

RESOLUTION No. 24-101

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH ADT TECHNOLOGIES UTILIZING FACILITY TECHNOLOGY INTEGRATION AND SECURITY SYSTEM SERVICES CONTRACT No. 220701, FOR THE PURCHASE, INSTALLATION, AND IMPLEMENTATION OF ACCESS CONTROL AND CLOSED-CIRCUIT TELEVISION SYSTEMS FOR DORAL CENTRAL PARK; PARTIALLY WAIVING COMPETITIVE BIDDING PURSUANT TO SECTION 2-321 OF THE CITY'S CODE OF ORDINANCES AS IT PERTAINS TO ANCILLARY OPEN MARKET ITEMS AND LABOR; AUTHORIZING THE CITY MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Doral ("City") has implemented access control and closed-circuit television ("CCTV") at nearly all City facilities, such as the government center, police department, police training center, and most City parks; and

WHEREAS, the City conducted market research and sought quotes from qualified vendors via various competitively procured cooperative contracts to seek the most competitive pricing; and

WHEREAS, ADT Technologies ("ADT") has provided the City with the lowest quote proposal to provide access control and CCTV needed for Doral Central Park; and

WHEREAS, the proposal provided by ADT to the City is pursuant to OMNIA Facility Technology Integration & Security System Services Contract No. 220701, which was competitively entered into through a cooperative purchasing venture; and

WHEREAS, pursuant to Section 2-322 of the City's Code of Ordinances, the City is authorized to purchase supplies, materials, equipment and contractual services which are the subject of contracts through cooperative purchasing ventures, when the best

interest of the City would be served thereby; and

WHEREAS, in the abundance of caution the City Manager is also seeking authority under Section 2-321 of the City Code for a partial waiver of competitive bidding for the portion of the proposal by ADT that was priced pursuant to “open market” pricing and for the labor; and

WHEREAS, the City Manager recommends that the City Council authorize the City Manager to execute the agreement with ADT for the purchase, installation, and implementation of access control and CCTV systems at Doral Central Park; and

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

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

Section 2. Approval and Authorization. The purchase, installation, and implementation of access control and CCTV systems for Doral Central Park is approved, and the City Manager is authorized to execute an agreement with ADT, subject to review and approval of the City Attorney, in substantially the form attached hereto as Exhibit “A”. The City Manager is further authorized to expend budgeted funds as provided for herein. Funding is provided via the Parks Bond Fund account numbers 303.9000572.500650 and 305.9000572.500650.

Section 3. Implementation. The City Manager and the City Attorney are hereby authorized to take such further action as may be necessary to implement the purpose and provisions of this Resolution, including negotiating the terms of an

agreement in furtherance of the approved purchase.

Section 4. Effective Date. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was offered by Vice Mayor Puig-Corve who moved its adoption. The motion was seconded by Councilmember Pineyro and upon being put to a vote, the vote was as follows:

Mayor Christi Fraga	Yes
Vice Mayor Oscar Puig-Corve	Yes
Councilwoman Digna Cabral	Yes
Councilman Rafael Pineyro	Yes
Councilwoman Maureen Porras	Yes

PASSED AND ADOPTED this 8 day of May, 2024.



CHRISTI FRAGA, MAYOR

ATTEST:



CONNIE DIAZ, MMC
CITY CLERK

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

By: 

GREENSPOON MARDER, LLP
INTERIM CITY ATTORNEY

EXHIBIT “A”

AGREEMENT

THIS AGREEMENT (the "Agreement") is entered this ____ day of May, 2024 ("Effective Date"), by and between the **CITY OF DORAL**, Florida, a Florida municipal corporation whose address and principal place of business is 8401 NW 53rd Terrace, Doral, Florida 33166, (the "City"), and **ADT COMMERCIAL LLC**, an active, Foreign Limited Liability Company authorized to do business in Florida whose address and principal place of business is 1501 Yamato Road, Boca Raton, Florida 33431 (the "Contractor"). The City and Contractor may be individually referred to as a "Party" or collectively referred to as the "Parties."

RECITALS

WHEREAS, the City of Doral (the "City") solicited a proposal from Contractor utilizing Region 4 Education Service Center Contract # R220701 for Facility Technology Integration & Security System Services competitively procured in partnership with OMNIA Partners ("OMNIA Contract"), for the purchase and installation of access control and CCTV hardware and implementation for Doral Central Park (the "Work"); and

WHEREAS, the Contractor submitted a proposal for the Project, which is attached hereto as Exhibit "A", and incorporated herein by reference ("Contractor's Proposal"); and

WHEREAS, the City desires to engage the Contractor, and the Contractor desires, to complete the Project as specified herein.

NOW THEREFORE, in consideration of the promises and the mutual covenants herein named, the parties agree as follows:

ARTICLE I

THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 The Contract

1.1.1 The Contract between the City and the Contractor, of which this Contract is a part, consists of the Contract Documents. It shall be effective on the date this Contract is executed by the last party to execute it.

1.2 The Contract Documents

1.2.1 The documents set forth below are hereinafter collectively referred to as the "Contract Documents", which are listed in their order of precedence for the purpose of resolving conflicts, errors and discrepancies, and by this reference shall become a part of the Agreement as though physically attached as a part thereof:

- (a) Amendments/Change Orders;
- (b) Agreement;
- (c) Contractor's Proposal which is incorporated herein as Exhibit "A";
- (d) Project Schedule which is incorporated herein as Exhibit "B";
- (e) OMNIA Contract as Exhibit "C";



- (f) The insurance requirements set forth and incorporated herein as Exhibit “D”;
- (g) E-Verify Affidavit which is incorporated herein as Exhibit “E”; and
- (h) All other exhibits to this Agreement.

Documents not enumerated in this Paragraph 1.2 are not Contract Documents and do not form part of this Contract.

1.3 Entire Agreement

1.3.1 This Contract, together with the Contract Documents, constitute the entire and exclusive agreement between the City and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes all prior written or oral communications, representations and negotiations, if any, between the City and the Contractor.

1.4 No Privity with Others

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create privity or any other contractual agreement between the City and any person or entity other than the Contractor.

1.5 Intent and Interpretation

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price. As used herein, the term “project” shall be inclusive of any Work.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The word “allowance” as used in this Contract shall mean the amount budgeted for an item and shall not be interpreted or construed as an agreement by the City to pay the budgeted amount. Any amounts to be paid for those items identified as an allowance shall only be issued with the prior written approval of the City. It is further understood by the Contractor that the allowance is inclusive of overhead.

1.5.6 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.7 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.8 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, and shall give written notice to the City of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the City, the City's Representative, or the City's Consultant Architect of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The City has requested the City's Consultant Architect to only prepare documents for the Project, including the Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been or are hereby made. The Contractor further acknowledges and represents that it has made a thorough and careful examination and inspection of existing surface conditions on the Project site, and the Contractor expressly acknowledges and agrees that it shall make no claim for additional compensation due to existing site conditions including, but not limited to, rock, surface and subsurface water, existing structures, and deficient soil, provided said conditions could be determined or ascertained from a thorough and careful examination and inspection of the site.

1.5.9 Reserved.

1.5.10 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

1.5.11 Whenever the word "days" is used, it shall mean calendar days and not working days unless otherwise specified.

1.6 Ownership of Contract Documents

1.6.1 The Contract Documents, and each of them, shall remain the property of the City unless the City has agreed otherwise with the City's Representative and/or City Consultant Architect. The Contractor shall have the right to keep one record set of the Contract

Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the City's prior written authorization.

1.7 Public Records Law

1.7.1 The Contractor shall comply with all applicable requirements contained in the Florida Public Records Law (Chapter 119, Florida Statutes), including but not limited to any applicable provisions in Section 119.0701, Florida Statutes. To the extent that the Contractor and this Contract are subject to the requirements in Section 119.0701, Florida Statutes, the Contractor shall: (a) keep and maintain public records required by the City to perform the services provided hereunder; (b) upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law for the duration of the term of this Contract and following completion of this Contract if the Contractor does not transfer the records to the City; and (d) upon completion of the Contract, transfer, at no cost, to the City all public records in the possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City. If the Contractor fails to comply with the requirements in this Section, the City may enforce these provisions in accordance with the terms of this Agreement. If the Contractor fails to provide the public records to the City within a reasonable time, it may be subject to penalties under Section 119.10, Florida Statutes.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT 305-593-6730, CITYCLERK@CITYOFDORAL.COM, 8401 NW 53RD TERRACE, DORAL, FLORIDA 33166.

1.8 Compliance with Laws

1.8.1 Contractor and the Services must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act (ADA), 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

1.8.2 ADA Compliance

Upon request, Contractor will provide the City with any accessibility testing results and written documentation verifying accessibility for documents delivered by the Contractor to the City, as well as promptly respond to and resolve accessibility complaints.

1.9 Electronic Recordkeeping

1.9.1 Contractor certifies its services and products meet all recordkeeping requirements of the State of Florida, including but not limited to those in Chapter 119, Florida Statutes and Rule 1B-26.003(6)(g), Florida Administrative Code.

ARTICLE II
THE WORK

2.1 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project, furnishing of any required insurance, and the provision or furnishing of labor, administration, management, supervision, testing, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, maintenance of traffic, permits and licenses required of the Contractor, including all items listed above and all appurtenant work, complete, tested and ready for operation, including fuel, heat, light, cooling and all other utilities, including temporary utilities and facilities as required by this Contract. The Work to be performed by the Contractor is specifically described in Contractor's Proposal attached hereto as Exhibit "A".

2.2 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract as specifically set forth in the Contract Documents. The Contractor agrees to comply with the City of Doral permitting requirements.

2.3 Unless expressly permitted or allowed by the Contract Documents, substitutions of materials, articles, systems, equipment, or other components of the Work will not be considered. Where substitutions are expressly permitted or allowed by the Contract Documents, the Contractor must demonstrate to both the City and the City's Representative that a proposed substitution is equal in substance, quality and function to the material, article, or piece of equipment identified in the Contract Documents. The City shall have no obligation to accept a proposed substitution and no substitution shall be allowed without the prior written approval from both the City's Representative and the City. If the substitution results in a savings to the Contractor, the City shall be entitled to a credit for the amount saved as a result of the substitution.

ARTICLE III
CONTRACT TERM AND TIME

3.1 Contract Term

3.1.1 The term of this Agreement shall commence on the Effective Date and shall

continue in full force and effect until the Project is fully and finally completed to the satisfaction of the City (the "Contract Term").

3.2 Contract Time and Project Schedule

3.2.1 Within [TBD] days of the Effective Date of this Agreement, the Consultant shall provide a Project Schedule which shall become Exhibit "B" to this Agreement. The Consultant shall perform its services expeditiously in accordance with the time frames set forth in the "Project Schedule" set forth in Exhibit "B".

3.2.2 The City shall notify the Contractor in writing of the date on which the Work shall begin ("the Notice to Proceed Date"). The Contractor shall commence site activities on the Notice to Proceed Date, and the Work shall be carried on regularly and without interruption. [Pending inclusion of time frame for completing work within the NTP—both Substantial Completion and Final Completion].

3.3 Notice to Proceed

3.3.1 Once a Notice to Proceed has been issued, the Contractor shall be responsible for the timely and successful completion of the Work and shall endeavor to provide all applicable agencies having jurisdiction with all the required documentation needed to successfully and timely continue the progress of the Work. This may include, but is not limited to providing all necessary documentation in the form of shop drawings, clarifications, calculations, technical data, protocols, product approvals, etc.

3.3.2 Under no circumstances will the City accept claims or be responsible for delays arising from failed, unsuccessful, untimely, or late inspections or rejections of inspected Work due to the fault of the Contractor for not supplying all the necessary documentation in the forms required or requested by the City, the City's Representative, or the City's Consultant Architect.

3.4 Time is of the Essence

3.4.1 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

3.5 The Terms of Sections 1.8, 7.15, and 7.5 entitled "Compliance with Laws", "Indemnity" and "Warranty", respectively, shall survive the expiration or termination of this Agreement.

ARTICLE IV **CONTRACT PRICE**

4.1 The Contract Price

4.1.1 The City shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of **\$588,044.36**. The fixed sum set forth in this Paragraph 4.1.1 shall constitute the Contract Price which shall not be modified except by Change Order as provided in this Contract.

4.1.2 **The Contractor has included within the Proposal a reasonable estimate of the labor hours needed to complete the project based on their professional expertise and experience. Accordingly, despite the estimated labor hours set forth in the Proposal, the Contractor is obligated to complete the Project in the amount set forth above, and the City shall not be responsible for any labor costs exceeding the amounts estimated in the Proposal.**

ARTICLE V
PAYMENT OF THE CONTRACT PRICE

5.1 Schedule of Values

5.1.1 The Contractor's Proposal contains a Schedule of Values allocating the Contract Price to the various portions of the Work. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged in writing by the City's Representative and the City.

5.2 Payment Procedure

5.2.1 The City shall pay the Contract Price to the Contractor as provided below.

5.2.2 Progress Payments. Payment to the Contractor shall be as follows: 50% of the Contract Price upon successful delivery of all equipment and materials, 40% upon Substantial Completion of the Work, and 10% upon Final Completion and acceptance of the Work by the City.

5.2.3 Payment for stored materials and equipment shall be contingent upon the Contractor's proof satisfactory to the City, that the City has title to such materials and equipment and shall include proof of required insurance sufficient to protect the City from any loss should the materials and equipment be lost, stolen or otherwise destroyed or damaged.

A Payment Request by the Contractor shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full accordance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the City's Representative will review the Payment Request and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Payment Request and is as required by this Contract. The City, in its sole discretion, may review the Work and the Payment Request prior to any certification by the City's Representative and the City may, in its sole discretion, require the City's Representative and the Contractor to meet and confer with the City with respect to

said Payment Request prior to any certification of same. The City's Representative shall determine and certify to the City the amount properly owing to the Contractor. The City shall make partial payments on account of the Contract Price to the Contractor within twenty-five (25) days following the receipt of the City's Representative's approval of each Payment Request.

The amount of each partial payment shall be the amount certified for payment by the City's Representative less such amounts, if any, otherwise owing by the Contractor to the City or which the City shall have the right to withhold as authorized by this Contract. The City's Representative's certification of the Contractor's Payment Request shall not preclude the City from the exercise of any of its rights as set forth in Paragraph 5.3 herein below.

5.2.4 The Contractor warrants that title to all Work covered by a Payment Request will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal of a Payment Request, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interests or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.5 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. Submission of lien releases from subcontractors is a prerequisite for release of payment to Contractor per Paragraph 5.2.3.

5.2.6 No progress payment, nor any use or occupancy of the Project by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

5.3 Withheld Payment

5.3.1 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:

- (a) defective Work not remedied by the Contractor nor, in the opinion of the City, likely to be remedied by the Contractor;
- (b) claims of third parties against the City or the City's property, unless the surety provides the City a written consent regarding the payment(s) in question;
- (c) **failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion. The City may ask the surety for a written consent regarding the payment(s) in question. However, notwithstanding the foregoing, and provisions of Section 255.05 (11), Florida Statutes, the parties hereby agree that the City may condition its payment to the Contractor on the production of a release, waiver, or like documentation from a Subcontractor or others demonstrating that the Subcontractor or others do not have an outstanding claim for payments due on labor, services or materials furnished under the Contract.**

In the event the City requires such documentation, the provisions of the Local Government Prompt Payment Act (Sections 218.70 through 218.79) shall be suspended until such time as the City obtains the requested documentation;

- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- (e) evidence that the Work will not be completed in the time required for final completion;
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the City or a third party to whom the City is, or may be liable;
- (h) failure to comply with 5.2.3 of this section.

In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this Subparagraph 5.3.1, the Contractor shall comply with such demand within ten (10) days of receipt of same.

5.4 Completion and Final Payment

5.4.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall immediately notify the City and the City's Representative thereof in writing. Thereupon, the City's Representative will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been fully performed, the City's Representative will promptly issue a final Certificate for Payment certifying to the City that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the City's Representative is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the City from the Contractor's final payment.

5.4.2 As a condition precedent to final payment to the Contractor, the Contractor shall deliver to the City the following documents in a form acceptable to the City:

- a) Project Record Documents including As-built Drawings and Specifications, Addenda, Construction Schedule, Change Orders and other modifications of the Contract, Approved Shop Drawings, Product Data and Samples, and Field Test records.
- b) Operating and Maintenance Instructions: Submit instructions and/or manuals for operating equipment and systems as prepared in accordance with the requirements of the applicable equipment specifications sections.
- c) Warranties: As applicable and in accordance with the requirements of the individual sections of the specifications.
- d) Affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied.

- e) Releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the City's Representative or the City.
- f) Consent of surety to final payment.
- g) A duly executed assignment of any and all warranties required by the Contract Documents.
- h) Any and all operating manuals required by the Contract Documents.
- i) Any and all manuals relating to Project materials or Project maintenance.
- j) Executed change orders relating to any and all changes in the Work.
- k) Any and all as-built drawings required by the Contract Documents.

If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.

5.4.3 As a further condition precedent to final payment, the Contractor shall furnish to the City a complete and comprehensive set of as-built drawings; said as-built drawings are to be submitted in hard copy and in electronic format, and the City and the Contractor agree and acknowledge that the Contract Price includes all cost and expense associated with the production of said as-built drawings.

5.4.4 The City shall make final payment of all sums due the Contractor within twenty-five (25) days of the City's Representative's execution of a final Certificate for Payment.

5.4.5 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

ARTICLE VI THE CITY

6.1 Information. Services and Items Required from City

6.1.1 The "City" The City of Doral, as represented by the City Commission and its designees, which is the owner of this Project.

6.1.2 The City shall furnish to the Contractor, prior to execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose.

By furnishing such material, the City does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefore. The City shall also furnish surveys, legal limitations and utility locations (if known), and a legal description, if available, of the Project site.

6.1.3 The Contractor is responsible for compliance with, and shall secure at its expense, all municipal review, construction, and inspection permits, provided, however, all City of Doral review, construction, and inspection fees will be waived save and except fees for inspection.

6.1.4 The City shall furnish the Contractor, upon request and free of charge, two (2) copies of the Contract Documents for execution of the Work. The Contractor will be charged, and shall pay the City FIFTY Dollars (\$50.00) per additional set of Contract Documents which it may require.

6.2 City's Right to Stop Work

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, the City shall have the right, but not an obligation, to order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the City orders that Work be resumed. In such event, the Contractor shall immediately obey such order. A stop work directive provided under this paragraph shall not entitle the Contractor to an extension of the completion date nor any financial compensation resulting from expenses due to delays caused by this Stop Work directive.

6.3 City's Right to Perform Work

6.3.1 If the Contractor's Work is stopped by the City under Paragraph 6.2, or if the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, and the Contractor fails within three (3) days of such stoppage, failure, or refusal, to provide adequate assurance to the City that the cause of such stoppage will be eliminated or corrected, then the City may, without prejudice to any other rights or remedies the City may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, plus compensation for the City's Representative's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the City, the Contractor shall pay the difference to the City.

6.4 Inspections

6.4.1 No inspector shall have authority to waive any requirements of the Contract Documents. Any failure or omission on the part of any inspector, the Engineer/Architect or any agent of the City, to condemn any defective work or material shall not release the Contractor from its obligations to install the Work free from faults and defects and to promptly remove and repair any defective or deficient work. The Contractor hereby acknowledges and agrees that no inspector shall have authority to:

- (a) Authorize any deviation from the Contract Documents or approve any substitute materials or equipment;

- (b) Undertake any of the responsibilities of the Contractor, subcontractors or Contractor's superintendent;
- (c) Expedite the Work for the Contractor;
- (d) Advise on or issue directions relative to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents;
- (e) Advise on or issue directions as to safety precautions and programs in connection with the Work. Provided however, this shall not preclude the City inspector from notifying the Contractor of any hazardous or dangerous condition;
- (f) Participate in specialized field or laboratory tests.

6.5 Coordination and Scheduling of Work

6.5.1 The Contractor shall cooperate with the City and any separate contractors retained by the City, and the Contractor shall carefully coordinate and schedule the Work as may be required to accommodate without delay or interference the Work of the City or any of its separate contractors.

6.6 Contractor Delay

6.6.1 "Contractor Delay" shall mean any delay in the completion of the Work solely attributable to Contractor, resulting from, including but not limited to: (i) Contractor's failure to meet any time deadlines specified herein; or (ii) the performance the Work by any person, subcontractor, firm or corporation employed by or on behalf of Contractor, which materially interferes with Contractor's completion of the Work.

6.6.2 Contractor agrees to promptly notify the City of a Contractor Delay, and provide the City a revised timeline for completion of the Work. If the Contractor Delay persists beyond seven (7) days, the City reserves the right to pursue remedies including, but not limited to, termination of this Contract, withholding of payment, or seeking damages for any losses incurred as a result of the delay or failure to perform.

6.6.3 Notwithstanding the foregoing or anything herein to the contrary, the Contractor shall be liable for any damages caused to the City as a result of a Contractor Delay.

ARTICLE VII **THE CONTRACTOR**

7.1 The Contractor shall perform no part of the Work, including ordering of material, at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor

performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the City's Representative, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

7.3 The Contractor shall perform the Work strictly in accordance with the Contract Documents. The Contractor shall also be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

7.4 Contractor's Professional Standard

7.4.1 City's engagement of the Contractor is based upon the Contractor's representations to the City that:

- (a) Contractor has carefully reviewed all Contract Documents prior to signing the Contract.
- (b) Contractor is an organization experienced in, and qualified, willing and able to provide construction of the nature and type necessary to perform the Work;
- (c) Contractor is authorized and licensed to do business in the State of Florida, Miami-Dade County and the City of Doral; and
- (d) Contractor shall furnish labor, material, equipment and services (i) which expeditiously, economically, and properly complete the Work in the manner most consistent with the City's interests and objectives, (ii) in accordance with the Contract Documents, and (iii) in accordance with the highest standards currently practiced by persons and entities performing comparable labor, material, equipment and services on projects of similar size and complexity.
- (e) Contractor certifies that the sum of the Contract Price as set forth in Paragraph 4.1 is adequate to fully execute the Work as defined by the Contract Documents.

7.4.2. The Contractor shall administer, manage, supervise and direct the Work using Contractor's best skill, effort and attention. The Contractor shall be responsible to the City for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.5 Warranty

7.5.1 The Contractor warrants to the City that all persons performing labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only implied warranty of fitness, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good and uniform quality, free from faults and defects and in strict conformance with this Contract for a period of one (1) year from the date of Final Completion and acceptance by the City unless a longer warranty period is a requirement of the drawings and/or specification for either individual elements of the project or the entire project. All Work not conforming to these requirements may be considered defective.

7.5.2 Any warranty required or received from a Subcontractor, manufacturer, or supplier is herein assigned by the Contractor to the City effective immediately upon

issuance of the fully executed Certificate of Completion. Furthermore, the Contractor agrees to supply to the City the originals of all such warranties where same are in writing, and further agrees to execute, if requested by the City, separate assignments of warranty on a form furnished by the City.

7.6 In the event permits are required, the Contractor shall obtain, and the City shall pay for, all permits, fees and licenses necessary and ordinary for the Work except as otherwise provided in this Contract.

The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

7.7 Supervision

7.7.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the City or the City's Representative.

7.7.2 Key administrative, managerial and supervisory personnel assigned by the Contractor to this Project are as follows:

<u>Name</u>	<u>Function</u>
[Pending individuals specified by ADT]	

The Contractor shall furnish to the City complete resumes of each of the individuals named above. So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the City agrees to the contrary in writing or unless the City requests the removal of any such individual from the Project. In the event the City requests the removal of any of the individuals named above, the Contractor shall immediately comply and shall immediately replace such individual with a qualified substitute to whom the City makes no objection. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.7.2 as though such individuals had been listed above.

7.8 Prior to the commencement of any construction activity, the Contractor shall provide to the City the layout and work area parameters for the Work.

7.9 Reserved.

7.10 The Contractor shall continuously maintain at the site, in an orderly fashion and format acceptable to the City, for the benefit of the City and the City's Representative one record copy of this Contract and all Contract Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the City and the City's Representative the approved Shop Drawings, Product Data, Samples, As-Builds and other similar required submittals.

Upon final completion of the Work, all of these record documents shall be delivered to the City within a reasonable time.

7.10.1 No less than bi-weekly, the Contractor shall conduct a Project meeting which shall include the Contractor's administrative, managerial and supervisory personnel and representatives of each subcontractor working on the Project site. The meeting shall address, but shall not be limited to, the current status of the Work, including the current Project schedule and the existence of any defective or deficient work as well as the appropriate action required to correct or replace such work. The City and the City's Representative shall have the right, but not the duty, to attend such weekly meetings. The Contractor shall maintain detailed minutes of each such weekly meetings and shall distribute typewritten copies of such minutes to the City and the City's Representative no later than the close of the next workday following completion of such meeting. The Contractor shall further require its Project Manager to maintain a daily job diary which shall include for each work day the daily weather conditions, the identity of each subcontractor working on the site, the manpower of each subcontractor working on the site, the identity of all visitors to the Project site, documentary progress photographs, and any and all other information reflecting any delays, hindrances, interferences, or other problems encountered or incurred on the Project site. Each week the Contractor shall furnish to the City and the City's Representative on a weekly basis full and complete copies of said daily job diary.

7.11 Shop Drawings, Product Data and Samples

7.11.1 Shop Drawings, Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.11.2 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data or Samples unless and until such submittals have been approved by the City's Representative. Approval by the City's Representative, however, shall not be evidence that Work installed pursuant thereto conforms with the requirements of this Contract.

7.11.3 The Contractor shall maintain a log of all Shop Drawings, Product Data and Samples submitted to the City's Representative and the City including, but not limited to, identification of the item of work according to appropriate specification section; date of receipt from appropriate subcontractor or supplier; date of review by the Contractor; date of submission to the City's Representative date of return from the City's Representative date of return to the subcontractor or supplier; status of review by the City's Representative and any required re-submittal information. A true and correct copy of this log shall be submitted with each Payment Request and receipt of same by the City's Representative shall be a condition precedent for approval of the Payment Request.

7.12 Cleaning the Site and the Project

7.12.1 The Contractor shall keep the site clean during performance of the Work, shall remove debris, trash and garbage from the Site daily and allow no accumulation of debris, garbage or trash on the Site. Upon Final Completion of the Work, the Contractor shall clean the site and the Project and remove all waste, together with all of the Contractor's property therefrom.

7.13 Access to Work

7.13.1 The City, the City's Representative shall have access to the Work at all times from commencement of the Work through Final Completion. The Contractor shall take whatever steps necessary to provide access when requested.

7.14 Safety

7.14.1 The Contractor shall take all reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to, its employees on the Work and all other persons who may be affected thereby; the Work and materials and equipment to be incorporated therein; and all other property at the site or adjacent thereto including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss, and shall give all notices required by same.

7.15 Indemnity

7.15.1 To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless CITY, its officers/agents and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of CONTRACTOR and persons employed or utilized by CONTRACTOR in the performance of this Contract. This indemnification shall survive the term of this Contract.

7.16 Reserved.

ARTICLE VIII
CONTRACT ADMINISTRATION

8.1 City's Consultant Architect

8.1.1 The City's Consultant Architect for this project is Bermello Ajamil & Partners, Inc., address 4711 S Le Jeune Rd, Coral Gables, FL 33146, phone number (305) 859-2050 .In the event the City should find it necessary or convenient to replace the Consultant Architect the City shall retain a replacement Consultant Architect and the status of the replacement Architect shall be that of the former Architect.

8.2 City's Representative

8.2.1 The City's Representative, unless otherwise directed by the City in writing, will perform those duties and discharge those responsibilities allocated to the Engineer or Architect as set forth in the Contract Documents and this Contract. The City's Representative shall be the City's representative from the effective date of this Contract until final payment has been made. The City's Representative shall be authorized to act on behalf of the City only to the extent provided in this Contract.

8.2.2 The Contractor and the City's Consultant Architect shall communicate with each other in the first instance through the City's Representative. The City's designated representative for the receipt of any such communications, or copies of same, is Mario Leon, whose address is c/o City of Doral, 8401 NW 53rd Terrace, Doral, FL 33166, phone number 305-593-6725, Ext. 1730 and email mario.leon@cityofdoral.com. The City reserves the right to change its designated representative upon written notice to the Contractor and City's Representative.

8.2.3 The City's Consultant Architect shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance there under by the Contractor. The Consultant Architect, through the City's Representative, shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The City's Representative will review the Contractor's Payment Requests and will certify to the City for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The City's Representative shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the City's Representative deems it necessary or advisable, the City's Representative shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements. In the event additional inspections or testing are required pursuant to this paragraph 8.2.5, the costs for all additional inspections or testing shall be the responsibility for the Contractor.

8.2.6 The City's Representative will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the Contract Documents.

8.2.7 The City's Representative will prepare Change Orders and may authorize minor changes in the Work upon approval from the City by Field Order as provided elsewhere herein.

8.2.8 The City's Representative shall, upon written request from the Contractor, conduct inspections to determine the date of Substantial Completion and the date of Final Completion, will receive and forward to the City for the City's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2.9 The Contractor agrees, acknowledges, and warrants that it has no third party beneficiary rights, or other rights, arising out of any contract by and between the City, the City's Representative, and/or the City's Consultant Architect and, in the event of any conflict between the terms and provisions of the contract by and between the City and the City's Representative, and/or the City's Consultant and this Contract, the terms of this Contract shall control with respect to the Contractor.

8.2.10 If the Contractor fails any inspection which requires a re-inspection by the City's Representative or any of its consultants, the Contractor shall bear the cost of such repeat inspection(s) which cost may be deducted by the City from any sums otherwise due the Contractor.

8.3 Claims by the Contractor

8.3.1 Except as prohibited in Paragraph 8.3.5.1 herein below, all Contractor claims shall be initiated by written notice and claim to the City and the City's Representative, as applicable.

Such written notice and claim must be furnished within three (3) days after occurrence of the event, or the first appearance of the condition giving rise to the claim.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim under this Paragraph 8.3 shall be reflected by a Change Order executed by the City, the City's Representative and the Contractor.

8.3.3 Claims for Concealed and Unknown Conditions -- Should concealed and unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within three (3) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City and the City's Representative written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

8.3.4 Claims for Additional Costs — Except as prohibited in Paragraph 8.3.5 herein below, if the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City's Representative and the City written notice of such claim within three (3) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim.

Such notice must be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

8.3.4.1 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's cost shall be strictly limited to direct costs incurred by the Contractor. Direct costs do not include the Contractor's home office overhead, loss of efficiency, consequential damages of the Contractor, or equipment costs in excess of actual equipment rental paid by the Contractor to a third party. The City shall not be liable to the Contractor for claims of third parties, including Subcontractors, unless and until liability of the Contractor has been established therefore in a court of competent jurisdiction.

8.3.5 Claims for Additional Time—If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or any causes beyond the Contractor's control, then the date for achieving Final Completion of the Work shall be extended upon the written notice and claim of the Contractor to the City and the City's Representative for such reasonable time as the City's Representative and the City may determine. Claims for delay can only be submitted for consideration in the event they have a direct, documentable impact on the Critical Path of the project as evidenced on the (CPM) schedule. Concurrent delay events impacting the schedule will only be considered as a single impact and cannot be extended linearly. Any notice and claim for an extension of time by the Contractor shall be made not more than three (3) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. Said claim shall specifically include, among other things, an adjusted critical path (CPM) schedule reflecting precisely the delay and its claimed impact upon the Contractor's future performance. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived.

8.3.5.1 In no event, and under no circumstances, shall the Contract Price be increased for, nor shall the Contractor claim, recover, or receive payment for, any cost, expense, damages, or compensation of any kind by reason of any delay to the Project, whether critical or non-critical, and whether caused in whole or in part by the City. The Contractor shall not be entitled to any direct, indirect, consequential, impact, or other costs, expenses, or damages, including but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever, whether such delay, disruption, interference, or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable.

It is further agreed that such direct costs do not include the Contractor's home office overhead, loss of efficiency, consequential damages, or equipment costs in excess of actual equipment rental paid by the Contractor to a third party. The Contractor's sole and

exclusive remedy for delay, hindrance, and disruption shall be an extension of the Contract Time provided a claim for same is made and is allowable pursuant to the provisions of Paragraph 8.3.5 hereinabove.

8.4 Field Orders

8.4.1 The City's Representative after first obtaining approval from the City, shall have authority to order minor changes in the Work not involving, a change in the Contract Price or in - Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

ARTICLE IX **SUBCONTRACTORS**

9.1 Definition

9.1.1 A Subcontractor is an entity that has a direct contract with the Contractor to perform a portion of the Work.

9.2 Award of Subcontracts

9.2.1 Upon execution of the Contract, or as may be required by the Instructions to Bidders, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the City against the Contractor herein, including those rights afforded to the City by Subparagraph 12.2.1 below.

ARTICLE X **CHANGES IN THE WORK**

10.1 Changes Permitted

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order, Construction Change Directive or by Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

10.2 Change Order Defined

10.2.1 Change Order shall mean a written order to the Contractor executed by the City and the City's Representative issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by Change Order.

10.3 Changes in the Contract Price

10.3.1. Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the City and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the City and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 The Contractor shall be bound by the following conditions and procedures governing additional work under the Contract.

10.3.2.1 Any change order must be recommended by the City's representative and approved by the City before any steps are taken to implement the change order.

10.3.2.2 Should the Contractor commence work without making a claim in writing for unforeseen extra work encountered, it will be construed as an acceptance and agreement that such work is required under the Contract and no further claim for such extras will be considered or allowed by the City.

10.3.2.3 Changes in the Work directed by the City's Representative shall become part of the Contract only by written change order.

10.3.2.4 Information regarding changes in the Work for additional work, credits and adjustments under the Contract shall be promptly transmitted in writing by the Contractor to the City's Representative with full explanations and justifications for consideration in preparing a change order to the Contract.

10.3.2.5 Contractor shall allow twenty-one (21) calendar days for the City's Representative to review and respond to the City on Contractor submitted Requests for Change Order pricing and Contractor submitted pricing for City initiated proposal requests. This review time is only for correctly submitting pricing. Submitted pricing found not to be in correct format, or containing pricing that relates to Work clearly not part of the change, or contains Sub- Contractor pricing not in the correct format, or contains Sub- Contractor pricing that relates to Work clearly not part of the change, will not be reviewed and returned to the Contractor for proper submission and as such, no Contractor claims for delay will be accepted as a result of extended response time due to improper pricing submission.

10.3.2.6 The City's Representative will review properly submitted Contractor pricing and compare submitted pricing with published pricing data contained in the Building Cost Data, Mechanical Cost Data and Electrical Cost Data, latest edition, as published by R.S. Means Company, Inc. Contractor submitted pricing found to be in excess of five (5%) percent above the stated published pricing will not be accepted and as such, no Contractor claims for delay will be accepted as a result of extended response time due to excessive pricing submittal by the Contractor.

10.3.3 The value of any change ordered under the Contract for extra work or any reductions in work required, shall be determined under one or more of the following procedures before a written change order is issued.

10.3.3.1 By Unit Price named in the contract or subsequently agreed upon by the City and the Contractor, which prices shall include Contractor's overhead and profit.

10.3.3.2 By Lump Sum Price agreed upon by the City and the Contractor, which price shall include overhead and profit. A breakdown of the estimated costs comprising the lump sum price may be required by the City's Representative for review. Percentage for overhead and profit shall be determined in accordance with the method listed described under Overhead and Profit below.

10.3.3.3 By a Cost Plus Price on total actual costs, plus an added percentage, all determined as described under Overhead and Profit below.

10.3.3.4 Overhead and Profit

(a) Subcontractor's overhead, including supervision and the furnishing, use and maintenance of small tools and ordinary equipment incidental to and required for the Work shall be just and fully compensated for by adding an amount equal to FIVE PERCENT (5%) of the sum of material and labor costs as defined under Subcontractor's profit below, but excluding documented equipment rental costs.

(b) Subcontractor's profit may then be added to the above material costs and labor costs including the Overhead allowance at the rate of SEVEN PERCENT (7%) of the sum of those costs, excluding equipment rental costs.

(c) Contractor's overhead, including general supervision and the furnishing, use and maintenance of small tools incidental to and required for the Work accomplished by its own direct labor shall be considered to be just and fully compensated for by adding an amount equal to FIVE PERCENT (5%) of the sum of material and labor costs as defined under Material costs and Labor costs below, but excluding equipment rental costs and bond allowance.

(d) Contractor's overhead, including general supervision and the furnishing, use and maintenance of small tools and equipment incidental to and required for the Work accomplished by subcontractors shall be considered to be just and fully compensated for by adding an amount equal to FIVE PERCENT (5%) of the sum of

material and labor costs as defined under Material costs and Labor costs below, but excluding equipment rental costs and bond allowance.

(e) Contractor's profit may then be added into the above material costs and labor costs, including the Overhead allowance at the rate of SEVEN PERCENT (7%) of the sum of those costs, excluding equipment rental costs.

10.3.3.5 Reserved.

10.3.3.6 Material costs actually recorded by the Contractor and the subcontractor as materials are delivered to the site and, as evidenced from originally receipted invoices, listing appropriate quantities and unit prices. Records in proper form shall be maintained and made available to the City's Representative and the City at all times.

10.3.3.7 Labor Costs represented by the actual wages paid to all laborers, apprentices, journeymen, and foremen involved in and necessary to completing the particular construction operations, for each day and every hour such labor teams and foremen are actually employed on the extra work required, including the net cost of insurance, social security and Workmen's Compensation. Records in proper form shall be maintained and be made available to the Engineer/Architect and the City at all times.

10.4 Minor Changes

10.4.1 The City's Representative, after first obtaining express written approval from the City, shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the City and the Contractor. The Contractor shall promptly carry out such written Field Orders.

10.5 Effect of Executed Change Order

10.5.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

10.6 Emergency Change Orders

10.6.1 In an emergency that presents immediate danger to person or property, the City's designated representative may order a change in the Work that shall be documented within three (3) days from the inception of said emergency in accordance with the change order requirements of Article X of this Contract.

ARTICLE XI
UNCOVERING AND CORRECTING WORK

11.1 Uncovering Work

11.1.1 If any of the Work is covered contrary to the City's Representative's request or to any provisions of this Contract, it shall, if required by the City's Representative or the City, be uncovered for the City's Representative inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time.

11.1.2 If any of the Work is covered in a manner not inconsistent with Subparagraph 11.1.1 above, it shall, if required by the City's Representative or the City, be uncovered for the inspection of the City's Representative or the City. If such Work conforms strictly with this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the City. If such Work does not strictly conform with this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

11.2 Correcting Work

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the City's Representative or the City as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the City for the City's Representative services and expenses made necessary thereby.

11.2.2 If within one (1) year after Final Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the City. This obligation shall survive final payment by the City and termination of this Contract. With respect to Work completed after Final Completion, this one (1) year obligation to specifically correct defective and non-conforming Work shall be extended by the period of time which elapses between Final Completion and acceptance of the subject Work by the City and the City's Representative. Should any Work be deemed defective or not in accordance with the Contract, and the Contractor fails to correct it as provided by this paragraph 11.2.2, the City will consider the Contractor in default, which may affect the Contractor's eligibility for future contracts.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. The establishment of the one-year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

11.3 The City May Accept Defective or Non-conforming Work

11.3.1 If the City chooses to accept defective or non-conforming Work, the City may do so. In such event, the Contract Price shall be reduced by the greater of: (a) the reasonable cost of removing and correcting the defective or non-conforming Work, and (b)

the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or non-conforming Work.

If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the City for its acceptance of defective or non-conforming Work, the Contractor shall, upon written demand from the City, pay the City such remaining compensation for accepting defective or non-conforming Work.

ARTICLE XII
CONTRACT TERMINATION

12.1 Termination by the Contractor

12.1.1 If the City shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of thirty (30) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the City's Representative and the City. In such event, the Contractor shall be entitled to recover from the City as though the City had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

12.2 Termination by the City

12.2.1 For Convenience

12.2.1.1 The City may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The City shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the City such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

12.1.1.4 In the event of termination by the City, the Contractor shall be paid for all Work accepted by the City Manager up to and through the date of termination.

12.2.2 For Cause

12.2.2.1 If the Contractor refuses or fails to prosecute the Work in a timely manner, supply enough properly skilled workers, administrative, managerial and supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a material provision of this Contract, then the City may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the costs of finishing Work exceed the unpaid balance of the Contract Price, the Contractor shall pay the difference to the City. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the City for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

ARTICLE XIII **INSURANCE**

13.1 Contractor agrees, at its sole expense, to maintain on a primary, non-contributory basis during the life of this Contract, or the performance of work under this Project, insurance coverages, limits, and endorsements as required in Exhibit "D". The Contractor agrees the insurance requirements herein as well as City's review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Contract. Any coverage maintained by the City shall apply excess of, or contingent upon the absence of, other insurance required or maintained by Contractor. All insurance policies required by this Contract shall be issued by an insurance company, acceptable to the City and authorized to do business in the State of Florida with an A.M. Best rating of B+ or better.

ARTICLE XIV **MISCELLANEOUS**

14.1 Governing Law/Jurisdiction/Venue

14.1.1 The Contract shall be governed by the laws of the State of Florida. Except as set forth in Article 7, should the parties be involved in legal action arising under, or connected to, this Contract, each party will be responsible for its own attorneys' fees and costs. The venue for any litigation will be Miami-Dade County, Florida.

14.2 Successors and Assigns

14.2.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the City. As a condition to any assignment, the assignee shall agree in writing to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements in this Contract.

14.3 Reserved.

14.4 Non-Discrimination

14.4.1 The Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, national origin, sex, gender identity, sexual orientation, age, disability/handicap, religion, family or income status.

14.5 Discriminatory Vendor List

14.5.1 Pursuant to Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity. By execution of this Contract, Contractor represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes.

14.6 Public Entity Crimes

14.6.1 Pursuant to Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. By execution of this Contract, Contractor represents that it has not been placed on the convicted vendor list as provided in Section 287.133, Florida Statutes.

14.7 Scrutinized Company

14.7.1 Pursuant to Section 287.135, Florida Statutes, Contractor certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes and that it is not engaged in a boycott of Israel.

14.7.2 Pursuant to Section 287.135, in the event the Contract is for one million dollars or more, Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes; and Contractor further certifies that it is not engaged in business operations in Cuba or Syria.

14.7.3 Pursuant to Section 287.135, Florida Statutes, City may at the option of the City Commission, terminate this Contract if Contractor is found to have submitted a false certification as provided under subsection 287.135(5), Florida Statutes; has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel; has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or has been engaged in business operations in Cuba or Syria.

14.8 Notice

14.8.1 In order for a notice to a party to be effective under this Contract, notice must be sent via U.S. certified mail, overnight delivery, or hand delivery to the addresses listed below and shall be effective upon mailing if sent by certified mail or overnight delivery and effective upon receipt if hand delivered. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this Section.

For the City: City Manager
City of Doral, Florida
8401 NW 53rd Terrace
Doral, Florida 33166

With a Copy to: City Attorney
City of Doral
8401 NW 53rd Terrace
Doral, FL 33166

For the Contractor: [Pending ADT]

ARTICLE XV **WAIVER OF JURY TRIAL**

15.1 City and Contractor hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract, arising out of, under, or in connection with the construction of the Work, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.

ARTICLE XVI
E-VERIFY

17.1 Florida Statute 448.095 directs all public employers, including municipal governments, to verify the employment eligibility of all new public employees through the U.S. Department of Homeland Security’s E-Verify System, and further provides that a public employer may not enter into a contract unless each party to the contract registers with and uses the E-Verify system. Florida Statute 448.095 further provides that if a contractor enters into a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien.

In accordance with Florida Statute 448.095, Contractor is required to verify employee eligibility using the E-Verify system for all existing and new employees hired by Contractor during the contract term. Further, Contractor must also require and maintain the statutorily required affidavit of its subcontractors. It is the responsibility of Contractor to ensure compliance with E-Verify requirements (as applicable). To enroll in E-Verify, employers should visit the E-Verify website (<https://www.e-verify.gov/employers/enrolling-in-e-verify>) and follow the instructions. The contractor must retain the I-9 Forms for inspection, and provide the attached E-Verify Affidavit, attached hereto as Attachment “E”.

[ADDITIONAL SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates under each signature. The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same; and by Contractor by and through its President, who has been duly authorized to execute same.

ATTEST:

CITY OF DORAL

Connie Diaz, MMC
City Clerk

By: _____
Kathie Brooks
Interim City Manager

Date: _____

APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF DORAL, FLORIDA ONLY:

GREENSPOON MARDER, LLP
INTERIM CITY ATTORNEY

By: Joseph Geller

CONTRACTOR

By: _____

Title: _____

Date: _____

EXHIBIT "A"
Contractor's Proposal

EXHIBIT "B"
Project Schedule

EXHIBIT "C"
OMNIA Contract

EXHIBIT "D"
Insurance

Comprehensive General Liability. Contractor agrees to maintain General Liability at a limit of liability not less than \$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate on a primary and non-contributory basis, including the City of Doral as an Additional Insured. Coverage must be offered in a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:

- Premises and Operation;
- Independent Contractors;
- Products and/or Completed Operations Hazard;
- Broad Form Property Damage
- Broad Form Contractual Coverage applicable to this Contract, including any hold harmless and/or Indemnification Agreement;
- Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability;
- \$3,000,000 Umbrella/Excess Liability over and above and following the above mentioned General Liability & Business Automobile Liabilities.

Business Automobile Liability. Contractor agrees to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 per Occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: Owned, Non-Owned & Hired automobiles, and Employers' Non-City ship.

Worker's Compensation & Employer's Liability. Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employers' Liability Act and the Homes Act. 4. Workers' Compensation in accordance with Florida Statute, including Employer's Liability of \$1,000,000. Contractor agrees to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

Builder's Risk Insurance. Coverage shall be "All Risk" coverage for one hundred percent (100%) of the completed value of the structure(s), building(s) or addition(s). Where Contract calls for install of machinery or equipment, the policy must be endorsed to provide coverage on "All Risk" basis during transit and installation. The policy must be issued with a deductible of not more than \$50,000 per claim.

Waiver of Subrogation. Contractor agrees by entering into this written Contract to a Waiver of Subrogation in favor of the City, Contractor, Sub-Contractors, Architects, or Engineer for

Exhibit "E"
E-Verify