

**AGREEMENT BETWEEN OWNER AND CONTRACTOR  
FOR A PROJECT OF LIMITED SCOPE**

This Agreement Between Owner and Contractor For a Project of Limited Scope (referred to herein as this "Agreement" and consisting of this document and all Exhibits attached hereto and/or incorporated herein by reference including, but not limited to, the Contract Documents, as said term is hereinafter defined) is being made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between:

**Owner** (hereinafter, the "Owner")  
Bit Boy Owner, LLC,  
a Delaware limited liability company  
6000 NW 58 St  
North Miami, Florida 33181  
Attn.: Adam Nadler, Project Manager  
Phone: 786-888-1234  
Fax: 786-629-3168  
Email: [Adam@MyVirtualDoctor.com](mailto:Adam@MyVirtualDoctor.com)

-and-

**Contractor** (hereinafter, the "Contractor")  
Name: Russell Incorporated, a  
Florida corporation  
Address: 1700 South Glades Road  
Boca Raton, Florida 33442  
Attn.: Jimmy Jones  
Phone: (954) 427-5500  
Fax: (954) 427-5300  
Email: [Phil@MyVirtualDoctor.com](mailto:Phil@MyVirtualDoctor.com)  
License Number: CGC 8675309

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**The Development is:**

The Landings, an approximately 184 acre tract of land situated on the East side Jacksonville Boulevard, Jacksonville, Florida (the "Development").

In consideration of the sum of Ten and 00/100 (\$10.00) Dollars exchanged between the parties, the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Contractor (collectively, the "Parties") agree as set forth herein. All terms and phrases capitalized or otherwise defined in this Agreement shall, for all purposes of this Agreement, have the respective meanings as are specified herein. All words utilized herein that have well known technical or construction industry meanings shall be construed in accordance with such recognized meanings, unless defined differently herein or if the context clearly indicates otherwise.

As a material inducement to Owner in entering into this Agreement, the Contractor, by its execution hereof, hereby represents and warrants that all of the statements, information and documentation contained in the Contractor's Bid Proposal (as the same may have been amended prior to the date hereof, the "Proposal") delivered to the Owner on August 29, 2014 including, but not limited to, the Contractor's commitment: (i) to complete all of the Basic Services referred to (and as said term is defined) hereinbelow and in the Owner's Reissued Invitation to Bid – Spine Road Work delivered to the Contractor on August 7, 2014 (the "Invitation to Bid"), the terms and provisions of which, if not set forth specifically herein, are hereby incorporated herein by this reference, for the fixed sum of Three Million Five Hundred Thousand (\$3,500,000) Dollars (which may be subject to adjustment pursuant to the provisions set forth hereinbelow); (ii) subject to the provisions set forth hereinbelow, to complete the Basic Services within a maximum number of two hundred sixty three (263) work days (which work days shall not include Saturdays, notwithstanding the fact that the Contractor shall be permitted to work on Saturdays); hereinafter the "Time Schedule") from the date of the Contractor's receipt, via email, of the Owner's notice to the Contractor to proceed (the "Notice to Proceed"; said commencement date being hereinafter referred to as the "Effective Date"); (iii) to qualify and continue to qualify as a member of the City of North, Miami, Florida's (the "City") Local Preference Group by subcontracting an aggregate of at least ten (10%) percent of the total cost of the Basic Services to one or more subcontractors approved by the Owner (such approval not to be unreasonably withheld and/or delayed) subject to each such subcontractor, at all times prior to the completion of the Work, having an office physically located within the limits of the City and possessing a current City Business Tax Receipt (the "Approved Subcontractor(s)"); and (iv) to employ, during each month of the term of this Agreement, individuals residing in the City equal to not less than fifteen (15%) percent of the total number of individuals required to perform and actually performing such Work on behalf of the Contractor, the Approved Subcontractor and/or all of the Contractor's Agents (as said term is hereinafter defined), are binding upon the Contractor as well as true and correct in all material respects, and are hereby incorporated herein by this reference, it being understood that: (i) for purposes of this Agreement, the term, "Contract Documents", as used herein, shall be Construction Drawings (the "Drawings and Specifications" and Exhibits 1-3 to, and as more particularly described and defined in the Invitation to Bid (as the same may have been amended and/or modified after the date of such Invitation to Bid), each of which is hereby incorporated herein by reference, together with this Agreement, all additional and/or modifications to the Drawings and Specification (including those resulting from Changes in Scope [as hereinafter defined]) addenda to such Drawings and Specifications ("Addenda") and Changes in Scope adopted during construction; (ii) in the event the statements made by the Contractor in said Proposal and/or the information and/or documents included by the Contractor therein shall prove to be incorrect in any material respect, the same shall entitle the Owner to receive from the Contractor those penalties more specifically set forth herein and/or to forthwith terminate this Agreement, without penalty; and (iii) in the event of a conflict between any of the terms and/or provisions and/or specifications set forth herein and the terms and conditions and/or specifications contained in the Invitation to Bid, the conflict shall be determined by the Owner, in its sole and absolute discretion.

Supplementing the foregoing provisions, it is expressly understood that in the event the Contractor and/or its Approved Subcontractor(s) and/or any other consultant or subcontractor retained by the Contractor and/or the Approved Subcontractor, shall fail, during any month of the term hereof, to employ residents of the City equal to not less than a total of fifteen (15%) percent

(the "Required Percentage") of the total number of individuals employed/retained, during the month in question, to perform (and actually performing) the Work, the Owner shall have the unfettered right to impose upon the Contractor agreed upon liquidated damages equal to the percentage amount, less than the Required Percentage, of City residents actually performing the Work during such month.

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## **ARTICLE I - THE SCOPE OF WORK/TERM/LIQUIDATED DAMAGES**

1.1 Pursuant to this Agreement, the Invitation to Bid and the Contract Documents referred to herein and in the Invitation to Bid, the Contractor shall be responsible to furnish all labor, materials, tools, equipment and supplies required by this Agreement, the Invitation to Bid and the Contract Documents (including all work which can be reasonably inferable from said Contract Documents) in connection with the construction of the Development's divided, four (4) lane, approximately 3,200 linear foot, Spine Road with the outer limits of the work having a width of approximately one hundred twenty (120') feet of which approximately forty-two (42') feet will be paved traffic lanes and the balance of which will consist of medians, sidewalks, bicycle lanes, curbs/gutters and green space, all as the same are depicted and set forth in the Contract Documents and as more fully described herein including, but not limited to, the detailed Scope of Work set forth on Exhibit A annexed hereto. Such scope of work shall also include solid waste excavation and relocation, water and sanitary sewer utility installations, power/communication utility installations, storm water drainage system installations (such as curbs/gutters, retention areas, storm water drainage wells, etc.), as well as providing to the licensed engineer selected by the Owner (the "Project Engineer") all required information and/or certifications as defined in and/or required by the Contract Documents (including all work incidental to the foregoing, collectively, the "Basic Services"), it being understood that: (i) subject to the provisions hereinabove set forth, as soon as is reasonably possible after the Effective Date, the Contractor shall commence and thereafter continuously prosecute said Basic Services to completion such that all of the Basic Services shall be fully completed within the Time Schedule; and (ii) by its execution hereof, the Contractor acknowledges that (x) the Time Schedule is a reasonable period of time to complete the Basic Services, and (y) the timely performance of the Basic Services shall be of the essence.

1.2 In addition to the Basic Services to be provided by the Contractor hereunder, the Owner shall have the unfettered right and option, to be exercised by written notice given to the Contractor at any time and from time-to-time during the term hereof, to require the Contractor to provide either or both of the following optional services (the "Optional Services and, together with the Basic Services, collectively, the "Work"), which Optional Services, if and to the extent requested by the Owner, shall be performed as soon as is commercially reasonable after the Contractor's receipt of each such request by Owner:

(a) as may be requested by the Owner from time to time during the term of this Agreement, provide all labor, services, equipment and/or materials required to deliver to the Development site up to eighty-five thousand (85,000 +/-) cubic yards of backfill material (from the "Palm Aire" project located in Pompano Beach, Florida) at a cost of Ten and 10/100 (\$10.10) Dollars per ton; and/or

(b) provide all labor, services, equipment and/or materials required to purchase, retrieve and remove from the Development site approximately 194,000 cubic yards of certain fill material acquired by the Owner from the Brickell Citi Center site, Miami, Florida, at an all-inclusive price (to be paid to the Owner) of One (\$1.00) Dollar per cubic yard (to be determined by truck counts), it being: (i) acknowledged by the Contractor that the Owner has made available to the Contractor all information (within its possession) applicable to such fill material; and (ii) understood that the Contractor's obligation to purchase and remove such material is expressly subject to, and contingent upon, the Owner's delivery to the Contractor of a Letter of No Objection from the Miami-Dade County Department of Environmental Resources Management as to the use of such material in connection with the construction of residential improvements to be located within said County.

1.3 Supplementing the provisions of Section 1.1 above, in the event the Contractor shall fail to timely prosecute and complete the Basic Services in accordance with the Time Schedule, the Contractor shall automatically be deemed to be liable to the Owner for agreed upon liquidated damages (which the Owner shall have sustained and suffered as a consequence thereof) in the amount of Five Thousand and 00/100 (\$5,000.00) Dollars per day for each day (or part thereof) that the Contractor shall have failed to timely comply with said Time Schedule. This provision for agreed-upon liquidated damages as set forth in this Section 1.3, as well as in the introductory paragraphs to this Agreement (regarding those penalties to be assessed against the Contractor in the event it should fail to employ or cause to be employed the Required Percentage of City residents) are bona fide provisions for such and are not a penalty, the Parties understanding being that by reason of the delay in the Owner's continued development and construction of the Development (or the Owner's inability to comply with its required local preference initiatives, as the case may be), the Owner will have sustained damages, which damages will be substantial and would be extremely difficult or impossible to determine with mathematical precision. Therefore, Owner and Contractor have agreed that, by signing this Agreement, the Parties acknowledge that the aforesaid liquidated damages agreed to be paid by Contractor, is agreed upon, after negotiation, as the Parties' reasonable estimate of the Owner's liquidated damages in the event the Contractor shall fail to timely comply with said Time Schedule or employ (or cause to be employed) such Required Percentage of City residents.

1.4 Contractor acknowledges the following as to the intent of the Contract Documents:

1.4.1 The intent of the Contract Documents is to include in the Work all labor and materials, insurance, tools, equipment, licenses, taxes, approvals, transportation, surveys, testing, field engineering and other professional services, and the inspection, survey and testing services required of Contractor pursuant thereto, together with any other items required to execute and complete the Work satisfactorily and in accordance with the Contract Documents. Contractor shall perform and complete the Work in accordance with the true intent and meaning of the Contract Documents, as may be interpreted to include the most complete Scope of the Work, shall perform all work incident thereto or as is usually performed in connection therewith or as is reasonably inferable therefrom and where the Work is part of a system to be installed in the Development, or if the intent of the Work is for the Contractor to install a complete system, Contractor shall provide all labor and materials necessary to render the system fully functional, complete and operational for the purpose intended.

1.4.2 The Contract Documents are complementary including, but not limited to, the Drawings and Specifications, and what is called for by one shall be as binding as if called for by all.

1.4.3 If any conflicts or ambiguities are found in or between the Drawings and Specifications, or among any of the Contract Documents, they shall be brought to the attention of the Owner immediately for resolution. Owner, after consulting with the Project Engineer who prepared the Drawings and Specifications for the Development and/or other consultants where it sees fit, will interpret the Contract Documents so as to secure in all cases the most substantial and complete performance of the Work as is most consistent with the needs and requirements of the Work. The decision of Owner shall be binding and the Work shall be performed as so directed.

1.4.4 Addenda to parts of the Contract Documents are for the purpose of varying, modifying, rescinding or adding to portions of the Contract Documents. All Addenda should be read together with the portions of the Contract Documents to which they pertain. Where an Addendum modifies a portion of a paragraph or a section, the remainder of the paragraph or section shall remain in force unless otherwise stated in the Addendum.

1.4.5 Captions, headings, cover pages, tables of contents and footnote instructions contained in the Contract Documents are inserted only to facilitate reference and for convenience and in no way define, limit or describe the scope, intent or meaning of any provision of the Contract Documents.

1.4.6 Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.4.7 In all instances in which there is any conflict, lack of clarity or ambiguity in or among the Contract Documents, the obligations of Contractor shall be deemed, at Owner's option, to include the most costly, greater quantity, or most demanding means of resolving the conflict, lack of clarity or ambiguity, unless Owner agrees in writing to accept a lesser alternative.

1.4.8 A typical or representative detail indicated on the Drawings shall constitute the standard for workmanship and material throughout corresponding parts of the Work. Where necessary, and where reasonably inferable from the Drawings and Specifications, Contractor shall adapt such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be subject to prior approval by the Owner. Repetitive features shown in outline on the Drawings shall be in exact accordance with corresponding features completely shown. If applicable, Contractor shall construct a mock-up sample of any such repetitive feature sufficiently in advance of the time required for the installation of same. The mock-up shall be constructed and modified as directed by Contractor, so as to enable a complete assessment of the adequacy of the design and to identify and establish the standards of quality that Contractor will require with respect to such features. The failure of Owner to direct the construction of the mock-up sample shall not relieve Contractor of the obligation to perform the Work as and to the level of quality that Owner may subsequently direct and Contractor shall be responsible to remedy and perform work necessary to correct any deficiencies that would have been identifiable had Contractor constructed a mock-up sample.

1.4.9 Contractor acknowledges that there are items of work which are not drawn or specified with complete detail in the Drawings and Specifications but which are required for the completion of the Work. Any such item, when identified as part of the reasonable development of the Work, shall be drawn or specified by the Owner in consultation with Contractor, in a manner consistent with contemplated kind and quality and customary standards. Contractor shall bring such item or items first to the attention of Owner. When such drawing or specification is approved by Owner, the drawing or specification so approved shall thereupon be deemed incorporated within and made a part of the Drawings and Specifications and as part of the Contract Documents, and the item of work shall be performed by Contractor as part of the Work without further action or order of Owner and without any increase in the Fee (as such term is hereinafter defined) as if such drawing and specification were originally included in the Drawings and Specifications and the Contract Documents, respectively.

1.5 Contractor shall fully perform the Work in accordance with this Agreement and the conditions and requirements set forth in the Invitation to Bid and the Contract Documents, including all work incidental thereto, so that all Work provided to Owner is coordinated, completed and of a professional nature. In addition to the foregoing, Contractor shall provide technical services and personnel as required or specified to effect the operation of the equipment required to perform the Work, including in the performance of the testing of such equipment, which testing shall be performed in accordance with the respective equipment manufacturer's recommendations.

1.6 Contractor shall attend all meetings which are necessary and/or reasonably requested by Owner and shall be represented thereat by an individual having knowledge of the Work and authorized to act on behalf of the Contractor. Contractor acknowledges that Owner has and may, in the future, retain certain other contractors to assist Owner in connection with the Development (which entities are collectively referred to herein as the "Owner's Contractors"). Contractor agrees that it shall maintain communication and coordinate its activities with Owner's Contractors as necessary to facilitate the completion of the Work in accordance with this Agreement.

1.7 Contractor shall be fully responsible for the professional quality of the Work, and all other work provided by or through the Contractor, the Approved Subcontractor and all other subcontractors, sub-subcontractors, vendors, consultants, equipment suppliers and/or materialmen retained by the Subcontractor and/or the Approved Subcontractor (together with the Approved Contractor(s), collectively, the "Contractor's Agents") and for the coordination of the Work performed by the Contractor and/or the Contractor's Agents with the work and/or services provided by the Owner, Owner's Contractors, or any other persons (including any entities and/or individuals) retained by Owner in connection with the design, development and/or construction of the Development.

1.8 Contractor acknowledges that the Work described in Section 1.1 above may have to be coordinated and/or integrated with other construction/development work for the Development to be provided by others. In this regard, Contractor acknowledges and agrees that it shall, if and to the extent reasonably required, be responsible to coordinate the performance of the Work with the work of Owner's Contractors so that the work on the entire Development is appropriately coordinated and integrated with the Work to be performed by the Contractor and/or the Contractor's Agents and the work performed by the Owner's Contractors.

1. The Work shall be performed as expeditiously as practicable and shall be consistent with good practices and applicable law and standards of professional skill, care and diligence. The Basic Services shall be performed in accordance with the time limits established in the Time Schedule, it being understood that the Time Schedule shall not be exceeded by the Contractor under any circumstance, except to the extent of the occurrence of an event of Force Majeure (as defined below), a Change in Scope (as defined below) requested by Owner, or changes in laws or regulations occurring after the date hereof. In the event that Contractor's performance of the Basic Services is delayed by Force Majeure (written notice of which shall be delivered to the Owner as soon as possible after the occurrence of the event giving rise to such claim of Force Majeur but not, in any event, more than twenty-four (24) hours after any such occurrence) or by a Change in Scope requested by Owner, the Contractor shall be entitled to an extension of time, equal to the amount of such delay, reasonably required to complete the applicable, remaining portions of the Basic Services.

1.8 The Contractor's Work shall be subject to the inspection and approval of the Owner (and/or its designees) at all times, but such approval shall not relieve the Contractor of responsibility for the proper performance of such Work. In addition, the Contractor shall be required: (i) from time to time, as specified by the Owner's Project Engineer and/or Project Manager, provide to such Engineer or Manager (as the case may be) all required information and/or certifications as defined in and/or required by this Agreement and the Contract Documents; and (ii) at all times, to provide safe and sufficient facilities for such inspection of the Work and shall, from time to time as required, furnish the Owner's Site Superintendent and/or Land Development Manager with full information concerning all materials and equipment brought onto the Development by it and/or any of its Contractor's Agents.

## **ARTICLE II - CHARGES AND PAYMENT/RETAINAGE**

2.1 Owner will pay Contractor for all Work required to be performed by Contractor hereunder: (i) the sum of \$3,500,000, in full payment for the Basic Services (the "Base Fee"), all as set forth in the Schedule of Values attached hereto as Exhibit B; and (ii) for an amount to be computed in accordance with the provisions of Section 1.2 hereof, in full payment of either or both of the Optional Services (the "Additional Fee" and, together with the Base Fee, collectively, the "Fee"), which Fee includes all permits (other than, and specifically excepting, the charges for the permit issued by the City for the Basic Services to be performed by the Contractor hereunder), inspection costs and/or taxes required by any division of federal, state and local governments having jurisdiction over the Development. Upon the completion of the Work (or portions thereof) and upon verification and approval of such completed Work by the Owner, the Contractor will be required to submit to the Developer, on a bi-monthly basis, on or before the 23<sup>rd</sup> day of each other month during the term hereof, an original invoice (in such form as may be specified by the Owner), in duplicate, for the Work performed prior to the date of such invoice. Unless then being contested by the Owner in good faith, the Fee (less the applicable Retainage described in Section 2.2 below, if any) shall be payable on or about the 25<sup>th</sup> day of the month immediately following the month in which such invoice has been delivered to the Owner provided, and on the express condition that, each such invoice, together with the other

documents described in Section 2.4 below, are delivered to the Owner on or before the 23<sup>rd</sup> day of each other month in question, time being of the essence.

2.2 The Owner shall withhold from each payment of the Base Fee to become due Contractor hereunder, an amount equal to ten (10%) percent of the amount of each approved invoice in question (the "Retainage"), it being understood that: (i) such Retainage shall be reduced to five (5%) percent of the amount of each approved invoice submitted by the Contractor after the Basis Services have been fifty (50%) percent completed; and (ii) all of such Retainages shall be paid to the Contractor within forty-five (45) days after its Final Completion (as said term is hereinafter defined), to the satisfaction of the Owner (in its sole discretion), of the Basic Services required to be rendered by the Contractor hereunder and its delivery, to the Owner, of general releases and waivers of liens from the Contractor and all Contractor's Agents performing such Basic Services on behalf of the Contractor and/or the Approved Subcontractor(s), as well as the each of their Monthly Progress Reports (for the months in question) referred to in Section 2.3 below.

2.3 Invoices from the Contractor shall be in a form specified by the Owner and shall be: (i) accompanied by such documents in a format as may be prescribed by the Owner including, but not limited to, a Pay Requisition Letter; (ii) accompanied by a completed and executed copy of each of the Contractor's and each Contractor's Agent's Monthly Progress Report regarding their respective Local Preference Initiatives, all as more particularly described in Section 18.3 hereof (which shall be submitted to the Owner on a monthly basis); and (iii) submitted one time, every other month, to the Owner in a completed form no later than the twenty-third (23<sup>rd</sup>) day of every other calendar month during the term hereof (each, an "Application for Payment"). In order to be in a completed form, each Application for Payment shall include copies of all supporting documentation required by the Owner (including, but not limited to, originally executed partial and/or final unconditional releases and waivers of lien from the Contractor and from all of Contractor's Agents in the form required by the Owner). An original copy of all releases and waivers of lien must be provided to Owner before Owner is required to make any payment to Contractor and shall include a provision for the waiver of all liens and right to assert a lien and for the release of all claims and causes of action against Owner.

2.4 If approved in advance by Owner, payments will be made on account of the value of materials not incorporated in the Work but delivered and suitably stored at the Development site, provided that Contractor has, to the sole satisfaction of Owner, demonstrated that title to such materials has vested in Contractor, that the materials are appropriately accessible, insured and stored, and that Contractor is and remains fully responsible for any risk of loss and resulting damages to Contractor or Owner.

2.5 If an Application for Payment is received by Owner after the 23<sup>rd</sup> day of the month in question, payment shall be made by the Owner not later than sixty (60) days after the Owner receives the Application for Payment and has satisfied all conditions precedent to the making of that payment, all as described above. Owner shall notify Contractor of any disputed amount, give reasons for the objection, and pay the undisputed amount.

2.6 Contractor acknowledges the following:



2.6.1 Owner may withhold payment or, because of subsequently discovered evidence, may nullify the whole or any part of any previously approved Application for Payment to such extent as may, in the sole judgment of Owner, be necessary to assure payment of claims or liens of any persons supplying labor or materials for the Work; to protect Owner from loss due to defective Work or to reimburse Owner for fines on account of noncompliance with applicable Laws; to protect Owner from loss due to death or injury to persons or damage to the Work or damage to the property or work of Owner, Owner's Contractor's or others to the extent of Contractor's fault; in the event that there is reasonable evidence that the Work will not be completed for the unpaid balance of the Fee; in the event that there is reasonable evidence that the Work will not be completed within the Time Schedule; in the event that Contractor fails or Owner in good faith believes that Contractor may have failed to perform the Work or otherwise perform in accordance with the Contract Documents; or to protect Owner, the City or the Owner's lender(s) from any other claims, demands or risks arising out of or related to Contractor's obligations hereunder.

2.6.2 In any of the foregoing events, Owner shall have the right to apply any such amounts so withheld in such manner as Owner may deem proper to satisfy such claims, to secure such protection, complete the Work or to compensate Owner for any loss or damages suffered by reason of Contractor's delay (including, but not limited to, the liquidated damages provided for herein in the event of such delay), default or breach. Such application shall be deemed payment for the account of Contractor. In the event that Owner gives Contractor notice that it intends to make such application, Contractor shall be estopped from disputing liability or the amount of liability unless, within three (3) days after receipt of such notice, it indicates to Owner in writing that it is not liable or that the amount of its liability is different from that set forth in the notice.

2.6.3 The provisions of this Section 2.6 are solely for the benefit of Owner, it being understood that: (i) any action or non-action by Owner shall not give rise to any liability on the part of Owner; and (ii) Owner's failure to so act shall not be deemed a waiver of any present or future claims of Owner.

2.7 The Owner is given the right at any time and in its sole discretion to make payment by joint or multiple party check to any lienor listed on Contractor's affidavit as unpaid, or any other lienor who has given written notice of non-payment to Owner or whose existence is otherwise known to Owner; except that Owner shall not directly pay any lienor for claims of lien which have been transferred to bond. Contractor shall be a party on all joint or multiple party checks issued by Owner. Endorsement by any payee of a joint or multiple party check shall be deemed payment to that party for the full amount of the check.

2.8 The Owner shall not have any obligation to pay or see to the payment of money to a subcontractor except as may otherwise be required by law. Owner shall not be deemed to be in breach of this Agreement by reason of the withholding of any payment to Contractor if the Work in question has been rejected by any governmental authority and/or by the Owner.

2.9 Payments made to the Contractor shall be deemed to have been received by it in trust, to be applied first to the amount owing to any person or entity who has performed labor, provided equipment or furnished materials to Contractor for the performance of the Work required under this Agreement and before Contractor shall use any monies received for any other purposes.

### **ARTICLE III - PROFESSIONAL RESPONSIBILITY AND COMPLIANCE WITH LAWS**

3.1 The standard of care for all Work to be performed or furnished by Contractor and all of Contractor's Agents under this Agreement shall be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the time and in the same locality. Subject to obtaining the prior written consent of Owner (in its sole and absolute discretion), Contractor and/or Contractor's Approved Subcontractor(s) may retain other subcontractors in their performance of the Work, it being understood that the Contractor shall at all times remain fully responsible to timely and properly complete the Work and for the actions and omissions of all of its Contractor's Agents.

3.2 Contractor shall be obligated to comply with all applicable standards of professional care in the performance of the Work. It is understood and agreed that the Work shall include and require all work required by all Laws (as defined below) and that the Contractor and each of its Contractor's Agents shall be required to obtain, maintain and provide to the Project Manager all licenses/permits and other requisite and/or required documentation and certifications required to be obtained by the Contractor by all Federal, State and local governing authorities as they relate to the Work outlined herein.

3.3 Contractor shall be responsible for complying with all applicable requirements, laws, rules, regulations, codes, ordinances and statutes of all applicable Federal, state, county, municipal, local and/or other governmental authorities in connection with its performance of the Work (collectively, "Laws"). By way of example and not limitation, Contractor shall observe and strictly adhere to: (a) the provisions of the Occupational Safety and Health Act (OSHA) including, but not limited to, the requirement that all equipment, trucks, bulldozers, cranes and the like meet OSHA standards, and that each individual performing Work at the Development site will possess and properly wear and use hard hats, safety vests and all other required personal protective equipment; (b) the rules, regulations and requirements of the Equal Employment Opportunity Commission and/or other governmental authorities with regard to non-discrimination as the same applies to the Work; (c) the American with Disabilities Act; and (d) all other applicable Laws as the same may be amended, interpreted or enforced from time to time. In addition to the foregoing, the Contractor shall be required to insure that all vehicles (including, but not limited to off-road trucks) brought onto the Development site by the Contractor and its Contractor's Agents adhere to the 15 MPH posted, maximum speed limit

3.4 Contractor shall, at the request of Owner, consult with appropriate governmental agencies and shall, at the request of Owner, appear as an expert witness at any related governmental meetings or hearings.

### **ARTICLE IV - RESPONSIBILITY FOR OTHERS**

4.1 Contractor shall enter into one or more subcontracts with the Approved Subcontractor(s) (and shall furnish a copy of same to Owner prior to its commencement of the Work) which, subject to its receipt of the prior written approval of the Owner, may retain (all

with the understanding that the Contractor shall be responsible for all Work performed by each such sub-subcontractor) all sub-subcontractors whose Work may be deemed necessary or advantageous by Contractor and/or the Approved Subcontractor(s) in connection with the performance of the Work required of Contractor pursuant to this Agreement. Neither Contractor nor the Approved Subcontractor(s) shall retain any subcontractor or sub-subcontractor without the prior written approval of Owner, it being understood, however, that the approval of Owner to such retention shall not relieve, affect or otherwise modify Contractor's obligations under this Agreement, including Contractor's responsibility for the quality and coordination of any Work provided by any of its Contractor's Agents. All costs associated with the Work rendered by Contractor's Agents shall be paid by Contractor, and Contractor shall not receive from Owner reimbursement therefore. In addition, if Owner's Contractors or any other contractors or consultants are engaged by Owner because of Contractor's failure to timely complete the Work required by this Agreement to Owner's satisfaction, all fees, costs and/or expenses of Owner's Contractors or other contractors or consultants retained to complete the Work (as well as all other damages and additional fees, costs and/or expenses incurred by the Owner as a consequence thereof, shall be forthwith paid by Contractor (to Owner) which shall not receive additional reimbursement therefore from Owner.

## **ARTICLE V – TESTS AND INSPECTIONS/SUPERVISION/FINAL COMPLETION**

5.1 The Contractor, as part of its Work, shall identify and recommend in writing to Owner any testing or investigation of the Development site (in addition to those identified in the Contract Documents) which is reasonably necessary in the professional opinion of the Contractor, including any reports relating to the soils, structural or other physical conditions at the Development site, and the Contractor shall review and incorporate in the Work all such additional work that may be required to comply with the results of any such testing provided to or obtained by Owner.

5.2 Intentionally deleted.

5.3 Contractor shall supervise and direct the Work, using its best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. Contractor assumes for the Work covered by this Agreement, all obligations incident thereto including, but not limited to, all warranties, statutory or otherwise.

5.4 Contractor shall be responsible to Owner for all acts and omissions of Contractor and each Contractor's Agent's, and each of their respective employees, agents, materialmen, suppliers, laborers, and all other persons or entities performing any portions of the Work for or on behalf of Contractor or any of Contractor's Agents.

5.5 Contractor shall, at all times, protect all adjoining property and shall repair or replace any such property damaged or destroyed during the progress of the Work.

5.6 Contractor shall, at all times while working on the Development site, have a capable, English speaking, Ground Crew Supervisor onsite who: (i) has at least five (5) years of field experience in performing work which is similar to the Work required hereunder; (ii) has the ability to operate and maintain field vehicles and equipment (off road trucks, dozers, loaders, etc.) and to recognize and avoid hazards associated with operating such equipment; (iii) will have primary responsibility for: (a) insuring that all individuals performing Work on the Development site possess all licenses required by law, as well as possess, wear and use all required personal protective equipment, (b) maintaining health and safety assurances and awareness on the Development site, including the daily safety inspection of all equipment to be used in performing the Work, (c) providing to the Owner's Site Superintendent, at the end of each day, daily reports regarding the Work performed such day, and (d) any and all such other responsibilities customarily borne by ground crew supervisors employed by contractors performing similar roadway construction projects, in South Florida, of the type described herein and as would be considered to be "standard in this industry" by an expert in the field of construction; and (iv) is authorized by Contractor to make commitments and decisions binding on the Contractor

5.7 "Final Completion" shall mean such time as: (a) each component of the Work is fully completed in a finished condition consistent with this Agreement and the applicable Contract Documents and is fully acceptable to Owner and Owner's Engineer of Record; (b) Contractor has delivered to Owner all manufacturer and subcontractor guarantees and warranties, if any; (c) Contractor is in compliance with the payment and lien provisions of this Agreement; (d) Contractor has completed its site cleanup and restoration, including, without limitation, removal of all excess materials, rocks, miscellaneous debris and supplies (as well as all of its equipment and trailers, if any, located on the Development after the completion of the Work); (e) all temporary utilities are disconnected if requested by Owner; and (f) Contractor has complied with all provisions of this Agreement and the Contract Documents.

5.8 When Contractor considers that any component of the Work is Finally Complete, Contractor shall notify Owner in writing. Owner will then inspect such component of the Work to determine if the requirements of Section 5.6 of this Agreement have been met and, if necessary, to prepare a comprehensive list of items to be completed or corrected prior to payment. Failure to include an item on such list will not alter the responsibility of Contractor to complete all Work strictly in accordance with this Agreement and the Contract Documents.

5.9 If Owner's inspection discloses any item, whether or not included on Contractor's list, that is not sufficiently complete in accordance with this Agreement and/or the Contract Documents, or any item not in compliance with Section 5.6 of this Agreement, Contractor shall forthwith complete or correct such item. In such case, Contractor shall then submit a request for another inspection to determine Final Completion. When the Owner agrees that such Phase of the Work is Finally Complete, Contractor may prepare a Certificate of Final Completion which shall establish the date of Final Completion and thereby establish those responsibilities of Owner and Contractor provided for herein and/or in the Contract Documents.

5.10 If, upon the completion of all Work to be performed hereunder, Contractor or anyone with whom it has an agreement shall be left with unused or excess materials, equipment or supplies

which shall have been paid for by Owner, then in that event Contractor, at Owner's option, shall turn such materials, equipment and supplies over to Owner or sell them to a bona fide purchaser for fair market value. In the event Owner directs Contractor to sell the excess of such unused materials, equipment and supplies, then in that event all monies received on account thereof shall be credited or paid over to Owner, at the direction of Owner.

## **ARTICLE VI - CHANGE IN SCOPE**

6.1 A "Change in Scope" is a change that is initiated or requested by Owner in connection with additional or different work (and/or the elimination of certain Work) not reasonably contemplated by the Invitation to Bid, this Agreement and/or the Contract Documents or is the result of a condition discovered at the Development site which requires Contractor to substantially expand, enlarge or diminish the character, quantity or cost of the Work to be performed by Contractor on the Development. No work required because of the negligence, breach of contract, error or omission of Contractor shall be considered a Change in Scope regardless of its cost or nature.

6.2 If Owner requests any change that Contractor believes constitutes a Change in Scope, Contractor shall furnish Owner with written notice of such fact promptly after the change is requested by Owner and before any work relating thereto is performed by Contractor. Contractor shall initiate no work on any Change in Scope (and shall not be entitled to any additional compensation or time based on any alleged Change in Scope) unless and until Contractor has first given written notice as required by this Section and has received written authorization from Owner to proceed with such change. If Contractor proceeds without written approval and Owner disagrees, Contractor waives all claims for additional compensation or time. If Contractor gives written notice that it believes a Change in Scope has occurred and Owner disagrees, the Contractor shall, if so directed by Owner, nonetheless proceed promptly and diligently to perform the work at issue, without waiving any of Contractor's rights to challenge Owner's determination.

6.3 The compensation payable to Contractor for any Change in Scope shall be determined in substantial accordance with the Schedule of Unit Costs contained in the Proposal. In the event a Change in Scope results in a reduction in the scope of Contractor's Work hereunder, Owner shall be entitled to a credit equal to the reasonable value of the Work removed from the scope of Contractor's Work.

6.4 No order, statement or conduct of Owner or its representatives shall be treated as a Change in Scope, nor entitle Contractor to additional compensation or time, unless pre-approved in writing by the Owner.

## **ARTICLE VII – INSURANCE/JOB SITE SECURITY/BONDS**

7.1 Prior to commencement of any Work under this Agreement and until final completion and final acceptance of the entirety of such Work (or longer as set forth below), Contractor shall maintain and pay for, including all deductibles, the following insurance coverages, occurrence based, with respect to the Work, with a company or companies that are rated A- or better by A.M. Best and reasonably satisfactory to Owner, Owner's lender(s), if any, and the City, covering all Work undertaken by Contractor and all of its Contractor's Agents, as follows:

7.1.1 Commercial General Liability insurance written on ISO form CG00 01 10/01 with limits of \$1,000,000 per occurrence Bodily Injury and Property Damage Combined, \$1,000,000 per occurrence Personal & Advertising Injury, \$2,000,000 aggregate Products and Completed Operations Liability, and \$2,000,000 General (per project) Aggregate. The policy shall be written on an occurrence basis. Any deductible shall be the responsibility of the Contractor.

Such policy shall be endorsed to name Owner, the City, Owners lender(s) and all other entities reasonably requested by Owner, as "additional insureds" utilizing ISO Forms CG2010 and CG2037, it being understood that such definition of Additional Insured shall include all of such entity's officers, directors, partners, members, employees, agents and consultants. Further, such policy providing coverage for "additional insureds" shall apply on a primary basis and non-contributory irrespective of any other insurance, whether collectible or not.

Completed Operations coverage (covering the Owner and each "additional insured") shall remain in force for not less than three (3) years after Final Completion and final acceptance of the entirety of the Work.

7.1.2 Automobile Liability Insurance for Bodily Injury and Property Damage in the amount of \$1,000,000 combined and covering all owned, non-owned and hired vehicles.

7.1.3 Umbrella Liability Insurance for the total limit purchased by Contractor, but not less than \$5,000,000 providing excess coverage over all limits and coverages noted in Subsections 7.1.1 and 7.1.2 above. Such policy shall be written on an "occurrence" basis and shall name the Owner, the City, Owner's lender(s) and all other entities that may be reasonably designated by Owner, as "additional insureds", it being understood that such definition of Additional Insured shall include all of such entity's officers, directors, partners, members, employees, agents and consultants. Further, such policy providing coverage for "additional insureds" shall apply on a primary basis and be non-contributory irrespective of any other insurance, whether collectible or not.

7.1.4 Workers' Compensation insurance affording coverage under the Workers' Compensation laws of the State of Florida and Employers' Liability coverage subject to limits of not less than \$1,000,000 per employee, \$1,000,000 each accident, and \$1,000,000 policy limit.

7.15 Property insurance covering all tools, material and equipment (owned, borrowed or leased by the Contractor, its employees or anyone else performing Work on the Development) to the full replacement value thereof. This insurance shall insure against damage or loss caused by fire and all other perils covered by a standard "All Risk" insurance policy. Failure

of the Contractor to secure and maintain adequate coverage shall not obligate Owner or its agents or employees for any losses.

7.2 All such policies of insurance (other than automobile), shall provide for a waiver of subrogation in favor of the Owner, the City and each of Owner's lender(s).

7.3 Prior to commencing the Work, Contractor shall provide Owner with such certificates and other evidence as Owner may require verifying the existence of such insurance coverages and the payment of the premiums therefor. Such insurance certificates must provide for at least thirty (30) days prior written notice to Owner and any additional insureds prior to cancellation.

7.4 All such insurance coverages shall contain policy provisions and exclusions reasonably satisfactory to Owner and to any of its lenders. At Owner's request from time to time, Contractor shall deliver to Owner certified copies of all insurance policies and such other verification as Owner may request. Contractor shall immediately notify Owner in writing of any occurrence, on or off the Development site, which may give rise to a claim for damages against Owner or any insurance coverages relating to the Work.

7.5 Owner shall not be responsible to provide job site security against vandalism, theft, breakage or damage to trailers, tools, equipment or other property of Contractor or any of Contractor's Agents, and the Contractor, on behalf of itself and all of Contractor's Agents, hereby waives all such claims (other than, and specifically excluding, claims directly resulting from the gross negligence or willful misconduct of the Owner and/or its employees.

7.6 Prior to commencing the Work, the Contractor will be required to provide the Owner with a copy of its health and safety plan for the Work described herein and in the Contract Documents, which plan shall conform to all local, State of Florida and Federal safety rules, regulations and/or requirements including, but not limited to, OSHA. The Contractor agrees to accept sole responsibility for full compliance, at all times, with all Federal, local, County, State or other legal requirements including, but not limited to: (1) applicable OSHA Safety Orders; (2) all applicable environmental requirements; and (3) all requirements of the Florida Department of Transportation Manual of Traffic Controls and Safe Practices for Street and Highway Construction, Maintenance and Utility Operations, so as to protect all persons entering the Development, including the Contractor's and the Owner's, and each of their respective affiliates, employees, agents and vendors, as well as the members of the public from injury or damage to their person or property.

7.7 The Owner reserves the right to issue immediate restraint or cease and desist orders to the Contractor when unsafe or harmful acts are observed or reported relative to the performance of the Work required hereunder.

7.8 In performing the Work, all safety on or off the Development site shall be the sole responsibility of the Contractor. The Owner shall not be responsible for safety on or off such site, it being understood that the Owner's on-site observations or inspections shall be only for the purpose of verifying that the site security specifications are being implemented properly, and not for safety purposes.

7.9 Before commencing the Work, Contractor shall obtain and furnish to Owner unconditional payment and performance bonds (collectively, the "Bonds") in the form specified hereinbelow and in an amount equal to one hundred ten (110%) percent of the Base Fee, covering all labor, work and materials to be provided hereunder and under the Contract Documents pursuant to Florida Statutes Sections 255.05 and 713.23 or other applicable provisions of the Florida Statutes, so as to exempt the Development (as well as the City's fee simple title thereto and the Owner's leasehold interest therein) from any liens filed by any parties performing the Work (including, but not limited to, the Contractor and all of the Contractor's Agents). No construction whatsoever can commence at the Development until such Bonds are issued and delivered to Owner with the City and Owner's lender(s) being named as joint obligees.

7.10 The Bonds will stipulate that no modification or waiver of any of the terms of the Contract Documents by either Contractor or Owner will in any manner discharge any surety liability thereunder. The Bonds shall state that their penal sum shall increase if the Fee is increased based on approved Change Orders and that the Owner's declaration of the Contractor's default hereunder shall automatically constitute grounds for the surety to perform under, and in accordance with, the Bonds.

7.11 The Bonds shall require that the Contractor comply with each and every term of this Agreement and the Contract Documents and shall remain in effect for a minimum period of one (1) year after Final Completion of the entirety of the Work, or for such longer period in Owner's sole discretion.

7.12 Any performance and payment bonds furnished by any subcontractors shall be subject to the provisions of this Article. In the event that the aforementioned Bonds required from Contractor are not issued for the Work prior to the Owner's Notice to Proceed, then this Agreement shall be voidable by Owner without Owner being liable to Contractor for any costs, damages, or expenses.

7.13 Any surety issuing Bonds to the Contractor must be authorized to transact business in the State of Florida and shall not be a foreign entity.

## **ARTICLE VIII – INDEMNIFICATION**

8.1 In addition to the other indemnification obligations of the Contractor contained herein (each of which shall be subject to the provisions of this Section 8.1), to the fullest extent permitted by Law, Contractor ("Indemnitor") shall indemnify, defend and hold harmless Owner and its members, partners and affiliates, and each of their respective managers, shareholders, officers, directors, employees, agents and representatives (collectively, "Indemnitees") from and against any and all loss, cost, expense, damage, injury, liability, claim, demand, penalty or cause of action (including reasonable attorneys' fees and legal costs at trial and on appeal) arising from, or in any way related to, or resulting from, the performance of the Work required under this Agreement, wherever such claim may be made, provided that such claim, damage, loss or expense is attributable to the Contractor's duties or obligations under this Agreement, or to the duties or obligations of any of the Contractor's Agents or anyone directly or indirectly employed



by them or for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a Party, all as described in this Agreement.

8.2 In addition to the foregoing, the Contractor shall be required to defend, indemnify and save harmless the Indemnitees from and against liability of any nature or kind, including cost and expenses, for, or on account of, the use of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the Work required hereunder, it being understood and agreed that if the Contractor uses any design, device or materials covered by a patent or copyright, the Fee shall be deemed to include payment for all royalties or costs arising from the use of such design, device, or materials in any way involved in the subject Work.

8.3 The Indemnitee(s) shall promptly advise the Indemnitor in writing of any claim, action or legal proceeding to which this indemnification may apply and the Indemnitor, at the Indemnitor's expense, shall assume, on behalf of such Indemnitee(s), and conduct with due diligence and in good faith, the defense of such action or legal proceeding with counsel satisfactory to the Indemnitee(s); provided that such Indemnitee(s) shall have the right to be represented by advisory counsel of his/her/its own selection and at his/her/its own expense. In the event of the failure of the Indemnitor to obtain counsel to defend any such claim against the Indemnitee(s), or to pay any final judgment entered against any Indemnitee as a result of such a claim, in accordance with the provisions of this Article VIII, the Indemnitee, at his/her/its option and without relieving the Indemnitor of its obligations hereunder, may perform such obligations, but all costs and expenses so incurred by the Indemnitee in that event shall be reimbursed or, at the option of Owner, shall be deducted from any monies owed to Contractor by the Owner together with interest at the legal rate permitted under the Florida Statutes from the date any such expense was paid. The Indemnitee(s) may retain, at the sole cost and expense of the Contractor, counsel on their own behalf in connection with such claim and/or judgment in the event of default by the Indemnitor hereunder.

8.4 If any indemnification provision or portion of any indemnification provision in this Agreement is interpreted in any manner which would cause a violation of any part of any Law, the indemnification provision or portion of any such indemnification provision which is deemed to be in violation of Law shall be deemed void and unenforceable and the remaining indemnification terms and provisions of this Agreement shall be unimpaired and shall remain in full force and effect.

## **ARTICLE IX - OWNER RESPONSIBILITY**

9.1 Owner shall: (1) provide Contractor, in writing, with all information reasonably requested by Contractor relating to Owner's requirements for the Work; (2) notify Contractor of any potential hazardous substances or other health and safety hazard or condition known to Owner existing on or near the Development site; (3) give Contractor written notice of any suspected deficiency in the Work and, in connection therewith, specify the duration of time within which the Contractor must cure and correct such deficiency; and (4) with reasonable promptness, provide required approvals and decisions.

9.2 Supplementing the provisions of Section 9.1 above, Contractor acknowledges that the Owner has advised it that the site of the Development, also known as the Munisport Property, is currently owned by the City and that it has been documented that: (i) beginning in 1974, the then owner of the site began to receive clean fill and construction and demolition debris in order to raise the elevation of its wetland areas and provide a sub-grade for the anticipated development of the site as a golf course with other recreational amenities; (ii) eventually, financial constraints and demands for a local landfill compelled the property owner to abandon its development plans and, instead, began accepting additional solid waste, including municipal solid waste, for fill material; (iii) numerous soil and groundwater environmental investigations were conducted starting in 1975 and, as a result, Miami-Dade County and the Florida Department of Environmental Protection determined that the only groundwater-related issue at the site that required remediation was a dissolved ammonia plume that exists as a result of the degradation of organic matter deposited in the landfill, the treatment of which is presently on-going; (iv) the dissolved ammonia plume has been determined by the U.S. Environmental Protection Agency to pose no human health risk; and (v) a Landfill Closure Permit has been issued for the site, and groundwater remediation activities, as well as methane gas monitoring and mitigation activities, are on-going, with regulatory supervision.

9.3 In the event that Contractor is requested by Owner or is required by subpoena to produce documents or give testimony in any action or proceeding to which Owner is a party and Contractor is not a party, Owner shall pay Contractor for any time required in connection therewith (at a rate per hour reasonably specified by the Owner), and shall reimburse the Contractor for its actual, out of pocket costs and/or expenses reasonably incurred by the Contractor in connection therewith.

## **ARTICLE X - FORCE MAJEURE**

10.1 "Force Majeure" shall mean solely an unexpected and irresistible force or act of God resulting in an event which, without the intervention of man, could have not been, under any set of circumstances, prevented had the Contractor exercised reasonable prudence, diligence and/or care. Rain delays shall not be considered a Force Majeure unless the rain delay is the direct result of a tropical storm or hurricane as declared by the National Hurricane Center, and only if the tropical storm or hurricane hits Miami-Dade County, Florida and directly affects construction at the Development. Force Majeure does not include, without limitation, delays in obtaining materials or supplies, unanticipated site conditions, and unusual delay in deliveries.

10.2 In the event of the occurrence of an event of Force Majeure, if approved by Owner, the obligations of Contractor to perform the Work shall be suspended for the duration of the event of Force Majeure. In such event, the Time Schedule shall be extended by a like number of days as the event of Force Majeure.

## **ARTICLE XI - RIGHT OF ENTRY**

11.1 Owner grants to Contractor and each of Contractor's Agents approved by Owner, and warrants that permission has been granted for a right of entry from time to time by Contractor, Contractor's Agents and each of their respective employees, agents and consultants, upon the Development site for the purpose of performing the Work. Owner recognizes that the use of investigative equipment and practices may unavoidably alter the existing site conditions and affect the environment in the areas of the Development where the Work is to be performed, despite the use of reasonable care.

## **ARTICLE XII - OWNERSHIP AND USE OF REPORTS AND CONFIDENTIAL INFORMATION/INSTRUMENTS OF SERVICE**

12.1 All reports and any other documents prepared by Contractor and/or Contractor's Agents for the Development, including, but not limited to, any drafts thereof (the "Work Product") shall be the property of Owner. Owner shall have the right to use the Work Product for information and reference in connection with Owner's development, use and/or occupancy of the Development, its maintenance and repair of the Development, and for additions, alterations or future construction of the Development, in each case, without paying Contractor any compensation other than the Fee to become payable to the Contractor pursuant to this Agreement.

12.1.1 As used herein, the term "Proprietary Information" shall mean all information which Contractor and/or any of Contractor's Agents acquires (whether directly from Owner or through the performance of the Work) concerning the present and future plans of Owner and/or any one or more of its affiliates, the operations of Owner and/or any one or more of its affiliates' businesses, or the use of the Development or its design, construction, features, appearance, marketing, layout or décor. Contractor represents to Owner that it has and employs (and will have the responsibility to insure that each of its Contractor's Agents has and employs) policies and procedures including, but not limited to, notice to its employees (and the respective employees of each of the Contractor's Agents), to protect Proprietary Information and to prevent its unauthorized publication and disclosure. Contractor agrees that Owner's Proprietary Information shall be subject to such policies and procedures. Specifically, and in addition, Contractor agrees that it will not (and will insure that each of its Contractor's Agents does not) disclose any Proprietary Information to any person, either internally or externally (except as directly necessary for the performance of the Work) without the prior written consent of Owner, and will not use, copy or distribute (and/or permit any Contractor's Agent to use, copy or distribute) any Proprietary Information (or any document containing Proprietary Information) except to the extent directly necessary to the performance of the Work. Contractor agrees, upon completion of the Work, to return to Owner or, if agreed by Owner in writing, destroy all documents containing Proprietary Information. Contractor shall not make (and will insure that each of its Contractor's Agents does not make) any announcement or publication, either internal or external, with respect to or in connection with the Development (including, but not limited to, any public announcement, website mention, advertising, publicity or comment about the Development or Contractor's and/or any Contractor's Agent's participation in it) without Owner's prior written approval, except as directly necessary for the performance of the Work.

12.1.2 If any design, device, material or process covered by patent or copyright is used by Contractor and/or any of Contractor's Agents, Contractor (and/or such Contractor's

Agent, as the case may be) shall obtain all necessary authorizations and licenses to use the same, and shall defend, indemnify and hold harmless Owner from any and all loss or expense arising out of, or in connection with, the use of such design, device, material or process.

12.2 Instruments of Service are representations, in any medium of expression, of the plans, drawings, surveys and/or specifications depicting and/or pertaining to the Work to be performed by the Contractor.

12.3 Owner shall be deemed the owner of all such Instruments of Service and will retain all common law, statutory and other reserved rights, including all copyrights, pertaining thereto. Neither Contractor nor any of Contractor's Agents, nor any of their respective material or equipment suppliers shall own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Work and/or the Development is not to be construed as a publication in derogation of the Owner's reserved rights as set forth herein.

12.4 Contractor and each Contractor's Agent, as well as all material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work as described in the Contract Documents. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. Contractor and each of Contractor's Agents, as well as all material and/or equipment suppliers may not use the Instruments of Service on any other project or for any work outside the scope of the Work, without the specific written consent of Owner.

## **ARTICLE XIII – TERMINATION/SUSPENSION**

### **13.1 Owner's Right to Terminate.**

13.1.1 Owner may terminate this Agreement if Contractor: (a) fails to timely and properly perform the Work; (b) fails to make payment to any of Contractor's Agents for labor or in accordance with the respective agreements between the Contractor and any such contractor's Agents; (c) disregards Laws or orders of any public authority having jurisdiction; (d) fails to remove from the Development site any employee (and/or any Contractor's Agent's employee) deemed by the Owner to be unsatisfactory; take any action which would cause the completion of the Work to become delayed or such Work to be undermanned; (f) becomes insolvent, is declared bankrupt, or commits an act of bankruptcy or insolvency, or makes an assignment for the benefit of creditors which renders the Contractor incapable of performing the work in accordance with and as required hereby; (g) has included in its Proposal any statements, information and/or documentation which is false or misleading (as reasonably determined by the Owner) in any material respect; or (h) otherwise breaches any part of this Agreement.

13.1.2 If any of the above reasons exist, Owner may, without prejudice to any other remedy, terminate this Agreement and take possession of the Development site (and the Contractor's and each Contractor's Agent's materials, which shall not be removed from the Development site, and may be thereafter disposed of by the Owner as the Owner shall determine, in its sole and absolute discretion), and may finish the Contractor's Work by whatever reasonable method Owner may deem expedient.

13.1.3 In the event that Owner terminates this Agreement (other than a termination by Owner pursuant to the provisions of Subsection 13.1(f) or Section 18.3 hereof, which shall not afford the Contractor any right to cure the same), Owner shall effectuate such termination by providing written notice thereof to Contractor seven (7) days' prior to the effective date of such termination.

13.1.4 In the event that Owner terminates this Agreement due to the fault of Contractor, Owner shall be entitled to recover its losses, damages, fees, costs and/or expenses incurred by the Owner as a consequence thereof including, but not limited to, an amount equal to the liquidated damages agreed to by the Parties in Section 1.2 and elsewhere in this Agreement, and any monies owed to Contractor upon such termination shall be reduced by the same including, but not limited to, any expenses arising from, or related to, the need to correct and/or complete the Work.

13.1.5 Upon the termination of this Agreement by Owner due to the fault of the Contractor, Contractor shall only be entitled to be paid for all Work properly and timely performed up to the effective date of termination, less the amounts payable by Contractor to Owner pursuant to this Section 13.1. Under no circumstances shall Contractor be entitled to any additional or lost profit and/or overhead for Work not performed, or for any additional damages or compensation.

13.1.6 Notwithstanding anything herein to the contrary, Owner may, in its sole discretion, by written notice to the Contractor, terminate this Agreement for any reason whatsoever at any time for Owner's convenience. Upon such termination, Owner shall only be responsible to pay Contractor for all Work properly and timely performed up to the effective date of termination. In no event shall Contractor be entitled to any profit and/or overhead or for any additional damages or compensation from Owner.

13.2 Contractor's Right to Terminate. This Agreement may be terminated by Contractor only if Owner fails to make payment to the Contractor in such amounts as are required by this Agreement within thirty (30) days after such payment is due pursuant to the provisions of this Agreement for Work actually performed by Contractor and accepted by Owner ("Payment Default"). In the event of a Payment Default, Contractor may, upon thirty (30) days' prior written notice to Owner, suspend or stop the performance of Work required of it under this Agreement. If the Payment Default is not cured within such thirty (30) days, then, upon the expiration of such thirty (30) day period, Contractor may terminate this Agreement. If Contractor terminates this Agreement on account of the Owner's failure to cure any Payment Default, Owner shall only be responsible to pay Contractor for all Work properly and timely performed up to the effective date of termination. All prior payments shall be applied to the amounts due hereunder. In no event shall the Contractor be entitled to any other damages or compensation from Owner.

13.3 In the event of the termination of this Agreement by Owner pursuant to Section 13.1 or by Contractor pursuant to Section 13.2, Contractor shall: (i) forthwith vacate (and cause each of its Contractor's Agents to forthwith vacate), the Development site, including all of their materials located thereon, it being understood that if any such materials shall remain on the Development site after the three (3) day period following any such termination, the same shall be

deemed abandoned by the Contractor and each such Contractor's Agents; (ii) remove from the Development, as soon as is reasonably possible after the effective date of any such termination, all of the Subcontractor's and each Subcontractor's Agent's equipment, it being understood that in the event the Subcontractor (and/or any Subcontractor's Agent) fails to so remove said equipment, the Owner shall have the right to charge reasonable storage fees as a consequence thereof and, after not less than ten (10) days prior written notice to the Contractor, place the same in storage, all at the Contractor's sole cost and expense); and (iii) deliver to Owner a complete set of all Work Product prepared for the Development by the Contractor (and/or any of Contractor's Agents) prior to the date of termination. Owner shall have the right to use the Work Product for the completion of the Development and for information and reference in connection with Owner's use and occupancy of the Development, all as provided for in this Agreement. All memoranda, books, records, documents, drawings, papers, plans, information, letters and other data containing and/or relating to Proprietary Information and/or the business of Owner or any of its affiliates, whether prepared by Contractor, any of Contractor's Agents, or otherwise coming into Contractor's (and/or any Contractor's Agent's) possession shall be and remain the exclusive property of Owner, and neither Contractor (nor any of Contractor's Agents) shall, directly or indirectly, assert any interest or property rights therein. Upon termination of this Agreement, Contractor will immediately return to Owner (and will cause each Contractor's Agent to immediately return to Owner): (i) all such memoranda, books, records, documents, drawings, schematics, papers, plans, information, letters and other data, and all copies thereof or therefrom, and Contractor will not retain, or cause or permit to be retained, any copies or other embodiments of the mat all of the property of Owner or its affiliates, including, but not limited to, any and all computers, printers, scanners, laptops, notebooks, smart phones, portable devices, electronics, equipment, office equipment, furniture and supplies, all media, whether on computer disc, hard drive or other form, and all copies thereof, within Contractor's possession or control. Contractor further agrees that it will not retain or use at any time any trade names, trademark or other proprietary business designation used or owned in connection with the business of Owner or any of its affiliates.

13.4 In addition to the right of the Owner to terminate this Agreement as hereinabove provided, Owner, in writing, may at any time and for any reason direct Contractor to suspend, stop or interrupt the Work or any part thereof for a specified period of time. Contractor shall resume the Work upon the date specified in such direction or upon such other date as Owner may thereafter specify in writing. The period during which the Work shall have been suspended, stopped or interrupted may, if warranted, be added to the Time Schedule. A suspension, stoppage or interruption of the Work pursuant to this provision shall not give rise to any claim against Owner for additional compensation or any other damages, fees, costs or expenses.

## **ARTICLE XIV CONSTRUCTION LIENS**

14.1 Contractor shall insure that neither it, nor any of its Contractor's Agents, shall file a lien against the City's fee title interest in the Development. In addition to the foregoing, if and to the extent permitted by applicable law: (i) Contractor hereby waives, on behalf of itself and each of its Contractor's Agents, its/their right to file a lien against the Development and/or the Owner's leasehold interest therein; and (ii) Contractor shall ensure that no construction liens, or any encumbrances in the nature thereof, or any other encumbrances whatsoever (including

equitable lien claims), shall be filed or maintained by the Contractor or by any of Contractor's Agents (each, a "Lienor") against the Development or the Owner's leasehold interest therein, in connection with any Work required of Contractor hereunder and whether or not Owner has made payment for the same, whether properly or improperly; and, irrespective of the foregoing, as a condition precedent to the receipt of any payment from Owner, Contractor shall be required to furnish a release and waiver of lien from each Lienor together with an interim Contractor's general release and waiver of lien. Further, as a condition to the receipt of final payment, Contractor shall provide Owner with, among other things, final releases and waivers of lien from each Lienor.

14.2 Each waiver and release of lien given to the Owner shall waive and release any lien rights and claims of the Lienors. Contractor shall cause each Lienor to execute a partial release and waiver of lien and partial release of claims for payment, which shall state that the Lienor has, by execution of the release, waived and released its claim of lien and claims for payment.

14.3 Contractor agrees to indemnify, defend and hold the Owner, its lender(s) and the City harmless from and against any and all liens or other claims filed against the Development, the City's fee simple title thereto, or the Owner and/or the Owner's leasehold interest in the Development by any Lienor in connection with the Work required to be rendered by Contractor hereunder. In the event that a claim of lien is filed against the Development, the City's fee simple title thereto and/or the Owner's leasehold interest therein in connection with such Work, the Contractor shall cause the same to be satisfied of record or transferred to a bond within five (5) business days following the date of recording. In the event any liens are not cleared of record either by transfer to a bond or released within five (5) business days of recording, Owner shall have the right to settle, satisfy or bond-off such lien at Contractor's sole cost and expense and offset the cost against the next payment(s) to become due to Contractor under this Agreement and, in addition, Owner shall be entitled to all other remedies available to it, at law or in equity, as a consequence thereof.

## **ARTICLE XV - ASSIGNMENT**

15.1 Contractor binds itself, its successors, permitted assigns and legal representatives to Owner and to the partners, members, managers, assigns and legal representatives of Owner and each of its affiliates with respect to all covenants, conditions, stipulations and provisions of this Agreement.

15.2 Contractor shall be prohibited from assigning and/or transferring this Agreement or any interest herein, and/or from sub-contracting (other than to the Approved Subcontractor) any of the Work required of it hereunder, without the prior written consent of the Owner, in its sole and absolute discretion, it being understood, however, that the Owner may, without the consent of the Contractor, assign this Agreement without restriction; and, in such event, the Contractor shall execute all consents reasonably required to facilitate such assignment.

## **ARTICLE XVI – SUBCONTRACTORS/SUB-SUBCONTRACTORS/LABOR**

16.1 All proposed Contractor's Agents must be licensed as required by law; and all of Contractor's agreements with any such Contractor's Agent shall be subject to the prior written approval of Owner, in its sole and absolute discretion.

16.2 Contractor shall ensure that all subcontracts and other agreements provide that: (i) they are subject to the provisions of this Agreement including, but not limited to the provisions of Sections 14.1 and 14.2, as well as the provisions of Section 18.4 hereof; (ii) any liens filed by a Contractor's Agent will be immediately bonded off by the Contractor; (iii) in the event this Agreement is terminated, any such subcontract may be assumed by Owner without additional cost beyond that actually incurred to the date of termination; (iv) all warranties shall inure to the benefit of Owner and Owner's assignees; and (v) the Contractor's Agent has made all necessary examinations, reviews, and determinations of the Development site.

16.3 Owner and its lender(s) shall be deemed to be third party beneficiaries of all such subcontracts and other agreements. Contractor agrees that it is fully responsible to Owner for the acts and omissions of each and every one of its Contractor's Agents, irrespective of whether or not the Owner has approved of such Contractor's Agent's subcontract/sub-subcontract, as it is for the acts and omissions of persons employed by Contractor.

16.4 Contractor acknowledges that construction of the Development shall be by contractors, subcontractors and sub-subcontractors that employ only competent employees for on-site work, regardless of whether such employees are, or are not, represented by unions. Contractor shall remove from the Development any employees of Contractor or and Contractor Agents who are determined by Owner to be unfit or to be acting or working in violation of any provision of this Agreement. Contractor shall maintain labor relations in such a manner as to prevent Development disruptions and shall perform the Work so as not to cause work stoppages, whether as to the Work or as to work involving other contractors, subcontractors or sub-subcontractors. Contractor represents that it and its employees (as well as those employees) will staff the job at all times as is necessary to comply with the terms of this Agreement.

16.5 In the event of refusal by employees of Contractor or and Contractor's Agent to perform Work because of any labor dispute, picketing or expressive activity; or should any employees of Contractor or any Contractor's Agent accesses the Development site through any gate other than the gate designated by the Owner, thereby causing a delay or shutdown; or should Contractor otherwise be unable to staff the job and thus fulfill its obligations under this Agreement, then Contractor shall be responsible for, and will indemnify Owner for any and all damages, monetary or otherwise, which result from any such refusal to work, delay, shutdown or failure to staff the job, including reasonable attorneys' fees which Owner may incur to enforce the provisions hereof.

16.6 In addition to the foregoing, Contractor expressly assumes the risk of and agrees to hold harmless, indemnify and defend Owner from all claims, allegations, damages, liabilities, costs, expenses and delays that may arise out of or relate to a violation of the requirements of the foregoing provisions of this Article 16, and in the event of any violation of this Article, Owner may, at its option, terminate this Agreement pursuant to the provisions of this Agreement and recover from Contractor any damages resulting therefrom, including but not limited to reasonable attorneys' fees and any additional costs incurred due to Contractors failure to perform hereunder.



## **ARTICLE XVII - HAZARDOUS SUBSTANCES/SAFETY**

17.1 All nonhazardous samples and by-products from sampling processes in connection with the Work shall be disposed of by Contractor in accordance with: (i) the Contract Documents; and (ii) applicable Law; provided, however, that it is specifically understood that any and all such materials, including wastes, that cannot be introduced back into the environment under existing Law without additional treatment, and all hazardous wastes or hazardous substances (collectively, "Hazardous Substances") related to the Work, shall not be handled, packaged, removed and/or discarded by the Contractor or any of its Contractor's Agents but shall, in lieu thereof, remain in place for disposal pursuant to, and in accordance with, the Biscayne Landing Hazardous Waste Contingency Plan and the Waste Relocation Plan constituting part of the Contract Documents. Contractor, at Owner's request, may assist Owner in identifying appropriate alternatives for off-site treatment, storage or disposal of Hazardous Substances, but Contractor shall not make any independent determination relating to the selection of a treatment, storage, or disposal facility nor subcontract such activities through transporters or others, it being understood that Owner shall sign all necessary manifests for the disposal of Hazardous Substances.

17.2 Prior to commencing the work, the Contractor will be required to provide the Owner with a copy of its health and safety plan for the Work described herein, which plan shall conform to all local, State of Florida and Federal safety rules, regulations and/or requirements including, but not limited to, OSHA. The Contractor agrees to accept sole responsibility for full compliance, at all times, with all Federal, local, County, State or other legal requirements including, but not limited to: (1) applicable OSHA Safety Orders; (2) all applicable, environmental requirements; and (3) all requirements of the Florida Department of Transportation Manual of Traffic Controls and Safe Practices for Street and Highway Construction, Maintenance and Utility Operations, so as to protect all persons entering the Development, including the Contractor's and the Owner's and each of its affiliates employees, agents, vendors, and members of the public from injury or damage to their person or property.

17.3 The Owner reserves the right to issue immediate restraint or cease and desist orders to the Contractor when unsafe or harmful acts are observed or reported relative to the performance of the Work required under this Agreement.

17.4 In performing the scope of work, all safety on or off the Development site shall be the sole responsibility of the Contractor. The Owner shall not be responsible for safety on or off such site, it being understood that the Owner's on-site observations or inspections shall be only for the purpose of verifying that the site security specifications are being implemented properly and not for safety purposes.

## **ARTICLE XVIII – DISPUTES/LOCAL PREFERENCE INITIATIVES/NON-DISCRIMINATION/PROHIBITED INTERESTS**

18.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Contractor, on behalf of itself and each of Contractor's Agents, submits to

the exclusive jurisdiction and venue of the State and Federal Courts in and for Miami-Dade County, Florida for the resolution of all disputes hereunder and waives any claim that the same is an inconvenient forum.

18.2 In connection with any dispute or litigation arising out of or relating to this Agreement including, but not limited to, the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and all other fees, costs and/or expenses incurred in any such litigation or in any bankruptcy proceedings and at all trial and appellate levels.

18.3 By its execution hereof, the Contractor acknowledges that it has been advised by the Owner (and that it has advised its Approved Subcontractor who has been instructed to advise all of its sub-subcontractors) that the Lease between the City and the Owner requires the Owner and each of its contractors/subcontractors performing work at the Development, to use their best, good faith efforts in seeking to employ individuals who are residents of the City of North Miami and, in connection therewith, to make available to such residents each such newly created job opportunities. Accordingly, as a material inducement to the Owner in entering into this Agreement, the Contractor hereby acknowledges its understanding and agreement to formally document (and shall cause its Approved Subcontractor and all other Contractor's Agents to formally document) its efforts and results of complying with such local hiring initiative by providing the Owner, on a monthly basis, with a completed copy of the form of Monthly Report annexed hereto as Exhibit "C", it being understood that the Contractor's and/or any Contractor's Agent's failure to comply with the foregoing on or before the 23<sup>rd</sup> day of each and every month during the term hereof, time being of the essence, could result in the: (i) suspension of any payment or part thereof until such time as the issues concerning compliance are resolved; or (ii) the immediate termination, suspension, or cancellation of this Agreement, without penalty. In addition to the foregoing, in the event the Contractor, prior to the execution hereof, had represented to the Owner (in the Proposal) that it was qualified as a City of North Miami "local business" and/or that it would employ a certain minimum number of the City of North Miami's residents in connection with the prosecution of the Work, its failure to continue to maintain such qualification or employ such minimum number of individuals (as well as its failure to continue to subcontract at least 10% of the agreed upon cost for the Work to the Approved Subcontractor(s)) shall likewise entitle the Owner to immediately terminate, suspend and/or cancel this Agreement, without penalty, as well as to impose upon the Contractor the liquidated damages provided for in herein.

18.4 Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, marital status, sex or age or any other status protected by applicable law. Contractor will take such actions, under any Laws, as are necessary to ensure that employees and applicants for employment are treated in a non-discriminatory manner without unlawful regard to their race, creed, color, national origin, marital status, sex or age or any other status protected by applicable law. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. Contractor agrees to post in conspicuous places available to employees and applicants for employment, such notices as may be provided by Laws setting forth the language of this non-discrimination provision.

18.5 Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will be considered for employment without regard to race, creed, color, national origin, marital status, sex, age or other status protected by applicable law.

18.6 No official of the City of North Miami, Florida who is authorized in such capacity and on behalf of the City to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or subcontract in connection with the Work, shall become directly or indirectly interested personally in this Agreement, or any material supply contract, subcontract, insurance contract or sub-contract or any other sub-contract pertaining to the Work.

18.7 In addition to the provisions of Section 18.6 above, no officer, employee, architect, attorney, engineer, inspector or consultant of or for the City of North Miami, Florida who is authorized in such capacity and on behalf of the City to exercise any legislative, executive, supervisory or other similar functions in connection with the Work, shall become directly or indirectly interested personally in this Agreement, or any material supply contract or subcontract, insurance contract or subcontract or any other contract or subcontract pertaining to the Work.

## **ARTICLE XIX - ACCEPTANCE OF SITE**

19.1 Contractor represents and warrants to Owner that it is a skilled professional with the requisite knowledge and ability to perform an examination and review of the Development site and the Contract Documents including, but not limited to, all plans and specifications included therein. Contractor acknowledges and agrees that prior to the execution of this Agreement, Contractor examined (or had the opportunity to examine) the Development site to its full satisfaction, including any existing work or improvements in place, and has determined the same are fit and proper to receive the Work in their present condition.

19.2 Contractor further represents and warrants that it has reviewed the Contract Documents to its full satisfaction, and has undertaken the responsibility to determine that the such Contract Documents are, to the best of its knowledge, substantially fit and proper for the performance of the Work and are, to the best of its knowledge: (i) free from errors, omissions, and/or inconsistencies; (ii) in compliance with applicable Laws; and (iii) provide sufficient information for Contractor, its Contractor's Agents and each of their respective laborers, and equipment and material suppliers to complete the Work for the Fee and strictly in accordance with the Time Schedule.

19.3 Contractor understands that it shall be responsible for having taken all reasonable steps necessary to ascertain the nature and location of the Work and the general local conditions which can affect the Work or the cost thereof. Failure by Contractor to acquaint itself with conditions which may affect the Work including, but not limited to, conditions relating to transportation, availability of parking, access to the Development, hours of operation, handling and storage of materials, availability of labor (including City residents), water, roads, weather, topographic conditions, applicable provisions of Law bearing on the performance of the Work, and the character and availability of equipment, tools, materials, supplies and facilities needed

prior to and during the prosecution of the Work, shall not relieve Contractor of its responsibilities under this Agreement and/or the Contract Documents.

19.4 Contractor shall obtain, furnish and be responsible for all lines and elevations required to perform the Work. All dimensions and elevations set forth in any Contract Document are to be verified in the field by Contractor, and shall not be deemed warranted or represented by Owner to be correct.

## **ARTICLE XX – WARRANTY OF WORK**

20.1 Contractor represents and warrants to Owner that all labor, supplies, materials, equipment and/or services furnished and Work performed will be free from faults and defects from the time of Final Completion of the entirety of the Work.

20.2 Contractor shall obtain warranties against any defects in workmanship, materials, labor, supplies, equipment, and services from all of Contractor's Agents for a period of not less than two (2) years after acceptance by Owner of all of the Work. All warranties provided by any Contractor's Agent, including express and implied warranties and all warranties provided by Law, shall run to and be for the benefit of Owner.

20.3 Contractor shall provide Owner with all manufacturer and dealer warranties and guarantees on equipment and materials, together with any other warranties or guarantees required by the Contract Documents.

20.4 Contractor hereby further provides a warranty for the Work as follows: (i) an implied warranty of merchantability and fitness for a particular purpose; (ii) a warranty that the Work will function for the purpose that it was designed or intended; and (iii) all statutory warranties.

20.5 All warranties and guarantees contained herein are in addition to, and will not invalidate, any other warranties made by Contractor to Owner or any other party pursuant to the Contract Documents. All warranties and guarantees shall be fully transferrable to Owner and by Owner to any of its assigns.

20.6 Contractor warrants that it will diligently and continuously make repairs to the Work at its sole expense, forthwith after request by the Owner to do so.

20.7 In case of emergencies, Contractor, within twenty-four (24) hours of notice (verbal or written), shall diligently and continuously pursue any necessary repairs or replacements of defects or defective Work until corrected and will restore the Work to the condition required by the Contract Documents.

20.8 All materials and equipment furnished under this Agreement shall be new and of good quality.

20.9 Any latent defects found by Owner at any time after Final Completion of the entirety of the Work shall be corrected by Contractor as soon as is reasonably possible after receiving written notice thereof from Owner, all at the Contractor's sole cost and expense.

## **ARTICLE XXI - PROTECTION OF WORK AND SAFETY PRECAUTIONS**

21.1 Contractor agrees to remain responsible for the reasonable preservation and protection of the Work at all times and during all Work stoppages or delays and further agrees to protect the Work from deterioration and/or damage until such time as the Work is accepted by Owner. If such delays or work stoppages are the fault of Contractor, no additional payments will be made by Owner to repair damage or restore deterioration, or otherwise correct deficiencies.

21.2 Contractor shall protect adjoining private or municipal property, and common areas, including, but not limited to, buildings and structures, foundations, landscaping, hallways, elevators, parking areas, walkways and underground systems, and shall provide barricades, temporary fences, and covered walkways required to protect the safety of passers-by, as required by local building codes, ordinances or other Laws, or the Contract Documents.

21.3 Contractor shall, at its sole cost and expense, promptly repair any damage or disturbance to walls, utilities, sidewalks, curbs, hallways, elevators, and the property of third parties (including municipalities) resulting from the performance of the Work, whether by Contractor, its Contractor's Agents, its and their material suppliers, its and their equipment suppliers, and/or its and their laborers.

21.4 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. Contractor shall take all reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) employees performing the Work and all other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of Contractor or Contractor's Agents; and (3) other property at the Development site or adjacent thereto, such as trees, shrubs, lawns, walks, hallways, elevators, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

21.5 Contractor understands and appreciates that the Work at the Development may be performed in close proximity to residential neighborhoods, apartments, and complexes; as such, Contractor shall use its best, good faith efforts to minimize disruption to neighboring property owners and to accommodate all reasonable requests made by such neighbors.

## **ARTICLE XXII - LABOR AND MATERIALS**

22.1 Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, permits, licenses, transportation, parking, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

22.2 Contractor shall enforce strict discipline and good order among Contractor's employees and all other persons carrying out the Work. Contractor shall not permit employment of unfit persons or persons not skilled in the tasks assigned to them.

## **ARTICLE XXIII - COMMUNICATIONS**

23.1 Owner may communicate directly with any Contractor's Agent or their respective laborer and/or material suppliers without any liability but, unless this Agreement shall have been previously terminated or the Contractor is then in default in timely performing its obligations hereunder, may not issue work directives to any Contractor's Agent or the Contractor's laborers, and/or material suppliers then employed by Contractor.

## **ARTICLE XXIV - CORRECTION OF WORK**

24.1 Contractor shall promptly correct any and all Work rejected by Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Final Completion and whether or not fabricated, installed or completed. Costs of correcting any such rejected Work, including additional testing and inspections, as well as the cost of uncovering and replacement, shall be at Contractor's sole expense. If any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner to do so unless Owner has previously given Contractor a written specific acceptance of such condition. If Contractor fails to correct nonconforming Work within a reasonable time, Owner may correct it in accordance with this Agreement. Nothing contained in this Section shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under this Agreement and/or the Contract Documents. Establishment of any warranty period for correction of Work relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced by Owner to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

24.2 The Contractor, in addition to removing and replacing, at its own expense, its defective Work, shall pay for all damage caused by such defects, and all fees, costs and/or expenses necessary to replace or repair satisfactorily any other work and/or property damaged or disturbed in making repairs to or replacement of its own Work. If Contractor fails to remedy all defective or incomplete Work after notice by Owner, Owner may remedy such condition and back charge Contractor for such costs and expenses plus ten (10%) percent, as well as pursue any and all rights and/or remedies available to it as a consequence thereof.

## **ARTICLE XXV - MISCELLANEOUS**

25.1 This Agreement constitutes the entire and integrated agreement between Owner and Contractor and supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written.

25.2 Modifications of this Agreement shall not be binding unless made in writing and signed by each Party hereto. The provisions of this Agreement shall be enforced to the fullest extent permitted by Law. In case any one or more provisions set forth in this Agreement, or the application thereof to any person or circumstance, shall for any reason be held invalid, illegal or unenforceable in any respect, any such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement or the application of such provisions to other persons or circumstances, and this Agreement shall be enforced to the greatest extent permitted by Law.

25.3 The Parties to this Agreement have participated fully in its negotiation and preparation and, accordingly, this Agreement shall not be more strictly construed against either one of the Parties hereto.

25.4 This Agreement may be executed in counterparts, each of which shall be deemed an original and together shall constitute a single instrument. In addition, any counterpart may be delivered by telephone facsimile transmission or portable document format ("PDF"), and such faxed signature(s) or PDF shall have the same force and effect, and be as binding, as if original signatures had been executed and delivered in person.

25.5 Neither this Agreement, nor any memorandum thereof, may be recorded in the public records and any such recording by Contractor shall be deemed a material default.

25.6 The term "Owner" means the Owner and/or the Owner's authorized representative(s) and/or designated agent(s).

25.7 Contractor represents that it is qualified to do business in the State of Florida and is a properly licensed contractor in the State of Florida.

25.8 Contractor's relationship with Owner is solely as an independent contractor and nothing contained in this Agreement shall be construed as creating a joint venture, partnership or employer/employee relationship.

25.9 Owner may request at any time that Contractor promptly deliver to Owner any or all materials provided to Contractor during the term of this Agreement.

25.10 No provision of this Agreement shall be deemed to have been waived by either party, either expressly, impliedly or by course of conduct, unless such waiver is in writing and signed by such party, which waiver shall apply only to the matter described in the writing and not to any subsequent rights of such party.

25.11 Waiver of Trial by Jury. OWNER AND CONTRACTOR, ON BEHALF OF ITSELF AND EACH OF ITS CONTRACTOR'S AGENTS, HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, IN CONTRACT, TORT OR OTHERWISE, BASED UPON THE WORK, DEVELOPMENT, OR THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY.

25.12 Contractor agrees to comply with all reasonable requests of Owner, Owner's lender(s), and the City.

25.13 All indemnities, representations, and waivers made by Contractor in favor of Owner shall survive the completion of the Work, the making of the final payment and any cancellation or termination of this Agreement.

25.14 Any notice or approval required or permitted to be given hereunder by one Party to the other shall be in writing and sent by either internationally recognized, overnight courier service or by registered or certified mail, return receipt requested, addressed to the Party at its address specified on the first page of this Agreement. From time to time either Party may designate another address or addressee for itself for all purposes under this Agreement by giving to the other party not less than fifteen (15) days advance written notice of such change of address or addressee in accordance with the provisions hereof.

**THE PARTIES ACKNOWLEDGE** that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to be bound accordingly.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**OWNER:**

**Bit Boy Partners, LLC**, a Delaware  
limited liability company

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

Signature

\_\_\_\_\_  
Typed Name/Title

**CONTRACTOR:**

**Russell, Inc.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name/Title



## EXHIBIT A

### INCLUSIONS WITHIN, AND EXCLUSIONS FROM, THE SCOPE OF THE WORK

#### Inclusions:

- All items necessary to complete the Work identified in the Contract Documents
- All required surveys, layouts, as-built drawings, and testing as required by the Contract Documents
- Dust control within the defined areas of the Work

#### Exclusions:

- Import of backfill material for utility trenches and waste excavation areas
- Import of temporary cover material for waste relocation activities
- Installation of 4 drainage wells
- Installation of the utility gas management system
- Contaminated soil or Hazardous Waste handling or disposal
- Removal of light poles

EXHIBIT B  
SCHEDULE OF VALUES

## EXHIBIT C

### CONTRACTOR'S MONTHLY PROGRESS REPORT

#### ON LOCAL PREFERENCE INITIATIVES

### INITIATIVE

### CONTRACTOR'S MONTHLY STATUS REPORT

Name of Contractor: \_\_\_\_\_

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

Work Being Provided: \_\_\_\_\_

Month Being Reported: \_\_\_\_\_

#### **I. QUALIFICATION AS A CITY OF NORTH MIAMI "LOCAL BUSINESS":**

\_\_\_\_ Yes \_\_\_\_ No: Indicate whether or not the Contractor, during the month in question, qualified as a "Local Business" as said term is defined in Section 7-151 of the City of North Miami's Procurement Code.

If the answer to the foregoing is "Yes", indicate (by check mark) the basis of such qualification:

\_\_\_\_: (a) Has a business located in the City with a current City business tax receipt; and/or

\_\_\_\_: (b) Has at least ten (10%) percent of its total workforce residing in the City; and/or

\_\_\_\_: (c) Subcontracts at least ten (10%) percent of the contractual amount of the work to be performed under the Contract in question to one or more subcontractors whose offices are physically located within the City.

**Note:** If the basis of such qualification is (a) above, please attach the current year's business tax receipt (unless previously delivered to the Owner); and if the basis of such qualification is either (b) or (c) above, please complete either Exhibit A or B (as the case may be) attached hereto.

#### **II. EMPLOYEES RESIDING IN THE CITY OF NORTH MIAMI:**

If the Contractor (whether or not qualified as a "Local Business"), during the month in question, has employed one or more individuals who were assigned to perform work at the Development (either full time or part time) and who resided in the City of North Miami during such month, please complete Exhibit C annexed hereto.

### **III. SOLICITATION OF NEW EMPLOYEES:**

If, during the month in question, the Contractor (whether or not qualified as a “Local Business”) solicited the employment of one or more new employees, please complete Exhibit D annexed hereto.

**THE CONTRACTOR, BY ITS EXECUTION HEREOF, HEREBY REPRESENTS AND WARRANTS THAT, TO THE BEST OF ITS KNOWLEDGE, THE INFORMATION CONTAINED IN THIS REPORT IS TRUE AND COMPLETE IN ALL MATERIAL RESPECTS.**

---

Name:

Title:

EXHIBIT A TO  
CONTRACTOR'S MONTHLY STATUS REPORT

If the Contractor has indicated that it continues to qualify as a "Local Business" under Section 7-151 of the City Of North Miami's Procurement Code, and the claimed basis of such qualification is that the Contractor has at least ten (10%) percent of its total workforce comprised of residents of the City, please complete the following:

\_\_\_\_\_: Total number of individuals employed during the month in question; and

\_\_\_\_\_: Total number of employed individuals residing (during the month) in the City; and

The name, address and position of those employees who resided in the City during such month:

<u>NAME</u>	<u>POSITION</u>	<u>STREET ADDRESS</u>
-------------	-----------------	-----------------------

- 1.
- 2.
- 3.
- 4.
- 5.

*(Attach Additional Sheets As Required)*

**FOR EACH INDIVIDUAL BEING LISTED ABOVE FOR THE FIRST TIME, IT WILL BE NECESSARY FOR THE CONTRACTOR TO ATTACH TO THIS FORM EVIDENCE OF SUCH INDIVIDUAL'S RESIDENCY BY PROVIDING A COPY OF ONE OF THE FOLLOWING SHOWING THE NAME AND ADDRESS OF SUCH INDIVIDUAL: (I) DRIVER'S LICENSE; (II) VOTER IDENTIFICATION CARD; (III) BANK STATEMENT; (IV) ALIEN REGISTRATION CARD; OR (V) ELECTRIC BILL.**

**IN ADDITION, IT WILL BE NECESSARY FOR THE CONTRACTOR TO PROVIDE A COPY OF ITS DATABASE CONTAINING THE NAMES AND ADDRESSES OF ALL INDIVIDUALS WHO WERE EMPLOYED, BY SUCH CONTRACTOR, DURING THE MONTH IN QUESTION.**

EXHIBIT B TO  
CONTRACTOR'S MONTHLY STATUS REPORT

If the Contractor has indicated that it continues to qualify as a "Local Business" under Section 7-151 of the City Of North Miami's Procurement Code, and the claimed basis of such qualification is that the Contractor has subcontracted out at least ten (10%) percent of the contractual amount of the work to be performed under the Contract in question to one or more subcontractors whose offices are physically located within the City, please complete the following and attach a true and correct copy of each Subcontract in question (unless previously delivered to the Owner) together with a copy of such subcontractor's current City of North Miami's business tax receipt:

\$\_\_\_\_\_: Total value of the work to be performed under the Contract in question; and

\$\_\_\_\_\_: Aggregate total value of such work subcontracted to businesses physically located within the City, as follows:

<u>NAME OF SUB</u>	<u>CONTRACT SUM</u>	<u>STREET ADDRESS</u>
--------------------	---------------------	-----------------------

- 1.
- 2.
- 3.

EXHIBIT C TO  
CONTRACTOR'S MONTHLY STATUS REPORT

If the Contractor (whether or not it is a qualified Local Business), during the month in question, has employed one or more individuals who, during such month, were assigned (either full or part time) to the performance of all or a portion of the work required under the Contract in question and who, during such month, resided in the City of North Miami, please provide the following information:

	<u>NAME OF EMPLOYEE</u>	<u>POSITION</u>	<u>STREET ADDRESS</u>
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

*(Attach Additional Sheets as Required)*

**FOR EACH INDIVIDUAL BEING LISTED ABOVE FOR THE FIRST TIME, IT WILL BE NECESSARY FOR THE CONTRACTOR TO ATTACH TO THIS FORM EVIDENCE OF SUCH INDIVIDUAL'S RESIDENCY BY PROVIDING A COPY OF ONE OF THE FOLLOWING SHOWING THE NAME AND ADDRESS OF SUCH INDIVIDUAL: (I) DRIVER'S LICENSE; (II) VOTER IDENTIFICATION CARD; (III) BANK STATEMENT; (IV) ALIEN REGISTRATION CARD; OR (V) ELECTRIC BILL.**

EXHIBIT D TO  
CONTRACTOR'S MONTHLY STATUS REPORT

If, during the month in question, the Contractor (whether or not it is a qualified Local Business) solicited the employment of individuals to fill one or more positions to be assigned (either full time or part time) to perform all or a portion of the work required under its Contract with the Owner, please provide the following information as to each individual which either contacted the Contractor (in response to an advertisement or solicitation) or who the Contractor contacted and/or interviewed to fill the position in question:

	HIRED <u>(YES OR NO)</u>	NAME	POSITION	CITY RESIDENT <u>(YES OR NO)</u>
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				



