

# REQUEST FOR PROPOSAL



**RFP NO:** 2011-10

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**TITLE:** OPERATION AND MANAGEMENT OF JUDGE ARTHUR I SNYDER TENNIS CENTER

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**ADVERTISEMENT:** AUGUST 19, 2011

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**NON-MANDATORY PRE-BID CONFERENCE** SEPTEMBER 1, 2011 TIME: 2:00PM  
NORTH MIAMI BEACH CITY HALL  
2<sup>ND</sup> FLOOR

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**DUE DATE:** SEPTEMBER 19, 2011 TIME: 2:00PM

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**SUBMIT TO:** CITY OF NORTH MIAMI BEACH PROCUREMENT  
MANAGEMENT DIVISION  
17011 NORTH EAST 19th AVENUE,  
ROOM 315  
NORTH MIAMI BEACH, FLORIDA 33162

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## SECTION 1.0 GENERAL TERMS AND CONDITIONS

### 1.1 DEFINITIONS

- a. When used in Contract Documents (defined below). or in related documents, the following terms, or pronouns are used in place of them, shall have the meanings given below:
- 1) **Addendum:** A modification of the Plans, Specifications or other Contract Documents distributed to prospective Bidders prior to the opening of Bids.
  - 2) **Advertisement for Bids:** The public notice inviting the submission of Bids for the work.
  - 3) **Bid:** The written offer of a Bidder to perform the work.
  - 4) **Bid Bond:** A bond executed by a Bidder and its Surety in the attached form guaranteeing that the Bidder, if awarded the Contract will execute the same and will timely furnish the required Performance Bond, Payment Bond, and evidence of Insurance.
  - 5) **Bidder:** Any individual, firm, partnership or corporation submitting a Bid in accordance with the Instructions to Bidders.
  - 6) **Bid Documents:** The Advertisement for Bids, Instructions to Bidders, Bid Form, Bid Bond, Contract, Performance Bond, Payment Bond, General Conditions, Special Provisions, Technical Specifications and Plans, together with all Addenda.
  - 7) **Bid Form:** The form on which Bids are submitted.
  - 8) **Calendar Day:** Everyday shown on the calendar.
  - 9) **Change Order:** Extra Work, or Additional Work. A written agreement executed by the City, the Contractor and the Contractor's Surety, covering modifications to the Contract recommended by the Architect/Engineer and approved by the City Manager and/or City Council.
  - 10) **Contract:** The written agreement between the City and the Contractor for performance of the Work in accordance with the requirements of the Contract Documents and for the payment of the agreed consideration.
  - 11) **Contract Documents:** The Instructions to Bidders, Bid Form, Bid Bond, Contract, Performance Bond, Payment Bond, General Conditions, Special Provisions, Supplemental Provisions, Technical Specifications and Plans, together with all Addenda, Change Orders, Schedules and Shop Drawings.
  - 12) **Contract Manager:** North Miami Beach's Chief Procurement Officer, Procurement Division, or the duly authorized representative designated to manage the Contract.
  - 13) **Contractor:** The individual, firm, partnership, corporation or joint venture whose Bid is accepted and who enters into a Contract with the City of North Miami Beach and who is liable for the acceptable performance of the work and for the payment of all legal debts pertaining to the Work.
  - 14) **Contract Date:** The date on which the Agreement is effective.
  - 15) **Contract Time:** The number of days allowed for completion of the work. The Contract Time will be stipulated in the Bid Form, unless extended by a Change Order. All contract time shall be measured in calendar days.
  - 16) **City:** A political subdivision, Incorporated City within Miami-Dade County of the State of Florida, whose governing body is a City Council consisting of a Mayor, Vice Mayor and five City Council members.
  - 17) **City Manager:** The manager of City of North Miami Beach, Florida.
  - 18) **Days:** Reference made to Days shall mean consecutive calendar days.
  - 19) **Deliverables:** All documentation and any items of any nature submitted by the

- Contractor to the City's Project Manager for review and approval pursuant to the terms of this Agreement.
- 20) **Lessee:** Any individual, partnership or corporation having a tenant relationship with the City of North Miami Beach.
  - 21) **Liquidated Damages:** The amount that the Contractor accepts, as stipulated in the Bid Form, which will be deducted from the Contract Sum for each Calendar day of delay due to a Non-excusable Delay.
  - 22) **Notice To Proceed (NTP):** The written communication issued by the City to the Contractor directing the Contractor to begin contract work and establishing the date of commencement of the work.
  - 23) **Owner:** The term Owner as used in this Contract shall mean the City of North Miami Beach, but it excludes the regulatory departments of Development Services, Building Safety, Planning & Zoning, Development and Regulation (Building and Zoning); City Utilities, Departments of Miami Dade County, Department of Environmental Resources Management (DERM); Public Works, Water & Sewer, and Fire Department or their successors.
  - 24) **Performance and Payment Bonds:** Bonds executed by the Contractor and his Surety, on the attached forms, assuring that the Contractor will, in good faith, perform and guarantee the work in full conformity with the terms of the Contract Documents and will promptly pay all persons supplying the Contractor with labor, materials, or supplies, used directly or indirectly by the Contractor in the prosecution of the Work.
  - 25) **Plans:** The drawings or reproductions thereof, prepared by the Architect/Engineer, which show the locations, character, dimensions and details of the work to be done and which are part of the Contract Documents.
  - 26) **Project:** The construction and services required by the Contract Documents, which includes all labor, materials, equipment, and services to be provided by the Contractor to fulfill the Contractor's obligations.
  - 27) **Project Cost:** The sum of the construction costs, allowances for contingencies, the total cost of design professional and related services provided by consultant, and allowances for such other items as charges of all other professionals and consultants.
  - 28) **Project Manager:** The duly authorized representative designated to manage the Project.
  - 29) **Scope of Service:** Document which details the work to be performed by the Contractor.
  - 30) **Subcontractor or Sub consultant:** Any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
  - 31) The words "**Work**", "**Services**", "**Program**", or "**Project**": All matters and things required to be done by the Contractor in accordance with the provisions of the Contract.
  - 32) The words "**Directed**", "**Required**", "**Permitted**", "**Ordered**", "**Designated**", "**Selected**", "**Prescribed**", or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the City's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the City's Project Manager.

## 1.2 INSTRUCTIONS TO BIDDERS

It is the policy of the City to encourage full and open competition among all available qualified vendors. All vendors regularly engaged in the type of work specified in the Bid Solicitation are encouraged to submit bids. Vendors may enroll with the City to be included on a mailing list for selected categories of goods and services. To be eligible for award of a contract (including small purchase orders), Bidders must complete a Vendor Application. For information and to apply as a vendor, please visit our website at [www.citynmb.com/purchasing](http://www.citynmb.com/purchasing) to download an application and submit it to Procurement Management Division, 17011 NE 19 Avenue, Suite 315 North Miami Beach,

Florida 33162. To get document, specifications and updates go to [www.citynmb.com/purchasing](http://www.citynmb.com/purchasing).

### 1.3 CONE OF SILENCE AND REQUEST FOR ADDITIONAL INFORMATION

“Cone of Silence,” as used herein, means a prohibition on any communication regarding a particular Request for Proposal (“RFP”), Request for Qualification (“RFQ”) or bid, between:

Pursuant to Section 2-11.1(t) of the County Code, all Bid solicitations, once advertised and until an award recommendation has been forwarded to the appropriate authority are under the “Cone of Silence”. Any communication or inquiries, except for clarification of process or procedure already contained in the solicitation, are to be made in writing to the attention of the Chief Procurement Officer. Such inquiries or request for information shall be submitted to the Chief Procurement Officer and shall contain the requester’s name, address, and telephone number. If transmitted by facsimile, the request should also include a cover sheet with Bidder’s facsimile number. The request may also be electronically mailed to [bids@citynmb.com](mailto:bids@citynmb.com) or mailed to Procurement Management Division, 17011 NE 19 Avenue, Suite 315, North Miami Beach, Florida 33162.

During Cone of Silence the following is prohibited: Any communication regarding this bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the City’s professional staff including, but not limited to, the City Manager and his or her staff. All communication regarding this bid should be sent in writing only to the Procurement Management Division at [bids@citynmb.com](mailto:bids@citynmb.com).

### 1.4 BIDDERS RESPONSIBILITIES

Bidders are required to submit their proposals upon the following express conditions:

- A. Bidders shall thoroughly examine the drawings, specifications, schedules, instructions and all other contract documents.
- B. Bidders shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities for delivery of material and equipment as required by the bid conditions. No plea of ignorance, by the bidder, of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the bidder to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of the City or the compensation to the bidder.
- C. Bidders are advised that all City contracts are subject to all legal requirements provided for in the City of North Miami Beach Purchasing Code and applicable County Ordinances, State Statutes and Federal Statutes.

### 1.5 PREPARATION OF BIDS

Bids will be prepared in accordance with the following:

- A. Our enclosed Bid Proposal Form is to be used in submitting your bid. NO OTHER FORM WILL BE ACCEPTED.
- B. All information required by the bid form shall be furnished. The bidder shall sign each continuation sheet (where indicated) on which an entry is made.
- C. Unit prices shall be shown and where there is an error in extension of prices, the unit price shall govern.
- D. Alternate bids will not be considered unless authorized in the Invitation to Bid document.
- E. Proposed delivery time must be shown in calendar days, which shall include weekends and holidays.
- F. The City of North Miami Beach is exempt from payment to its vendors of State of Florida sales

tax and, therefore, such taxes should not be figured into the bid. However, this exemption does not transmit to suppliers to the City in their (supplier) purchases of goods or services, used in work or goods supplied to the City. Contractors are responsible for any taxes, sales or otherwise, levied on their purchases, subcontracts, employment, etc. An exemption certificate will be signed where applicable, upon request. The City will pay no sales tax.

## 1.6 DESCRIPTION OF SUPPLIES

- A. Any manufacturer's names, trade names, brand names, or catalog numbers used in these applications are for the purpose of describing and establishing minimum requirements or level of quality, standards of performance, and design required, and is in no way intended to prohibit the bidding of other manufacturers' items of equal material, unless specifications state "NO SUBSTITUTIONS."
- B. Bidders must indicate any variances to the specifications, terms, and conditions, no matter how slight. If variations are not stated in the Proposal, it shall be construed that the bid fully complies with the Specifications, Terms and Conditions.
- C. Bidders are required to state exactly what they intend to furnish; otherwise they shall be required to furnish the items as specified.
- D. Bidders will submit, with their proposal, necessary data (factory information sheets, specifications, brochures, etc.) to evaluate and determine the quality of the item(s) they are bidding.
- E. The City shall be the sole judge of equality and its decision shall be final.

## 1.7 SUBMISSION OF BIDS

- A. Bids and Addenda thereto shall be enclosed in sealed envelopes addressed to the Chief Procurement Officer, Brian K. O'Connor, City of North Miami Beach, 17011 NE 19 Avenue, Room 315, North Miami Beach, Florida 33162. The name and address of the bidder, the bid number, the date and hour of the bid opening, and the bid name shall be placed on the outside of the envelope.
- B. Bids must be submitted on the forms furnished. E-mailed and facsimile bids will not be considered. Bids, however, may be modified by telegraphic notice provided such notice is received prior to the time and date set for the bid opening. Bids shall be dated and time stamped in Room 315 prior to bid opening. Bidders shall have sole responsibility of insuring delivery of bids on time and to the proper location.
- C. Bidders requesting a copy of the bid tabulation shall include a stamped, self-addressed envelope.
- D. Bids should be submitted in duplicate. Submit one **original** and 1 **copy**. Please include in your proposal package a CD or flash drive containing your complete proposal.

## 1.8 ADDENDA

The Procurement Management Division may issue an addendum in response to any inquiry received, prior to Bid opening, which changes, adds to or clarifies the terms, provisions or requirements of the solicitation. The Bidder should not rely on any representation, statement or explanation whether written or verbal, other than those made in this Bid solicitation document or in any addenda issued. Where there appears to be a conflict between this Bid solicitation and any addenda, the last addendum issued shall prevail.

It is the Bidder's responsibility to ensure receipt of all addenda and any accompanying documents. Bidder(s) shall acknowledge receipt of any formal Addenda by signing the addendum and including it with their Bid. Failure to include signed formal Addenda in its Bid shall deem its Bid non-responsive provided, however, that the City may waive this requirement in its best interest.



**1.9 REJECTION OF BIDS**

- A. The City may reject a bid if:
1. The Bidder fails to acknowledge receipt of an addendum, or if
  2. The Bidder misstates or conceals any material fact in the bid, or if
  3. The bid does not strictly conform to the law or requirements of bid, or if
  4. The bid is conditional, except that the bidder may qualify his bid for acceptance by the City on an "all or none" basis, group basis, or a "low item" basis. An "all or none" basis bid must include all items upon which bids are invited.
  5. The City is under and pending or current litigation with the bidder/proposer.
- B. The City may, however, reject all bids whenever it is deemed in the best interest of the City to do so, and may reject any part of a bid unless the bid has been qualified as provided in paragraph A4 above.

**1.10 WITHDRAWAL OF BIDS**

- A. Bids may not be withdrawn for a period of 90 days after the time set for the bid opening.
- B. Bids may be withdrawn prior to the time set for the bid opening. Such request must be in writing.
- C. The City will permanently retain as liquidated damages the bid deposit furnished by any bidder who requests to withdraw a bid after the bid opening.

**1.1 LATE BIDS OR MODIFICATIONS**

Only bids or proposals received as of opening date and time will be considered timely. Bids and modifications received after the time set for the bid opening will be rejected as late.

**1.12 CONFLICTS WITHIN THE BID SOLICITATION**

Where there appears to be a conflict between the General Terms and Conditions, Special Conditions, the Technical Specifications, the Bid Submittal Section, or any addendum issued, the order of precedence shall be the last addendum issued, the Bid Submittal Section, the Technical Specifications, the Special Conditions, and then the General Terms and Conditions.

**1.13 CLARIFICATION OR OBJECTION TO BID SPECIFICATIONS**

If any person contemplating submitting a bid for this contract is in doubt as to the true meaning of the specifications or other bid documents or any part thereof, he/she may submit to the City Buyer on or before ten days prior to scheduled opening, a request for clarification. All such requests for clarification shall be made in writing and the person submitting the request will be responsible for its prompt delivery. Any interpretation of the bid, if made, will be made only by Addendum duly issued. A copy of such Addendum will be mailed or delivered to each person receiving an Invitation for Bids. The City will not be responsible for any other explanation or interpretation of the proposed bid made or given prior to the award of the contract. Any objection to the specifications and requirements as set forth in this bid must be filed in writing with the Chief Procurement Officer on or before ten days prior to scheduled opening.

**1.14 INVOICING/PAYMENT**

All invoices should be sent to: City of North Miami Beach, Finance Department, 17011 NE 19

Avenue, 3<sup>rd</sup> Floor, North Miami Beach, Florida 33162. In accordance with Florida State Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. Bidders should state any payment discount in the space provided on the proposal form.

### 1.15 DISCOUNTS

- A. Bidders may offer a cash discount for prompt payment; however, such discounts shall NOT be considered in determining the lowest net cost for bid evaluation purposes. Bidders are encouraged to reflect cash discounts in the unit prices quoted.
- B. In connection with any discount offered, time will be computed from the date of receipt of supplies or services or from the date a correct invoice is received, whichever is the later date. Payment is deemed to be made on the date of mailing of the check.

### 1.16 COMPETENCY OF BIDDERS

- A. Pre-award inspection of the Bidder's facility may be made prior to the award of contract. Bids will be considered only from firms which are regularly engaged in the business of providing the goods and/or services as described in this Bid(s); have a record of performance for a reasonable period of time; have sufficient financial support, equipment and organization to insure that they can satisfactorily deliver the material and/or services if awarded a Contract under the terms and conditions herein stated. The terms "equipment and organization" as used herein shall be construed to mean a fully equipped and well established company in line with the best business practices in the industry and as determined by the proper authorities of the City.
- B. The City may consider any evidence available to it of the financial, technical and other qualifications and abilities of a Bidder, including past performance (experience) with the City in making the award in the best interest of the City.

### 1.17 NOTICE REQUIREMENTS

All notices required or permitted under the Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

#### **To the City**

##### Project Manager:

City of North Miami Beach  
Attention: Glenn Finney  
Phone: 305-948-2016  
Fax: 305-787-6040  
E-mail: glenn.finney@citynmb.com  
and,

##### To the Chief Procurement Officer:

Brian K. O'Connor, C.P.M. A.P.P  
Chief Procurement Officer  
Procurement Management Division  
17011 NE 19th Avenue, Suite 315  
North Miami Beach, FL 33162

Phone: (305) 948-2946 Fax: (305) 957-3522  
Email: bids@citynmb.com

### **To the Contractor**

Notices will be sent to the contractor at the physical address, e-mail address, fax numbers and to the person listed in the Contractor's proposal, as applicable.

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

### **1.18 EMPLOYEES**

All employees of the Contractor shall be considered to be at all times the sole employees of the Contractor, under the Contractor's sole direction, and not an employee or agent of the City of North Miami Beach. The Contractor shall supply competent and physically capable employees and the City may require the Contractor to remove any employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose presence on City property is not in the best interest of the City. Each employee shall have and wear proper identification.

### **1.19 AWARD OF BID**

- A. The bid will be awarded to the lowest responsive and responsible bidder(s) whose bid(s), conforming to the Invitation for Bids, is most advantageous to the City, price and other factors considered.
- B. The City reserves the right to accept and award item by item, and/or by group, or in the aggregate, unless the bidder qualifies his bid by specified limitations as provided for in paragraph above.
- C. One or more Contractors may be designated as approved Primary or Secondary Vendor(s) for the delivery of material and/or services from this contract through the effective period of the award. In situations when obtaining services from the Primary Vendor (s) is not in the best interest of the city, vendor cannot deliver material and/or services within 24 hours of date required, or on an emergency basis, staff may obtain services from the Secondary Vendor (s).
- D. Successful Bidder shall be notified in writing of award.
- E. Delivery of materials and/or services shall be performed upon receipt by successful bidder of a numbered, signed purchase order.

### **1.20 BID PROTESTS**

The City shall provide notice of its decision to award or reject to all bidders by U.S. mail. If bidders wish to protest a decision of award, they must file a notice of protest in writing to the Chief Procurement Officer within three (3) working days after receipt of the notice of the City's decision of award, and shall file a formal written protest within 10 days after filing the notice of protest. The notice of protest must be either handed or delivered and date time stamped by the Procurement Management Division, or sent via Certified U.S. mail, return receipt requested. Failure to file a protest within the time specified herein shall constitute a waiver of all rights to protest the City's decision regarding the award of bid.

**1.21 AGREEMENT**

An agreement shall be sent to the awarded bidder to be signed, witnessed, and returned to the City for execution. The City will provide a copy of the fully executed agreement to the awarded bidder.

**1.22 DISQUALIFICATION OF BIDDERS**

A bidder may be disqualified temporarily or permanently and his/her bid(s) rejected for:

- A. Poor performance or default, in the City's opinion, on previous contracts with the City.
- B. Poor performance or default, in the City's opinion, on previous contracts with other public entities.
- C. Insufficient financial or company size, in the City's opinion, to perform the requirements of the contract.

**1.23 SUBCONTRACTING**

Unless otherwise specified in this Bid Solicitation, the successful Bidder shall not subcontract any portion of the work without the prior written consent of the City. The ability to subcontract may be further limited by the Special Conditions. Subcontracting without the prior consent of the City may result in termination of the contract for default.

**1.24 ASSIGNMENT**

The successful Bidder shall not assign, transfer, hypothecate, or otherwise dispose of this contract, including any rights, title or interest therein, or its power to execute such contract to any person, company or corporation without the prior written consent of the City.

**1.25 LOCAL, STATE AND FEDERAL COMPLIANCE REQUIREMENTS**

Bidders shall comply with all local, state and federal directives, orders and laws as applicable to this bid and subsequent contract(s).

Including but not limited to:

- A. Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this contract.
- B. Occupational Safety and Health Act (OSHA) as applicable to this contract.

**1.26 FRAUD AND MISREPRESENTATION**

In accordance with City Purchasing Policy 3.6 and pursuant to Section 2-8-1.4 of the Miami-Dade County Code, any individual, corporation or other entity that attempts to meet its contractual obligations with the City through fraud, misrepresentation or material misstatement, may be debarred from doing business with the City. The City as further sanction may terminate or cancel any other contracts with such individual, corporation or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.

**1.27 COLLUSION**

The bidder, by affixing his signature to this proposal, agrees to the following: "Bidder certifies that his/her bid is made without previous understanding, agreement, or connection with any person, firm or corporation, making a bid for the same items, or the initiating City department, and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action."

**1.28 MAINTAINING BID STATUS**

To be retained on the active bidders list, bidder MUST respond to this Invitation to Bid. To protect your status as an active bidder, please complete and return the last page of the bid proposal form indicating reason for "No Bid" at this time. Three (3) consecutive failures to respond to bid invitations could result in automatic removal from the bidders list.

**1.29 PATENTS AND COPYRIGHTS**

It shall be understood and agreed that by the submission of a proposal, the bidder, if awarded a contract, shall save harmless and fully indemnify the City and any of its officers or agents from any and all damages that may, at any time, be imposed or claimed for infringement of any patent right, trademark, or copyright, of any person or persons, association, or corporation, as the result of the use of such articles by the City, or any of its officers, agents, or employees, and of which articles the contractor is not the patentee, assignee, licensee, or owner, or lawfully entitled to sell same.

**1.30 PUBLIC RECORDS LAW**

Pursuant to Florida Statute 119.07, public records may be inspected and examined by anyone desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Sealed Bids and Proposals become subject to this statute, notwithstanding bidders' or proposers' requests to the contrary, at the time the City provides notice of a decision or intended decision, or 10 days after bid or proposal opening, whichever is earlier.

Financial statements submitted in response to a request by the City are confidential, and exempt from disclosure. Data processing software obtained under a licensing agreement which prohibits its disclosure is also exempt.

Bidders are hereby notified that all information submitted as part of, or in support of bid submittals will be available for public inspection after opening of bids in compliance with Chapter 119 of the Florida Statutes. The bidder shall not submit any information in response to this invitation, which the bidder considers to be a trade secret, proprietary or confidential. The submission of any information to the City in connection with this invitation shall be deemed conclusively to be a waiver of any trade secret or other protection, which would otherwise be available to the bidder. In the event that the bidder submits information to the City in violation of this restriction, either inadvertently or intentionally and clearly identifies that information in the bid as protected or confidential, the City shall endeavor to redact and return that information to the bidder as quickly as possible, and if appropriate, evaluate the balance of the bid. The redaction or return of information pursuant to this clause may render a bid non-responsive.

**1.31 INFORMATION**

Further information, if desired, may be obtained from the City Buyer, 17011 N.E. 19<sup>th</sup> Avenue, Room 315, North Miami Beach, Florida 33162, Telephone (305) 948-2946.

Questions or requests for clarification of the specifications shall be in writing and received by the Procurement Management Division at least ten days prior to the date and time of the bid opening. They may be mailed or faxed to (305) 957-3522 or emailed to [Bids@citynmb.com](mailto:Bids@citynmb.com)

**1.32 REQUEST FOR PROPOSAL**

Should these "General Conditions" be used in the specifications for a Request for Proposal, every reference to a bid shall be and mean the same as proposal.

**1.33 CONFLICT IN SPECIFICATIONS**

Where there appears to be a variance or conflict between these General Conditions and the Special Conditions or Technical Specifications outlined in the Bid Package, the order of preference shall be Technical Specifications, Special Conditions, then General Terms and Conditions.

**1.34 EXCEPTIONS TO PROPOSAL**

The bidder shall list on the space provided on the proposal page or on a separate sheet of paper any exceptions to the conditions of this Bid Proposal. This sheet shall be labeled, "Exceptions to Proposal Provisions," and shall be attached to the Bid Proposal. If no exceptions are stated, it will be understood that all General, Special and Technical Conditions will be complied with, without exception.

**1.35 NOTICE TO PROCEED**

A signed Purchase Order will be the Contractor's authorization to proceed and may substitute for a "Notice to Proceed" form.

**1.36 HOLD HARMLESS AGREEMENT**

The awarded bidder agrees to indemnify and hold harmless the City of North Miami Beach, Miami-Dade County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages in an amount not less than \$1,000,000 per occurrence, which shall include attorney's fees and costs of defense, which the City of North Miami Beach, Miami-Dade County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this project by the awarded bidder or its employees, agents, servants, partners principals or subcontractors. Furthermore, the awarded bidder shall pay all claims and losses in an amount not less than \$1,000,000 per occurrence in connection therewith and shall investigate and defend all claims, suits or actions of any kind of nature in the name of the City of North Miami Beach and Miami-Dade County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The awarded bidder expressly understands and agrees that any insurance protection required by the resulting agreement or otherwise provided by the awarded bidder shall cover the City of North Miami Beach, Miami-Dade County, its officers, employees, agents and instrumentalities and shall include claims for damages resulting from and/or caused by the negligence, recklessness or intentional wrongful misconduct of the indemnifying party and persons employed or by utilized by the indemnifying party in the performance of the construction contract.

**1.37 COPELAND "ANTI-KICKBACK"**

Contractor and all subcontractors will comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

**1.38 CONFLICT OF LAW**

If and when this contract is disputed, and should it be necessary to litigate, the substantive and procedural laws of the State of Florida shall govern the outcome of such litigation. This shall apply notwithstanding such factors which include, but are not limited to, place where contract is entered into, place where accident arises, or any other such incident.

**1.39 INTERPRETATION OF THE APPROXIMATE QUANTITIES**

The bidder's attention is called to the fact that the estimate of quantities to be furnished under the specifications is approximate only and not guaranteed. The City does not assume any responsibility that the final quantities shall remain in strict accordance with the estimated quantities, nor shall the Bidder plead misunderstanding or deception because of such estimate of quantities.

**1.40 QUANTITIES**

The City specifically reserves the right to accept all or any part of the bid, to split the award, to increase or decrease the quantity to meet additional or reduced requirements of the City, without such change affecting the contract unit price set forth in the proposal form by the bidder.

**1.41 DELIVERY, INSPECTION & TITLE**

Prices quoted and deliveries are to be FOB Destination and unloaded unless otherwise specified in the Invitation for Bids and made during regular business hours.

Inspection and acceptance will be destination unless otherwise provided. Title to/or risk of loss or damage to all items shall be the responsibility of the successful bidder until acceptance by the buyer unless loss or damage results from negligence by the buyer. If the materials or services supplied to the City are found to be defective or to not conform to specifications, the City reserves the right to cancel the order upon written notice to the seller and return product at bidder's expense.

**1.42 WARRANTY**

Unless otherwise specified, all items proposed by the bidder shall include a warranty covering parts and labor for a specified period of time. The bidder shall submit information on both manufacturer and dealer warranties, where applicable, with the bid proposal. All goods furnished shall be fully guaranteed by the successful Bidder against factory defects and workmanship. At no expense to the City, the successful Bidder shall correct any and all apparent and latent defects that may occur within the manufacturer's standard warranty. The Special Conditions of the Bid solicitation may supersede the manufacturer's standard warranty.

**1.43 DURATION OF AGREEMENT**

This Agreement will commence on \_\_\_\_\_ and expire on \_\_\_\_\_ unless Contractor is otherwise notified by the City. Any extension to this Agreement shall be in writing. The City Manager is authorized to extend or terminate this Agreement on behalf of the City.

**1.44 CLAIMS**

Successful bidder(s) will be responsible for making any and all claims against carriers for missing or damaged items.

**1.45 CONTRACT RENEWAL**

Any contract or agreement executed in conjunction with the award of a bid may be renewed for additional twelve month periods if agreed to in writing by both parties.

**1.46 MODIFICATION OF CONTRACT**

The contract may be modified by mutual consent, in writing through the issuance of a modification to the contract, purchase order, change order or award sheet, as appropriate.

**1.47 MATERIAL SAFETY DATA SHEET (MSDS)**

Under the terms of the Florida Right-to-Know Law (Chapter 442, Florida Statutes), all suppliers of products deemed to be toxic in substance, as indicated in the State of Florida Substance List, are required to submit a Material Safety Data Sheet (MSDS) for each substance as a condition of the award of the bid by the City.

**1.48 CONDITION OF MATERIALS AND PACKAGING**

All equipment, materials, supplies, and components supplied under this bid must be new and unused, free from defects, and shall be the latest manufacturer's models unless otherwise specified. No others will be accepted under the terms and intent of this bid. All containers shall be new and suitable for storage or shipment, and bid price shall include standard commercial packaging. Any exceptions to this provision shall be detailed on the proposal page under exceptions to specifications.

**1.49 SAMPLES**

Samples, when required, must be submitted within the time specified at no expense to the City. If not destroyed or used up during testing, samples will be returned upon request at the bidder's expense. Each individual sample must be labeled with bidder's name and manufacturer's brand name and number.

**1.50 PUBLIC ENTITY CRIMES**

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 on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids 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 Florida Statutes, Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

**1.51 DISCRIMINATION**

Any entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

**1.52 DRUG-FREE WORKPLACE PROGRAM**

In the event of identical tie low bids, preference shall be given to businesses with drug-free workplace programs. Bidders with such programs shall complete and submit the attached form with bid.

**1.53 SOLICITATION, GIVING, AND ACCEPTANCE OF GIFTS POLICY**

Bidders shall sign and submit this attached form indicating understanding and compliance with the City's and State's policies prohibiting solicitation and acceptance of gifts by public officers, employees, or candidates.

Failure to submit this signed form will result in your bid being declared non-responsive; provided,



however, that the low bidder may be given the opportunity to submit the form to the City within five calendar days after notification by the City, if this is determined to be in the best interest of the City.

#### **1.54 PURCHASING AGREEMENTS WITH OTHER GOVERNMENT AGENCIES**

It is hereby made part of this Invitation to Bid that the submission of any bid response to this advertised request constitutes a bid made under the same terms and conditions, for the same price, to other government agencies if agreeable by the bidder and the government agency.

At the option of the vendor/contractor, the use of the contract resulting from this solicitation may be extended to other governmental agencies, including the State of Florida, its agencies, political subdivisions, counties, and cities.

Each governmental agency allowed by the vendor/contractor to use this contract shall do so independently of any other governmental entity. Each agency shall be responsible for its own purchases and shall be liable only for goods or services ordered, received, and accepted. No agency receives any liability by virtue of this bid and subsequent contract award

#### **1.55 ACCESS TO RECORDS**

The City reserves the right to require the Contractor to submit to an audit. The Contractor shall provide access to all of its records, which relate directly or indirectly to this Agreement at its place of business during regular business hours. The Contractor shall retain all records pertaining to this Agreement and upon request make them available to the City for three years following expiration of the Agreement. The Contractor agrees to provide such assistance as may be necessary to facilitate the review or audit by the City to ensure compliance with applicable accounting and financial standards.

#### **1.56 GREEN PROCUREMENT POLICY**

##### **PURPOSE**

The purpose of this policy is to ensure that the City of North Miami Beach departments purchase recycled and other environmentally preferable products whenever the products meet the price and performance requirements of the city.

The City recognizes that the products and services the City buys have inherent social, human, health, environmental and economic impacts, thus the City should make procurement decisions that consider the reduction of its environmental footprint and promotes practices that improve human health, and conserve natural resources.

##### **POLICIES**

##### **GENERAL POLICIES**

A. The City encourages its Departments and their staff to be innovative and demonstrate leadership by incorporating progressive and best-practice sustainability specifications, strategies and practices in procurement decisions.

B. Departments shall buy recycled and other environmentally preferable products whenever practicable.

- C. The City shall require its contractors and consultants to use recycled and other environmentally preferable products whenever practicable.
- D. The City shall promote the use of recycled and other environmentally preferable products by publicizing its environmental purchasing policy and its implementation, consistent with this policy.
- E. The City shall communicate its commitment to sustainable procurement, by modeling the best product and services choices to citizens, other public agencies and private companies.
- F. The Purchasing Division will take the lead in including environmentally preferable product specifications in bid documents and district contracts, as appropriate.
  
- G. The City shall aim to maximize the proportion of goods and services that come from local providers with acceptable environmental practices, thereby reducing the environmental impact of transportation wherever feasible and supporting a sustainable local economy.
- H. The City shall seek opportunities to pool purchases with others to enhance markets for environmentally preferable products, to obtain favorable prices, and to reduce waste packaging, transportation, and product cost.
  
- I. Encourage and promote both local and national companies to bring forward emerging and progressive sustainable products and services, by being a consumer of such products and companies.

#### RESPONSIBILITIES OF THE PURCHASING DIVISION

- A. Preparing or revising bid documents and contract language where necessary to implement this chapter; Researching opportunities for procurement of recycled and other environmentally preferable products and communicating these to appropriate county departments for evaluation and purchase;
- B. Collecting data on purchases by departments of recycled and other environmentally preferable products; and
- C. Preparing and submitting a report to the City Manager each year by March 31, describing the progress of departments in implementation of the environmental purchasing policy, including the following elements:
  - 1. Quantities, costs and types of recycled and other environmentally preferable products purchased;
  - 2. A summary of savings achieved through the purchase of recycled and other environmentally preferable products;
  - 3. A summary of program promotional efforts; and
  - 4. Recommendations for changes in procurement policies.

#### RESPONSIBILITIES OF DEPARTMENTS

- A. Assigning appropriate personnel to evaluate opportunities for buying recycled and other environmentally preferable products reflected in federal guidance or communicated by Purchasing Division
- B. Purchasing recycled and other environmentally preferable products whenever practicable; and
- C. Seeking opportunities to pool purchases with others to enhance markets for environmentally preferable products, to obtain favorable prices, and to reduce waste packaging, transportation, and product cost.

#### RULES AND REGULATIONS FOR PROCUREMENT OF PAPER PRODUCTS

- A. Departments shall buy recycled or other environmentally preferable paper whenever

practicable.

B. Departments shall use recycled paper for all imprinted letterhead paper and business cards.

C. Departments shall publicize the city's use of recycled paper by including a recycling logo and an indication of recycled content on all printed material, to the extent practicable.

D. Departments shall use both sides of sheets of paper whenever practicable.

E. Departments shall require all contractors or consultants submitting proposals to use recycled paper and use both sides of sheets of paper whenever practicable.

#### RULES AND REGULATIONS FOR PROCUREMENT OF LUBRICATING AND FUEL OILS

A. Departments shall purchase environmentally preferable oils whenever practicable.

B. When departments specify re-refined lubricating oil in procurements, they shall purchase re-refined oil if the price is no more than ten percent higher than the price of non-re-refined oil.

#### DEFINITIONS

Environmentally Preferable Product: A product that has a reduced negative effect or increased positive effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials acquisition, production, fabrication, manufacturing, packaging, distribution, reuse, operation, maintenance, and disposal of the product. This term includes, but is not limited to, recyclable products, recycled products, and reusable products.

#### EXEMPTIONS

Nothing in this policy shall be construed as requiring a department or contractor to procure products that do not perform adequately for their intended end use or are not available at a reasonable price in a reasonable period of time.

#### GREEN PURCHASING RESOURCES

The Purchasing Division shall maintain and distribute to staff a list of resources and educational materials regarding accessing and purchasing environmentally preferable products. Some of these resources include the following:

1. U.S. Communities Going Green Program is the one-stop source for public agency access to a broad line of responsible purchasing products, services and resources. In addition to comprehensive contracts that offer eco-friendly products, agencies will find a wealth of valuable information and resources that will help lower the environmental impact within the community and will assist in making educated decisions about the products an agency purchases.  
<http://www.gogreencommunities.org/>
2. U.S. EPA Environmentally Preferable Purchasing (EPP): <http://www.epa.gov/enp/>
3. The Responsible Purchasing Network (RPN) is a national network of procurement-related professionals dedicated to socially responsible and environmentally sustainable purchasing.  
<http://www.responsibleuurchasS.orgJindex.yhp>
4. ENERGY STAR is a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy helping to save money and protect the environment through energy efficient products and practices. <http://www.energystar.gov/>
5. EPEAT is a system to help purchasers in the public and private sectors evaluate, compare

and select desktop computers, notebooks and monitors based on their environmental attributes.  
<http://www.epeat.net>

#### ANNUAL REVIEW OF POLICY

The City shall annually review its Green Procurement Policy to evaluate the following: its effectiveness, savings, potential changes, and expansion of policy to reflect national trends and best practices.

#### **1.57 INDEMNIFICATION AND INSURANCE**

In accordance with Chapter 725, Florida Statutes, the Contractor shall indemnify and hold harmless the City of North Miami Beach, Miami-Dade County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, in an amount not less than \$1,000,000 per occurrence which shall include attorneys' fees and costs of defense, which the City of North Miami Beach, Miami-Dade County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. Furthermore, the Contractor shall pay all claims and losses in an amount not less than \$1,000,000 per occurrence in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City of North Miami Beach, Miami-Dade County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall cover the City of North Miami Beach, Miami-Dade County its officers, employees, agents and instrumentalities and shall include claims, or damages resulting from and/or caused by the negligence, recklessness or intentional wrongful misconduct of the indemnifying party and persons employed by or utilized by the indemnifying party in the performance of the contract.

Upon City's notification, the Contractor shall furnish to the Procurement Management Division, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440. Should the Contractor be exempt from this Statute, the Contractor and each employee shall hold the City harmless from any injury incurred during performance of the Contract. The exempt contractor shall also submit a written statement detailing the number of employees and that they are not required to carry Worker's Compensation insurance, and do not anticipate hiring any additional employees during the term of this contract or a copy of a Certificate of Exemption.
2. General Liability Insurance on a comprehensive basis in an amount not less than \$1,000,000 per person, \$2,000,000 per occurrence for bodily injury and property damage. **City of North Miami Beach, Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of City of North Miami Beach 17011 NE 19 Avenue, Suite 315, North Miami Beach, Florida 33162, as the certificate holder, must appear on the certificate of insurance.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$1,000,000 per person and \$2,000,000 per occurrence.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

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

**Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the City.**

**NOTE: CITY OF NORTH MIAMI BEACH CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after City notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the City. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after City notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the City.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the City. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the City at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the City shall suspend the Contract until such time as the new or renewed certificates are received by the City in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the City may, at its sole discretion, terminate this contract.

**1.58 CITY WEBSITE**

Bids, addenda, bid tabulations, lists of pre-bid conferences attendees and other information is available on the Procurement and Contract Services Division's "Bid's & RFP's" page, which can be found at: [www.citynmb.com](http://www.citynmb.com).

**1.59 DISCLAIMER**

The City of the City of North Miami Beach may, in its sole and absolute discretion, accept or reject, in whole or in part, for any reason whatsoever any or all Bids; re-advertise this Bid; postpone or cancel at any time this Bid process; or, waive any formalities of or irregularities in the bidding process. Bids that are not submitted on time and/or do not conform to the City of North Miami Beach's requirements will not be considered. After all bids are analyzed, organization submitting bids that appear, solely in the opinion of the City of North Miami Beach, to be the most

competitive, shall be submitted to the City of North Miami Beach's City Council, and the final selection will be made shortly thereafter with a timetable set solely by the City of North Miami Beach. The selection by the City of North Miami Beach shall be based on the bid, which is, in the sole opinion of the City Council of the City of North Miami Beach, in the best interest of the City of North Miami Beach. The issuance of this bid constitutes only an invitation to make presentations to the City of North Miami Beach. The City of North Miami Beach reserves the right to determine, at its sole discretion, whether any aspect of the bid satisfies the criteria established in this Bid. In all cases the City of North Miami Beach shall have no liability to any contractor for any costs or expense, incurred in connection with this bid or otherwise.

#### **1.60 CONFIDENTIALITY**

As a political subdivision, the City of North Miami Beach is subject to the Florida Sunshine Act and Public Records Law. By submitting a Bid, Contractor acknowledges that the materials submitted with the Bid and the results of the City of North Miami Beach's evaluation are open to public inspection upon proper request. Contractor should take special note of this as it relates to proprietary information that might be included in its Bid.

#### **1.61 ORDER OF PRECEDENCE**

If there is a conflict between or among the provisions of the Agreement, the order of precedence is as follows: 1) the terms and conditions of the agreement, 2) the City of North Miami Beach's ITB and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

#### **1.62 NATURE OF THE AGREEMENT**

- a) The Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in the Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of the Agreement that are not contained in the Agreement, and that the Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that the Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the City in all aspects of the Services performed hereunder.
- c) The Contractor acknowledges that the Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in the Agreement but necessary to carrying out its intent are required by the Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the City's Project Manager.
- e) The Contractor acknowledges that the City shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the

form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the City. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the City with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

#### **1.63 PAYMENT FOR SERVICES/AMOUNT OBLIGATED**

The Contractor warrants that it has reviewed the City's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in the total amount submitted on the Bid Form. The City shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the City and the Contractor.

All Services undertaken by the Contractor before City's approval of this Contract shall be at the Contractor's risk and expense.

With respect to travel costs and travel related expenses outside of South Florida, the Contractor agrees to adhere to Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost and fees. The City shall not be liable for any such expenses that have not been approved in advance, in writing, by the City.

#### **1.64 PRICING**

Prices shall remain firm and fixed for the term of the Contract, including any option or extension periods; however, the Contractor may offer incentive discounts to the City at any time during the Contract term, including any renewal or extension thereof.

#### **1.65 GUARANTEE**

The Contractor shall be responsible for technically deficient designs, reports, or studies due to his errors and omissions, and shall promptly correct or replace all such deficient work due to his errors and omissions without cost to City upon the request of the City for five years after the date of acceptance of the project by the City, which are judged to have been in error by a court of competent jurisdiction. Contractor shall also be responsible for the cost of correcting deficient construction which was built from technically deficient designs. Payment in full by the City for work performed does not constitute a waiver of this guarantee.

#### **1.66 MANNER OF PERFORMANCE**

a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the City in accordance with the terms and conditions of this Agreement. The City shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the City, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

b) The Contractor agrees to defend, hold harmless and indemnify the City and shall be liable and

responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the City, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the City. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any of its personnel if so directed upon reasonable request from the City, should the City make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the City and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

#### **1.67 INDEPENDENT CONTRACTOR RELATIONSHIP**

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the City. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the City shall be that of an independent contractor and not as employees and agents of the City.

The Contractor does not have the power or authority to bind the City in any promise, agreement or representation other than specifically provided for in this Agreement.

#### **1.68 AUTHORITY OF THE CITY'S PROJECT MANAGER**

- a) The Contractor hereby acknowledges that the City's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or



order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.

- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the City Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the City Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the City Manager within 10 days of the occurrence, event or act out of which the dispute arises.

The City Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the City Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the City Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. The parties agree that whenever the City Manager is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be deemed fair and impartial when exercised or taken. The City Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

#### **1.69 MUTUAL OBLIGATIONS**

- a) This Agreement, including attachments and appendices to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity or defense obligation on the Contractor, the City may, at its expense, elect to participate in the defense if the City should so choose. Furthermore, the City may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs and

attorney's fees from the Contractor.

#### **1.70 QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING**

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

#### **1.71 AUDITS**

The City, or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and those of its subcontractors and suppliers which apply to all matters of the City. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

The Contractor agrees to grant access to the City's Auditor to all financial and performance-related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

#### **1.72 SUBSTITUTION OF PERSONNEL**

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the City in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

#### **1.73 SUBCONTRACTUAL RELATIONS**

- a) If the Contractor will cause any part of this Agreement to be performed by a subcontractor, the provisions of this Contract will apply to such subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the City the name of the proposed subcontractor, the portion of the Services which the subcontractor is to do, the place of business of such subcontractor, and such other information as the City may require. The City will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the City.
- c) Before entering into any subcontract hereunder, the Contractor will inform the subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such subcontractor will strictly comply with the requirements of this Contract.

- d) In order to qualify as a subcontractor satisfactory to the City, in addition to the other requirements herein provided, the subcontractor must be prepared to prove to the satisfaction of the City that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the subcontractor must show to the satisfaction of the City that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The City shall have the right to withdraw its consent to a subcontract if it appears to the City that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All subcontractors are required to protect the confidentiality of the City and City's proprietary and confidential information. Contractor shall furnish to the City copies of all subcontracts between Contractor and subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the City permitting the City to request completion of performance by the subcontractor of its obligations under the subcontract, in the event the City finds the Contractor in breach of its obligations, and the option to pay the subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the City to any subcontractor hereunder as more fully described herein.

#### **1.74 ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS**

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the City were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events, the City makes no representations or guarantees, the City shall not be responsible for the accuracy of the assumptions presented, the City shall not be responsible for conclusions to be drawn there from, and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

#### **1.75 SEVERABILITY**

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

#### **1.76 TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK**

- a) The City may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the City through fraud, misrepresentation or material misstatement.
- b) The City may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the City. Such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the City through fraud, misrepresentation or material misstatement may be debarred from City contracting in accordance with the City debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in

## Chapter 3 of the City's Purchasing Policies and Procedures Manual.

In addition to cancellation or termination as otherwise provided in this Agreement, the City may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the City:
  - i. stop work on the date specified in the notice ("the Effective Termination Date");
  - ii. Take such action as may be necessary for the protection and preservation of the City's materials and property;
  - iii. cancel orders;
  - iv. assign to the City and deliver to any location designated by the City any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and which have been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
  - v. take no action which will increase the amounts payable by the City under this Agreement.
- e) In the event that the City exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
  - i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
  - ii. Non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and which have been specifically developed for the sole purpose of this Agreement but not incorporated in the Services.
- f) All compensation pursuant to this Article is subject to audit.

**1.77 EVENT OF DEFAULT**

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
  - i. the Contractor has not delivered Deliverables on a timely basis;
  - ii. The Contractor has refused or failed, except in any case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
  - iii. The Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
  - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the

Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;

- V. the Contractor has failed to obtain the approval of the City where required by this Agreement;
  - vi. The Contractor has failed to provide "adequate assurances" as required under subsection "b" below; and
  - vii. The Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the City may request that the Contractor, within the time frame set forth in the City's request, provide adequate assurances to the City, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the City receives such assurances the City may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the City the requested assurances within the prescribed time frame, the City may:
- i. treats such failure as a repudiation of this Agreement;
  - iii. Resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the City shall terminate this Agreement for default, the City or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

#### **1.78 REMEDIES IN THE EVENT OF DEFAULT**

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the City for procurement of Services, including procurement and administrative costs; and,
- c) Such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The City may also bring any suit or proceeding for specific performance or for an injunction.

#### **1.79 PATENT AND COPYRIGHT INDEMNIFICATION**

- a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks,

trade secret, or any other third party proprietary rights.

- b) The Contractor shall be liable and responsible for any and all claims made against the City for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the City's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the City and defend any action brought against the City with respect to any claim, demand, and cause of action, debt, or liability.
- c) In the event any Deliverable or anything provided to the City hereunder, or a portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation, at the City's option, to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at the Contractor's expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the City, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- d) The Contractor shall be solely responsible for determining and informing the City whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The City may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the City's judgment, use thereof would delay the Work or be unlawful.
- e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

#### **1.80 PROPRIETARY INFORMATION**

As a political subdivision of the State of Florida, the City of North Miami Beach is subject to the provisions of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the City's possession may constitute or contain information or materials which the City has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the City has developed at its own expense, the disclosure of which could harm the City's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the City's property, any computer programs, data compilations, or other software which the City has developed, has used or is using, is holding for use, or which are otherwise in the possession of the City (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the City and, if the Computer Software has been leased or purchased by the City, all third party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the City any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the City's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

**1.81 PROPRIETARY RIGHTS**

- a) The Contractor hereby acknowledges and agrees that the City retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the City to the Contractor hereunder or furnished by the Contractor to the City and/or created by the Contractor for delivery to the City, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the City, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the City's copyrights or other proprietary rights.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the City, hereinafter referred to as "Developed Works" shall become the property of the City.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the City, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all licensed software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the City so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such licensed software and the associated specifications, technical data and other documentation for the operations of the City or entities controlling, controlled by, under common control with, or affiliated with the City, or organizations which may hereafter be formed by or become affiliated with the City. Such license specifically includes, but is not limited to, the right of the City to use and/or disclose, in whole or in part, the technical documentation and licensed software, including any source code provided hereunder, to any person or entity outside the City for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the City or entities controlling, controlled by, under common control with, or affiliated with the City, or organizations which may hereafter be formed by or become affiliated with the City. No such licensed software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

**1.82 BUSINESS APPLICATION AND FORMS**

The Contractor shall be a registered vendor with the City Procurement Management Division, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate vendor application and to update the application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of the Miami-Dade County Code as amended by Ordinance 00-1, requires any City employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with the City or any person or agency acting for the City competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with the City of North Miami Beach or any person or agency acting for the City and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

### **1.83 LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State, County and City orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in a conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) North Miami Beach Purchasing Policies and Procedures Manual Policy 3.6 "Debarment and Suspension".

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

### **1.84 NONDISCRIMINATION**

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities



without discrimination. Such action shall be taken with reference to, but not limited to recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training. By entering into this Contract with the City, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts). If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the City to be in violation of the Act, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit or the Contractor violates the Act during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

#### **1.85 CONFLICT OF INTEREST**

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the City or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the City, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or member of the immediate family or household of any of the aforesaid:
  - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
  - ii) Is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge, any subcontractor or supplier to the Contractor?
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligations under this Agreement; provided that the City, in its sole discretion, may consent in writing to such a relationship, and provided the Contractor provides the City with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the City's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the City's Project Manager. Contractor shall thereafter cooperate with the City's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

**1.86 PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall the Contractor, its employees, agents, subcontractors and suppliers, without the express written consent of the City:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the City, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the City. Such approval may be withheld if for any reason the City believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, council or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the City; and
- c) Represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the City, except as may be required by law.

**1.87 BANKRUPTCY**

The City reserves the right to terminate this contract if, during the term of any contract the Contractor has with the City, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

**1.88 GOVERNING LAW**

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida.

**1.89 SURVIVAL**

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the City under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

**1.90 CANCELLATION FOR UNAPPROPRIATED FUNDS**

The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

**1.91 ASBESTOS STATEMENT**

All material supplied must be 100% asbestos free. Bidder, by virtue of bidding, certifies that if awarded any portion of the ITB he will supply only material or equipment that is 100% asbestos free.

**1.92 VERBAL INSTRUCTIONS PROCEDURE**

No negotiations, decisions, or actions shall be initiated or executed by the Contractor as a result of any discussions with any City employee. Only those communications which are in writing from an authorized City representative may be considered. Only written communications from Contractors, which are assigned by a person designated as authorized to bind the Contractor, will be recognized by the City as duly authorized expressions on behalf of Contractors.

### **1.93 COST ADJUSTMENTS**

The cost for all items as quoted herein shall remain firm for the first year of the contract. Costs for subsequent years and any extension term years shall be subject to an adjustment only if increases occur in the industry. However, unless very unusual and significant changes have occurred in the industry, such increases shall not exceed 5% per year or, whichever is less, the latest yearly percentage increase in the All Urban Consumers Price Index (CPU-U) (National) as published by the Bureau of Labor Statistics, U.S. Dept. of Labor. The yearly increase, or decrease in the CPI shall be that latest index published and available ninety (90) days prior to the end of the contract year then in effect compared to the index for the same month one year prior. Any requested cost increase shall be fully documented and submitted to the City at least ninety (60) days prior to the contract anniversary date. Any approved cost adjustments shall become effective upon the anniversary date of the contract. In the event the CPI or industry costs decline, the City shall have the right to receive, from the Contractor, a reasonable reduction in costs that reflect such cost changes in the industry. The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the contract can be cancelled by the City upon giving thirty (30) days written notice to the Contractor.

### **1.94 PROHIBITION OF INTEREST**

No contract will be awarded to a bidding firm who has City elected officials, officers or employees affiliated with it, unless the bidding firm has fully complied with current Florida State Statutes and City Ordinances relating to this issue. Bidders must disclose any such affiliation. Failure to disclose any such affiliation will result in disqualification of the Bidder and removal of the Bidder from the City's bidder lists and prohibition from engaging in any business with the City.

### **1.95 NO CONTINGENT FEES**

Vendor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Vendor to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Vendor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or infraction of this provision, the City shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

### **1.96 E-VERIFY**

Contractor acknowledges that the City may be utilizing the Contractor's services for a project that is funded in whole or in part by State funds pursuant to a contract between the City and a State agency ("Contract"). Contractor shall be responsible for complying with the E-Verify requirements in the Contract and using the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by Contractor during the Agreement term. The Contractor is also responsible for e-verifying its subcontractors, if any, pursuant to the Contract and reporting to the City any required information. Contractor acknowledges that the terms of this paragraph are material terms, the breach of any of which shall constitute a default under this Agreement.

## SECTION 2.0 SPECIAL CONDITIONS

### 2.1 BID TIMETABLE

The tentative schedule for this RFP and contract approval is as follows:

8/19/11		Advertisement
9/1/11	2:00pm	Non-Mandatory Pre-Bid Conference
9/19/11	2:00pm	Bid due date and time
9/23/11	2:00PM	Review Committee Meeting
October		NTP

### 2.2 QUESTIONS REGARDING SPECIFICATIONS

Any questions regarding the specifications shall be addressed to the Chief Procurement Officer, Procurement Management Division, City of North Miami Beach, via e-mail at bids@citynmb.com or in writing to 17011 NE 19 Avenue, Room 315, North Miami Beach, Florida 33162.

Any oral instructions given are not binding. All questions and interpretations will be clarified in writing to all bidders by written addenda. Failure of a bidder to receive and/or acknowledge any addendum shall not release the bidder from any obligations under this bid.

### 2.3 SAFETY AND SECURITY

The Grounds are open and subject to uncontrolled entry twenty-four hours a day, seven days a week. The selected Proposer shall secure the Tennis Center and all equipment. Provide a security plan.

The selected Proposer shall provide the Department its emergency evacuation plan and hurricane plan, to include how the selected Proposer shall secure the equipment and the facility in the event of an emergency.

### 2.4 VENDING

The City will be the only provider of food and drinks including vending machines.

### 2.5 UTILITIES

The City will be responsible for the management and payment of utilities.

### 2.6 EMPLOYMENT STANDARDS

Employees with records of criminal conviction, other than minor traffic violations, shall not be assigned to the City's premises. In fulfilling the Company's obligations under this clause, Company shall fully comply with the laws relating to the making of investigative reports and the disclosure of information contained therein. Verification of criminal background checks must be maintained by the Company and made available to the City, if requested. Contractor must submit upon award all employees level 2 background checks.

Company agrees not to employ, on the City's premises, any persons using or under the influence of drugs and/or alcohol, while on City's premises.

Company agrees not to employ, on the City's premises, any persons unfit or unskilled to perform the work assigned to that person.

## 2.7 METHOD AND TIMES OF PAYMENT

All payments shall be made by the 10<sup>th</sup> of every month to: The City of North Miami Beach, Attn: Finance Department – TENNIS CENTER MANAGEMENT, 17011 NE 19<sup>th</sup> Ave, North Miami Beach Florida 33162-3111.

Contractor must furnish a copy of its monthly income statement substantiating all valet parking receipts for that month and must deliver that monthly statement to the City with each payment. The statement referred to herein shall be in such form and style and contain such details and breakdown as City may reasonably determine or require. The furnishing by Contractor of any grossly inaccurate statement shall constitute a breach of this Agreement. The acceptance by City of payments or statements thereon shall in no case constitute a waiver of City's right to examination of Contractor's books and records of its valet parking receipts.

- A. **Sales Tax**: The Contractor shall be liable for the prevailing State of Florida Sales and Use Tax imposed on rent (currently at the rate of 7%) on the amounts payable to the City under this Agreement. This Sales and Use Tax shall be payable to the City, when rent is due, which in turn will remit same, less authorized handling deductions, to the State. Said tax is applicable to minimum rental guarantee unless otherwise determined by the State of Florida.
- B. **Taxes on Contractor's Personal Property**: Contractor shall be responsible for and shall pay before delinquency all municipal, county, or state taxes assessed against any occupancy interest or personal property of any kind, owned by or placed in, upon or about the Contracted Premises by Contractor.
- C. **Late Payment Charge**: In the event that the Contractor fails to make any payments, as required to be paid under the provisions of this contract, within ten calendar days of the due date, a five (5) percent late payment charge per day will accrue against all such delinquent payment(s) from the original due date until the City actually receives payment. The right of the City to require payment of such late payment charge and the obligation of the Contractor to pay same shall be in addition to and not in lieu of the rights of the City to enforce other provisions herein, including termination of this Contract, or to pursue other remedies provided by law.
- D. **Worthless Check or Draft**: In the event that the Contractor delivers a dishonored check or draft to the City in payment of any obligation arising under this Contract, the Contractor shall incur and pay a service charge of \$10.00 or five percent (5%) of the face amount of the check, whichever is greater. For each such dishonored check, such payment shall be made within five (5) days from the date Contractor is advised of such default. Further, in such event, the City may require that future payments required pursuant to this Contract be made by cashier's check or other means acceptable to the City. A second such occurrence of dishonored check during the Contract term will be a breach of contract and, at the City's option, will constitute a default allowing for termination.

### **SECTION 3.0 SCOPE OF WORK**

The City of North Miami Beach is inviting qualified tennis and racquetball services professionals to submit Requests for Proposals for the operation and management of the Tennis and Racquetball Facility at the Judge Arthur I. Snyder Tennis Center.

#### **3.1 SCOPE**

Interested parties may propose to fully manage tennis and racquetball activities at the Tennis Center, or any portion of the services thereunder, at the facility. The Leisure Services's preference is a turnkey operator (i.e. full operation).

#### **3.2 DESCRIPTION OF FACILITY**

The Judge Arthur I. Snyder Tennis Center is a Tennis and Racquetball facility located at 16851 West Dixie Highway, North Miami Beach, Florida and is adjacent to the Spanish Monastery. The Tennis Center has twelve hydrogrid (underground irrigation system) clay tennis courts, six lighted laykold courts, four outdoor racquetball courts, two wall paddleboard courts, a pro shop, and restrooms with lockers. There is also free parking at the facility.

NOTE: Six of the twelve hydrogrid clay tennis courts are lighted.

#### **3.3 INSPECTION OF FACILITY**

Proposers are required to visit the facility. No appointment is necessary. Inspection may take place during normal operating hours between 8:00 am and 5:00 p.m. Monday-Friday.

For additional information, contact:  
Paulette Murphy  
Director of Leisure Services

Phone: (305) 948-2957  
Fax: (305) 787-6040

#### **3.4 REVENUE**

Proposers shall outline in detail how they will provide revenue to the City.

It is the intent of the City to provide the best possible service to the public. It is the City's further intent to gain revenues. However, the City makes no guarantee the City will act, promote, approve, assist or cooperate in any manner to assure that this project will be a financial success for the City or for the selected Proposer.

**SECTION 4.0 PROPOSAL FORMAT-SUBMIT****4.1 CONTENT OF PROPOSALS -SUBMIT**

Bids should be submitted in duplicate. Submit one **original** and 1 **copy**. Please include in your proposal package a CD or flash drive containing a PDF copy of the complete original proposal.

Each submittal shall address the following topics, and outline a plan of operation and development. Responses shall follow the format outlined below:

**1. Letter of Interest and Proposer Information**

Name of Company  
Address  
Telephone/Fax numbers  
Names of officers of corporation or partners  
Authorized official representative

**2. Center Management**

- a. Tennis and Racquetball Lessons  
Tennis: Individual and Group  
Racquetball: Individual and Group
- b. On-Court Operations:  
General Play  
Court and Light Fees  
Programming for Leagues  
Membership  
Camps (Adult & Youth)  
Tournaments (Adult & Youth)
- c. Pro Shop Operations:  
Racquet Stringing  
Tennis/Racquetball related equipment sales and rentals
- d. Administrative Plan:  
Hours of operation  
Management  
Staffing (pros, clerks, maintenance, custodial, etc.)  
Maintenance  
    Clay courts, other courts (adding clay when necessary, replacing nets and  
    windowscreens, maintaining alarm security systems)  
    Restrooms  
    Pro shop  
Security System
- e. Special events

**3. Investment and Payments**

- a. Investment by Proposer:
  - Equipment
  - Fixtures
  - Windscreens
  - Capital Improvements

- b. Payments to City:

- 1. Minimum guaranteed payment to City \_\_\_\_\_(not less than \$1,500).

- 2. % of gross receipts applied to increasing dollar volume and/or category. Include a schedule of percentages and volumes. (e.g. % of gross receipts per month from \$10,000 to \$20,000; \_\_\_% of gross receipts from \$20,000 to \$30,000, etc.)

Such monthly minimum and monthly percentage payments shall be received by the City from the Proposer at a set time each month for each preceding month.

- 3. Proposer may offer alternative methods of compensation to the City.

**4. Term of Contract**

Initial term shall be a maximum of three years. The agreement may be renewed for additional one-year periods, upon mutual agreement in writing by both parties for two additional years.

**5. Experience, Capability, and Commitment**

- a. Proposer's financial status, plan, and ability to finance the proposed services and improvements.

- b. Experience in similar operations.  
Years and Explain type (s) of Experience. The City will consider only contractors with a minimum of 3 years of experience.

- Names, locations, and dates where Proposer has operated similar business
    - Names, addresses, contact person, and telephone number of Owners of the operations listed above.

- c. Professional Certifications Affiliations
    - Professional References

- d. Litigation  
List any pending civil litigation/criminal action involving business or its partners/corporate officers/owners

**6. Marketing Program**

- Advertising
- Promotion
- Sales



**7. Public Outreach Program**

- a. Plan for interfacing with the surrounding community.
- b. Youth programs  
Junior Development  
Underprivileged youth access plan
- c. Adult Programs

**8. Additional Considerations**

- a. Special Programs
- b. Additional Services
- c. Additional Comments

The Proposer acknowledges that the City is relying on information provided in this proposal, and that discovery of any misstatement of fact or material omission may cause rejection of the proposal, discontinuation of negotiations, or termination of any resulting contract.

It is expressly understood by the Proposer that evaluations in awarding an Agreement are based on objective and subjective criteria. Proposers proposing the most substantial offering in any particular category are not guaranteed selection by the Committee. Selecting the best overall proposal is the Committee's objective. In addition, alternate or additional services or amenities will be considered.

Add the following information to the RFP package before delivery.

Proposer's Name	Procurement Management Division, City Hall Room 315 17011 NE 19 <sup>th</sup> Avenue North Miami Beach, Florida 33162
Proposer's Address	
Proposer's Telephone Number	
RFP No.:	
ITB Title:	
Due Date:	

**4.2 RFP ACKNOWLEDGEMENT- SUBMIT**

**NAME OF COMPANY:** \_\_\_\_\_  
(Name of company submitting bid)

**SIGNATURE:** \_\_\_\_\_  
(Sign in Ink) (Print Name)

**TITLE:** \_\_\_\_\_ **E-MAIL ADDRESS:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**TELEPHONE NO.:** \_\_\_\_\_ **FAX NO.:** \_\_\_\_\_

By signing and submitting this bid proposal, we acknowledge having read and agreeing to all times and conditions of these specifications, including, but not limited to, agreeing to indemnify and hold the City harmless from any and all claims, suits, actions, damages, causes of action, or attorney's fees arising from any personal injury, loss of life, or damage to person or property sustained by reason of or as a result of the products or services supplied, or negligence of contractor supplier, his employees, agents, or assigns.

By signing and submitting this bid proposal, we certify that this company has current insurance coverage specified herein. The insurance policy number(s) and expiration date(s) are provided below, or copies of the insurance certificate(s) are enclosed. If awarded the bid, we will provide the City with proof of the required insurance and include the City as an additional insured on our general liability coverage.

Do you give prompt payment discounts?

Yes, Percentage of discount \_\_\_\_\_% Term \_\_\_\_\_  No

I certify that this bid is made without prior understanding, agreement or connection with any corporation, firm, or person submitting a bid for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid for the bidder.

**INSURANCE POLICY NO(S):** \_\_\_\_\_

**EXPIRATION DATE(S):** \_\_\_\_\_

**INSURANCE CERTIFICATE(S) ENCLOSED:** YES NO

\_\_\_\_\_  
(Sign In Ink) (Print Name)

**WARRANTIES** \_\_\_\_\_

If the undersigned Bidder is awarded a construction Agreement on this Proposal, the Surety who will provide the Public Construction Payment and Performance Bond will be:

\_\_\_\_\_  
whose address is \_\_\_\_\_

State \_\_\_\_\_

\_\_\_\_\_ Zip Code \_\_\_\_\_

**SECTION 5.0 CITY REQUIRED FORMS- SUBMIT**

**5.1 STATEMENT OF “NO” BID**

If your company shall not be submitting a bid in response to this Invitation to Bid or Request for Proposal, please complete this Statement of “No” Bid Sheet and return, prior to the Bid/RFP Due Date established within, to:

**The City of North Miami Beach  
 Procurement Management Division, Room 315  
 17011 NE 19th Avenue  
 North Miami Beach, Florida 33162**

This information shall help the City of North Miami Beach in the preparation of future Bids and RFP's.

Bid/RFP/RFQ Number: \_\_\_\_\_ Title: \_\_\_\_\_

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

Contact: \_\_\_\_\_

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

E-Mail: \_\_\_\_\_

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

√	<b>Reasons for “NO” Bid:</b>
	Unable to comply with product or service specifications.
	Unable to comply with scope of work.
	Unable to quote on all items in the group.
	Insufficient time to respond to the Invitation to Bid.
	Unable to hold prices firm through the term of the contract period.
	Our schedule would not permit us to perform.
	Unable to meet delivery requirements.
	Unable to meet bond requirements.
	Unable to meet insurance requirements.
	Other (Specify below)

Comments: \_\_\_\_\_

**5.2 REFERENCE QUESTIONNAIRE**

It is the responsibility of the contractor/vendor to provide a minimum of three (3) references using this form and providing this information with your submission. Failure to do so may result in the rejection of your submission.

Giving reference for:  
(BID/RFP/RFQ # AND TITLE)

Firm giving Reference:  
Address:  
Phone:  
Fax:  
Email:

- 1. **Q:** What was the dollar value of the contract?  
**A:**
- 2. Have there been any change orders, and if so how many?  
**A:**
- 3. **Q:** Do they perform on a timely basis as required by the agreement?  
**A:**
- 4. **Q:** Was the project manager easy to get in contact with?  
**A:**
- 5. **Q:** Would you use them again?  
**A:**
- 6. **Q:** Overall, what would you rate their performance? (Scale from 1-5)  
**A:**     **5** *Excellent*     **4** *Good*     **3** *Fair*     **2** *Poor*     **1** *Unacceptable*
- 7. **Q:** Is there anything else we should know, that we have not asked?  
**A:**

The undersigned does hereby certify that the foregoing and subsequent statements are true and correct and are made independently, free from vendor interference/collusion.

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

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

**5.3 BID SIGNATURE PAGE FOR CORPORATION**

The officers of the Corporation are as follows:

<u>NAME</u>	<u>ADDRESS</u>
President _____	
Vice-President _____	
Secretary _____	
Treasurer _____	
Registered Agent _____	

The full names and residences of stockbrokers, persons, or firms interested in the foregoing Bid, as principals, are as follows:

\_\_\_\_\_

\_\_\_\_\_

Post Office Address

BIDDER:

\_\_\_\_\_

(CORPORATE NAME)

\_\_\_\_\_  
PRESIDENT'S SIGNATURE AND E-MAIL ADDRESS

Is this corporation incorporated in the State of Florida?

ATTEST: \_\_\_\_\_  
SECRETARY

YES [ ] NO [ ]

If no, give address of principal place of business: \_\_\_\_\_

\_\_\_\_\_

**5.4 BID SIGNATURE PAGE FOR SOLE PROPRIETOR OR PARTNERSHIP**

The full names and residences of persons, partners or firms interested in the foregoing Bid, as principals, are as follows:

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BIDDER

\_\_\_\_\_  
(FIRM NAME)

Witnesses:

(SEAL)

\_\_\_\_\_  
SIGNATURE AND E-MAIL ADDRESS

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
Title (Sole Proprietor or Partner)

Post Office Address:

\_\_\_\_\_

\_\_\_\_\_  
TELEPHONE

CITY in which fictitious name is registered.

\_\_\_\_\_  
Attach a copy of proof of registration

**5.5 DRUG-FREE WORKPLACE PROGRAM**

IDENTICAL TIE BIDS - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employee that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

\_\_\_\_\_  
VENDOR'S SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
NAME OF COMPANY

**5.6 SOLICITATION, GIVING, AND ACCEPTANCE OF GIFTS POLICY**

Florida Statute 112.313 prohibits the solicitation or acceptance of Gifts. - "No Public officer, employee of an agency, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, or candidate would be influenced thereby."... The term 'public officer' includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body."

The City of North Miami Beach policy prohibits all public officers, elected or appointed, all employees, and their families from accepting any gifts of any value, either directly or indirectly, from any contractor, vendor, consultant, or business with whom the City does business. Only advertising office stationery or supplies of small value are exempt from this policy - e.g. calendars, note pads, pencils.

The State of Florida definition of "gifts" includes the following:

- Real property or its use,
- Tangible or intangible personal property, or its use,
- A preferential rate of terms on a debt, loan, goods, or services,
- Forgiveness of indebtedness,
- Transportation, lodging, or parking,
- Membership dues,
- Entrance fees, admission fees, or tickets to events, performances, or facilities,
- Plants, flowers or floral arrangements

Services provided by persons pursuant to a professional license or certificate. Other personal services for which a fee is normally charged by the person providing the services. Any other similar service or thing having an attributable value not already provided for in this section. To this list, the City of North Miami Beach has added food, meals, beverages, and candy.

Any contractor, vendor, consultant, or business found to have given a gift to a public officer or employee, or his/her family, will be subject to dismissal or revocation of contract.

As the person authorized to sign the statement, I certify that this firm will comply fully with this policy.

SIGNATURE	PRINTED NAME
NAME OF COMPANY	TITLE

Failure to sign this page shall render your bid non-responsive



## **5.7 VENDOR REGISTRATION**

If you are not a City of North Miami Beach current registered vendor follow the instructions when you go to:

<http://www.keepandshare.com/doc/1759482/vendor-registration-form-2010-pdf-february-19-2010-9-51-am-360k?da=y>

**5.8 NONCOLLUSION AFFIDAVIT**

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

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

- (1) He/she is \_\_\_\_\_ of \_\_\_\_\_, the Bidder that has submitted the attached Bid.
- (2) Bidder has been fully informed regarding the preparation and contents of the attached Bid and of all pertinent circumstances regarding such Bid;
- (3) Such Bid is genuine and is not a collusion or sham Bid;
- (4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the contractor for which the attached Bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through advantage against the \_\_\_\_\_ (Local Public Agency) or any person interested in the proposed Contract; and
- (5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(SIGNED) \_\_\_\_\_  
Title

Subscribed and sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
My commission expires:

**SECTION 6.0 EVALUATION/SELECTION PROCESS**

**6.1 INTRODUCTION**

Following the opening of the proposal packages, the proposals will be evaluated by an Evaluation/Selection Committee appointed by the City Manager. The Committee will be comprised of appropriate City personnel from Leisure department with the appropriate experience and/or knowledge.

Scoring proposals is based on point totals and not a percentage factor.

**6.2 EVALUATION CRITERIA**

The Evaluation/Selection Committee will evaluate and rank responsive proposals based on the criteria listed below. The City reserves the right to negotiate the final terms, conditions and pricing of the contract as may be in the best interest of the City.

Selection Criteria		
No.	Description	Points
1	Approach to providing the services proposed in this Solicitation including quality of submittal	20
2	Investment and payments	20
3	Proposer's experience, capability and Commitment	25
4	Marketing Plan	15
5	Public Outreach Program	15
6	Additional Considerations	5
Total		100

Upon completion of the criteria evaluation, rating and ranking, the Committee may choose to conduct an oral presentation(s) with the Proposer(s) which the Evaluation/Selection Committee deems to warrant further consideration based on the best rated proposal providing the highest quality of service to the City; scores in clusters; significant breaks in scoring; and/or maintaining competition. Upon completion of the oral presentation(s), the Committee will re-evaluate, re-rate and re-rank the proposals remaining in consideration based upon the written documents combined with the oral presentation.

**6.3 OVERALL RANKING**

The Evaluation/Selection Committee will then determine the overall ranking by adding the points for all criteria as described in Section 7.2 above and all other applicable additional points specified in this Solicitation.

Following the evaluation and ranking of the proposals, the Evaluation/Selection Committee will recommend that a contract be negotiated with the highest ranked responsive and responsible Proposer. The City may enter into negotiations with the recommended Proposer or take such other action as it deems to be in the best interest of the City.

#### **6.4 CONTRACT AWARD**

Any negotiated contract, as a result of the Solicitation, will be submitted to City Manager or designee for approval and may be submitted to the City Council for their approval. All Proposers will be notified in writing when the City Manager or designee makes an award recommendation. The Contract award, if any, shall be made to the Proposer whose proposal shall be deemed by the City to be in the best interest of the City. The City's decision to make the award and which proposal is in the best interest of the City shall be final.

**SECTION 7.0 SAMPLE AGREEMENT FOR BIDDER INFORMATION ONLY**

**DO NOT EXECUTE**

**SAMPLE AGREEMENT- DO NOT FILL OUT**

**CONTRACT TITLE AND NUMBER**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, **2011** by and between **Design Communications, LTD.**, a corporation organized and existing under the laws of the **State of Florida**, having its principal office at **10611 Satellite Boulevard, Orlando, FL 32837** (hereinafter referred to as the "Contractor"), and the City of North Miami Beach, a political subdivision of the State of Florida, having its principal office at 17011 NE 19<sup>th</sup> Avenue, North Miami Beach, Florida 33162 (hereinafter referred to as the "City"),

**WITNESSETH:**

**WHEREAS**, the Contractor has offered to provide the materials and/or services and to be bound by the Plans and the terms and conditions of the **Invitation to Bid (ITB) No. 2010-19**, which includes the General Terms and Conditions of Invitations for Bids, Specifications, Bid Forms, and associated addenda attached hereto and incorporated herein as Exhibit "A", and the terms of Contractor's Proposal attached hereto and incorporated herein as Exhibit "B"; and

**WHEREAS**, the Contractor has submitted a written proposal dated **November 4, 2010**, hereinafter referred to as the "Contractor's Proposal", the terms of which are incorporated herein by reference as if fully set forth herein; and

**WHEREAS**, the City desires to procure from the Contractor such services for the City, in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The Contractor agrees to provide the materials and/or services pursuant to and to be bound by the Plans and the terms and conditions of the Invitation to Bid, which includes General Terms and Conditions of Invitations for Bids, Specifications, Bid Forms, and associated addenda and the terms of which are incorporated herein by reference as if fully set forth herein and attached hereto as Exhibit "A", and the Contractor's Proposal attached hereto and incorporated herein as Exhibit "B".
2. The CITY agrees to abide by and to be bound by the terms of the Invitation to Bid, which includes General Terms and Conditions of Invitations for Bids, Specifications, Bid Forms, and associated addenda as attached hereto and incorporated herein as Exhibit "A", and by the terms of Contractor's Proposal attached hereto and incorporated herein as Exhibit "B".
3. Contractor shall deliver materials and/or provide services in accordance with the terms of the Invitation to Bid, Bid Forms and addenda attached hereto and incorporated herein as Exhibit "A" and with the terms of Contractor's Proposal attached hereto and incorporated herein as Exhibit "B".

4. The City agrees to make payment in accordance with the terms of the Invitation to Bid, Bid Forms and addenda attached hereto and incorporated herein as Exhibit "A" and with the terms of Contractor's Proposal attached hereto and incorporated herein as Exhibit "B".

5. This Agreement and attachments hereto constitute the entire agreement between the parties hereto, and its provisions shall not be amended, except in writing, after formal approval by both parties.

6. This Agreement will commence on \_\_\_\_\_ and expire on \_\_\_\_\_ unless Contractor is otherwise notified by the City. Any extension to this Agreement shall be in writing. The City Manager is authorized to extend or terminate this Agreement on behalf of the City.

7. In addition to any other contractual indemnification provisions in Exhibit A or Exhibit B in favor of the City, Contractor hereby agrees to indemnify and hold the City harmless from any and all claims, suits, actions, damages, causes of action, and attorney's fees, arising from any personal injury, loss of life, or damage to person or property sustained by reason of or as a result of the products or materials used or supplied in the performance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on this

\_\_\_\_\_ day of \_\_\_\_\_, 2011.

CONTRACTOR

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

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

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Corporate Seal/Notary Public  
Corporate Seal/Notary Seal

CITY OF NORTH MIAMI BEACH

By: \_\_\_\_\_  
Lyndon L. Bonner, City Manager

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Pamela L. Latimore, City Clerk

Approved as to form  
and legal sufficiency

\_\_\_\_\_  
Darcee S. Siegel, City Attorney

**SECTION 8.0 APPENDIX**

- 8.1 PICTURES OF JUDGE ARTHUR I SNYDER TENNIS CENTER**
- 8.1 DRAWINGS OF JUDGE ARTHUR I SNYDER TENNIS CENTER**



























FLORIDA  
PLAY NOW!



FLORIDA  
PLAY NOW!

TELL US WHAT YOU'RE PLAYING FOR  
AND WE'LL TAKE CARE OF THE REST.

















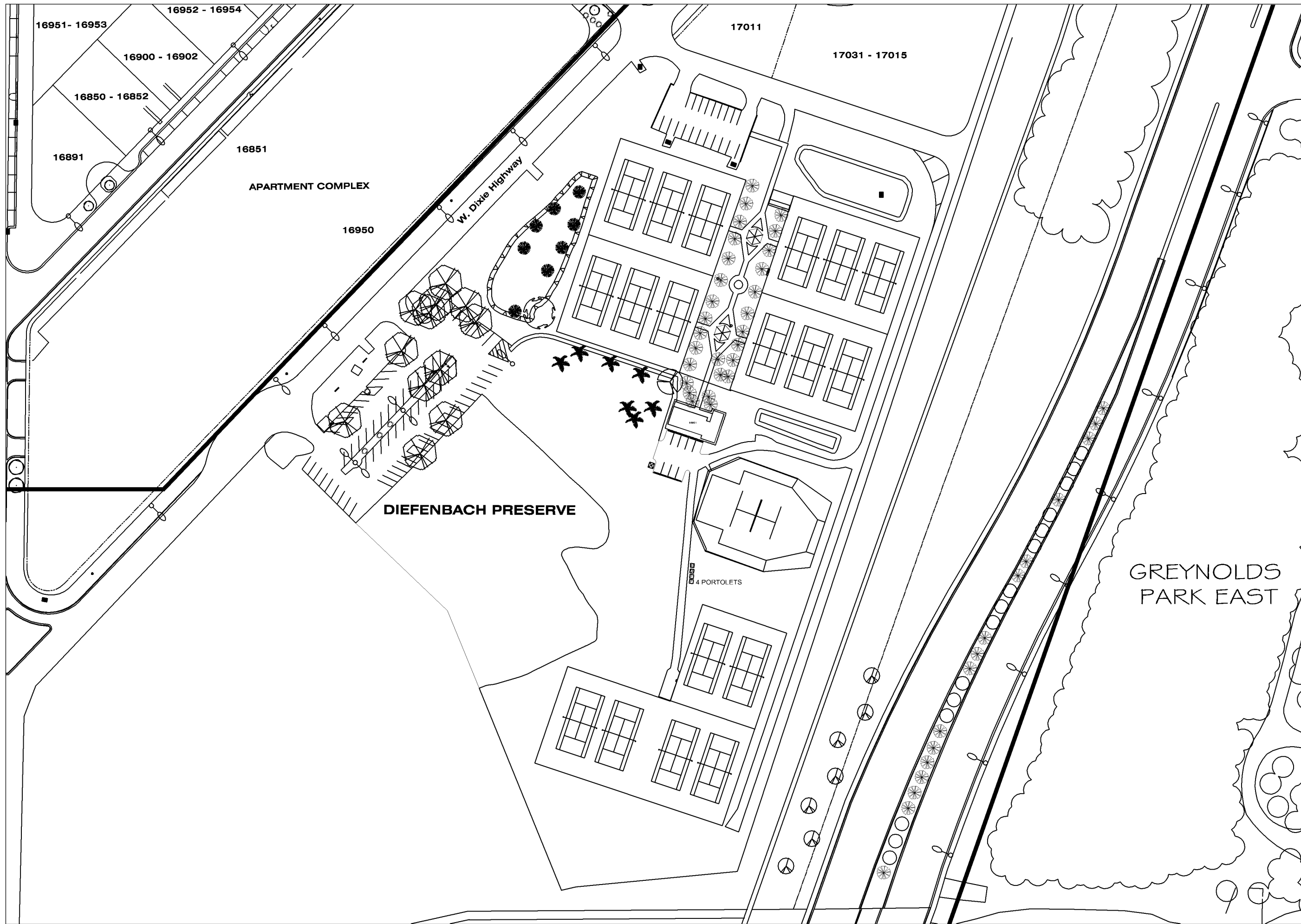










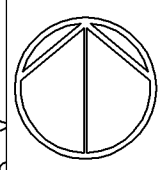


Project No. \_\_\_\_\_

Revisions:


**CITY OF NORTH MIAMI BEACH  
SNYDER TENNIS CENTER**

City of North Miami Beach  
Department of Public Services  
Capital Improvements Program



Date: 8/18/11  
 Drawn by: C.M.R.  
 Scale: N.T.S.  
 Sheet No.: 1 of 01