

**AGREEMENT FOR CONSTRUCTION MANAGEMENT AT-RISK SERVICES
FOR DORAL GLADES PARK**

THIS AGREEMENT FOR CONSTRUCTION MANAGEMENT AT-RISK SERVICES (the "Agreement"), made and entered into this 14th day of FEBRUARY, 2016, by and between the CITY OF DORAL, a Florida municipal corporation whose address is 8401 NW 53 Terrace, Doral, FL. 33166 (the "City"), and Pirtle Construction Company, a Florida corporation whose address 5700 Griffin Road, Suite 200, Davie, FL. 33314 (the "Construction Manager" or "CM"). The City and the CM may be referred to individually as a "Party" or collectively the "Parties."

RECITALS

WHEREAS, the City intends to build a new recreation facility known as, Doral Glades Park (the "Project") and issued Request for Proposal For Construction Manager At-Risk to Provide Preconstruction & Construction Services via a Guaranteed Maximum Price Amendment for Doral Glades Park (the "RFP"), which is incorporated herein and made part hereof by this reference, so as to obtain the necessary services to accomplish the development of the Project; and

WHEREAS, CM's Proposal was deemed to be in the best interest of the City and selected and approved by the City Council; and

WHEREAS, the City desires to engage the CM, and the CM desires to be engaged by the City, to provide preconstruction and, upon acceptance of a guaranteed maximum price, construction services, for the construction of the Project pursuant to the terms of this Agreement and the RFP.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein and made a part hereof by this reference, the covenants and conditions herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties, City and CM agree as follows:

ARTICLE I
DEFINITIONS

The following terms shall have the meanings specified below. Any capitalized terms referred to herein and not defined shall have the meanings set forth in the Agreement between City and Construction Manager:

- 1.1 **Architect/Engineer or A/E:** The "Architect/Engineer" or "A/E" shall mean that person or firm designated as the architect/engineer for the Project, or any portion thereof. Also referred to as the Consultant, this entity has entered into a separate

agreement with the City for design services for the Project, said Agreement attached and incorporated as Exhibit VII hereto (also referred to as the A/E Agreement). For purposes of this Agreement, the Architect/Engineer of record for the Project is **CPZ Architects, Inc.**

1.2 **Bonds:** The "Bonds" shall mean the Public Construction Payment Bond and the Public Construction Performance and Guarantee Bond furnished by the Construction Manager as required by this Agreement.

1.3 **Bond Premium:** The term "Bond Premium" shall mean the direct cost of the premium paid for the Bond (s).

1.4 **Budget:** The amount established by the City for this Project. Construction Manager herein acknowledges that, prior to execution of this Agreement; it has received the City's written Budget for the Project.

1.5 **City or Owner:** The "City" or "Owner" shall mean the City of Doral, a Florida municipal corporation, having its principal offices at 8401 NW 53rd Terrace, Doral, Florida, 33166, and may also be referred to as the "Owner" in this Agreement. The City, as a governmental entity, is subject to the availability of funds and annual appropriation of funds by its legislative body and other governmental authorities or sources of revenue, in an amount to allow continuation of its performance under this Agreement. In the event of lack of funding for this Agreement, or the Project subject to this Agreement, this Agreement may be terminated by the City pursuant to the procedures set forth in Subsection 6.2.

1.6 **City Council:** "City Council" shall mean the governing and legislative body of the City. The City Council shall be the final authority to do or to approve the following actions or conduct by passage of an enabling resolution or amendment to this Agreement.

1.6.1 The City Council shall be the body to consider, comment upon, or approve of any amendments or modifications to this Agreement.

1.6.2 The City Council shall be the body to consider, comment upon, or approve any assignment, sale, transfer or subletting of this Agreement or any interest therein, or any subcontracts made pursuant to this Agreement. Assignment and transfer shall be defined to include sale of the majority of the stock of a corporation.

1.6.3 All City Council approvals and authorizations shall be expressed by passage of an appropriate enabling resolution and, as determined by the City if applicable or required, by the execution of an appropriate amendment to this Agreement.

1.6.4 The City Council shall approve or consider all contract amendments which exceed the sum of Fifteen Thousand Dollars and 00/100 (\$15,000.00), or such

other amount as may be specified by the City of Doral Code in its Procurement Ordinance, as same may be amended from time to time.

1.7 **City Manager:** The "City Manager" shall mean the Chief Administrative Officer of the City. The City Manager shall be construed to include any duly authorized designees, including, a Program Coordinator, and shall serve as the City's representative to whom administrative requests for approval shall be made and who shall issue authorizations exclusive of those authorizations reserved to the City Council, to the CM. These authorizations shall include, without limitation: reviewing, approving, or otherwise commenting upon the schedules, plans, reports, estimates, contracts and other documents submitted to the City by the CM pursuant to the Scope of Services set forth in this Agreement, as same may be amended from time to time.

1.7.1 The City Manager shall decide, in his/her professional discretion, matters arising pursuant to this Agreement, which are not otherwise expressly provided for in this Agreement, and shall attempt to render administrative decisions promptly to avoid unreasonable delay in the progress of the CM's work.

1.7.2 The City Manager shall additionally be authorized, but not required, upon written request of the CM, to reallocate monies already budgeted toward payment of the CM; provided, however, that he/she cannot increase the CM's compensation or other budgets established by this Agreement.

1.7.3 The City Manager, in his/her administrative discretion, may consult with the City Council concerning disputes or matters arising under this Agreement regardless of whether such matters or disputes are enumerated herein.

1.7.4 The City Manager or his/her designee shall be the representative, on behalf of the City authorized to issue a Notice to Proceed.

1.7.5 The City Manager may approve contract amendments which shall not exceed the sum of Fifteen Thousand Dollars and 00/100 (\$15,000.00), or such other amount as may be specified by the City of Doral Code, in its Procurement Ordinance, as same may be amended from time to time.

1.7.6 The City Manager may, in his sole discretion, form a committee or committees, or inquire of or consult with persons for the purpose of receiving advice and recommendations relating to the exercise of his/her powers, duties and responsibilities under this Agreement.

1.8 **CM Principal:** The "CM Principal" shall be the person designated by the Construction Manager as its senior representative to the City. The CM Principal shall perform those duties required in this Agreement and shall have the authority to commit and obligate the CM, and to fully act for the CM in all matters.

- 1.9 **Claim:** A "Claim" is a demand, assertion, dispute or other such claim by one of the parties hereto arising out of or based upon the terms and conditions of the Contract Documents.
- 1.10 **Contract Amendment or Change Orders:** "A Contract Amendment" or "Change Order" shall mean a written order to the Construction Manager approved by the City, as specified in this Agreement, and signed by the City's duly authorized representative, authorizing a change in the Project or the method and manner of performance thereof, or an adjustment in the fees or completion dates, as applicable, and executed by the City, CM and the A/E. Contract Amendments and/or Change Orders affecting changes to the Work shall be countersigned by the CM and the A/E. Contract Amendments and/or Change Orders shall be approved by the City Council if they exceed Fifteen Thousand Dollars and 00/100 (\$15,000.00), or by the City Manager if they are Fifteen Thousand Dollars and 00/100 (\$15,000.00) or less in amount (or such other amount as may be specified by the City of Doral Code, in its Procurement Ordinance, as same may be amended from time to time). Even for Contract Amendments and/or Change Orders for less than Fifteen Thousand Dollars and 00/100 (\$15,000.00) the City Manager shall retain the right to seek and obtain concurrence of the City Council for approval of any such Contract Amendments and/or Change Orders.
- 1.11 **Construction Change Directive:** The term "Construction Change Directive" shall mean a written directive to effect changes to the Work, prepared by the A/E and executed by the City.
- 1.12 **Construction Estimate:** The term "Construction Estimate" shall mean a cost estimate for the completion of the entire Scope of Work for the Project, which estimate shall include all components of the Cost of the Work, as well as the Construction Fee for the Project. This estimate is initially established as **\$8,000,000-\$10,000,000** which is the sum budgeted by the City for the construction cost for the Project. The parties acknowledge that a construction bond for the construction estimate of this project in the amount of \$10,000,000 must be provided to the City by the CM.
- 1.13 **Construction Manager (CM):** The firm of **Pirtle Construction Company** whose principal address is, **5700 Griffin Road, Suite 200, Davie, FL 33314** as selected by the City pursuant to **Resolution No. 16-134**, to provide services of Construction Management At-Risk for this Project. Acceptance of the GMP by the City shall result in the CM functioning from that point forward as a General Contractor under the terms and conditions of the Contract Documents, as same may be amended, which will go into effect at the time of GMP acceptance.
- 1.13.1 The Construction Manager shall be liable for its services, responsibilities and liabilities under this Agreement, as well as the services, responsibilities and liabilities of any subconsultants, and any other person or entity acting under the direction or control of the Construction Manager. When the term "Construction

Manager” or “CM” is used in this Agreement, it shall be deemed to include any subconsultants and any other person or entity acting under the direction or control of CM. Any subconsultants retained by Construction Manager pursuant to this Agreement and the Project, must receive the prior written approval of the City.

- 1.15 **Construction Manager’s Fee:** The term “Construction Manager’s Fee” or “Fee” shall mean, for purposes of this Agreement only, the cost of time and materials expended with a not to exceed amount of **\$54,900.00**, representing the Fee for CM’s Preconstruction Services, as contemplated herein. Notwithstanding anything to the contrary, if the GMP is not accepted by the City and the Agreement is terminated, the Construction Manager shall be entitled to receive only that portion of the Fee herein, representing all work performed to date relating to the Project.
- 1.16 **Construction Phase Services:** The term “Construction Phase Services” shall mean and anticipates, in a subsequent amendment to this Agreement, and further, in the event the City Council approves the GMP, the services to be performed by or through the Construction Manager during the Construction Phase of the Project, including, without limitation, the Work for the Project, and such other services as called for by this Agreement and any amendments hereto, or reasonably inferred there from.
- 1.17 **Construction Schedule:** The term “Construction Schedule” shall mean a critical path schedule or other construction schedule, as defined and required by the Contract Documents.
- 1.18 **Construction Team:** The term “Construction Team” shall mean the construction team consisting of representatives of the Construction Manager, the City, and the A/E.
- 1.19 **Contingency:** The term “Contingency” shall mean a line item contingency amount contained in the Schedule of Values for the Project, which contingency amount, if accepted by the City, shall be included within the GMP for the Project, and shall accordingly be referenced in the [GMP] Amendment to this Agreement. Pursuant to said Amendment, the Contingency shall be used as a source of funds for the costs reasonably and necessarily incurred and paid by the Construction Manager, which costs shall be at rates not higher than the standard paid in the locality of the Work, as follows: (i) in connection with the proper performance of Work required hereunder which Work was unforeseeable by the Construction Manager, the A/E and the City at the time of execution of the GMP Amendment pertaining thereto, notwithstanding the Construction Manager’s exercise of due diligence in connection therewith; and (ii) to the extent that any portion of the Contingency remains unallocated on the date of Final Completion and after the issuance of final payment for the Project, which remaining portion of the Contingency shall accrue to the benefit of the City. The Contingency amount, if any, shall be set forth in the GMP Amendment for the Project, on its face and within

the Schedule of Values attached thereto. The Contingency amount shall be used at the discretion of the City and must be approved prior to the CM using it.

- 1.20 **Contract:** The term "Contract" means the contract formed by all of the Contract Documents, including this Agreement and any amendments hereto.
- 1.21 **Contract Documents:** The "Contract Documents" include **Resolution No. 16-134**; this Agreement, and all attachments, exhibits, and amendments thereto; the A/E Agreement, attached as Exhibit VII hereto; and such other documentation as may be listed as an attachment and/or an exhibit to this Agreement. Upon execution of the GMP Amendment, the Contract Documents shall be expanded to include, in addition to those items listed above, those documents identified by the GMP Amendment and the attachments and exhibits thereto.
- 1.22 **Contract Time:** The time period defined within this Agreement for the Construction Manager to submit the GMP.
- 1.23 **Drawings:** The "Drawings" shall refer to the graphic and pictorial provisions of the Work identified as the Drawings in the GMP Amendment; Change Order, or Construction Change Directive issued and executed in accordance with the Agreement, including without limitation, all notes schedule and legends on such Drawings.
- 1.24 **General:** Except as defined herein, or as otherwise defined in the Contract Documents, words which have well-known technical meanings or otherwise have accepted construction industry meanings are used in the Contract Documents in accordance with such well-known or accepted meanings.
- 1.25 **General Contractor:** The term "General Contractor" shall refer to the CM after acceptance by the City of the GMP Amendment. The CM shall be duly licensed as a General Contractor pursuant to Chapter 489, Florida Statutes.
- 1.26 **Guaranteed Maximum Price:** The term "Guaranteed Maximum Price" or "GMP" shall mean the sum certain set forth in the GMP Amendment as the Project price that the Construction Manager guarantees not to exceed for the Project for all services within the Agreement, as same shall be amended upon acceptance of the GMP by the City not to include the Preconstruction Services Fee.
- 1.27 **GMP Amendment:** The term "GMP Amendment" shall mean the GMP Proposal for the Project, if any, accepted by the City, in its sole discretion, in substantially the same form as attached as Exhibit "A", hereto, which Amendment shall automatically become a part hereof upon the City's and Construction Manager's execution of the same and shall establish, among other things, the GMP, the names of the Construction Manager's on site-management and supervisory personnel for the Project; and the Contract Time for the Project.

- 1.28 **GMP Proposal:** The term “GMP Proposal” shall mean a proposal for completing the Project, which proposal shall include the proposed Guaranteed Maximum Price for the construction of the Project, as provided by the Construction Manager and accepted by the City based upon the Drawings and Specifications; the Contract Documents; and the Memorandum of Changes. The City has no obligation to accept the GMP Proposal regardless of the amount or its relationship to estimates provided.
- 1.29 **Laws:** The term “Laws” shall include all Federal, State, County and local laws, statutes, regulations, ordinances, rules and building codes applicable to the Project, including, without limitation, orders of any public authority having jurisdiction over the Project, building, labor, safety, licensing or environmental laws and local building codes, building standards and trade practices affecting the Project, as same may be amended from time to time.
- 1.30 **Memorandum of Changes:** The term “Memorandum of Changes” shall mean a written summary of the Construction Manager’s recommended modifications to the Drawings and Specifications relating to the Project based on an evaluation of the Project requirements; on and off-site development; survey requirements; and Project budget requirements; and a review of the design documents; and the Drawings and Specifications; and the Contract Documents.
- 1.31 **Phase I (90%) Design Development Documents:** The term “Phase I and II- Design Development Documents” shall mean the Drawings and Specifications and other documents which fix and describe the size and character of the entire Project as to architectural, structural, mechanical and electrical systems, materials and such other elements, as may be appropriate, and as further defined by the A/E Agreement. CM’s knowledge of and coordination with said Agreement is incorporated herein.
- 1.32 **Phase II (100%): Construction Documents:** The term “Phase II- Construction Documents” shall mean the Drawings and Specifications setting forth in detail the requirements of the construction of the Project, and as further defined by the A/E Agreement. CM’s knowledge of and coordination with said Agreement is specifically required of the Construction Manager.
- 1.34 **Preconstruction Services Fee:** The term “Preconstruction Services Fee” shall mean the cost of time and materials for the services contemplated in this Agreement, not to exceed the amount of **\$54,900.00**, for CM’s services performed during the Design Phase related to the Project, which fee includes all direct and indirect costs incurred by the Construction Manager in the proper performance of the Pre-Construction Phase Services contemplated under this Agreement.
- 1.35 **Preconstruction Phase Services:** The term “Preconstruction Phase Services” shall mean the services which the Construction Manager shall perform in reviewing

the design and for the Bid and Award Phases of the Agreement, and culminate with exercise by the City of one of the City's options regarding the GMP Proposal.

1.36 **Project:** The term "Project", in its entirety shall mean that certain portion of the City construction project referenced in **Resolution No. 16-134**, involving the construction of Doral Glades Park. The final phasing of the Project will be determined by the CM, CONSULTANT and City jointly. The phasing plan agreed upon by the CONSULTANT, CM and the City may require separate GMP Amendments. The total GMP Amendments will comprise the entire Project.

1.37 **Schedule of Values:** The term "Schedule of Values" shall mean the schedule of values, setting forth the detailed cost breakdown, including labor, materials and taxes, of the GMP set forth in the applicable GMP Proposal, the sum of which shall not exceed the GMP.

1.38 **Scope of the Work:** The term "Scope of the Work" shall mean all services, labor, materials equipment, operations and construction management services that are indicated in, or reasonably inferable from the Contract Documents.

1.39 **Specifications:** The "Specifications" consist of any and all written requirements for materials, equipment, construction systems, standards and workmanship for the Work which are identified as the Specifications in the GMP Amendment, Contract Amendment(s), or Construction Change Directive(s) issued and executed in accordance with the Agreement.

1.40 **Subconsultants:**

1.40.1 A "Subconsultant" is a person or entity which has a direct contract with the Construction Manager to perform or supply a portion of the Work and the term includes such Subconsultant's authorized representatives. Construction Manager shall obtain prior written approval of the City prior to changing or modifying the subconsultants and other professional associates. Any such services performed by any Subconsultants shall be passed through to City without additional charge by the CM. All such work shall be itemized on invoices from such Subconsultants, showing work performed and charges incurred.

1.40.2 The Construction Manager represents that it has made and will make reasonable investigation of all Subconsultants to be utilized in the performance of work under this Agreement to determine that they possess the skill, knowledge and experience necessary to enable them to perform the services required. Nothing in this Agreement shall relieve the Construction Manager of its prime and sole responsibility for the performance of the Work under this Agreement.

1.40.3 All rates, multipliers and any other fees charged by any Subconsultants shall be not more than those rates, multipliers and other fees in any contracts that any such Subconsultants may have either with the City directly

or as a Subconsultant under some other City agreement or more than what is typically charged in the industry.

1.40.4. Construction Manager shall bind each and every approved Subconsultant to the terms stated in this Section and shall require the proper licensing of such Subconsultants.

1.40.5 If any of the services outlined in this Agreement are furnished by Construction Manager by obtaining the services of Subconsultants, Construction Manager shall provide City with proposals and contracts between the Subconsultants and Construction Manager outlining the services to be performed and the charges for same, together with any other documentation required by City.

- 1.41 **Substantial Completion:** The term "Substantial Completion" is as defined in the Contract Documents, as same may be amended.
- 1.42 **Substantial Completion Date:** The "Substantial Completion Date" shall mean the date which the A/E certifies to the City by means of a certificate of Substantial Completion as the date when the Construction Manager has achieved completion of the Project or any phase thereof in accordance with the General Conditions of the Contract Documents and applicable laws and the City of Doral Building Department issues a Certificate of Occupancy (CO). Notwithstanding the preceding, if a situation arises beyond the control of the CM, and the issuance of a Certificate of Temporary Occupancy (TCO) is granted by the Building Department, then the City may deem at its sole and reasonable discretion that the Project or any phase thereof has been Substantially Completed.
- 1.43 **Substitutions:** a City-approved deviation from the brand or type of materials products or equipment is specified in the Construction Documents, as accomplished through section 4.3.9 herein.
- 1.44 **Taxes:** The term "Taxes" shall mean all taxes related to the performance of the Work or any portion thereof, including but not limited to, all sales, consumer, use, occupational, excise, social security, unemployment compensation and similar taxes.
- 1.45 **Work:** The term "Work" means all supervision, labor materials and equipment required by the Contract Documents to be provided by or through the Construction Manager for the entire Project and all other services necessary to fulfill the Construction Manager's obligations hereunder to perform the Scope of the Work, including, as the context may require, any portion of the Work with respect to the Project. The uncapitalized term work is used in its ordinary sense.
- 1.46 **Force Majeure:** "Force Majeure" shall mean any delay occasioned by superior or irresistible force(s) occasioned by violence in nature without the interference of human agency such as hurricanes, tornados, flood and loss caused by fire and

other similar unavoidable casualties; changes in federal law, state or local laws, ordinances, codes or regulations, enacted after the date of this Agreement and having a substantial impact on the Project; other causes beyond the parties control; or by any other such causes which the City and the Construction Manager decide in writing justify the delay. Provided, however, that market conditions, labor conditions, construction industry price trends, and similar matters which normally impact on the bidding process shall not be considered a Force Majeure.

- 1.47 **Value Engineering:** Value Engineering is a project evaluation technique used during the design process which seeks to reduce costs and/or increase value by analyzing the functional requirements of a project's materials, methods, components and subsystems consistent with specified performance, reliability, maintainability, aesthetic, safety, and security criteria to ensure that it provides the best use of available project funds.

ARTICLE II

RELATIONSHIP OF CITY AND CONSTRUCTION MANAGER

2.1 The Construction Manager accepts the relationship of trust and confidence established between it and the City by this Agreement. The Construction Manager represents that it will furnish its best skill and judgment in performing the CM's services and the Work, and shall always act to further the interest of the City in the expeditious completion of the Project, at the lowest responsible cost to the City, and in strict accordance with the Contract Documents and prudent and customary construction practices.

2.2 By signing this Agreement, the Construction Manager accepts a fiduciary duty with the City and warrants and represents to the City that the Construction Manager:

- a) has all licenses and certifications required by applicable law to perform the CM's services and the Work;
- b) is experienced in all aspects of preconstruction and construction planning for projects similar to the Project;
- c) will act in the City's highest and best interest in performing the CM's services and the Work; and
- d) that no employee or affiliate of the Construction Manager, including all subconsultants, subcontractors and suppliers, at any tier, has been convicted of a public entity crime, fraud, theft, and/or property damage crime within the preceding thirty-six (36) months from the date of execution of this Agreement, pursuant to Section 287.133, Florida Statutes.

The Construction Manager acknowledges and agrees that the City is relying on these representations and covenants as a material inducement to enter into this Agreement.

ARTICLE III

THE CONSTRUCTION MANAGER SERVICES

3.1 Services Generally.

The Services of the Construction Manager shall include, but are not limited to, those described or specified herein. The Services described herein shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned. The Construction Manager's Services shall include, without limitation, all of the Preconstruction Services set forth in this Agreement and, upon approval by the City of the GMP, and as contemplated in the GMP Amendment (or Amendments), and such other amendment(s) as necessary to fix and describe the parties' respective rights and responsibilities with respect to the Work and the Project, all of the Construction Services required to complete the Work in strict accordance with the Contract Documents, and to deliver the Project to the City at or below the GMP, when established, and within the Contract time.

3.2 GMP Amendment

The parties are entering into this Agreement before Contract Documents are sufficiently complete to establish the GMP; therefore, it is anticipated that one or more GMP Amendments will be executed to establish the GMP and incorporate subsequent documents that fully describe the scope of the Work included in the GMP. Each such Contract Amendment and additional Contract Documents shall become a part of this Agreement as if fully set forth herein. The GMP for the Project must be established no later than , **June 14, 2017, (See Attached Project Schedule in Exhibit II)** after issuance of an initial Notice to Proceed by the City pursuant to this Agreement; otherwise this Agreement shall terminate pursuant to Article VI herein. The GMP final amount and corresponding construction bond amount must be provided in the GMP Amendment.

3.3 Pre-Construction Services.

The Construction Manager shall review Project requirements, existing on-site and off-site development, surveys and preliminary budget, and make recommendations to the City for revisions. The Construction Manager shall prepare a preliminary Project Schedule in accordance with the Contract Documents and in coordination with the City and the Architect/Engineer, identifying all phases, critical path activities, and critical duties of each of the Project team members. The Construction Manager shall, at each remaining design phase (i.e. 90% design development; and 100% construction document), review the plans and advise the City and the Architect/Engineer regarding the constructability of the design and of any errors, omissions, or conflicts it discovers. The Construction Manager shall prepare an outline of proposed bid packages and detailed cost estimates, and advise the City regarding trends in the construction and labor markets that may affect the price or schedule of the Project. The Construction Manager shall attend all Project related meetings. The Construction Manager's Preconstruction Services shall be provided, and the City shall compensate Construction Manager for such services, based upon the actual cost of time and materials, in an amount not to exceed **\$54,900.00** representing the Construction Manager's Fee. At the conclusion of the Preconstruction Services, the

Construction Manager shall, without assuming the duties of the Architect/Engineer, warrant to the City, that the plans, specifications and other Contract Documents are consistent, practical, feasible and constructible, and that the Project is constructible within the contract time.

ARTICLE IV DUTIES AND RESPONSIBILITIES

4.1 The CM shall perform the following responsibilities and duties:

4.1.1 All CM procedures, recommendations, documentation, record retention, etc. must conform to the Project requirements including applicable sections of the City's procedures, Architect and Engineer's procedural manual; master specifications; general conditions of the Construction Agreement; (and other) applicable codes, regulations and procedures that may be required at the State, County, City or any agency, utility or similar governmental entity.

4.1.2 Develop, for City approval and for full compliance by CM, of a Project specific procedures manual detailing the entire Project process, including at minimum the following:

- a) The RFP and all corresponding forms and attachments;
- b) This Agreement;
- c) The GMP Amendment and all corresponding forms and attachment;
- d) All Contract Documents, which include, Project Specifications, Construction Manager's Proposal, Qualifications, and Assumptions, Construction Manager's Salary and Wake Schedule, Project Schedule; Onsite Management and Supervisory Schedule; and Schedule of Values;
- e) Construction coordination, scheduling, communication and documentation procedures among the CM, the Architect/Engineer, subcontractor(s), subconsultant(s), and other departments or organizations who require coordination with and/or input into the Work;
- f) Project reports (bi-weekly and final report);
- g) Requests for Information;
- h) Contract Amendment(s) process;
- i) Shop Drawing submittal/product data and samples; and
- j) Project closeout/commissioning.

Said procedures manual to be presented no later than with first application for payment.

4.2 **Coordination and Scheduling**

4.2.1 Coordination with A/E - In providing the Construction Manager's services described in this Agreement, the CM shall maintain a working relationship with the Architect/Engineer. However, nothing in this Agreement shall be construed to mean that the CM assumes any of the responsibilities or duties of the A/E. The

CM shall be solely responsible for construction means, methods, techniques, sequence and procedures used in the construction of the Project and for the safety of its personnel, property, and its operations for performing in accordance with the CM's Agreement with the City. The A/E is responsible for the requirements of the Project, as indicated in the Agreement between the City and the A/E. The CM's services shall be rendered compatibly and in cooperation with the A/E's services to the City. It is not intended that the services of the A/E and the CM be competitive or duplicative, but rather be complimentary.

4.2.2 Scheduling - The CM shall meet immediately upon execution of this Agreement with the Architect/Engineer and City representatives to review the A/E Agreement (final) and the Project as referenced in Schedule D of the A/E Agreement. The CM shall ensure that the parties jointly review, modify as necessary, and agree to a single design schedule, to be called the revised most current Schedule to the A/E Agreement. This schedule shall be submitted to the City within fourteen (14) days of execution of this Agreement. Should the parties not be able to reach final agreement on a revised schedule for purposes of the Project, which include(s) a schedule for all CM services, which the CM believes to be fair, reasonable, and in the best interest of the Project. The City shall then determine what schedule is to be utilized, and the City's decision with regard to same shall be final, and binding upon the parties.

4.3 Design Phase

4.3.1 Review of Design Documents - The CM shall review the design documents and make recommendations to the City and to the A/E as to constructability, cost, sequencing, scheduling, and the time of construction, as to clarity, consistency and coordination of documentation. The recommendations resulting from such review will be provided to the City and A/E in writing and as notations on the design documents. This review and the accompanying writing notations shall be submitted with the documents for review by the City at each Phase of design review as noted in the A/E Agreement (Exhibit VII).

4.3.2 Responsibility - The CM, as a result of the above-noted review of the design documents and recommendations provided to the City, shall utilize its best efforts to assure the coordination of drawings with the written specifications. This includes but is not limited to, the CM's review of the construction documents in coordination of the drawings and specifications themselves, with the existing buildings and sites to ensure proper coordination and constructability and lack of conflict, and to minimize unforeseen conditions. The CM shall, during this phase, be responsible for the proper identification and location of all utilities, services, and other underground facilities which may impact the Project. The CM specifically agrees that no Contract Amendments shall be requested by the CM or considered by the City for reasons involving conflicts in the documents, questions of clarity with regard to documents, incompatibility, or conflicts between the documents and laws, the existing conditions, utilities, and unforeseen underground conditions.

4.3.3 Preliminary Scheduling - The CM will submit to the Architect/Engineer for comment and to the City for approval a proposed schedule for the Project within 30 days of execution of this agreement. That schedule shall include such bid and construction activities as well as reasonably outline the approach the CM intends to take for the Project. This requirement is in addition to any other scheduling requirements which may be contained in the contract documents and shall be compatible with same. The CM shall include in the above-noted schedule a proposed construction sequencing plan for the Work.

4.3.4 Estimating and Cost Control - The CM shall prepare detailed cost estimates and updates throughout the Design Phase leading up to the bidding phase of the Project. The CM shall submit same with the submittal of each Phase of design review in accordance with the most current A/E Agreement and at such other times as it may be requested by the City. The estimates by the CM shall show the estimated amount of the GMP. They shall be in such detail as the City may require, and shall not exceed the construction budget of **\$10,000,000.00**

- a) Should the CM's estimated GMP exceed the Budget, the CM shall include with said estimate written suggestions for bringing the Project within Budget. The City, at its sole option, may adjust the Budget or it may direct the CM to coordinate with the Architect/Engineer to reduce the estimated cost of the Project through Value Engineering, re-design by the Architect/Engineer, re-estimating, obtaining additional pricing, scope reduction and/or other at no cost to the City; or it may choose to continue under subparagraph (b) below.
- b) The City shall determine, after receipt and review of each estimate, whether the CM shall continue to perform the services of the Agreement without requiring adjustment of the most current CM estimated GMP. The City may, at its sole option, determine to proceed with the Project without Budget adjustment or any other change to the Project. This shall in no way obligate the City to accept the CM's GMP Proposal whether or not it is within the estimate or whether or not it is within the Budget. The City in this and all cases may reject the GMP at its sole discretion and proceed to exercise its options as identified in this Agreement.
- c) The CM and A/E shall advise the City immediately when the A/E or CM estimate exceeds the construction budget.

4.3.5 General Coordination - The CM shall coordinate with and include activities in both the schedule referred to in this Section and other schedules required in the Contract Documents the work of consultants, testing labs, and other consultants employed by the City as well as the reviews required by the City and other agencies and the Architect/Engineer.

4.3.6 Permits and Fees - The CM will be responsible for coordinating with the Architect/Engineer the submittal of all required documents for permits. CM shall be responsible for obtaining any and all permits and paying any and all related fees for the Work. The City shall not pay the CM any additional sums beyond the

Preconstruction Services Fee and the GMP for these services. Fees for building permits issued by the City of Doral will be paid by the City. Fees for other permits shall be the responsibility of the CM.

4.3.7 Design Services – N/A.

4.3.8 Memorandum of Changes -The CM shall submit to the Owner the CM's Memorandum of Changes in sufficient time and as scheduled so it may be reviewed by the A/E and the City against the Contract Documents and any corrections, modifications, additions, or changes be incorporated prior to commencing the Bid and Award Phase. The Memorandum of Changes shall include a summary of all recommendations made by the CM in fulfilling the CM's duties with regard to the Contract Documents. The CM shall identify any recommendations not incorporated into the documents. The City shall either direct that same be incorporated or explain in writing why the recommendation is rejected.

4.3.9 Substitutions: If a certain brand of materials, products or equipment is specified in the Construction Documents, it is required for the purpose of establishing a level of quality desired or purpose designated. Should Construction Manager find it necessary or desirable to use a material, equipment, product or system other than that specified, Construction Manager shall secure from City, through A/E, written approval for the use of the alternate materials, equipment, product or system. Construction Manager shall make such request, in writing, not later than forty-five (45) days after the Award of the Contract and before ordering any materials requiring approval. The City is not obligated to consider Requests for Substitution or resubmittal of previously rejected substitutions after forty-five (45) days of contract award. The City is not obligated to approve Requests for Substitutions and has the discretion to require Construction Manager to provide the materials as specified in the Construction Documents. In no case shall Construction Manager be entitled to additional time and/or money arising out of City's failure to approve Requests for Substitutions.

Requests shall be submitted as follows:

- 1: Submit five (5) copies of the Request to A/E.
- 2: Describe in detail (complete with test reports, catalogs, brochures and black or blue line prints of drawings) the material, equipment, product or system and changes or adjustments to other Work affected. Submit samples when requested. Construction Manager is responsible for denoting all instances wherein the proposed substitution differs from the item specified.
- 3: Include "cost breakdown" of item specified and of proposed substitute for which request is made. Include costs of adjustments to other work affected. Include any variation in operating, maintenance or

- replacement costs, and length of time product has been available on the domestic market.
- 4: State amount deducted or added to Contract amount or state "no change" in Contract amount.
 - 5: State change in Contract Time for completion or state "no change" in Contract Time.

The City's decision on approval or rejection of a Request for Substitution will be final. Approval or rejection of a request to substitute will be based in part on A/E's opinion as to adaptability, durability, quality, aesthetics, contract amount change, life cycle functions or other considerations the City determines appropriate as compared to the specified or noted item(s). Should the City, during the course of the Work, find it necessary or desirable to use a material, equipment, product or system other than specified, the City shall notify Construction Manager, in writing. Should Construction Manager accept the proposal without a change in price or time, it shall be considered an approved substitute. If A/E requests a sample of a specified material, product, element of work or approved substitute, Construction Manager shall provide same. If the sample is approved, all subsequent materials used in the Work shall be equal in every respect to the sample. If the sample is not approved, Construction Manager shall provide an acceptable sample.

4.4 **Bid and Award Phase**

4.4.1 **Prequalification** - The CM shall prepare a subcontractor's prequalification plan in compliance with the requirements currently determined by the City. The CM shall submit to the City the CM's list of pre-approved Subcontractors for each element of the Work to be subcontracted by the CM. This list shall be developed by the execution by the CM of the subcontractor's prequalification plan noted above. The City reserves the right to reject any subcontractor proposed for any bid to be considered by the CM. Any claims, objections or disputes arising out of the prequalification plan or list are the responsibility of the CM. The CM shall hold harmless, indemnify, and defend the City, its employees, agents, and representatives in any matter arising out of the prequalification plan and/or the subcontractor's list, except where the sole cause of the matter is a City directed decision.

4.4.2 **Scope of Work** - The CM shall receive subcontract proposals which, when combined with the work the CM intends to do with its own forces, shall represent the entirety of the Scope of Work required of this Agreement.

4.4.3 **Pre-Bid Conferences** - The CM shall schedule and conduct pre-bid conferences for subcontractors and the City to ensure the availability of such subcontractors, material suppliers, etc. for this pre-bid conference. The CM shall be solely responsible for the content of the pre-bid conference.

4.4.4 **Subcontract Bidding** - The CM shall schedule, in coordination with the Architect/Engineer and the City, the acceptance, review and award of the bids to

qualified responsive and responsible Subcontractors. Said bids from subcontractors shall be in writing and shall be opened and reviewed with the Architect/Engineer and the City prior to award by the CM.

4.5 **The Guaranteed Maximum Price**

4.5.1 **Calculation/Negotiation of the Guaranteed Maximum Price-** After taking, reviewing and identifying the lowest acceptable bids from responsive and responsible subcontractors, the CM shall propose to the City, a Guaranteed Maximum Price, which shall be the sum of the proposed subcontracts and the CM's General Conditions (including any fee, profit, overhead and all like amounts) and the agreed upon Contingency. The Guaranteed Maximum Price shall be the full and complete amount for which the CM agrees to go forward from the receipt of subcontract bids to the full completion of the Project.

4.5.2 **Acceptance of GMP** - Upon acceptance and execution of the GMP Proposal, by the City, the CM shall enter into subcontract agreements with the subcontractors selected for the amounts included in the GMP Proposal for that subcontract work, and shall function as a General Contractor and comply with the Contract Documents accordingly with regard to the Project as well as a Construction Manager with regard to other services required by the Contract Documents.

4.6 **Time of Performance**

4.6.1 **Conformance with Approved Schedule-** The CM shall perform all the duties required by this Agreement in such a way and time as to conform to the most current Schedule "D" of the A/E Agreement.

4.6.2 **Review and Acceptance of Schedule-** In executing the Agreement, the CM acknowledges specifically that the CM has reviewed the most current Schedule "D" of the A/E Agreement, has given any necessary input to the City regarding any need to modify that schedule to accommodate the CM at Risk process, and shall not be entitled to additional time or money in order to conform the CM services to that schedule.

4.6.3 **Preparation and Delivery of the CM at Risk Schedule-** Within fourteen (14) days of the effective date of this Agreement the CM shall present to the City a schedule for the CM's duties, deliverables, and requirements showing the start and completion of design phase activities to be performed by the CM. This schedule shall be in conformance with the most current Schedule "D" of the A/E Agreement.

4.7 **PAYMENT BREAKDOWN**

4.7.1 **Application for Payment Submittal-** The CM shall submit monthly an application for payment for the proportional amount of the Preconstruction

Services Fee which shall be determined by providing all backup documentation for time and materials expended while providing the preconstruction services. Time will be billed at the rates submitted in the RFQ package and incorporated into this agreement.

4.7.2 Time Extensions- In the event the performance of the CM is delayed by reasons outside the CM's control, the CM shall request in writing an extension of time for the contract requirements of this Agreement. Said request for extension shall include a proposed revised schedule, and documentation as to the cause of the delay. The CM's sole remedy for delays which impact the time of performance of this Agreement shall be a time extension. No damages for delay shall accrue to the benefit of the CM as a result of any delays to the performance of this Agreement. Specifically, the CM agrees that the failure of the Architect/Engineer to maintain the design schedule shall be non-compensable to the CM and CM's sole remedy shall be an extension of time.

4.7.3 Extra Services- Should the CM be requested or required by the City to provide services which the CM believes are outside and/or in addition to the scope of this Agreement, the CM shall within five (5) days of being requested to perform such services, notify the City in writing of the CM's opinion that they are extra services to this Agreement, the reason the CM believes they are outside the scope of this Agreement, and the proposed costs, and time impact, if any, for the performance of same. The City may direct the CM to proceed with such services pending a final determination as to the compensation. In such case, the CM's right to consideration shall not be waived by proceeding as directed.

4.8 City's Right to Require Documentation and Audit

The City may, as deemed necessary, require from the CM support and/or documentation for any submission. Upon execution of the Agreement, the CM agrees that the City shall have unrestricted access during normal working hours to all CM's records relating to this Project including hard copy as well as electronic records for a period of three years after final completion.

ARTICLE V GMP PROPOSAL AND ACCEPTANCE/REJECTION

5.1 Subcontract Bids

The CM shall open subcontract bids from the pre-approved list of potential subcontractors at a time and place scheduled with the City's Project Coordinator and such other City Representatives in attendance. The CM shall provide a summation and analysis of the apparent low subcontract bids including the identity of any apparent low subcontract bidders which the CM does not wish to employ. Such identification and proposal of non-utilization by the CM shall require specific written reason for same.

5.2 CM Fee, Profit, General Conditions, Contingency

The CM shall propose the amount to be included in the GMP for the Construction Manager's General Conditions costs and the Contingency as defined herein.

5.3 Total Fee

The sum of the totals of the two above paragraphs shall comprise the proposed GMP for the Project and shall form the basis of negotiations between the CM and the City.

5.4 Process Concerning GMP

The City shall have the option of accepting or rejecting the GMP as presented by the CM. Should the GMP be accepted, the GMP Amendment reflecting that acceptance will be executed, and the Contract Price increased by the GMP amount. Should the GMP not be accepted, the City may at its option:

- a) Reject the GMP and direct the Architect/Engineer and CM to investigate, redesign, develop for City approval value engineering possibilities, and other cost savings and to re-submit a new, lesser, proposed GMP. This may at the City's option, include reduction in scope. All to be done at no additional cost to be City.
- b) Reject the GMP, take possession of the plans and specifications, and bid the work to a General Contractor or otherwise complete with other forces or take such action, if any, that the City may determine is in its best interest. In this event, the CM shall not perform nor be compensated for, any services on the Project beyond the agreed Construction Preconstruction Services Fee herein. In the event any option under this subparagraph is chosen by the City, the CM is obligated to immediately turnover to the City all plans, specifications and other project related documentation.

If and when accepted by the City, the GMP shall be formalized by the execution of the GMP Amendment (Exhibit I).

The City shall determine, after each negotiation session, unless agreement is reached, if further negotiations are warranted. If not, the negotiations shall be declared not to be successful and the City shall take possession and ownership of all documents produced for the Design and Bid Phase, pay the CM any remaining undisputed Construction Manager's Fee, and proceed under the requirements noted under this paragraph, and the City and CM shall be mutually released from any further obligation each to the other.

The City shall have no obligation to accept the GMP Proposal of the CM regardless of that Proposals' relationship to the Budget or the most current estimate or for any other reason.

Should the Construction Manager realize any savings from the negotiated Schedule of Values, the City shall receive 75% of said savings with no line item integrity. The City reserves the right to audit all contract related documents at any time during the Project and at the end of the Project.

ARTICLE VI **TERMINATION**

6.1 Termination for Cause

The City may terminate this Agreement for cause in the event that the CM (1) violates any provisions of this Agreement or performs same in bad faith; or (2) unreasonably delays the performance of the Services, and CM fails to cure same within thirty (30) days following written notice to CM. In that event, such termination shall become effective upon seven (7) days written notice to CM.

6.1.1 In the event this Agreement is terminated by the City for cause, the City, at its sole option and discretion, may take over the Services and complete them by contracting with another CM or otherwise. In such event, the CM shall be liable to the City for any additional cost incurred by the City due to such termination. "Additional Cost" is defined as the difference between the actual cost of completion of such incomplete services, and the cost of completion of such Services which would have resulted from payments to the CM hereunder had the Agreement not been terminated

6.1.2 Payment only for Services satisfactorily performed by the CM and accepted by the City prior to receipt of a Notice of Termination for Cause, shall be made in accordance with this Article 6 herein and the City shall have no further liability for compensation, expenses or fees to the CM.

6.1.3 Upon receipt of a written Notice of Termination, the CM shall promptly assemble and submit to the City, as provided herein or as required in the written notice, all documents, including drawings, calculations, specifications, correspondence, and all other relevant materials affected by such termination.

6.1.4 In the event of a termination for cause, no payments to the CM shall be made (1) for Services not satisfactorily performed, as same shall be determined at the City's option and discretion; and (2) for assembly of submittal of documents, as provided above.

6.2 Termination for Convenience

The City, in addition to the rights and options to Terminate for Cause, as set forth above, or any other provisions set forth in this Agreement, retains the right to terminate this Agreement at its sole option, at any time, for convenience, without cause and without

penalty, when in its sole discretion it deems such termination is in the best interest of the City, upon notice to CM, in writing, fourteen (14) days prior to termination.

6.2.1 In the event the City terminates the CM's services for its convenience, as provided herein, the CM shall be compensated for all Services rendered up to the time of receipt of said written termination notice, and for the assembly and submittal to the City of documents for the Services performed, in accordance with Article 6 herein, and the City shall have no further liability for compensation, expenses or fees to the CM, except as set forth in this Article 6.

6.3 **Termination by CM**

The CM may only terminate this Agreement for cause in the event that the City willfully violates any provisions of this Agreement or unreasonably delays payment for the Services, and has failed to cure same within thirty (30) days following written notice from the CM. In that event, CM may terminate this Agreement upon written notice to the City, which termination shall become effective thirty (30) days from the date of said Notice. In that event, payment for Services satisfactorily performed prior to the date of termination shall be made in accordance with this Article 6.

6.3.1 The CM shall have no right to terminate this Agreement for convenience of the CM.

6.4 **Implementation of Termination**

In the event of termination, either for cause or for convenience, the CM, upon receipt of the notice of termination, shall (1) stop the performance of Services under this Agreement on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts except for any that may be authorized, in writing, by the City, prior to their occurrence; (3) terminate all orders and subcontracts to the extent that they relate to the performance of the Services terminated by the Notice of Termination; (4) promptly assemble and submit, as provided herein, all documents for the services performed, including drawings, calculations, specifications, correspondence, and all other relevant materials affected by the termination; and (5) complete performance of any Services as shall not have been terminated by the Notice of Termination and as specifically set forth therein.

6.5 **Non-solicitation**

The CM warrants that it has not employed or retained any company or person, other than an employee working solely for the CM, to solicit or secure this Agreement; and that it has not paid, nor agreed to pay any company or other person any fee, Council, gift or other consideration contingent upon the execution of this Agreement. For breach or violation of this warranty, the City has the right to terminate this Agreement without liability to the CM for any reason whatsoever.

ARTICLE VII
INDEMNIFICATION

7.1 CM shall, at all times hereafter, indemnify, hold harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of any kind or nature arising out of the negligent act, error, or omission of CM, its agents, servants or employees in the performance of services under this Agreement.

7.2 In the event that CM abandons this Agreement or causes it to be terminated by City, CM shall indemnify, hold harmless and defend the City, its agents, servants and employees against any loss pertaining to such termination.

7.3 CM hereby affirms that it shall be responsible for the acts, errors and omissions of its Subcontractors and it shall indemnify, defend and save harmless the City, its agents, servants and employees from any and all claims by third parties which may arise on account of services rendered by CM's Subcontractors.

7.4 The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

ARTICLE VIII
MISCELLANEOUS

8.1 Ownership of Documents

All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared or provided by CM in connection with this Agreement shall become the property of the City, and shall be delivered by CM within ten (10) days after receipt of written notice. Any re-use of documents by City without written verification or adaptation by CM for the specific purpose intended will be without liability to CM.

8.2 Records

CM shall keep such records and accounts and require any and all CM and Subcontractors to keep such records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to the Project, and any expenses for which CM expects to be reimbursed. All books and records relative to the Project will be available at all reasonable times for examination and audit by City and shall be kept for a period of three (3) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for City's disallowance of any fees or expenses based upon such entries. All books and records which are considered public records shall, pursuant to Chapter 119, Florida Statutes, be kept by CM in accordance with such statutes. Specifically, the CM agrees to:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;
- b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- d) Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the public agency.

8.3 Equal Opportunity Employment

8.3.1 CM agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, disability or sexual orientation and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to sexual orientation, race, color, religion, sex, age, national origin, or disability. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising, layoff or compensation; and selection for training, including apprenticeships. CM agrees to furnish City with a copy of its Affirmative Action Policy.

8.4 Public Entity Crimes Act

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

8.5 No Contingent Fee

CM warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CM, 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 CM any fee, Council, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, 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, Council, percentage, gift, or consideration.

8.6 **Assignment**

This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered by CM, under any circumstances, without the prior written consent of City.

8.7 **Insurance**

The CM shall comply throughout the term of this Agreement with the insurance requirements stipulated herein. It is agreed by the parties that the CM shall not commence with work on the Project until satisfactory proof of the following insurance coverage has been furnished to the City. The Consultant will maintain in effect the following insurance coverage. If required coverage is not confirmed on certificate of insurance, CM is contractually bound.

8.7.1 Workers' Compensation: Coverage is to apply for all persons fulfilling this contract for statutory limits in compliance with the law of the State of Florida and any applicable federal laws. The policy must include Employer' Liability with a limit of \$1,000,000 each accident, \$1,000,000 each employee, \$1,000,000 policy limit for disease. The City will not accept certificates of exemption. Confirmation that Workers Compensation is provided for all persons fulfilling this contract, whether employed, contracted, temporary or subcontracted is required.

8.7.2 Commercial General Liability: Occurrence Form Required: Contractor shall maintain commercial general liability (CGL) insurance with limits of not less than:

- \$5,000,000 each occurrence for bodily injury and property damage
- \$5,000,000 general aggregate (must apply Per Project)
- \$5,000,000 products completed operations aggregate
- \$5,000,000 personal & advertising injury

No exclusion shall apply to: premises, independent contractors, contractual liability, or property damage resulting from explosion, collapse or underground (XCU) exposures.

8.7.3 Commercial Automobile Liability: Contractor shall maintain automobile liability insurance with a limit of not less than \$5,000,000 each occurrence for

bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto fulfilling duties under this agreement (including owned, hired, and non-owned autos). The policy shall provide contractual liability coverage.

8.7.4 Professional Liability/Errors and Omissions: Licensed design-build professional work such as that provided by architects, engineers, etc. shall maintain professional liability or malpractice or errors or omissions insurance with limits of \$2,000,000 per occurrence.

a. If claims-made the retro date shall be prior or equal to the effective date of any contract with the City. CM agrees that Professional Liability coverage will be renewed or include a "tail" or Discovery, or continuous renewal of coverage for a period of 3 years following the completion of the project.

8.7.5 Umbrella or Excess Liability insurance can be utilized to provide the required limits. Coverage shall be "following form" and shall not be more restrictive than the underlying insurance policy coverages, including all special endorsements and City as Additional Insured status.

8.7.6 Builder's Risk: Builder's Risk Insurance is to be purchased to cover subject property under construction for special perils (all risks or equivalent) of loss (including wind, theft and sinkhole), subject to a waiver of coinsurance, and covering on-site and off-site storage, transit and installation risks, if such coverages are not separately provided.

a. Flood: If property being constructed is located in a Special Flood Hazard Area (SFHA) or flood risk exists, flood insurance must be provided to be provided.

b. Deductible: the contractor is responsible for any applicable deductibles.

c. Replacement Cost coverage

d. Insured Parties: The Builder's Risk insurance is to be endorsed to cover the interest of all parties, including the City and all contractors and subcontractors.

e. In addition, provide the following coverages:

i. Waiver of Occupancy Endorsement – coverage should be continued if the City to occupies the facility under construction during such activity.

ii. Machinery / Equipment Endorsement – when the Contract calls for the installation of machinery or equipment, coverage must be provided during transit, installation, and testing.

iii. Any tools, equipment, installation materials, etc., owned by Contractor are the contractor's responsibility.

8.7.7 Contractor's Bid, Performance or Payment Bonds – per state law, bonds are required for public construction projects.

8.7.8 Special Requirements: Certificate of Insurance shall confirm in writing that all applicable provisions apply.

8.7.9 Evidence of Insurance: A copy of the Contractor/Vendor's current certificate of insurance **MUST** be provided with the response to this bid. A formal certificate shall be provided upon announcement that a Contractor has been awarded the work. The Certificate(s) shall be signed by a person authorized by that insurer to bind coverage on its behalf. All Certificates of Insurance must be on file with and approved by the City before commencement of any work activities.

a. The formal insurance certificate shall also comply with the following:

1. Additional Insured: "City of Doral and its Elected Officials, Agents, Representatives, Employees, and Volunteers" shall be named as an "Additional Insured" on all policies except Worker's Compensation and Professional Liability.

Additional Insured coverage shall be provided with the following ISO forms or similar policy provisions providing equal to or broader than coverage:

One of the following forms or its equivalent:

CG 2026 (Additional Insured–Designated Person or Organization) OR
CG 2010 (Additional Insured-Owners Lessees Contractors) OR
CG 2038 (Additional Insured-Automatic Status).

AND,

CG 2037 (Additional Insured-Completed Operations). The Contractor/Vendor agrees to continue to purchase products and completed operations coverage to satisfy this agreement for a minimum of three years beyond the City's acceptance of construction projects.

2. Notification: The policy shall provide a 10-day notification clause in the event of cancellation, non-renewal, material modification, or any other lapse in coverage of the policy. In the event the insurance policy does not provide such notification, Contractor shall provide notification to the City. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be delivered to the City 10 days prior to said expiration date.

b. Primary & Non Contributory

This Insurance shall be considered primary to any other insurance. Coverage shall be provided with the following ISO form or similar policy provision providing equal to or broader than coverage: CG 2001 (Primary and Noncontributory – Other Insurance Condition).

c. Waiver of Subrogation

All of Contractor's insurance policies, except Professional Liability, will waive rights of recovery against the City. Coverage shall be provided with the following CGL ISO form or similar policy provision providing equal to or broader than coverage: CG 2404 (Waiver of Transfer of Rights of Recovery Against Others to Us).

d. Subcontractors' Compliance:

- 1) Subcontractors are required to meet standard subcontractor requirements per Exhibit D.
- 2) CM shall confirm that Products/Completed operations coverage will apply to the Additional Insured status for a minimum of 3 years following completion of the Project.

e. Financial Stability: The policies of insurance shall be written on forms acceptable to the City and placed with insurance carriers authorized by the Insurance Department in the State of Florida. All insurance carriers must meet a minimum financial AM Best company rating of no less than:

"A- Excellent: FSC VII. City reserved the right but not the obligation to reject any insurer providing coverage due to poor or deteriorating financial condition.

f. Retention/Deductible

The Contractor/Vendor's deductible/self-insured retentions shall be disclosed to the City and may be disapproved by the City. They shall be reduced or eliminated at the option of the City. The Contractor/Vendor is responsible for the amount of any deductible or self-insured retention.

The above policies shall provide the City of Doral with written notice of cancellation or material change from the insurer in accordance to policy provisions.

Companies authorized to do business in the State of Florida with the following qualifications shall issue all insurance policies required above:

The Company must be rated no less than "A-" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best Insurance Guide published by A.M. best Company, or its equivalent. All policies or certificates of insurance are subject to review and verification by Risk Management

8.7.10 The Consultant must give thirty (30) days prior written notice of cancellation or of substantial modifications in the insurance coverage, to the Project Coordinator.

8.7.11 CM shall provide to City a Certificate of Insurance or a copy of all insurance policies required by this Section. City reserves the right to require a certified copy of such policies upon request. All certificates and endorsements required herein shall state that City shall be given thirty (30) days written notice prior to expiration or cancellation of the policy. Should CM fail to obtain, maintain, or renew the policies of insurance referred to herein, in the required amounts, the City may, at its sole discretion, obtain such insurance, and any sums expended by the City in obtaining same shall be repaid by CM to City, plus ten percent (10%) of the amount of premiums paid to compensate City for its administrative costs. If CM does not repay City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) per year until paid and such failure shall be deemed an event of default hereunder.

8.8 All Prior Agreements Superseded/Amendments

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

8.9 Notices

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by registered United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

FOR CITY OF DORAL:

Edward A. Rojas
City Manager
City of Doral
8401 NW 53rd Terrace
Doral, FL 33166

WITH A COPY TO:

Daniel A. Espino, Esq.
Weiss, Serota, Helfman, Cole, & Bierman, PL
City Attorney
2525 Ponce De Leon Boulevard, 7th Floor
Coral Gables, FL 33134

FOR CONSTRUCTION MANAGER:

WITH A COPY TO:

8.10 Interpretation

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

8.11 Protection of Records

CM shall protect from harm and damage all data, drawings, specifications, designs, models, photographs, reports, surveys and other data created or provided in connection with this Agreement (collectively, City Property), while such data and materials are in CM's possession. Such duty may include, but is not limited to, making back-up copies of all data stored by electronic device on any media, taking reasonable actions to prevent damage by impending flood or storm (including, but not limited to, removing the City Property to a safe location), and establishing and enforcing such security measures as are reasonably available, considering the customary practice within CM's trade or possession.

8.12 Exhibits and Attachments

In the event of conflict between the terms contained in this Agreement and the terms contained in any of the documents attached or incorporated herein, the terms of this Agreement shall control and shall be given full effect.

8.13 Observance of Laws

Throughout the term of this Agreement, the CM shall keep fully informed of all federal, state and local laws, ordinances, codes, rules, and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which, in any manner, affect work authorized under the terms of this Agreement, and shall further take into account all known pending changes to the foregoing of which it should be reasonably aware.. The CM shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees.

8.14 Agreement Severable; No Waiver

In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

8.15 City's Own Forces

The City reserves the right to perform construction and operations related to the Project with the City's own forces, and to award contracts in connection with the Project which are not part of the CM's responsibilities under this Agreement.

8.16 Governing Law And Exclusive Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, CM AND CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

8.17 Limitation of Liability

8.17.1 The City desires to enter into this Agreement only if in so doing the City can place a limit on City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the Fee paid to CM herein, less any sums paid by the City. CM hereby expresses its willingness to enter into this Agreement with CM's

recovery from the City for any damage action for breach of contract to be limited to a maximum the Fee paid to CM herein, less any sums paid by the City.

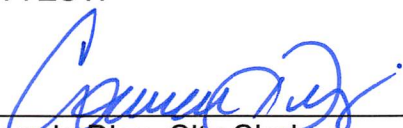
8.17.2 Accordingly, and notwithstanding any other term or condition of this Agreement, CM hereby agrees that the City shall not be liable to CM for damages in an amount in excess the Fee paid to the CM herein, less any sums paid by the City, for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this subparagraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Section 768.28, Florida Statutes.

8.18 Counterparts

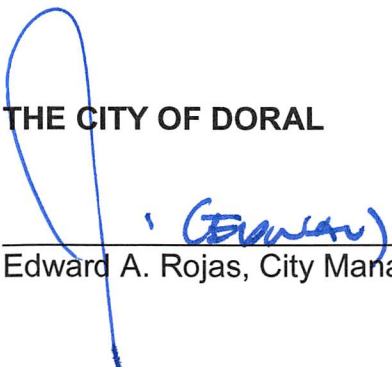
This Parties may execute this Agreement in one or more individual counterparts, which, when compiled, constitute one fully executed agreement.

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

ATTEST:



Connie Diaz, City Clerk


THE CITY OF DORAL



Edward A. Rojas, City Manager



Weiss, Serota, Helfman, Cole, & Bierman, PL
City Attorney

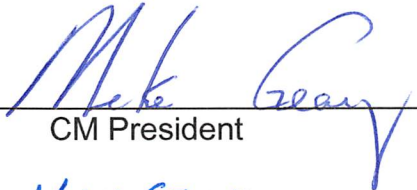
ATTEST:


By: 



Print Name

Florida Contractor License: CGC055033

By: 

CM President


Print Name

Exhibit "A"

**RFP #2016-09 Request for Proposals Construction Manager At-Risk Firm to
Provide Preconstruction & Construction Services via a Guaranteed Maximum
Price Amendment for Doral Glades Park**

Exhibit "B"
Pirtle Construction Company Bid Proposal

Exhibit "C"
Resolution No. 16-134

Exhibit "D" Standard Subcontractor Insurance Requirements

James B. Pirtle Construction Company Inc.

Coverage	Limits
General Liability (required verbiage) – Occurrence Form	
Each Occurrence	\$1,000,000
Fire Damage (any one fire)	\$50,000
Medical Exp (any one Person)	\$5,000
Personal & ADV Injury	\$1,000,000
General Aggregate ("Per Project" Must be marked)	\$2,000,000
Products – Comp/Op Aggregate	\$2,000,000
Automobile Insurance (required verbiage)**	
Combined Single Limit – Symbol 1 "Any Auto"	\$1,000,000
Combined Single Limit – Symbol 8 & 9 "Employers Non-Owned And Hired Auto"	
Symbol 1 "Any Auto" must be indicated if Sub-Contractor Owns Automobiles or Trucks	
Excess Liability	
Each Occurrence	\$3,000,000
Aggregate	\$3,000,000
Workers' Compensation (required verbiage)	
WC Statutory Limits ("Waiver of Subrogation" verbiage)	X
EL Each Accident	\$1,000,000
EL Disease – Each Employee	\$1,000,000
EL Disease – Policy Limit	\$1,000,000
REQUIRED VERBIAGE	

GENERAL LIABILITY/AUTO LIABILITY

Certificate Holder is added as an additional insured on a primary, non-contributory basis, waiver of subrogation as respects General Liability and additional insured for Automobile Liability.

WORKERS' COMPENSATION

Workers' Compensation policy includes a Waiver of Subrogation in favor of the Certificate holder.

ENDORSEMENTS MUST INCLUDE:

Commercial General Liability Insurance, including ongoing operations, Products and Completed Operations, blanket waiver of subrogation, and blanket contractual liability insurance.

CERTIFICATE HOLDER & ADDITIONAL INSURED – MUST READ

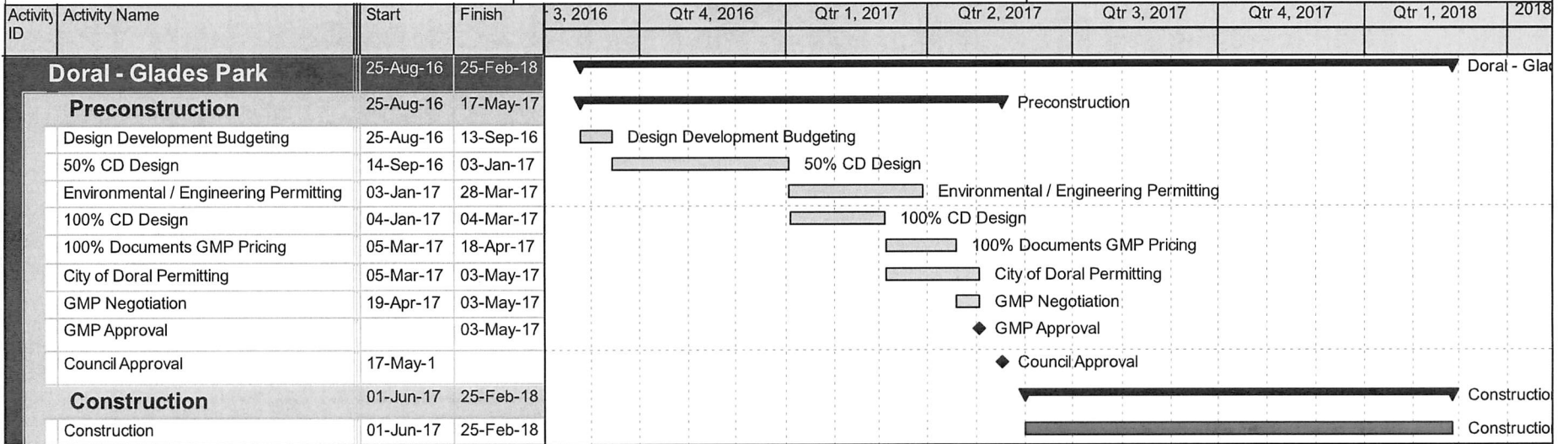
James B. Pirtle Construction Company Inc.
5700 Griffin Road, Suite 200
Davie, FL 33314

What verbiage is required on the certificate you submit to James B. Pirtle Construction Company Inc.??? See Below!					
If you are a	General Liability	Primary Non-Contrib, Verbiage	Auto	Excess or Umbrella	Workers' Comp
<u>Subcontractor or Vendor</u> who will have employees on the project site.	YES	YES	YES	YES	YES
<u>Supplier who will deliver materials</u> to the project site.	YES	YES	YES	YES	YES
<u>Supplier who will ship materials to the project site by freight or 3rd party delivery company.</u>	YES	YES	No	YES	No

Edition Date: 11/2012

All Insurance Companies Must Be Rated by "AM BEST" as A- VIII or Better

Please call our office with ANY questions.
Gladys C. Lopez / InSource, Inc.
Tel. 305-670-5361
glopez@insource-inc.com



Actual Work
 Critical Remaining Work
 ▼ Summary
 Remaining Work
 ◆ Milestone

RESOLUTION No. 16-134

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AWARDED REQUEST FOR PROPOSALS #2016-09 "CONSTRUCTION MANAGER AT-RISK FIRM TO PROVIDE PRECONSTRUCTION & CONSTRUCTION SERVICES VIA A GUARANTEED MAXIMUM PRICE (GMP) AMENDMENT FOR DORAL GLADES PARK" TO PIRTLE CONSTRUCTION COMPANY AS THE TOP RANKED FIRM; AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH PIRTLE CONSTRUCTION COMPANY FOR AN AMOUNT NOT TO EXCEED \$54,900.00 FOR THE PRECONSTRUCTION SERVICES OF DORAL GLADES PARK AND TO DELIVER A GUARANTEED MAXIMUM PRICE (GMP) FOR THE CONSTRUCTION OF THE FACILITY UPON COMPLETION OF THE PRECONSTRUCTION SERVICES PHASE; AUTHORIZING THE CITY MANAGER TO NEGOTIATE WITH THE NEXT HIGHEST RANKED FIRM SUCCESSIVELY IF AN AGREEMENT CANNOT BE NEGOTIATED WITH THE TOP RANKED FIRM; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, On April 15th, 2016, the City of Doral (the "City") issued RFP# 2016-09 (the "RFP"), "Construction Manager At-Risk Firm to Provide Preconstruction & Construction Services via a Guaranteed Maximum Price ("GMP") Amendment for the Doral Glades Park") for the provision of Construction Management Services for the construction of the new Doral Glades Park in the City of Doral; and

WHEREAS, Seventeen (17) Firms attended the mandatory pre-bid meeting which was held on April 26th, 2016. Five (5) proposal submittals were received on May 12th, 2016 with all five (5) firms meeting the required criteria; and

WHEREAS, an evaluation meeting was held on May 31st, 2016 where proposals received were scored and ranked. The committee determined that based on a Five Hundred (500) Total Point System the firms ranked as follows:

1. Pirtle Construction Company	438.10 pts
2. Biltmore Construction	428.50 pts
3. Kaufman Lynn	424.00 pts
4. Link Construction	379.65 pts
5. Recreational Design & Construction	371.00 pts

WHEREAS, Staff has recommended the City Council award the RFP to the top ranked firm and authorize the City Manager to negotiate and enter into an agreement with Pirtle Construction Company in an amount not to exceed \$54,900.00 for preconstruction services and to deliver a Guaranteed Maximum Price (GMP) for the construction of the facility upon completion of the preconstruction services phase, and to allow the City Manager to negotiate with the next highest ranked firm successively if an agreement cannot be negotiated with the top ranked firm.

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

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

Section 2. Approval of Services. The award of RFP# 2016-09 to Pirtle Construction Company for the provision of providing preconstruction services and to deliver a Guaranteed Maximum Price (GMP) for the construction of Doral Glades Park upon completion of the preconstruction services phase is hereby approved. This award does not in and of itself confer and rights or benefits on Pirtle Construction Company or any of the other ranked companies.

Section 3. Authorization to Procure Services. The City Manager is hereby authorized to negotiate and enter into an agreement with Pirtle Construction Company and authorized to negotiate with the next highest ranked firm successively if an agreement cannot be negotiated with Pirtle Construction Company. The agreement is subject to approval by the City Attorney as to form and legal sufficiency and on such other terms and conditions as may be appropriate to protect and further the interests of the City. This Authorization does not create or confer any rights to Pirtle Construction Company or any of the other ranked companies.

Section 4. Implementation. The City Manager and the City Attorney are hereby authorized to take such action as may be necessary to implement the provisions of this Resolution.

Section 5. Effective Date. This resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Councilmember Ruiz who moved its adoption.

The motion was seconded by Councilmember Cabrera and upon being put to a vote,
the vote was as follows:

Mayor Luigi Boria	Yes
Vice Mayor Christi Fraga	Absent/Excused
Councilman Pete Cabrera	Yes
Councilwoman Ana Maria Rodriguez	Yes
Councilwoman Sandra Ruiz	Yes

PASSED AND ADOPTED this 8 day of June 2016.



LUIGI BORIA, MAYOR

ATTEST:



CONNIE DIAZ, CMC
CITY CLERK

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



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