.5 Contractor shall be responsible for reimbursing City, in addition to liquidated damages, for all costs incurred by Consultant in administering the construction of the Project beyond the completion date specified above, plus approved time extensions. Consultant construction administration costs shall be pursuant to the contract between City and Consultant, a copy of which is available upon request of the Contract Administrator. All such costs shall be deducted from the monies due Contractor for performance of Work under this Contract by means of unilateral credit change orders issued by City as costs are incurred by Consultant and agreed to by City.

ARTICLE 3

ASSIGNMENT OF WORK AND COMPENSATION

- 3.1 **PUSH BUTTON AWARD**
When Work is identified by a City representative, the Contractor who provides all services needed and is the lowest for the project based on prices submitted in Appendix E, Cost Proposal Form, will be selected to complete the Work.
- 3.1.1 For projects with an estimated cost up to the amount specified in City Procedure PO16.02, Threshold Category 1 (currently \$10,000 or as amended), the project/contract manager may select the contractor deemed to be best qualified.

3.1.2 For projects with an estimated cost exceeding the amount specified in City Procedure PO16.02, Threshold Category 1 (currently \$10,000 or as amended), the project/contract manager will select the awarded contractor that has the best pricing and availability for the sum of the items needed.

3.1.3 Contractor shall be instructed to commence the Work by written instructions as further detailed in Section 2.2. Contractor shall commence scheduling activities, permit applications and other preconstruction work within five (5) calendar days after receipt of Purchase Order, which date shall establish the Project Initiation Date.

3.2 ADDITIONAL SERVICES

The City anticipates that a significant portion of the projects awarded pursuant to any continuing services agreement resulting from this ITB shall be completed in accordance with the prices established through the ITB. The City recognizes that there may be instances when the need for services in addition to those stipulated herein shall arise to complement or complete a project awarded pursuant to the established line items. In those cases, the City may negotiate with the Contractor on a mutually agreeable price for the additional services based on available industry pricing. The approval of the City Manager shall be required for any additional services exceeding a project aggregate of \$50,000. The following items may not be purchased as additional services:

- a. design services exceeding \$35,000;
- b. electrical services exceeding \$75,000;
- c. any non-contract construction work exceeding a cost of \$300,000.

3.3 PERFORMANCE AND PAYMENT BOND

The City will require a performance and payment bond for any project in excess of \$200,000. Within ten (10) calendar days of City issue the Purchase Order, Contractor shall furnish a Performance Bond and a Payment Bond containing all the provisions of the Performance Bond and Payment Bond attached hereto as forms 00710 and 00720. Such Purchase Order shall become null and void in the event Contractor fails to timely furnish a Performance and Payment Bond as provided herein.

3.3.1 Each Bond shall be in the amount of one hundred percent (100%) of the Purchase Order, guaranteeing to City the completion and performance of the work covered in such Contract as well as full payment of all suppliers, laborers, or subcontractors employed pursuant to this Project. The City may accept a Performance Bond and Payment Bond from a surety company which has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued, if the surety company is otherwise in compliance with the provisions of the Florida Insurance Code, and if the surety company holds a currently valid certificate of authority issued by the United States Department of the Treasury under Section 9304 to 9308 of Title 31 of the United States Code, as may be amended from time to time. The Certificate and Affidavit so certifying (Form 00722) should be submitted with the Bid Bond and also with the Performance Bond and Payment Bond.

3.3.2 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 sum, or an additional bond shall be conditioned that Contractor will, upon

notification by City, correct any defective or faulty work or materials which appear within one year after Final Completion of the Contract.

3.3.3 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 of Miami-Dade County and provide City with evidence of such recording.

3.3.4 Alternate Form of Security:

In lieu of a Performance Bond and a 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 unconditional letter of credit in the form attached hereto as Form 00735. Such alternate forms of security shall be subject to the prior approval of City and for same purpose and shall be subject to the same conditions as those applicable above and shall be held by City for one year after completion and acceptance of the Work.

3.4 QUALIFICATION OF SURETY

3.4.1. 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.

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

3.4.3. The City will accept a surety bond from a company with a rating of B+ or better for bonds up to \$2 million, 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 City shall review and either accept or reject the surety company based on the financial information available to the City. A surety company that is rejected by the City may be substituted by the Bidder or proposer with a surety company acceptable to the City, only if the bid amount does not increase. The following sets forth, in general, the acceptable parameters for bonds:

Policy- Financial holder's Size
<u>Amount of Bond Ratings Category</u>
500,001 to 1,000,000 B+ Class I
1,000,001 to 2,000,000 B+ Class II
2,000,001 to 5,000,000 A Class III
5,000,001 to 10,000,000 A Class IV

10,000,001 to 25,000,000 A Class V
25,000,001 to 50,000,000 A Class VI
50,000,001 or more A Class VII

- 3.5. The City may accept a Bid Bond, Performance Bond and Payment Bond from a surety company that is in compliance with the provisions of the Florida Insurance Code, and if the surety company holds a currently valid certificate of authority issued by the United States Department of the Treasury under Section 9304 to 9308 of Title 31 of the United States Code, as may be amended from time to time. The Certificate and Affidavit so certifying (Form 00722) should be submitted with the Bid Bond and also with the Performance Bond and Payment Bond.
- 3.6. More stringent requirements of any grantor agency are set forth within the Supplemental Conditions. If there are no more stringent requirements, the provisions of this section shall apply.
- 3.7. PROGRESS PAYMENTS

Contractor may make Application for Payment for work completed during the Project at intervals of not more than once a month. Contractor's application shall show a complete breakdown of the Project components, the quantities completed and the amount due, together with such supporting evidence as may be required by Consultant. Contractor shall include, but same shall be limited to, at Consultant's discretion, with each Application for Payment, an updated progress schedule acceptable to Consultant as required by the Contract Documents and a release of liens and consent of surety relative to the work which is the subject of the Application. Each Application for Payment shall be submitted in triplicate to Consultant for approval. Upon submission of an acceptable updated progress schedule and the other documents required herein along with the application for payment, City shall make payment to Contractor with respect to approved Applications for Payment, less retainage as herein provided for and/or withholding of any other amounts pursuant to the Contract Documents, within twenty-five (25) days in accordance with Section 218.735 of the Florida Statutes.

- 3.8. At the City's discretion, if specified in a Purchase Order, ten percent (10%) of all monies earned by Contractor may be retained by City until Final Completion and acceptance by City in accordance with Article 4 hereof, except that after fifty percent (50%) of the Work has been completed, the Contract Administrator shall reduce the retainage to five percent (5%) of all monies previously earned and all monies earned thereafter. Any additional reduction in retainage shall be in the sole discretion of the City Manager or applicable Department Director provided that Contractor shall have no entitlement to a reduction. Any interest earned on retainage shall accrue to the benefit of City. All requests for retainage reduction in writing in a separate stand-alone document from monthly applications for payment.
- 3.9. City may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:
- 3.9.1 Defective work not remedied.
- 3.9.2 Claims filed or reasonable evidence indicating probable filing of claims by other parties against Contractor or City because of Contractor's performance.

- 3.9.3 Failure of Contractor to make payments properly to Subcontractors or for material or labor.
- 3.9.4 Damage to another contractor not remedied.
- 3.9.5 Liquidated damages and costs incurred by Consultant for extended construction administration.
- 3.9.6 Failure of Contractor to provide any and all documents required by the Contract Documents.

When the above grounds are removed or resolved satisfactory to the Contract Administrator, payment shall be made in whole or in part.

ARTICLE 4

ACCEPTANCE AND FINAL PAYMENT

- 4.1 Upon receipt of written notice from Contractor that the Work is ready for final inspection and acceptance, City shall, within ten (10) calendar days, make an inspection thereof. If City and Contract Administrator find the Work acceptable, the requisite documents have been submitted and the requirements of the Contract Documents fully satisfied, and all conditions of the permits and regulatory agencies have been met, a final payment shall be made by the City. 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 General Conditions and identified by Contractor as unsettled at the time of the application for final payment.

ARTICLE 5

MISCELLANEOUS

- 5.1 A. The term "Contract Documents" as referenced herein shall include "Contract Documents" shall mean this Contract (together with all exhibits, addenda, Purchase Orders and written amendments issued thereto), and all Design Documents and Construction Documents. The Contract Documents shall also include, without limitation (together with all exhibits, addenda, and written amendments issued thereto), the Invitation to Bid (ITB), instructions to bidders, bid form, bid bond, surety payment bond and performance bond, Special Conditions, and Contractor's response to the ITB. The requirements of the Contract Documents, as such term is defined herein, are hereby incorporated by reference as if fully set forth herein. This Contract is part of, and incorporated in, the Contract Documents. Accordingly, all of the documents incorporated by the Contract Documents shall govern any Purchase Order issued under this Contract.
- B. The term "Work" as used herein shall mean all labor, materials, equipment, supplies, tools, machinery, utilities, fabrication, transportation, insurance, bonds, permits and conditions thereof, building code changes and government approvals, licenses, tests,

quality assurance and/or quality control inspections and related certifications, surveys, studies, and other items, work and services that are necessary or appropriate for the total construction, installation, and functioning of the Project specified in any Purchase Order, together with all additional, collateral and incidental items, and work and services required for delivery of a completed, fully functional and functioning Project as set forth in the Contract Documents.

5.2 Where there is a conflict between any provision set forth within the Contract Documents and a more stringent provision elsewhere in the Contract Documents or under any applicable law, regulation, statute or code requirement which is applicable to this Project, the more stringent provision shall prevail and govern the performance of the Work.

5.3 Public Entity Crimes

In accordance with the Public Crimes Act, Section 287.133, Florida Statutes, a person or affiliate who is a contractor, consultant or other provider, who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the City, may not submit a bid on a contract with the City for the construction or repair of a public building or public work, may not submit bids on leases of real property to the City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the City, and may not transact any business with the City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section by Contractor shall result in cancellation of the City purchase and may result in Contractor debarment.

5.4 Independent Contractor

Contractor is an independent contractor under this Contract. Services provided by Contractor pursuant to this Contract shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees, or agents of the City. This Contract shall not constitute or make the parties a partnership or joint venture.

5.5 Third Party Beneficiaries

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

5.6 Notices

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified.

The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

For City:

Matthew LePera
City of Miami Beach
Public Works Streets Department
1700 Convention Center Drive, 3rd Floor
Miami Beach, Florida 33139
Phone:305-673-7000 ext. 6828
Email: matthewlepera@miamibeachfl.gov

With copies to:

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

For Contractor:

Metro Express, Inc.
9390 Northwest 109 Street
Medley, FL 33178
Attn: Ernesto Feliciano
Phone: 305-885-1330
E-mail: efj600@yahoo.com / info@metroexpresscorp.com

5.7 Assignment and Performance

Neither this Contract nor any interest herein shall be assigned, transferred, or encumbered by either party. In addition, Contractor shall not subcontract any portion of the work required by this Contract except as authorized by Section 23 of the General Conditions. Contractor represents that all persons delivering the services required by this Contract have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Work and to provide and perform such services to City's satisfaction for the agreed compensation.

Contractor shall perform its duties, obligations, and services under this Contract in a skillful and respectable manner. The quality of Contractor's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

5.8 Materiality and Waiver of Breach

City and Contractor agree that each requirement, duty, and obligation set forth in these Contract Documents is substantial and important to the formation of this Contract and, therefore, is a material term hereof.

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

5.9 Severance

In the event a portion of this Contract is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Contractor elects to terminate this Contract. An election to terminate this Contract based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

5.10 Applicable Law and Venue

This Contract shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. **By entering into this Contract, Contractor and City hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to, or arising out of the Project. Contractor shall specifically bind all subcontractors to the provisions of this Contract.**

5.11 Amendments

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

5.12 Prior Agreements

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Contract that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with Section 5.11 above.

5.13 Indemnification

Contractor shall indemnify and hold harmless City, its officers, agents, directors, and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of Contractor and persons employed or utilized by Contractor in the performance of this Agreement. Except as specifically provided herein, this Agreement does not require Contractor to indemnify City, its employees, officers, directors, or agents from any liability, damage, loss, claim, action, or proceeding. These indemnifications shall survive the term of this Agreement. In the event that any action or proceeding is brought against City by reason of any such claim or demand, Contractor

shall, upon written notice from City, resist and defend such action or proceeding by counsel satisfactory to City.

The indemnification provided above shall obligate Contractor to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at City's option, any and all claims of liability and all suits and actions of every name and description covered by Section 5.1 above which may be brought against City whether performed by Contractor, or persons employed or utilized by Contractor.

5.14 Inspection of Work

Consultant and City shall at all times have access to the Work, and Contractor shall provide proper facilities for such access and for inspecting, measuring and testing.

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

5.14.2 Re-examination of any of the Work may be ordered by Consultant with prior written approval by the Contract Administrator, and if so ordered, the Work must be uncovered by Contractor. If such Work is found to be in accordance with the Contract Documents, City shall pay the cost of reexamination and replacement by means of a Change Order. If such Work is not in accordance with the Contract Documents, Contractor shall pay such cost.

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

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

5.15 Termination

Termination for Convenience. In addition to other rights the City may have at law and pursuant to the Contract Documents with respect to cancellation and termination of the Agreement, the City may, in its sole discretion, terminate for the City's convenience the performance of Work under this Agreement, in whole or in part, at any time upon written notice to the Contractor. The City shall effectuate such Termination for Convenience by delivering to the Contractor a Notice of Termination for Convenience, specifying the applicable scope and effective date of termination, which termination shall be deemed operative as of the effective date specified therein without any further written notices from

the City required. Such Termination for Convenience shall not be deemed a breach of the Agreement, and may be issued by the City with or without cause.

5.15.1 Upon receipt of such Notice of Termination for Convenience from the City, and except as otherwise directed by the City, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Section 5.15:

- i. Stop the Work specified as terminated in the Notice of Termination for Convenience;
- ii. Promptly notify all Subcontractors of such termination, cancel all contracts and purchase orders to the extent they relate to the Work terminated to the fullest extent possible and take such other actions as are necessary to minimize demobilization and termination costs for such cancellations;
- iii. Immediately deliver to the City all Project records, in their original/native electronic format (i.e. CAD, Word, Excel, etc.), any and all other unfinished documents, and any and all warranties and guaranties for Work, equipment or materials already installed or purchased;
- iv. If specifically directed by the City in writing, assign to the City all right, title and interest of Contractor under any contract, subcontract and/or purchase order, in which case the City shall have the right and obligation to settle or to pay any outstanding claims arising from said contracts, subcontracts or purchase orders;
- v. Place no further subcontracts or purchase orders for materials, services, or facilities, except as necessary to complete the portion of the Work not terminated (if any) under the Notice of Termination for Convenience;
- vi. As directed by the City, transfer title and deliver to the City (1) the fabricated and non-fabricated parts, Work in progress, completed Work, supplies and other material produced or required for the Work terminated; and (2) the completed or partially completed Project records that, if this Agreement had been completed, would be required to be furnished to the City;
- vii. Settle all outstanding liabilities and termination settlement proposals from the termination of any subcontracts or purchase orders, with the prior approval or ratification to the extent required by the City (if any);
- viii. Take any action that may be necessary, or that the City may direct, for the protection and preservation of the Project Site, including life safety and any property related to this Agreement that is in the Contractor's possession and in which the City has or may acquire an interest; and
- ix. Complete performance of the Work not terminated (if any).

5.15.2 Upon issuance of such Notice of Termination for Convenience, the Contractor shall only be entitled to payment for the Work satisfactorily performed up until the date of its receipt of such Notice of Termination for Convenience, but no later than the effective date specified therein. Payment for the Work satisfactorily performed shall be determined by the City in good faith, in accordance with the percent completion of the Work, less all amounts previously paid to the Contractor in approved Applications for Payment, the reasonable costs of demobilization and reasonable costs, if any, for canceling contracts and purchase orders with Subcontractors to the extent such costs are not reasonably avoidable by the Contractor.

Contractor shall submit, for the City's review and consideration, a final termination payment proposal with substantiating documentation, including an updated Schedule of Values, within 30 days of the effective date of termination, unless extended in writing by the City upon request. Such termination amount shall be mutually agreed upon by the City and the Contractor and absent such agreement, the City shall, no less than fifteen (15) days prior to making final payment, provide the Contractor with written notice of the amount the City intends to pay to the Contractor. Such final payment so made to the Contractor shall be in full and final settlement for Work performed under this Agreement, except to the extent the Contractor disputes such amount in a written notice delivered to and received by the City prior to the City's tendering such final payment.

5.16 Termination of Agreement For Cause.

The City, through the City Manager, may terminate this Agreement for cause, upon written notice to Contractor, in the event that the Contractor (1) violates any provision of this Agreement or performs same in bad faith; (2) unreasonably delays the performance of the Work or any portion thereof; or (3) does not perform the Work or any portion thereof in a timely and satisfactory manner. In the case of termination for cause by the City, the Contractor shall first be granted a fifteen (15) day cure period (commencing upon receipt of the initial written notice of default from the City). The following occurrences shall be deemed sufficient grounds for termination for cause:

- 5.16.1 Failing to make payments to Subcontractors or Suppliers for materials or labor in accordance with the respective Subcontracts and Purchase Orders;
- 5.16.2 Failing to perform any portion of the Work in a manner consistent with the requirements of the Contract Documents or within the time required therein;
- 5.16.3 Failing to perform the Work with sufficient manpower, workmen and equipment or with sufficient materials, with the effect of delaying the prosecution of the Work in accordance with the Project Schedule and/or delaying completion of any Work within the specified time;
- 5.16.4 Failing and/or refusing to remove, repair and/or replace any portion of the Work as may be rejected as defective or nonconforming with the terms and conditions of the Contract Documents;

- 5.16.5 A custodian, trustee or receiver is appointed for the Contractor, or the Contractor becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Contractor causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Contractor, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Contractor;
- 5.16.6 An indictment is issued against the Contractor;
- 5.16.7 Persistently disregarding laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- 5.16.8 Fraud, misrepresentation or material misstatement by Contractor in the course of obtaining this Agreement;
- 5.16.9 Failing to comply in any material respect with any of the terms of this Agreement or the other Contract Documents.

Upon the issuance of a Notice of Termination for Cause, the Contractor shall:

- i. Immediately deliver to the City all Submittals and Project-related records in their original/native electronic format (i.e. CAD, Word, Excel, etc.), any and all other unfinished documents, and any and all warranties and guaranties for Work, equipment or materials already installed or purchased;
- ii. If specifically directed by the City in writing, assign to the City all right, title and interest of Contractor under any contract, subcontract and/or purchase order, in which case the City shall have the right and obligation to settle or to pay any outstanding claims arising from said contracts, subcontracts or purchase orders;
- iii. As directed by the City, transfer title and deliver to the City (1) the fabricated and non-fabricated parts, Work in progress, completed Work, supplies and other material produced or required for the Work terminated; and (2) the completed or partially completed Project records that, if this Agreement had been completed, would be required to be furnished to the City; and
- iv. Take any action that may be necessary, or that the City may direct, for the protection and preservation of the property related to this Agreement that is in the Contractor's possession and in which the City has or may acquire an interest.

The rights and remedies of the City under this Section shall apply to all defaults that fail to be cured within the applicable cure period or are cured but in an untimely manner, and the City shall not be obligated to accept such late cure. The City reserves the right, in lieu of termination as set forth herein, to withhold any payments of money which may be due or become due to the Contractor until said defaults have been remedied. In no event shall Contractor be entitled to any

compensation for anticipatory profits or consequential damages as a result of the discontinuance of any portion of the Work, or termination of this Contract. In the event it is determined, for any reason, that Contractor was not in default under the provisions of this Section, then the City's notice of termination for default shall automatically be treated as a termination for convenience, and the rights and obligations of the City and Contractor shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause contained in Section 5.15. The Contractor shall have no further recourse of any nature against the City for any wrongful termination.

5.17 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.

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

ATTEST:

DocuSigned by:
Rafael E. Granado
FAB8BA08FB5E4CF...
City Clerk
10/4/2021 | 10:16 EDT

THE CITY OF MIAMI BEACH

[Signature]
Mayor

Attest:

[Signature]
Signature/Secretary
Delio A. Trasobares
Print Name

METRO EXPRESS, INC.

[Signature]
Signature/President
Delio A. Trasobares
Print Name



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Signature]
City Attorney
10/25/21
Date

EXHIBIT A
PURCHASE ORDER

EXHIBIT B: FORM OF PERFORMANCE BOND

BY THIS BOND, We _____, as Principal, hereinafter called Contractor, and _____, as Surety, are bound to the City of Miami Beach, Florida, as Oblige, hereinafter called City, 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, Bid/Contract No.: _____, awarded the _____ day of _____, 20____, with City 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 City for construction of _____, 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 City all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that City 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.

Whenever Contractor shall be, and declared by City to be, in default under the Contract, City having performed City obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- 3.1. Complete the Project in accordance with the terms and conditions of the Contract Documents; or
- 3.2. Obtain a bid or bids for completing the Project in accordance with the terms and conditions of the Contract Documents, and upon determination by Surety of the lowest responsible Bidder, or, if City elects, upon determination by City and Surety jointly of the lowest responsible Bidder, arrange for a contract between such Bidder and City, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract

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FORM OF PERFORMANCE BOND (Continued)

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 City to Contractor under the Contract and any amendments thereto, less the amount properly paid by City to Contractor.

No right of action shall accrue on this bond to or for the use of any person or corporation other than City 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_____.

WITNESSES:

(Name of Corporation)

Secretary
(CORPORATE SEAL)

By: _____
(Signature)

(Print Name and Title)

IN THE PRESENCE OF:

INSURANCE COMPANY:

By: _____
Agent and Attorney-in-Fact

Address: _____
(Street)

(City/State/Zip Code)

Telephone No.: _____

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EXHIBIT C: FORM OF PAYMENT BOND

BY THIS BOND, We _____, as Principal, hereinafter called Contractor, and _____, as Surety, are bound to the City of Miami Beach, Florida, as Obligee, hereinafter called City, 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, Bid/Contract No.: _____, awarded the _____ day of _____, 20____, with City 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. Pays City all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that City 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.
- 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.

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2.4. Any action under this Bond must be instituted in accordance with the Notice and Time Limitations provisions prescribed in Section 255.05(2), 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)

____ day of _____, 20____.

IN THE PRESENCE OF:

INSURANCE COMPANY:

By: _____
Agent and Attorney-in-Fact

Address: _____
(Street)

(City/State/Zip Code)

Telephone No.: _____

EXHIBIT D TO THE AGREEMENT
FOR THE PURCHASE OF CONCRETE CURBING/SIDEWALK CONSTRUCTION, MILLING
AND RESURFACING OF ASPHALT CONCRETE, AND STRIPING OF CITY STREETS
AND PARKING LOTS PURSUANT TO ITB 2018-033-ND

1. **Definitions:** Whenever the following terms or pronouns in place of them appear in the Project Manual, the intent and meaning shall be interpreted as follows:
 - 1.1 **Bid:** shall refer to any offer(s) submitted in response to this ITB. The terms “Bid” and “Bid Submittal” are used interchangeably.
 - 1.2 **Bidder:** Any individual, firm, or corporation submitting a bid for this Project, acting directly or through a duly authorized representative.
 - 1.3 **Change Order:** A written document ordering a change in the Contract Price or Contract Time or a material change.
 - 1.4 **City:** The City (or Owner) shall mean the City of Miami Beach, a Florida municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139, which is a party hereto and /or for which this Contract is to be performed. In all respects hereunder, City's performance is pursuant to City's position as the owner of a construction project. In the event City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred pursuant to City's regulatory authority as a governmental body and shall not be attributable in any manner to City as a party to this Contract.
 - 1.5 **City Commission:** City Commission shall mean the governing and legislative body of the City.
 - 1.6 **City Manager:** City Manager shall mean the Chief Administrative Officer of the City.
 - 1.7 **Contract:** The part or section of the Contract Documents addressing some of the rights and duties of the parties hereto, including but not limited to contract time and liquidated damages.
 - 1.8 **Contract Documents:** The official documents setting forth bidding information, requirements and contractual obligations for the project and includes the Contract, Invitation to Bid, Scope of Work, Instructions to Bidders, Supplements, Technical Specifications, Exhibits, Certificated, Closeout Forms, General Conditions, Supplementary Conditions, Plans, Drawings, Addenda, Award by the City Commission, Bonds, Notice of Award, Notices to Proceed, Purchase Order(s), Change Order(s), Field Order(s), Supplemental Instructions, and any additional documents the submission of which is required by the Project.
 - 1.9 **Contract Price:** The original amount established in the Bid Submittal and award by the City, as may be amended by Change Order.
 - 1.10 **Contractor:** The person or entity with whom the City has contracted and who is responsible for the acceptable performance of the Work and for the payment

of all legal debts pertaining to the Work. All references in the Contract Documents to third parties under contract or control of Contractor shall be deemed to be a reference to Contractor.

- 1.11 **Department:** The Public Works Department, or any other City department authorized to use any resulting agreement.
- 1.12 **Field Order:** A written order which orders minor changes in the Work but which does not involve a change in the Contract Price or Contract Time.
- 1.13 **Notice(s) to Proceed:** Written notice to Contractor authorizing the commencement of the activities identified in the notice or as described in the Contract Documents.
- 1.14 **Plans and/or Drawings:** The official graphic representations of this Project which are a part of the Contract Documents.
- 1.15 **Responsible Bidder:** An offeror who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- 1.16 **Responsive Bidder:** A person or entity who has submitted a bid which conforms in all material respects to a solicitation. A bid or proposal of a Responsive Bidder must be submitted on the required forms, which contain all required information, signatures, notarizations, insurance, bonding, security, or other mandated requirements by the bid documents to be submitted at the time of bid opening.
- 1.17 **Subcontractor:** A person or entity 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.
- 1.18 **Surety:** The surety company or individual which is bound by the performance bond and payment bond with and for Contractor who is primarily liable, and which surety company or individual is responsible for Contractor's satisfactory performance of the work under the contract and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes.
- 1.19 **Task Order:** At the request of the City, the Contractor shall furnish a Task Order for any project under consideration. Each project shall have a project-specific Task Order. The Task Order shall be approved by a City representative. The Task Order shall stipulate the following:
- Fixed Project Costs. Project Cost shall be based on plans and specifications provided by the City or field-verified measurements and shall be in accordance with contract unit prices and other pricing terms.
 - Additional Services. The City anticipates that a significant portion of the projects awarded pursuant to any continuing services agreement resulting from this ITB shall be completed in accordance with the prices established through the ITB. The City recognizes that there may be instances when the need for services in addition to those stipulated

herein shall arise. In those cases, the City may negotiate with the Contractor on a mutually agreeable price for the additional services based on available industry pricing. The approval of the City Manager shall be required for any additional services exceeding a project aggregate of \$50,000.

- Total Project Cost.
- Project Approach and Methodology. This shall include any necessary phasing, logistical requirements, etc.
- Required Permits.
- Project Duration.
- Mobilization Plan.
- Project Manager & Contact.

1.20 **Work:** The construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a part of the Project.

2. Personnel Requirements: Superintendent must have at least approximately five (5) years of experience in projects of similar design, scope, size and complexity. The Project Manager must have at least approximately five (5) years of experience in projects of similar design, scope, size and complexity.

Project Manual:

- 2.1. The Project Manual includes any general or special Contract conditions or specifications attached hereto.
- 2.2. The Project Manual, along with all documents that make up and constitute the Contract Documents, shall be followed in strict accordance as to work, performance, material, and dimensions except when Consultant may authorize, in writing, an exception.
- 2.3. Dimensions given in figures are to hold preference over scaled measurements from the drawings; however, all discrepancies shall be resolved by Consultant. Contractor shall not proceed when in doubt as to any dimension or measurement, but shall seek clarification from Consultant.
- 2.4. Contractor shall be furnished three (3) copies, free of charge, of the Project Manual; two of which shall be preserved and always kept accessible to Consultant and Consultant's authorized representatives. Additional copies of the Project Manual may be obtained from City at the cost of reproduction.

3. Intention of City:

It is the intent of City to describe in the Contract Documents a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents and in accordance with all codes and regulations governing construction of the Project. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied by

Contractor whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or 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. City shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.

4. Preliminary Matters:

4.1. Within five (5) calendar days prior to the pre-construction meeting, Contractor shall submit to Consultant, for Consultant's review and acceptance, a project schedule.

CONTRACTOR agrees to attend weekly progress meetings and provide an updated (3) week look ahead schedule for review and discussion and monthly be prepared to discuss any:

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

The Project Schedule shall be the basis of the CONTRACTOR'S work and shall be complied with in all respects.

If CONTRACTOR'S Work becomes more than (30) days behind schedule CONTRACTOR shall be required to submit a "Make-Up" schedule to PROGRAM MANAGER for review and acceptance that demonstrates "Catch Up" within thirty (3) days. CONTRACTOR shall provide, at CONTRACTOR'S cost, the necessary additional labor and or equipment necessary to make-up the lost time. Failure to provide a "Make-Up" schedule or vigorously follow the "Make-Up" schedule shall be reason to default CONTRACTOR.

4.1.1 After award but prior to the submission of the final progress schedule, CONSULTANT, Contract Administrator and CONTRACTOR shall meet with all utility owners and secure from them a schedule of utility relocation, provided, however, neither CONSULTANT nor CITY shall be responsible for the nonperformance by the utility owners.

4.1.2 A preliminary schedule of Shop Drawing submissions; and

4.1.3 In a lump sum contract or in a contract which includes lump sum bid items of Work, a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each

item of work which will be confirmed in writing by Contractor at the time of submission.

Such prices shall be broken down to show labor, equipment, materials and overhead and profit.

4.1.4 After award but prior to the submission of the progress schedule, Consultant, Contract Administrator and Contractor shall meet with all utility owners and secure from them a schedule of utility relocation, provided, however, neither Consultant nor City shall be responsible for the nonperformance by the utility owners.

4.2. At a time specified by Consultant but before Contractor starts the work at the Project site, a conference attended by Contractor, Consultant and others as deemed appropriate by Contract Administrator will be held to discuss the schedules to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

4.3. Within thirty-five (35) days from the Project Initiation Date set forth in the Notice to Proceed, a conference attended by Contractor, Consultant and others, as appropriate, will be held to finalize the schedules submitted. Within forty-five (45) days after the Project Initiation Date set forth in Notice to Proceed No. 1, the Contractor shall revise the original schedule submittal to address all review comments from the CPM review conference and resubmit for Consultant review. The finalized progress schedule will be accepted by Consultant only as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance shall not constitute acceptance by City or Consultant of the means or methods of construction or of the sequencing or scheduling of the Work, and such acceptance will neither impose on Consultant or City responsibility for the progress or scheduling of the Work nor relieve Contractor from full responsibility therefore. The finalized schedule of Shop Drawing submissions must be acceptable to Consultant as providing a workable arrangement for processing the submissions. The finalized schedule of values must be acceptable to Consultant as to form and substance.

5. Performance Bond and Payment Bond:

Within fifteen (15) calendar days of being notified of the award, Contractor shall furnish a Performance Bond and a Payment Bond containing all the provisions of the Performance Bond and Payment Bond attached hereto as forms 00710 and 00720.

5.1. Each Bond shall be in the amount of one hundred percent (100%) of the Contract Price guaranteeing to City the completion and performance of the work covered in such Contract as well as full payment of all suppliers, laborers, or subcontractors employed pursuant to this Project. Each Bond shall be with a surety company which is qualified pursuant to Article 5.

5.2. 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 sum, or an additional bond shall be conditioned that Contractor will, upon

notification by City, correct any defective or faulty work or materials which appear within one year after Final Completion of the Contract.

5.3. 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 of Miami-Dade County and provide City with evidence of such recording.

5.4. Alternate Form of Security:

In lieu of a Performance Bond and a 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 unconditional letter of credit in the form attached hereto as Form 00735. Such alternate forms of security shall be subject to the prior approval of City and for same purpose and shall be subject to the same conditions as those applicable above and shall be held by City for one year after completion and acceptance of the Work.

6. Qualification of Surety

6.1. Performance Bonds and Payment Bonds for projects over Two Hundred Thousand Dollars (\$200,000.00) :

6.1.1. 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.

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

7. Labor and Materials:

7.1. 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, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

7.2. Contractor shall at all times enforce strict discipline and good order among its employees and subcontractors at the Project site and shall not employ on the

Project any unfit person or anyone not skilled in the work to which they are assigned.

8. 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 this Contract for said work.

9. Weather:

Extensions to the Contract Time for delays caused by the effects of inclement weather shall be submitted as a request for a change in the Contract Time pursuant to Article 35. These time extensions are justified only when rains or other inclement weather conditions or related adverse soil conditions prevent Contractor from productively performing controlling items of work identified on the accepted schedule or updates resulting in:

- (1) Contractor being unable to work at least fifty percent (50%) of the normal workday on controlling items of work identified on the accepted schedule or updates due to adverse weather conditions; or
- (2) Contractor must make major repairs to the Work damaged by weather. Providing the damage was not attributable to a failure to perform or neglect by Contractor, and providing that Contractor was unable to work at least fifty percent (50%) of the normal workday on controlling items of work identified on the accepted schedule or updates.

10. Permits, Licenses and Impact Fees:

10.1. Except as otherwise provided within the Supplemental Conditions, all permits and licenses required by federal, state or local laws, rules and regulations necessary for the prosecution of the Work undertaken by Contractor pursuant to this Contract shall be secured and paid for by Contractor. It is Contractor's responsibility to have and maintain appropriate Certificate(s) of Competency, valid for the Work to be performed and valid for the jurisdiction in which the Work is to be performed for all persons working on the Project for whom a Certificate of Competency is required.

10.2. Impact fees levied by the City and/or Miami-Dade County shall be paid by Contractor. Contractor shall be reimbursed only for the actual amount of the impact fee levied by the municipality as evidenced by an invoice or other acceptable documentation issued by the municipality. Reimbursement to Contractor in no event shall include profit or overhead of Contractor.

11. Resolution of Disputes:

11.1 To prevent all disputes and litigation, it is agreed by the parties hereto that Consultant shall decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Contract as to the character, quality, amount and value of any work done and materials furnished, or proposed to be done or furnished under or, by reason of, the Contract Documents and Consultant's estimates and decisions upon all claims, questions, difficulties and disputes shall

be final and binding to the extent provided in Section 11.2. Any claim, question, difficulty or dispute which cannot be resolved by mutual agreement of City and Contractor shall be submitted to Consultant in writing within twenty-one (21) calendar days. Unless a different period of time is set forth herein, Consultant shall notify City and Contractor in writing of Consultant's decision within twenty-one (21) calendar days from the date of the submission of the claim, question, difficulty or dispute, unless Consultant requires additional time to gather information or allow the parties to provide additional information. All non-technical administrative disputes shall be determined by the Contract Administrator pursuant to the time periods provided herein. During the pendency of any dispute and after a determination thereof, Contractor, Consultant and City shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction.

- 11.2 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 ten (10) 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 adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) days after Final Completion of the Work, the parties shall participate in mediation to address all objections to any determinations hereunder and to attempt to prevent litigation. The mediator shall be mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. A party objecting to a determination specifically waives all of its rights provided hereunder, including its rights and remedies under State law, if said party fails to comply in strict accordance with the requirements of this Article.

12. Superintendence and Supervision:

- 12.1. The orders of City are to be given through Consultant, which instructions are to be strictly and promptly followed in every case. Contractor shall keep on the Project during its progress, a full-time competent English speaking superintendent and any necessary assistants, all satisfactory to Consultant. The superintendent shall not be changed except with the written consent of Consultant, unless the superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ. The superintendent shall represent Contractor and all directions given to the superintendent shall be as binding as if given to Contractor and will be confirmed in writing by Consultant upon the written request of Contractor. Contractor shall give efficient supervision to the Work, using its best skill and attention.
- 12.2. Daily, Contractor's superintendent shall record, at a minimum, the following information in a bound log: the day; date; weather conditions and how any weather condition affected progress of the Work; time of commencement of work for the day; the work being performed; materials, labor, personnel, equipment and subcontractors at the Project site; visitors to the Project site, including representatives of Consultant; regulatory representatives; any special or unusual conditions or occurrences encountered; and the time of termination of work for the day. All information shall be recorded in the daily log in ink. The daily log shall be

kept on the Project site and shall be available at all times for inspection and copying by City and Consultant.

- 12.3. The Contract Administrator, Contractor and Consultant shall meet at least weekly or as determined by the Contract Administrator, during the course of the Work to review and agree upon the work performed to date and to establish the controlling items of work for the next two weeks. The Consultant shall publish, keep, and distribute minutes and any comments thereto of each such meeting.
- 12.4. If Contractor, in the course of prosecuting the Work, finds any discrepancy between the Contract Documents and the physical conditions of the locality, or any errors, omissions, or discrepancies in the Project Manual, it shall be Contractor's duty to immediately inform Consultant, in writing, and Consultant will promptly review the same. Any work done after such discovery, until authorized, will be done at Contractor's sole risk.
- 12.5. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction.

13. Contractor's Right to Stop Work or Terminate Contract:

Should Consultant fail to review and approve or state in writing reasons for nonapproval of any Application for Payment within twenty (20) days after it is presented, or if City fails either to pay Contractor within thirty (30) days after presentation by Consultant of any sum certified by Consultant, or to notify Contractor and Consultant in writing of any objection to the Application for Payment, then Contractor may, give written notice to City and Consultant of such delay, neglect or default, specifying the same. If City or Consultant (where applicable), within a period of ten (10) calendar days after such notice shall not remedy the delay, neglect, or default upon which the notice is based, then Contractor may stop work or terminate this Contract and recover from City payment for all work executed and reasonable expenses sustained therein plus reasonable termination expenses. Any objection made by City to an Application for Payment shall be submitted to Consultant in accordance with the provisions of Article 11 hereof.

14. Assignment:

Neither party hereto shall assign the Contract or any subcontract in whole or in part without the written consent of the other, nor shall Contractor assign any monies due or to become due to it hereunder, without the previous written consent of the Mayor and City Commission.

15. Differing Site Conditions:

In the event that during the course of the Work Contractor encounters subsurface or concealed conditions at the Project site which differ materially from those shown on the Contract Documents and from those ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents; or unknown

physical conditions of the Project site, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents, Contractor, without disturbing the conditions and before performing any work affected by such conditions, shall, within twenty-four (24) hours of their discovery, notify City and Consultant in writing of the existence of the aforesaid conditions. Consultant and City 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 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, Consultant shall recommend an equitable adjustment to the Contract Price, or the Contract Time, or both. If City and Contractor cannot agree on an adjustment in the Contract Price or Contract Time, the adjustment shall be referred to Consultant for determination in accordance with the provisions of Article 11. Should Consultant determine that the conditions of the Project site are not so materially different to justify a change in the terms of the Contract, Consultant shall so notify City 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 as the date of substantial completion.

16. Plans and Working Drawings:

City, through 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 Project Manual. In case of disagreement between the written and graphic portions of the Project Manual, the written portion shall govern.

17. Contractor to Check Plans, Specifications and Data:

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

18. Contractor's Responsibility for Damages and Accidents:

18.1. Contractor shall accept full responsibility for the Work against all loss or damage of whatsoever nature sustained until final acceptance by City, and shall promptly repair any damage done from any cause whatsoever, except as provided in Article 24.

18.2. Contractor shall be responsible for all materials, equipment and supplies pertaining to the Project. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by City, Contractor shall replace same without cost to City, except as provided in Article 24.

19. Warranty:

Contractor warrants to Owner that all labor, materials and equipment furnished as part of the Services under this Agreement are of the type and quality required by the Contract Documents, new (unless otherwise required or permitted by the Contract Documents) and installed in a good and workmanlike manner and otherwise in accordance with the Contract Documents. Contractor further warrants that the Services will be free from defects due to defective materials or workmanship for a period of one (1) year following the City's final acceptance of the Services. Should any defects develop during the one-year warranty period due to defective materials or workmanship, Contractor shall repair or replace all defective or deficient Services at Contractor's sole cost and expense. Should the Contractor fail to correct any deficiencies within thirty (30) days of written notice by the City to cure, the City may, at its option, correct the deficiencies and charge Contractor for the cost of such correction. Contractor agrees to pay such charges upon demand. This warranty is not limited by the provisions of Article 21 herein.

20. Supplementary Drawings:

20.1. When, in the opinion of Consultant, it becomes necessary to explain the Work to be done more fully, or to illustrate the Work further, or to show any changes which may be required, supplementary drawings, with specifications pertaining thereto, will be prepared by Consultant.

20.2. The supplementary drawings shall be binding upon Contractor with the same force as the Project Manual. Where such supplementary drawings require either less or more than the original quantities of work, appropriate adjustments shall be made by Change Order.

21. Defective Work:

21.1. Consultant shall have the authority to reject or disapprove work which Consultant finds to be defective. If required by Consultant, Contractor shall promptly either correct all defective work or remove such defective work and replace it with nondefective work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

21.2. Should Contractor fail or refuse to remove or correct any defective work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by Consultant, City shall have the authority to cause the defective work to be removed or corrected, or make such repairs as may be necessary at Contractor's expense. Any expense incurred by

City 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. In the event of failure of Contractor to make all necessary repairs promptly and fully, City may declare Contractor in default.

21.3. If, within one (1) year after the date of substantial completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, or by any specific provision of the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor , after receipt of written notice from City, shall promptly correct such defective or nonconforming Work within the time specified by City without cost to City, to do so. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents including but not limited to, Article 18 hereof and any claim regarding latent defects.

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

22. 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.

23. Subcontracts:

23.1. Contractor shall not employ any subcontractor against whom City or Consultant may have a reasonable objection. Contractor shall not be required to employ any subcontractor against whom Contractor has a reasonable objection.....

23.2. Contractor shall be fully responsible for all acts and omissions of its subcontractors and of persons directly or indirectly employed by its subcontractors and of persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in the Contract Documents shall create any contractual relationship between any subcontractor and City or any obligation on the part of City to pay or to see the payment of any monies due any subcontractor. City or Consultant may furnish to any subcontractor evidence of amounts paid to Contractor on account of specific work performed.

23.3. Contractor agrees to bind specifically every subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of City.

23.4. Contractor shall perform the Work with its own organization, amounting to not less than 70% percent of the Contract Price.

24. Separate Contracts:

24.1. City reserves the right to let other contracts in connection with this Project. Contractor shall afford other persons reasonable opportunity for the introduction

and storage of their materials and the execution of their work and shall properly connect and coordinate this Work with theirs.

- 24.2. If any part of Contractor's Work depends for proper execution or results upon the work of any other persons, Contractor shall inspect and promptly report to Consultant any defects in such work that render it unsuitable for such proper execution and results. Contractor's failure to so inspect and report shall constitute an acceptance of the other person's work as fit and proper for the reception of Contractor's Work, except as to defects which may develop in other contractor's work after the execution of Contractor's.
- 24.3. Contractor shall conduct its operations and take all reasonable steps to coordinate the prosecution of the Work so as to create no interference or impact on any other contractor on the site. Should such interference or impact occur, Contractor shall be liable to the affected contractor for the cost of such interference or impact.
- 24.4. To insure the proper execution of subsequent work, Contractor shall inspect the work already in place and shall at once report to Consultant any discrepancy between the executed work and the requirements of the Contract Documents.

25. Use of Completed Portions:

- 25.1. City shall have the right at its sole option to take possession of and use any completed or partially completed portions of the Project. Such possession and use shall not be deemed an acceptance of any of the Work not completed in accordance with the Contract Documents. If such possession and use increases the cost of or delays the Work, Contractor shall be entitled to reasonable extra compensation or reasonable extension of time or both, as recommended by Consultant and approved by City.
- 25.2. In the event City takes possession of any completed or partially completed portions of the Project, the following shall occur:
 - 25.2.1. City shall give notice to Contractor in writing at least thirty (30) calendar days prior to City's intended occupancy of a designated area.
 - 25.2.2. Contractor shall complete to the point of Substantial Completion the designated area and request inspection and issuance of a Certificate of Substantial Completion in the form attached hereto as 00925 from Consultant.
 - 25.2.3. Upon Consultant's issuance of a Certificate of Substantial Completion, City will assume full responsibility for maintenance, utilities, subsequent damages of City and public, adjustment of insurance coverage's and start of warranty for the occupied area.
 - 25.2.4. Contractor shall complete all items noted on the Certificate of Substantial Completion within the time specified by Consultant on the Certificate of Substantial Completion, as soon as possible and request final inspection and final acceptance of the portion of the Work occupied. Upon completion of final inspection and receipt of an

application for final payment, Consultant shall issue a Final Certificate of Payment relative to the occupied area.

- 25.2.5. If City finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by City and Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. Insurance on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. Consent of Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

26. Lands for Work:

- 26.1. City shall provide, as may be indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto and such other lands as are designated by City or the use of Contractor.
- 26.2. Contractor shall provide, at Contractor's own expense and without liability to City, any additional land and access thereto that may be required for temporary construction facilities, or for storage of materials. Contractor shall furnish to City copies of written permission obtained by Contractor from the owners of such facilities.

27. Legal Restrictions and Traffic Provisions:

Contractor shall conform to and obey all applicable laws, regulations, or ordinances with regard to labor employed, hours of work and Contractor's general operations. Contractor shall conduct its operations so as not to close any thoroughfare, nor interfere in any way with traffic on railway, highways, or water, without the prior written consent of the proper authorities.

28. Location and Damage to Existing Facilities, Equipment or Utilities:

- 28.1. As far as possible, all existing utility lines in the Project area have been shown on the plans. However, City does not guarantee that all lines are shown, or that the ones indicated are in their true location. It shall be the Contractor's responsibility to identify and locate all underground and overhead utility lines or equipment affecting or affected by the Project. No additional payment will be made to the Contractor because of discrepancies in actual and plan location of utilities, and damages suffered as a result thereof.
- 28.2. The Contractor shall notify each utility company involved at least ten (10) days prior to the start of construction to arrange for positive underground location, relocation or support of its utility where that utility may be in conflict with or endangered by the proposed construction. Relocation of water mains or other utilities for the convenience of the Contractor shall be paid by the Contractor. All charges by utility companies for temporary support of its utilities shall be paid for by the Contractor. All costs of permanent utility relocation to avoid conflict shall be the responsibility of the utility company involved. No additional payment will be

made to the Contractor for utility relocations, whether or not said relocation is necessary to avoid conflict with other lines.

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

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

29. Value Engineering:

Contractor may request substitution of materials, articles, pieces of equipment or any changes that reduce the Contract Price by making such request to Consultant in writing. Consultant will be the sole judge of acceptability, and no substitute will be ordered, installed, used or initiated without Consultant's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. However, any substitution accepted by Consultant shall not result in any increase in the Contract Price or Contract Time. By making a request for substitution, Contractor agrees to pay directly to Consultant all Consultant's fees and charges related to Consultant's review of the request for substitution, whether or not the request for substitution is accepted by Consultant. Any substitution submitted by Contractor must meet the form, fit, function and life cycle criteria of the item proposed to be replaced and there must be a net dollar savings including Consultant review fees and charges. If a substitution is approved, the net dollar savings shall be shared equally between Contractor and City and shall be processed as a deductive Change Order. City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute approved after award of the Contract.

30. Continuing the Work:

Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with City, including disputes or disagreements concerning a request for a Change Order, a request for a change in the Contract Price or Contract Time. The Work shall not be delayed or postponed pending resolution of any disputes or disagreements.

31. Changes in the Work or Terms of Contract Documents:

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

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

32. Field Orders and Supplemental Instructions:

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

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

33. Change Orders:

33.1. Changes in the quantity or character of the Work within the scope of the Project which are not properly the subject of Field Orders or Supplemental Instructions, including all changes resulting in changes in the Contract Price, or the Contract Time, shall be authorized only by Change Orders approved in advance and issued in accordance with the provisions of the City.

33.2. All changes to construction contracts which exceed the Commission-approved contingency must be approved in advance in accordance with the value of the Change Order or the calculated value of the time extension. All Change Orders with a value of \$50,000 or more shall be approved in advance by the Mayor and City Commission. All Change Orders with a value of less than \$50,000 shall be approved in advance by the City Manager or his designee.

33.3. In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, City reserves the right at its sole option to either terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed work; or submit the matter in dispute to Consultant as set forth in Article 11 hereof. During the pendency of the dispute, and upon receipt of a Change Order approved by City, Contractor shall promptly proceed with the change in the Work involved and advise the Consultant and Contract Administrator in writing within seven (7) calendar days of Contractor's

agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Price or Contract Time.

33.4. On approval of any Contract change increasing the Contract Price, Contractor shall ensure that the performance bond and payment bond are increased so that each reflects the total Contract Price as increased.

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

34. Value of Change Order Work:

34.1. The value of any work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

34.1.1. Where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of items involved.

34.1.2. By mutual acceptance of a lump sum which Contractor and City acknowledge contains a component for overhead and profit.

34.1.3. On the basis of the "cost of work," determined as provided in Sections 38.2 and 38.3, plus a Contractor's fee for overhead and profit which is determined as provided in Section 38.4.

34.2. The term "cost of work" means the sum of all direct costs necessarily incurred and paid by Contractor in the proper performance of the Work described in the Change Order. Except as otherwise may be agreed to in writing by City, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Section 38.3.

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

34.2.2. Cost of all materials and equipment furnished and incorporated in the work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash

discounts shall accrue to Contractor unless City deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to City. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to City and Contractor shall make provisions so that they may be obtained. Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by City with the advice of Consultant and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the work.

- 34.2.3. Payments made by Contractor to Subcontractors for work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from Subcontractors acceptable to Contractor and shall deliver such bids to City who will then determine, with the advice of Consultant, which bids will be accepted. If the Subcontract provides that the Subcontractor is to be paid on the basis of cost of the work plus a fee, the Subcontractor's cost of the work shall be determined in the same manner as Contractor 'S cost of the work. All Subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.
- 34.2.4. Cost of special consultants, including, but not limited to, engineers, architects, testing laboratories, and surveyors employed for services specifically related to the performance of the work described in the Change Order.
- 34.2.5. Supplemental costs including the following:
 - 34.2.5.1. The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the work except for local travel to and from the site of the work.
 - 34.2.5.2. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workmen, which are consumed in the performance of the work, and cost less market value of such items used but not consumed which remains the property of Contractor .
 - 34.2.5.3. Sales, use, or similar taxes related to the work, and for which Contractor is liable, imposed by any governmental authority.

- 34.2.5.4. Deposits lost for causes other than Contractor's negligence; royalty payments and fees for permits and licenses.
 - 34.2.5.5. The cost of utilities, fuel and sanitary facilities at the site.
 - 34.2.5.6. Receipted minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the work.
 - 34.2.5.7. Cost of premiums for additional bonds and insurance required because of changes in the work.
- 34.3. The term "cost of the work" shall not include any of the following:
- 34.3.1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in its principal or a branch office for general administration of the work and not specifically included in the agreed-upon schedule of job classifications, all of which are to be considered administrative costs covered by Contractor's fee.
 - 34.3.2. Expenses of Contractor's principal and branch offices other than Contractor's office at the site.
 - 34.3.3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the work and charges against Contractor for delinquent payments.
 - 34.3.4. Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same, except for additional bonds and insurance required because of changes in the work.
 - 34.3.5. Costs due to the negligence or neglect of Contractor, any Subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective work, disposal of materials or equipment wrongly supplied and making good any damage to property.
 - 34.3.6. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in Section 38.2.
- 34.4. Contractor's fee allowed to Contractor for overhead and profit shall be determined as follows:
- 34.4.1. A mutually acceptable fixed fee or if none can be agreed upon,

- 34.4.2. A fee based on the following percentages of the various portions of the cost of the work:
- 34.4.2.1. For costs incurred under Sections 38.2.1 and 38.2.2, Contractor's fee shall not exceed ten percent (10%).
 - 34.4.2.2. For costs incurred under Section 38.2.3, Contractor's fee shall not exceed seven and one half percent (7.5%); and if a subcontract is on the basis of cost of the work plus a fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall not exceed ten percent (10%); and
 - 34.4.2.3. No fee shall be payable on the basis of costs itemized under Sections 38.2.4 and 38.2.5, (except Section 38.2.5.3), and Section 38.3.
- 34.5. The amount of credit to be allowed by Contractor to City for any such change which results in a net decrease in cost, will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any, however, Contractor shall not be entitled to claim lost profits for any Work not performed.
- 34.6. Whenever the cost of any work is to be determined pursuant to Sections 38.2 and 38.3, Contractor will submit in a form acceptable to Consultant an itemized cost breakdown together with the supporting data.
- 34.7. Where the quantity of any item of the Work that is covered by a unit price is increased or decreased by more than twenty percent (20%) from the quantity of such work indicated in the Contract Documents, an appropriate Change Order shall be issued to adjust the unit price, if warranted.
- 34.8. Whenever a change in the Work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, Contractor shall submit an initial cost estimate acceptable to Consultant and Contract Administrator.
- 34.8.1. Breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost.
 - 34.8.2. Whenever a change involves Contractor and one or more Subcontractors and the change is an increase in the Contract Price, overhead and profit percentage for Contractor and each Subcontractor shall be itemized separately.
- 34.9. Each Change Order must state within the body of the Change Order whether it is based upon unit price, negotiated lump sum, or "cost of the work."

35. Notification and Claim for Change of Contract Time or Contract Price:

35.1. Any claim for a change in the Contract Time or Contract Price shall be made by written notice by Contractor to the Contract Administrator and to Consultant within five (5) calendar 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 Consultant allows an additional period of time to ascertain more accurate data in support of the claim and such notice shall be accompanied by Contractor's written notarized statement that the adjustment 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 for changes in the Contract Time or Contract Price shall be determined by Consultant in accordance with Article 10 hereof, if City and Contractor cannot otherwise agree. **IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE CONTRACT TIME OR CONTRACT PRICE SHALL BE WAIVED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.**

35.2. 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 therefore as provided in Section 39.1. Such delays shall include, but not be limited to, acts or neglect by any separate contractor employed by City, fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

36. No Damages for Delay:

No claim for damages or any claim, other than for an extension of time, shall be made or asserted against City by reason of any delays except as provided herein. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by Contractor for actual delays due solely to fraud, bad faith or active interference on the part of City or its Consultant. Otherwise, Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

37. Excusable Delay; Compensable; Non-Compensable:

37.1 Excusable Delay. Delay which extends the completion of the Work and which is caused by circumstances beyond the control of Contractor or its subcontractors, suppliers or vendors is Excusable Delay.

Contractor is entitled to a time extension of the Contract Time for each day the Work is delayed due to Excusable Delay. Contractor shall document its claim for any time extension as provided in Article 35 hereof.

Failure of Contractor to comply with Article 35 hereof as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.

Excusable Delay may be compensable or non-compensable:

(a) Compensable Excusable Delay. Excusable Delay is compensable when (i) the delay extends the Contract Time, (ii) is caused by circumstances beyond the control of the Contractor or its subcontractors, suppliers or vendors, and (iii) is caused solely by fraud, bad faith or active interference on the part of City or its agents. In no event shall Contractor be compensated for interim delays which do not extend the Contract Time.

Contractor shall be entitled to direct and indirect costs for Compensable Excusable Delay. Direct costs recoverable by Contractor shall be limited to the actual additional costs allowed pursuant to Article 33 hereof.

City and Contractor recognize and agree that the amount of Contractor's precise actual indirect costs for delay in the performance and completion of the Work is impossible to determine as of the date of execution of the Contract Documents, and that proof of the precise amount will be difficult. Therefore, indirect costs recoverable by the Contractor shall be liquidated on a daily basis for each day the Contract Time is delayed due to a Compensable Excusable Delay. These liquidated indirect costs shall be paid to compensate Contractor for all indirect costs caused by a Compensable Excusable Delay and shall include, but not be limited to, all profit on indirect costs, home office overhead, acceleration, loss of earnings, loss of productivity, loss of bonding capacity, loss of opportunity and all other indirect costs incurred by Contractor. The amount of liquidated indirect costs recoverable shall be **one hundred dollars (\$100)** per day for each calendar day the Contract is delayed due to a Compensable Excusable Delay.

(b) Non-Compensable Excusable Delay. When Excusable Delay is (i) caused by circumstances beyond the control of Contractor, its subcontractors, suppliers and vendors, and is also caused by circumstances beyond the control of the City or Consultant, or (ii) is caused jointly or concurrently by Contractor or its subcontractors, suppliers or vendors and by the City or Consultant, then Contractor shall be entitled only to a time extension and no further compensation for the delay.

38. Substantial Completion:

When Contractor considers that the Work, or a portion thereof designated by City pursuant to Article 25 hereof, has reached Substantial Completion, Contractor shall so notify City and Consultant in writing. Consultant and City shall then promptly inspect the Work. When Consultant, on the basis of such an inspection, determines that the Work or designated portion thereof is substantially complete, it will then prepare a Certificate of Substantial Completion in the form attached hereto as Form 00925 which shall establish the Date of Substantial Completion; shall state the responsibilities of City and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance; and shall list all Work yet to be completed to satisfy the requirements of the Contract Documents for Final Completion. The failure to include any items of corrective work on such list does not alter the responsibility of Contractor to complete all of the Work in accordance with the Contract Documents. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to City through the Contract Administrator and Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

39. No Interest:

Any monies not paid by City when claimed to be due to Contractor under this Agreement, including, but not limited to, any and all claims for contract damages of any type, shall not be subject to interest including, but not limited to prejudgment interest. However, the provisions of City's prompt payment ordinance, as such relates to timeliness of payment, and the provisions of Section 218.74(4), Florida Statutes (1989) as such relates to the payment of interest, shall apply to valid and proper invoices.

40. Shop Drawings:

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

40.2. Within thirty (20) calendar days after the Project Initiation Date specified in the Notice to Proceed, Contractor shall submit to Consultant a complete list of preliminary data on items for which Shop Drawings are to be submitted and shall identify the critical items. Approval of this list by Consultant shall in no way relieve Contractor from submitting complete Shop Drawings and providing materials, equipment, etc., fully in accordance with the Contract Documents. This procedure is required in order to expedite final approval of Shop Drawings.

40.3. After the approval of the list of items required in Section 44.2 above, Contractor shall promptly request Shop Drawings from the various manufacturers, fabricators, and suppliers. Contractor shall include all shop drawings and other submittals in its certification.

40.4. Contractor shall thoroughly review and check the Shop Drawings and each and every copy shall show this approval thereon.

- 40.5. If the Shop Drawings show or indicate departures from the Contract requirements, 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 Documents.
 - 40.6. Consultant shall review and approve Shop Drawings within seven (7) calendar days from the date received, unless said Drawings are rejected by Consultant for material reasons. Consultant's approval of Shop Drawings will be general and shall not relieve Contractor of responsibility for the accuracy of such 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 Drawings. No work called for by Shop Drawings shall be performed until the said Drawings have been approved by Consultant. Approval shall not relieve Contractor from responsibility for errors or omissions of any sort on the Shop Drawings.
 - 40.7. 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 Consultant along with its comments as to compliance, noncompliance, or features requiring special attention.
 - 40.8. 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.
 - 40.9. Contractor shall submit the number of copies required by Consultant. Resubmissions of Shop Drawings shall be made in the same quantity until final approval is obtained.
 - 40.10. Contractor shall keep one set of Shop Drawings marked with Consultant's approval at the job site at all times.
41. Field Layout of the Work and Record Drawings:
- 41.1. The entire responsibility for establishing and maintaining line and grade in the field lies with Contractor. Contractor shall maintain an accurate and precise record of the location and elevation of all pipe lines, conduits, structures, maintenance access structures, handholes, fittings and the like and shall prepare record or "as-built" drawings of the same which are sealed by a Professional Surveyor. Contractor shall deliver these records in good order to Consultant as the Work is completed. The cost of all such field layout and recording work is included in the prices bid for the appropriate items. All record drawings shall be made on reproducible paper and shall be delivered to Consultant prior to, and as a condition of, final payment.
 - 41.2. Contractor shall maintain in a safe place at the Project site one record copy of all Drawings, Plans, Specifications, Addenda, written amendments, Change Orders, Field Orders and written interpretations and clarifications in good order and

annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings shall be available at all times to Consultant for reference. Upon Final Completion of the Project and prior to Final Payment, these record documents, samples and Shop Drawings shall be delivered to the Contract Administrator.

41.3. Prior to, and as a condition precedent to Final Payment, Contractor shall submit to City, Contractor's record drawings or as-built drawings acceptable to Consultant.

42. Safety and Protection:

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

42.1.1. All employees on the work site and other persons who may be affected thereby;

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

42.1.3. 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.

42.2. Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utilities when prosecution of the work may affect them. All damage, injury or loss to any property referred to in Sections 46.1.2 and 46.1.3 above, caused directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor. 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 Consultant has issued a notice to City and Contractor that the Work is acceptable except as otherwise provided in Article 24 hereof.

42.3. Contractor shall designate a responsible member of its organization at the Work site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to City.

43. Final Bill of Materials:

Contractor shall be required to submit to City and Consultant a final bill of materials with unit costs for each bid item for supply of materials in place. This shall be an itemized list of all materials with a unit cost for each material and the total shall agree with unit costs established for each Contract item. A Final Certificate for Payment cannot be issued by Consultant until Contractor submits the final bill of materials and Consultant verifies the accuracy of the units of Work.

44. Payment by City for Tests:

Except when otherwise specified in the Contract Documents, the expense of all tests requested by Consultant shall be borne by City and performed by a testing firm chosen by Consultant. For road construction projects the procedure for making tests required by Consultant will be in conformance with the most recent edition of the State of Florida, Department of Transportation Standard Specifications for Road and Bridge Construction. The cost of any required test which Contractor fails shall be paid for by Contractor.

45. Project Sign:

Any requirements for a project sign shall be paid by the Contractor as specified by City Guidelines`.

46. Hurricane Precautions:

46.1. During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning or alert, the Contractor, at no cost to the City, shall take all precautions necessary to secure the Project site in response to all threatened storm events, regardless of whether the City or Consultant has given notice of same.

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

46.3. Additional work relating to hurricane warning or alert at the Project site will be addressed by a Change Order in accordance with Section 33, General Conditions.

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

47. Cleaning Up; City's Right to Clean Up:

Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Project, Contractor shall remove all its waste materials and rubbish from and about the Project as well as its tools, construction equipment, machinery and surplus materials. If Contractor fails to clean up during the prosecution of the Work or at the completion of the Work, City may do so and the cost thereof shall be charged to Contractor. If a dispute arises between Contractor and separate contractors as to their responsibility for cleaning up, City may clean up and charge the cost thereof to the contractors responsible therefore as Consultant shall determine to be just.

48. Removal of Equipment:

In case of termination of this Contract before completion for any cause whatever, Contractor, if notified to do so by City, shall promptly remove any part or all of Contractor's equipment and supplies from the property of City, failing which City shall have the right to remove such equipment and supplies at the expense of Contractor.

49. Nondiscrimination, Equal Employment Opportunity, and Americans with Disabilities Act:

1. Contractor shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. Contractor shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Contractor shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

Contractor's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery. Contractor shall not engage in or commit any discriminatory practice in violation of City of Miami Beach Ordinance No 92.2824 in performing any services pursuant to this Agreement.

2. **NON-DISCRIMINATION.** The Proposer certifies that it is in compliance with the non-discrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin. In accordance with the City's Human Rights Ordinance, codified in Chapter 62 of the City Code, Proposer shall prohibit discrimination by reason of race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, and age or disability.

50. Project Records:

City shall have the right to inspect and copy, at City's expense, the books and records and accounts of Contractor which relate in any way to the Project, and to any claim for additional compensation made by Contractor, and to conduct an audit of the financial and accounting records of Contractor which relate to the Project and to any claim for additional compensation made by Contractor. Contractor shall retain and make available to City all such books and records and accounts, financial or otherwise, which relate to the Project and to any claim for a period of three (3) years following Final Completion of the Project. During the Project and the three (3) year period following Final Completion of the Project, Contractor shall provide City access to its books and records upon seventy-two (72) hours written notice.

51. Performance Evaluations:

An interim performance evaluation of the successful Contractor may be submitted by the Contract Administrator during construction of the Project. A final performance evaluation shall be submitted when the Request for Final Payment to the construction contractor is forwarded for approval. In either situation, the completed evaluation(s) shall be forwarded to the City's Procurement Director who shall provide a copy to the successful Contractor. Said evaluation(s) may be used by the City as a factor in considering the responsibility of the successful Contractor for future bids with the City.

52. Occupational Health and Safety:

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

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

53. Environmental Regulations:

The City reserves the right to consider a Bidder's history of citations and/or violations of environmental regulations in investigating a Bidder's responsibility, and further reserves the right to declare a Bidder not responsible if the history of violations warrant such determination in the opinion of the City. Bidder shall submit with its Bid, a complete history of all citations and/or violations, notices and dispositions thereof. The nonsubmission of any such documentation shall be deemed to be an affirmation by the Bidder that there are no citations or violations. Bidder shall notify the City immediately of notice of any citation

or violation which Bidder may receive after the Bid opening date and during the time of performance of any contract awarded to it.

54. "Or Equal" Clause:

Whenever a material, article or piece of equipment is identified in the Contract Documents including plans and specifications by reference to manufacturers' or vendors' names, trade names, catalog numbers, or otherwise, City, through Consultant, will have made its best efforts to name at least three (3) such references. Any such reference is intended merely to establish a standard; and, unless it is followed by the words **"no substitution is permitted"** because of form, fit, function and quality, any material, article, or equipment of other manufacturers and vendors which will perform or serve the requirements of the general design will be considered equally acceptable provided the materials, article or equipment so proposed is, in the sole opinion of Consultant, equal in substance, quality and function.

ANY REQUESTS FOR SUBSTITUTION MUST BE MADE TO THE CITY'S PROCUREMENT DIRECTOR, WHO SHALL FORWARD SAME TO CONSULTANT.

E-VERIFY AFFIDAVIT

In accordance with Section 448.095, Florida Statutes, the City of Miami Springs requires all contractors doing business with the City to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The City will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity’s participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.

In the presence of:

Signed, sealed and delivered by:

Witness #1 Print Name: _____

Print Name: _____

Witness #2 Print Name: _____

Title: _____

Entity Name: _____

ACKNOWLEDGMENT

State of Florida
County of _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 20____, by _____
_____(name of person) as _____ (type of authority) for _____
_____(name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as Commissioned)

- _____ Personally known to me; or
- _____ Produced identification (Type of Identification: _____)
- _____ Did take an oath; or
- _____ Did not take an oath

EXHIBIT B

Composite Quote from Metro Express, Inc.



Metro Express, Inc.
State Wide General Engineering Contractors
CGCO50965- E-201301

Licensed
 Insured
 Bonded

PROPOSAL

Quote No. 031522-001

Date: 3/15/2022

To:	City of Miami Springs Public Works Department 345 N Royal Poinciana Blvd Miami Springs FL 33166-5259		
Contact	Lazaro Garaboa	Phone: 305-805-5170	Fax: 305-805-5195
Job:	Sidewalk Repairs Multiple Locations		

We hereby propose to furnish all labor, material and equipment subject to terms and conditions as follows:
 The job will include and be limited to the following:

	Unit	Qty	UP	Total
Mobilization	EA	1	600.00	600.00
MOT	EA	1	600.00	600.00
Concrete Sidewalk, 4" thick	SF	14,505	4.50	65,272.50
Concrete Sidewalk, 6" thick	SF	2,330	5.00	11,650.00
NOTES:				
Pump not included			TOTAL	78,122.50

Notes:
 **All other job not listed above will be billed at additional charge.
 **Price do not include any permit (to be obtained by others), MOT, surveying, tree removal, valve adjustment, testing, layout, marking, painting, as-built, regrading, landscaping, etc
 **Not responsible for area not ready, cars or any other obstacle in the area of work.
 **All work to be performed in regular daily operation hours during weekdays.

We hereby propose to furnish labor and materials, complete in accordance with above specifications, for the sum shown above, with payment to be made within 30 days after work completed.

THIS PROPOSAL SUBJECT TO ACCEPTANCE WITHIN 30 DAYS AND IS VOID THEREAFTER AT THE OPTION OF METRO EXPRESS INC.

Authorized Signature: A.F.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are hereby accepted. You are authorized to do work as specified. Payment will be made as outline above and interest charges may be charged upon delinquent accounts.

ACCEPTED BY: _____
 name signature

DATE: _____

Location	SDW-4"	SDW-6"
Crane & Miami Springs (2083 corner park)	177	10
2500 Ludlam DR	172	40
1295 Thrush AVE	188	44
Miami Springs AVE & Blue Bird	174	
Empty Lot next to 1271 Redbird	92	
1200 Thrush AVE	224	37
1101 Nightingale AVE	160	41
901 Oriole AVE	224	35
750 Shadow Way	102	12
289 Shadow Way	12	
327 Flacon AVE	66	12
200 Esplanade DR	127	
180 Esplanade DR	27	
780 Nightingale AVE	49	
80 Whitethorn DR on Beverly	130	21
88 Corydon DR	149	17
100 BLK Chippewa east side	81	50
188 Corydon DR	138	
101 Pcatella ST on Payne	160	13
100 Pocatella ST on Paybe	133	12
254 Curtiss Grace Church	200	52
890 Morningside DR	116	70

2901	466
LF	LF

14505	2330
SF	SF



PROPOSAL

Quote No. 031622-001

Date: 3/16/2022

To:	City of Miami Springs Public Works Department 345 N Royal Poinciana Blvd Miami Springs FL 33166-5259		
Contact	Lazaro Garaboa	Phone: 305-805-5170	Fax: 305-805-5195
Job:	ADA Ramps at Multiple Locations		

We hereby propose to furnish all labor, material and equipment subject to terms and conditions as follows:
 The job will include and be limited to the following:

	Unit	Qty	UP	Total
Mobilization	EA	1	600.00	600.00
MOT	EA	1	600.00	600.00
Concrete Sidewalk, 6" thick for ADA Ramp	SF	950	5.00	4,750.00
Detectable Warning Surface	EA	19	300.00	5,700.00
NOTES:				
Pump not included			TOTAL	11,650.00

Notes:
 **All other job not listed above will be billed at additional charge.
 **Price do not include any permit (to be obtained by others), MOT, surveying, tree removal, valve adjustment, testing, layout, marking, painting, as-built, regrading, landscaping, etc
 **Not responsible for area not ready, cars or any other obstacle in the area of work.
 **All work to be performed in regular daily operation hours during weekdays.

We hereby propose to furnish labor and materials, complete in accordance with above specifications, for the sum shown above, with payment to be made within 30 days after work completed.

THIS PROPOSAL SUBJECT TO ACCEPTANCE WITHIN 30 DAYS AND IS VOID THEREAFTER AT THE OPTION OF METRO EXPRESS INC.

Authorized Signature: A.F.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are hereby accepted. You are authorized to do work as specified. Payment will be made as outline above and interest charges may be charged upon delinquent accounts.

ACCEPTED BY: _____
 name signature

DATE: _____

Location	DWS	ADA-Ramp
Crane & Miami Springs (2083 corner park)	1	10
2500 Ludlam DR	1	10
1295 Thrush AVE	1	10
Miami Springs AVE & Blue Bird	2	20
1200 Thrush AVE	1	10
1101 Nightingale AVE	1	10
901 Oriole AVE	1	10
289 Shadow Way	1	10
200 Esplanade DR	1	10
180 Esplanade DR	1	10
80 Whitethorn DR on Beverly	1	10
88 Corydon DR	2	20
188 Corydon DR	1	10
101 Pcatella ST on Payne	1	10
100 Pocatella ST on Paybe	1	10
254 Curtiss Grace Church	1	10
890 Morningside DR	1	10

19	190
EA	LF

950
SF