

RESOLUTION No. 2008-168-855

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE AND EXECUTE A CONTRACT WITH CPZ ARCHITECTS, INC., FOR SUCCESSOR ARCHITECTURE SERVICES RELATING TO THE COMPLETION OF THE MIAMI GARDENS COMMUNITY CENTER IN THE AMOUNT OF \$443,000.00; CERTIFYING THAT A PUBLIC EMERGENCY EXISTS WITH RESPECT TO THE AWARD OF THIS CONTRACT AND WAIVING THE REQUIREMENTS OF THE CONSULTANT'S COMPETITIVE NEGOTIATION ACT; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Miami Gardens acquired the contract for architectural services from Miami-Dade for the Miami Gardens Community Center on November 10, 2004, in accordance with Resolution No. 2004-116-167, and

WHEREAS, since that time, City staff has attempted to work with Judson Architecture, Inc., in order to complete the project, and

WHEREAS, in recent months, Judson Architecture, Inc., has failed to adhere to several of the major provisions of the contract with the City resulting in delays of the project, cost price increases and increased exposure to liability for the City, and

WHEREAS, in light of the fact, that the City has decided to terminate its relationship with Judson Architecture, Inc., in light of the failure of Judson Architecture, Inc., to meet its contractual obligations, the City staff is requesting that the City contract with a successor architect in order to complete the project so that the City does not lose funds that have been ear-marked for the project, and

WHEREAS, City staff has investigated and researched this matter in an effort to retain the services of a successor architect who could successful complete the project, and

WHEREAS, the efforts undertaken by City staff are outlined in the attached Staff Summary, and

WHEREAS, in light of those efforts and in view of the background checks conducted by City staff with respect to architectural consultants, it is being requested that the City Council authorize the City Manager and City Attorney to negotiate and execute a contract with CPZ Architects, Inc., for successor architectural services to complete the project, and

WHEREAS, Section 3(a)(2) of the Consultant's Competitive Negotiation Act (CCNA) exempts contracts for architecture services when a valid public emergency exists,

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

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORIZATION: The City Manager and City Attorney are hereby authorized to negotiate and execute an Agreement with CPZ Architects, Inc., for successor architect services for the completion of the Miami Gardens Community Center in the amount of \$443,000.00 which amount includes the successor architectural services of \$218,000.00 along with estimated sub-contractor costs of \$225,000.00.

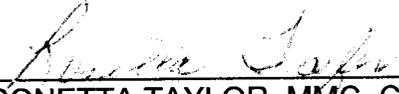
Section 3. CERTIFICATION OF AN EMERGENCY: The City Council of the City of Miami Gardens hereby certifies an emergency in accordance with Section 287.0553(a)(2) of the CCNA.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON SEPTEMBER 10, 2008.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Vice Mayor Watson
SECOND BY: Councilman Gilbert

VOTE: 7-0

Mayor Shirley Gibson	<u> X </u> (Yes)	<u> </u> (No)
Vice Mayor Barbara Watson	<u> X </u> (Yes)	<u> </u> (No)
Councilman Melvin L. Bratton	<u> X </u> (Yes)	<u> </u> (No)
Councilman Aaron Campbell	<u> X </u> (Yes)	<u> </u> (No)
Councilman Oliver Gilbert, III	<u> X </u> (Yes)	<u> </u> (No)
Councilwoman Sharon Pritchett	<u> X </u> (Yes)	<u> </u> (No)
Councilman André Williams	<u> X </u> (Yes)	<u> </u> (No)

SKD/teh
8189406_1.DOC

City of Miami Gardens

1515 NW 167th Street
Building 5, suite 200
Miami Gardens, Florida 33169



Mayor Shirley Gibson
Vice Mayor Barbara Watson
Councilman Melvin L. Bratton
Councilman Aaron Campbell Jr.
Councilwoman Sharon Pritchett
Councilman Oliver G. Gilbert III
Councilman André Williams

Agenda Cover Page

Meeting Date: **September 10, 2008**

Fiscal Impact: No Yes **X**

(If yes, explain in Staff Summary)

Funding Source: **CIP**

Contract/P.O. Requirement: Yes **X** No

Sponsor Name/Department:

Danny Crew, City Manager

Public hearing

Ordinance

1st Reading

advertising requirement: Yes No

RFP/RFQ/Bid #

Quasi-Judicial

Resolution **X**

2nd Reading

Yes No

Title

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE AND EXECUTE A CONTRACT WITH CPZ ARCHITECTS, INC., FOR SUCCESSOR ARCHITECTURE SERVICES RELATING TO THE COMPLETION OF THE MIAMI GARDENS COMMUNITY CENTER IN THE AMOUNT OF \$443,000.00; CERTIFYING THAT A PUBLIC EMERGENCY EXISTS WITH RESPECT TO THE AWARD OF THIS CONTRACT AND WAIVING THE REQUIREMENTS OF THE CONSULTANT'S COMPETITIVE NEGOTIATION ACT; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Staff Summary

Background

On November 10, 2004, the City of Miami Gardens acquired the contract for Architectural Services from Miami Dade County for the Miami Gardens Community Center (then Carol City Community Center) via Resolution No. 2004-116-167. Since that time, staff has worked closely with Judson Architecture, Inc. (Judson) to bring this project to fruition. In a previous item brought before Council this evening, staff requested the termination of the contract with Judson Architecture for convenience per Section 8.04 of the contract.

The City Attorney advised that under normal circumstances a contract such as this one for Architectural Service would have to be bid in accordance with Section 287.055, Florida Statutes, the Consultant's Competitive Negotiation Act ("CCNA"). However, the CCNA provides for an exemption in the case of "valid public emergencies certified by the agency head." (Section (3) (a) (2) of the CCNA).

The nature of the "valid public emergency" in this instance is the funding to complete the project itself. The construction of the MGCC is funded from several sources, Safe Neighborhood Parks (SNP), County General Obligation Bonds, QNIP funds, and County General fund dollars. The SNP funds will sunset on December 31, 2008, which means that the City must spend down all dollars by this time or risk having the funds reclaimed by the County. The remaining SNP funds for this project total \$3.2 million dollars.

In light of this eminent deadline, staff must ensure that there is a reliable architect on board to manage the construction process at all times. If the City were forced to entertain the CCNA selection process, staff estimates that it would take upwards of 45-60 days to have a new architect appointed to manage the project. The declaration of an emergency in order to waive the CCNA bidding requirements are imperative to keeping SNP spend downs on track.

Selection of a "Successor Architect"

In an effort to find a new architect, staff reached out to neighboring municipalities with ongoing completed, and/or comparable construction projects in order to identify a successful project management team. Staff and the City Attorney interviewed two firms that came highly recommended; both firms were asked to submit firm qualifications, proposer certification forms, and the City's consultant questionnaire. Staff conducted site visits of projects completed by these architects and spoke with municipal project managers at each site. In addition to the site visits, staff conducted a Westlaw search on both corporations to uncover any pending litigation.

Based on the vetting process enumerated above, it is the recommendation of staff that CPZ Architects, Inc., located in Plantation, FL be awarded the contract for Successor Architect Services for the Miami Gardens Community Center in the amount of \$218,000. Staff took efforts to ensure that CPZ Consultants, Inc. had completed government projects and had been awarded municipal contracts via the CCNA process.

Sub-Contractor Costs:

The contract with Judson included the services for Structural Engineers, Mechanical, Electrical, Plumbing Engineers, Landscape Architects, and Pool Consultants. Termination of the contract with Judson also terminates the services of the sub-contractors listed above. As such, CPZ Architects will procure these sub-consultant services in support of this project. It is estimated that the cost of sub-contractor services for the remainder of the project will be \$225,000.

CITY OF MIAMI GARDENS
NONEXCLUSIVE PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 10TH day of September, 2008 by and between the City of Miami Gardens, a Florida municipal corporation, (hereinafter referred to as "City"), and CPZ Architects, Inc., authorized to do business in the State of Florida, (hereinafter referred to as "Consultant") and jointly referred to as the Parties.

WITNESSETH:

WHEREAS, the City desires to hire the Consultant on an emergency basis to provide architectural services (Services) on a nonexclusive basis as expressed in the Scope of Services, which is incorporated herein by reference and as more particularly described below and described in Exhibit "A"; and

WHEREAS, the Consultant has expressed the capability and desire to perform the Services described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, the Consultant and City desire to enter into the foregoing Agreement.

NOW, THEREFORE, in consideration of the mutual terms and conditions, the Parties agree as follows:

ARTICLE 1

1.1 The above Recitals are incorporated herein by reference. The following documents are incorporated and made part of this Agreement:

- Scope of Services (Exhibit A).
- Consultant Compensation Rates (Exhibit B)

1.2 All exhibits may also be collectively referred to as the "Documents". In the event of any conflict between the Documents or any ambiguity or missing specification or instruction, the following priority is established:

- Specific direction from the City.
- This Agreement and any attachments.
- Exhibit A
- ExhibitB

ARTICLE 2

SERVICES AND RESPONSIBILITIES

2.1 General

2.1.1 The Consultant agrees to perform for the benefit of the City part or all of the architectural services set forth and described in the Scope of Services. Consultant shall perform the Services in accordance with standard industry practice. The Consultant shall guard against defects in its work or its consultants or sub-consultants work.

2.2 Basic Services

2.2.1 The Consultant shall signify responsibility for the Construction Documents and drawings prepared pursuant to this Agreement by affixing a signature, date and seal as required by Chapters 471 and 481, Florida Statutes, if applicable. The Consultant shall comply with all of its governing laws, rules, regulations, codes, directives and other applicable federal, state and local requirements.

2.3 The City shall make decisions on all claims regarding interpretation of the Construction Documents, and on all other matters relating to the execution and progress of the Work after receiving a recommendation from the Consultant. The Consultant shall check and approve samples, schedules, shop drawings and other submissions for conformance with the concept of each Project, and for compliance with the information given by the Construction Documents. The Consultant shall also prepare Change Orders, assemble written guarantees required of the Contractor, and approve progress payments to the Contractor based on each Project Schedule of Values and the percentage of Work completed.

2.3.1 The City shall maintain a record of all change orders which shall be categorized according to the various types, causes, etc. that it may be determined are useful and necessary for its purpose. Among those shall be change orders, which are identified as architectural/engineering errors or omissions. An error determined to be caused solely by the Consultant and the costs of which would not otherwise have been a necessary expense to the City for the project shall be considered for purposes of this agreement to be an additional cost to the City, which would not be incurred without the error.

2.4 The Consultant shall carefully review and examine the Contractor's Schedule of Values, together with any supporting documentation. The purpose of such review and examination will be to protect the City from an unbalanced Schedule of Values which allocates greater value to certain elements of each Project than is indicated by industry standards, supporting documentation, or data. If the Schedule of Values is not found to be appropriate, it shall be returned to the Contractor for revision or supporting

documentation. After making such examination, when the Schedule of Values is found to be appropriate, the Consultant shall sign the Schedule of Values indicating informed belief that the Schedule of Values constitutes a reasonable, balanced basis for payment of the Contract price to the Contractor.

- 2.5 The Consultant shall perform on-site construction observation of each Project based on the Construction Documents in accordance with Paragraph 2.10 of this Agreement. The Consultant's observation shall determine the progress and quality of the work, and whether the work is proceeding in accordance with the Construction Documents. The Consultant will provide the City with a written report of each site visit in order to inform the City of the progress of the Work. The Consultant shall endeavor to guard the City against defects and deficiencies in the work of Contractors, and make written recommendation to the City where the Work fails to conform to the Construction Documents. Based on such observation and the Contractor's Application for Payment, the Consultant shall determine the amount due to the Contractor and shall issue Certificates for Payment in such amount. These Certificates will constitute a representation to the City, based on such observations and the data comprising the Application for Payment that the work has progressed to the point indicated. By issuing a Certificate for Payment the Consultant will also represent to the City that, to the best of its information and belief, based on what its observations have revealed, the work is in accordance with the Construction Documents. The Consultant shall conduct observations to determine the dates of substantial and final completion and issue a recommendation for final Payment.
- 2.6 The Consultant shall revise the Construction Drawings and submit record or corrected drawings to the City to show those changes made during the construction process, based on the marked up prints, drawings and other data furnished by the Contractor.
- 2.7 The Consultant shall attend regularly scheduled progress meetings on site.
- 2.8 The Consultant shall prepare construction Change Orders for the City's approval. Consultant shall not authorize any changes in the work or time, no matter how minor, without prior written approval of City.
- 2.9 Each project's construction or demolition shall be considered complete upon compilation of a punch list by Consultant, written notification to Contractor by Consultant of all releases of lien and written recommendation by Consultant of final payment to the Contractor, which shall be the sole decision of the City.
- 2.10 Resident Project Services. During the construction progress of any work the Consultant will, if authorized by the City, provide resident project inspection services to be performed by one or more authorized employees ("Resident Project Representative") of the Consultant. Resident project representatives shall provide extensive inspection services at the project site during construction. The Resident Project Representative will endeavor to provide protection for the City against defects and deficiencies in the work of

the Contractor(s). Resident project inspection services shall include, but is not limited to, the following:

- Conducting all preconstruction conferences;
- Conducting all necessary construction progress meetings;
- Observation of the work in progress, to the extent authorized by the City;
- Receipt, review coordination and disbursement of shop drawings and other submittals;
- Maintenance and preparation of progress reports;
- Field inspection and approval of materials for conformance to the specifications;
- Field observation and verification of quantities of equipment and materials installed;
- Verification of contractors' and subcontractors' payrolls and records for compliance with applicable contract requirements;
- Maintenance at each Project site, on a current basis, of all drawings, specifications, contracts, samples, permits, and other Project related documents, and at the completion of each Project, deliver all such records to the City;
- Preparation, update and distribution of a Project Budget with each Project Schedule;
- Notification to the City immediately if it appears that either each Project Schedule or each Project Budget will not be met;
- Scheduling and conducting monthly progress meetings, at which City, Engineer, General Contractor, Trade Contractor, Utilities Representative, Suppliers, can jointly discuss such matters as procedures, progress, problems and scheduling;
- Recommending courses of action, and enforcing courses selected by the City, if so directed by the City, if the General and/or Trade contractors are not meeting the requirements of the plans, specifications, and construction contract;
- Development and implementation of a system for the preparation, review, and processing of Change Orders;
- Maintenance of a daily log of each Project;
- Recording the progress of each Project, and submission of written monthly progress reports to the City, including information on the Contractors' Work, and the percentage of completion;

- Determination of substantial and final completion of work and preparation of a list of incomplete or unsatisfactory items and a schedule for their completion;
- Securing and transmitting to the City required guarantees, affidavits, releases, key manuals, record drawings, and maintenance stocks; and
- Providing artwork, models, or renderings as requested by the City.

The Resident Project Representative shall also investigate and report on complaints and unusual occurrences that may affect the responsibility of the Consultant or the City in connection with the Work. The Resident Project Representative shall be a person acceptable to the City, and the City shall have the right to employ personnel to inspect the work in progress, provided, however, that such personnel as are employed by the City and such personnel will be responsible directly to the City in the performance of work that would otherwise be assumed and performed by the Consultant.

ARTICLE 3

ADDITIONAL SERVICES

- 3.1 When authorized pursuant to a written work authorization, the Consultant shall furnish the following additional services:
- Preparing to serve or serving as a Consultant or witness for the City in any litigation, arbitration or other legal or administrative proceeding.
 - Additional services in connection with a project not otherwise provided for in this Agreement.
 - Services in connection with a work directive change or change order requested by the City.
- 3.2 When required by the Construction Contract Documents in circumstances beyond the Consultant's control, and upon the City's authorization, it will furnish the following additional services:
- Services in connection with work changes necessitated by unforeseen conditions encountered during construction.
 - Services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of claims submitted by Contractor, except to the extent such claims are caused by the errors or omissions of the Consultant.

- Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or negligent work of any Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any Contractor; provided, however, if a fire occurs as a direct result of errors or omissions in the design by the Consultant or if the Consultant negligently fails to notify the Contractor of the status of their workmanship pursuant to Consultant's duties as described in the Contract Documents, the Consultant's additional construction services related to the remedy shall be deemed part of Basic Services and compensated as such.
- Services in connection with any partial utilization of any part of a project by City prior to Substantial Completion.
- Services to evaluate the propriety of substitutions or design alternates proposed by the Contractor and involving methods of construction, materials, or major project components either during Bidding and/or Negotiation services or Construction Contract Award. The cost of such services shall be borne by the Contractor, and this requirement shall be included in the construction contract.
- Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by the Contractor, unless such substitutions are due to a design error by the Consultant, in which case such services shall be deemed Basic Services. Except when caused by a design error by the Consultant, the cost of such services shall be borne by the Contractor, and this requirement shall be included in the construction contract.

ARTICLE 4

CITY'S RESPONSIBILITIES

- 4.1 The City shall do the following in a timely manner so as not to delay the services of the Consultant:
- 4.1.1 Designate in writing a person to act as the City's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions and receive information with respect to the Consultant's services for a particular project.
 - 4.1.2 Assist the Consultant by placing at the Consultant's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
 - 4.1.4 Furnish to the Consultant, if required for performance of the Consultant's services (except where otherwise furnished by the Consultant as Additional Services), the following:

- 4.1.4.1 Data prepared by, or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;
- 4.1.4.2 Appropriate professional interpretations of all of the foregoing;
- 4.1.4.3 Environmental assessment and impact statements;
- 4.1.4.4 Property, boundary, easement, right-of-way, topographic and utility surveys;
- 4.1.4.5 Property descriptions;
- 4.1.4.6 Zoning, deed and other land use restrictions;
- 4.1.4.7 Approvals and permits required in the City's jurisdiction and those from outside agencies unless such approvals and permits are the responsibility of the Consultant, all of which the Consultant may use and rely upon in performing services under this Agreement; and
- 4.1.4.8 Arrange for access to and make all provisions for the Consultant to enter upon the City's property as required for the Consultant to perform services under this Agreement.
- 4.1.4.9 Two full size complete sets of permit drawings, specification and contractor contracts.
- 4.1.4.10 Air conditioned secure construction site office with access to telephone, copy machine and fax machine.
- 4.1.4.11 On site conference room to hold meetings with all parties.
- 4.1.4.12 All construction correspondence and photographs between all parties to be made available to our office at the job site.

ARTICLE 5

SEQUENCE OF SERVICES AND TIME FOR PERFORMANCE

- 5.1 This Agreement shall commence upon the execution by both parties and shall continue for one (1) year or until project(s) is completed in full, unless terminated sooner as provided for in this Agreement. The Consultant understands and acknowledges that the Services to be performed during the one (1) year term will be governed by this Agreement, and that there is no guarantee of future work being given to the Consultant.
- 5.2 Consultant shall submit to the City, at least five (5) days prior to actually commencing services, a schedule of services and expenses for approval by the City before any services commence. The City reserves the right to make changes to the sequence as necessary to facilitate the services or to minimize any conflict with operations.
- 5.3 Failure of the Consultant to meet the stated schedule will constitute a default, for which payment for services may be withheld until default is cured. Time extensions will be reviewed, upon request, for extenuating circumstances. The Consultants schedule will be based on the schedule provided by the contractor and as required to complete the construction of the project.
- 5.4 When the Consultant has exceeded the stated completion date, including any extension for extenuating circumstances which may have been granted, a written notice of Default will be issued to the Consultant and payment for services rendered shall be withheld.
- 5.5 Should the Consultant exceed the assigned completion time, the City reserves the right not to issue to the Consultant any further work authorizations until such time as there is no longer in a Default and the Consultant has demonstrated, to the City's satisfaction, that the reasons for tardy completion have been addressed and are not likely to be repeated in subsequent work authorizations. This restricted issuance provision may result in the Consultant not being issued all of the planned work the City anticipated in this Agreement. The Consultant shall have no right to the balance of any work, or to any compensation associated with these non-issued work authorizations, due to the Consultant being in Default.
- 5.6 Should the Consultant remain in Default for a time period of fifteen (15) consecutive calendar days, the City may, at its option, retain another Consultant to perform any Work arising out of this Agreement and/or terminate this Agreement.

ARTICLE 6

DELAY IN PERFORMANCE/SUSPENSION OR ABANDONMENT

- 6.1 City shall be entitled to withhold progress payments to Consultant for services rendered until completion of services to the City's satisfaction.

- 6.2 A delay due to an Act of God, fire, lockout, strike or labor dispute, manufacturing delay, riot or civil commotion, act of public enemy or other cause beyond the control of Consultant, or by interruption of or delay in transportation, labor trouble from whatever cause arising and whether or not the demands of the employees involved are reasonable and with City's power to concede, partial or complete suspension of City's operations, compliance with any order or request of any governmental officer, department, agency, or committee shall not subject City to any liability to Consultant. At the City's option, the period specified for performance of services shall be extended by the period of delay occasioned by any such circumstance, and services omitted shall be made or performed during such extension, or the services so omitted shall extend this Agreement for a period equal to such delay. During this period such delay shall not constitute a delay by the Consultant.
- 6.3 If a project is suspended for the convenience of the City for more than six months, or abandoned in whole or in part for the convenience of the City under any phase, the City will give written notice to the Consultant of such project abandonment or suspension. The Consultant will be compensated only for work completed prior to abandonment or suspension. The City will not be liable for overhead, or any other cost direct or indirect, that the Consultant may incur outside of any direct costs associated with a project. If a project is resumed after having been suspended for an excess of six months, the Consultant's further compensation may be renegotiated, but the City shall have no obligation to complete the project.

ARTICLE 7

COMPENSATION AND METHOD OF PAYMENT

- 7.1 City agrees to compensate Consultant for the services performed pursuant to the provisions of this Agreement based on the "not to exceed amount of \$218,000.00 for services to be provided by Consultant and estimate of \$225,000.000 for work to be performed by any sub-consultant of Consultant. All work that is performed beyond the Scope of Work attached hereto as Exhibit "A," shall be paid at the Consultant's hourly rates as outlined on Exhibit "B" attached hereto. The determination of whether the work exceeds the Scope of Services shall be left solely to the City.

The Consultant will provide the City with monthly reports of expenditures and keep them up to date with the actual hours expended. If there are additional hours that are required, the Consultant will review with the City for Authorization.

- 7.2 The Consultant shall submit to the City for approval, prior to actual performance, the anticipated number of hours to be expended and the personnel to be assigned to each Project. If the services are performed in accordance with the City's approved expenditure of hours and utilization of personnel, the Consultant shall be entitled to invoice for work authorizations as they are completed. The Consultant shall submit an original invoice and one copy to the City. This will be considered the official request for payment. The invoices shall include the following information:

Invoice number for each work order and date;

Amount previously billed;

Amount due on invoice

- 7.3 The City shall pay Consultant within thirty (30) days of receipt of any invoice the total shown to be due on such invoice, provided the City has accepted the Consultant's performance. Invoicing for services rendered shall be submitted on a monthly basis for those portions of services rendered.

ARTICLE 8

OWNERSHIP OF DOCUMENTS

- 8.1 All documents, design plans and specifications resulting from the professional services rendered by the Consultant under this Agreement shall be deemed the sole property of the City, and the City shall have all rights incident to the sole ownership. Consultant agrees that all documents maintained and generated pursuant to this contractual relationship between City and Consultant shall be subject to all provisions of Chapter 119.01 et. seq. Florida Statutes. Consultant agrees to transfer all documents upon the City's request.

ARTICLE 9

COURT APPEARANCE, CONFERENCES AND HEARINGS

- 9.1 This Agreement shall obligate the Consultant to prepare for and appear in litigation or any other proceeding on behalf of the City for any dispute arising out of this Agreement. Except for litigation caused by errors or omissions of the Consultant, Consultant shall be compensated for such litigation support services at its prevailing rates for such services.
- 9.2 The Consultant shall confer with the City during the performance of the Services regarding the interpretation of this Agreement, the correction of errors and omissions, the preparation of any necessary revisions to correct errors and omissions or the clarification of service requirements, all without compensation.

ARTICLE 10

REPRESENTATIONS

- 10.1 The Consultant represents that it is qualified to perform the Services contemplated by this Agreement and that it is authorized to do business in the State of Florida and in Miami-Dade County.
- 10.2 The Consultant shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement and all services performed under this Agreement shall be done in a professional manner.

- 10.3 The Consultant represents, with full knowledge that the City is relying upon these representations when entering into this Agreement with the Consultant, that the Consultant has the professional expertise, experience and manpower to perform the services as described in this Agreement.
- 10.4 The Consultant shall be responsible for technically deficient designs, reports or studies due to Consultant's errors and omissions, for four years after the date of final acceptance of the Services by the City or as provided under Florida law, which ever is greater. The Consultant shall, upon the request of the City, promptly correct or replace all deficient work due to errors or omissions which fall below the recognized standard of care, without cost to City. The Consultant shall also be responsible for all damages resulting from the Consultant's documents. Payment in full by the City for services performed does not constitute a waiver of this representation.
- 10.5 All services performed by the Consultant shall be to the satisfaction of the City. In cases of disagreement or ambiguity, the City shall decide all questions, difficulties and disputes of whatever nature that may arise under this Agreement.
- 10.6 The Consultant warrants and represents that all of its employees, other consultants and sub-consultants are treated equally during employment or retention without regard to race, color, religion, gender, age or national origin.
- 10.7 The Consultant represents that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for the Consultant any fee, commission, percentage fee, gifts or any other considerations contingent upon or resulting from the award or making of this contract. For breach or violation of this representation, the City shall have the right to cancel this Agreement without liability to the Consultant or any third party. Execution of this Agreement by Consultant shall act as the execution of a truth-in-negotiation certificate certifying that wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of this Agreement

ARTICLE 11

NOTICES

All notices or other communications which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service, or by registered mail addressed to the other party at the address indicated or as may be changed from time to time. Such notice shall be deemed given on the day on which personally served, or if by mail, on the date of actual receipt.

Consultant: CPZ Architects, Inc.,
4316 West Broward Boulevard
Plantation, FL 33317
Attn: Chris Zimmerman

City: City of Miami Gardens
1515 N W 167th Street; Bldg. 5 Suite 200
Miami Gardens, Florida 33169
Attention: City Manager

With a copy to: City Attorney
1515 N W 167th Street; Bldg. 5 Suite 200
Miami Gardens, Florida 33169

ARTICLE 12

AUDIT RIGHTS

The City reserves the right to audit the records of the Consultant covered by this Agreement at any time during the execution of the Services and for a period three (3) years after final payment is made for any Work performed.

ARTICLE 13

SUBCONTRACTING

- 13.1 No Services shall be subcontracted, assigned, or transferred under this Agreement without the prior consent of the City, which consent may be withheld.
- 13.2 The Consultant shall be fully responsible to the City for all acts and omissions of any agents or employees, or approved subcontractors. Subcontractors shall have appropriate general liability, professional liability, and workers' compensation insurance, or be covered by Consultant's insurance. Consultant shall furnish the City with appropriate proof of insurance and releases from all subcontractors in connection with the work performed.

ARTICLE 14

TERMINATION

- 14.1 The City retains the right to terminate Consultant's services and/or this Agreement, with or without cause, upon ten (10) days written notice, at any time prior without penalty. City shall only be responsible to pay the Consultant for any service actually rendered up to the date of termination. Consultant shall not be entitled to any other amounts or damages, including but not limited to anticipated profits or consequential damages, special damages or any other type of damages upon termination by the City pursuant to this Article.

- 14.2 It is understood by the City and Consultant that any payment to Consultant shall be made only if Consultant is not in default under the terms of this Agreement.
- 14.3. Upon receipt of a Termination Notice and except as otherwise directed by the City, Consultant shall:
- 14.3.1 Stop work on the date and to the extent specified.
 - 14.3.2 Terminate and settle all orders relating to the terminated work.
 - 14.3.3 Transfer all work in progress, completed work, and other materials related to the terminated work to the City.
- 14.5 The Consultant retains the right to terminate this agreement for cause, upon ten (10) days written notice with the City having ten (10) days to cure any default. The City shall be responsible to pay the Consultant for all Services actually rendered up to the date of termination, provided that the Consultant is not in default.

ARTICLE 15

DEFAULT

- 15.1 An event of default shall mean a breach of this Agreement by the Consultant. Without limiting the generality of the foregoing and in addition to those instances referred to as a breach, an event of default shall include the following:
- a. Consultant has not performed services on a timely basis;
 - b. Consultant has refused or failed to supply enough properly skilled Personnel;
 - c. Consultant has failed to make prompt payment to subcontractors or suppliers for any services after receiving payment from the City for such services or supplies;
 - d. Consultant has failed to obtain the approval of the City where required by this Agreement;
 - e. Consultant has failed in any representations made in this Agreement; or
 - f. Consultant has refused or failed to provide the Services as defined in this Agreement.
 - g. Consultant has filed bankruptcy or any other such insolvency proceeding and the same is not discharged within 90 days of such date.
- 15.2 In an Event of Default, the Consultant shall be liable for all damages resulting from the default, including:

- The difference between the amount that has been paid to the Consultant and the amount required to complete the Consultant's work, provided the fees by the firm replacing the Consultant are reasonable and the hourly rates do not exceed the Consultant's rates. This amount shall also include procurement and administrative costs incurred by the City.
- Consequential damages and Incidental damages.

15.3 The City may take advantage of each and every remedy specifically existing at law or in equity. Each and every remedy shall be in addition to every other remedy given or otherwise existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the City. The exercise or the beginning of the exercise of one remedy shall not be deemed to be a waiver of the right to exercise any other remedy. The City's rights and remedies as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to the City in law or in equity.

ARTICLE 16

INDEMNIFICATION

The Consultant shall defend, indemnify and hold harmless the City, its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of this Agreement.

The parties agree that 1% of the total compensation paid to the CONTRACTOR for performance of this Contract shall represent the specific consideration for the CONTRACTOR'S indemnification of the Owner.

City agrees to the maximum extent permitted by law, to indemnify and hold harmless the Consultant from any damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising or allegedly arising from any negligent acts, error or omissions by any prior consultant employed by the City on this Project and from any claims of copyright or patent infringement by any prior consultant arising from the use or reuse of any documents prepared or provided by the City, except for those matters that should have been reasonably discovered by Consultant during its independent investigation of the documents.. Consultant understands and acknowledges that Consultant needs to undertake an independent investigation as to the completeness and accuracy of such documents. The City warrants that the City has the right to provide such documents to the successor Consultant free of any claims of copyright or patent infringement or violation of any other party's rights in intellectual property.

Nothing contained herein shall be deemed a waiver of sovereign immunity by the City.

ARTICLE 17

INSURANCE

- 17.1 Throughout the term of this Agreement, the Consultant shall maintain in force at its own expense, insurance as follows:
- 17.1.1 Workers' Compensation: Workers' Compensation Insurance with statutory limits, including coverage for Employer's Liability, with limits not less than \$1,000,000.
- 17.1.2 General Liability: Commercial General Liability with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property damage including coverage for contractual liability, personal injury, broad form property damage, products and completed operations. This coverage is required by the Consultant and any subcontractor or anyone directly or indirectly employed by either of them. The City shall be named additional insured.
- 17.1.3 Automobile Liability: Comprehensive or Business Automobile Liability Insurance with not less than \$500,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverage for owned, hire and non-owned vehicles as applicable. The Consultant and any of its approved subcontractors shall take out and maintain this insurance coverage against claims for damages resulting from bodily injury, including wrongful death and property damage which may arise from the operations of any owned, hired or non-owned automobiles and/or equipment used in any endeavor in connection with the carrying out of this Agreement. The City shall be named as an additional insured.
- 17.1.4 Professional Liability: The Consultant, its officers, employees and agents will provide the City a Certificate of Insurance evidencing professional liability insurance with limits of not less than \$250,000 aggregate with respect to acts, errors or omissions in connection with professional services to be provided under this Agreement and any deductible is not to exceed \$25,000 for each claim. Consultant represents it is financially responsible for the deductible amount.
- The Consultant shall maintain professional liability insurance during the term of this Agreement and for a period of four (4) years from the date of completion of each Project. In the event that Consultant goes out of business during the term of this Agreement or the four (4) year period described above, Consultant shall purchase Extended Reporting Coverage for claims arising out of Consultant's negligent acts errors and omissions during the term of the Professional Liability Policy.
- 17.1.5 Subcontractors Insurance: Each subcontractor shall furnish to the Consultant two copies of the Certificate of Insurance and Consultant shall furnish one copy of the Certificate to the City, and shall name the City as an additional insured.

- 17.2 All insurance policies required of the Consultant shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed agents upon whom service of process may be made in Miami-Dade County, Florida. The City may accept coverage with carriers having lower Best's ratings upon review of financial information concerning Consultant and the insurance carrier.
- 17.3 The required insurance shall be proved under occurrence-based policies, which Consultant shall maintain continuously throughout the term of this Agreement
- 17.4 Any deductibles or self-insured retentions must be declared to and approved by the City Manager or designee prior to the start of work under this Agreement. The City reserves the right to request additional documentation, financial or other such documentation as well as such additional insurance as the City Manager deems appropriate, prior to giving approval of the deductible or self-insured retention and prior to executing the Agreement. The City manager or designee, prior to the change taking effect, must approve any changes to the deductibles or self-insured retentions made during the term of this Agreement or during the term of any policy.

ARTICLE 18

ATTORNEYS FEES

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, expenses and court costs, including appellate fees incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

ARTICLE 19

CODES, ORDINANCES, AND LAW

The Consultant shall abide and be governed by all applicable local, state and federal codes, ordinances, and laws, rules, regulations and directives regarding the Consultant's Services.

ARTICLE 20

ENTIRETY OF AGREEMENT

This Agreement and its attachments constitute the sole and only Agreement of the parties and sets forth the rights, duties, and obligations of each party. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

ARTICLE 21

NON-EXCLUSIVE AGREEMENT

The professional services to be provided by the Consultant pursuant to this Agreement shall be nonexclusive, and nothing shall preclude the City from engaging other firms to perform similar professional services.

ARTICLE 22

GOVERNING LAW; VENUE

This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue shall be in Miami-Dade County, Florida.

ARTICLE 23

INDEPENDENT CONTRACTOR

Consultant and its employees and agents shall be deemed to be independent contractors, and not City agents or employees. The Consultant, its employees or agents shall not attain any rights or benefits under neither the City's retirement plan nor any rights generally afforded the City's classified or unclassified employees. The Consultant shall not be deemed entitled to the Florida Workers' Compensation benefits as a City employee.

ARTICLE 24

NONDISCRIMINATION

Consultant agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

ARTICLE 25

AMENDMENTS

No amendments to this Agreement shall be binding on either party unless in writing and signed by both parties.

ARTICLE 26

CONDUCT/CONFLICT OF INTEREST

Consultant covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, direct or indirect, with contractors or vendors providing professional services on projects assigned to the Consultant, except as fully disclosed and approved by the City.

Consultant further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

ARTICLE 27

OTHER PROVISIONS

- 27.1 Title and paragraph headings are for convenient reference and are not a part of this Agreement.
- 27.2 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same of any other provision, and no waiver shall be effective unless made in writing.
- 27.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida by a court of competent jurisdiction, such provision, paragraph, sentence, word or phrase shall be deemed modified in order to conform with Florida law. If not modifiable to conform to such law, then it shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force an effect.
- 27.4 This Agreement is binding upon the parties hereto their heirs, successors and assigns.
- 27.5 The preparation of this Contract has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. It is the parties' further intention that this Contract be construed liberally to achieve its intent.
- 27.6 This Agreement may not be assigned by the Consultant

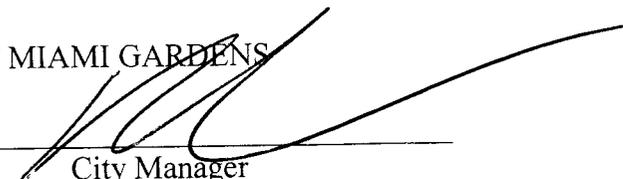
The remainder of this page left blank

IN WITNESS WHEREOF, this Agreement is effective as of the date first written above.

CPZ ARCHITECTS, INC.

CITY OF MIAMI GARDENS

By: 

By: 

City Manager

Name: CHRIS P. ZIMMERMANN

Title: PRESIDENT

WITNESS:


Corporate Secretary

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

Exhibit "A"

Scope of Services - Successor Architect Services

The Successor Architect shall conduct project construction administration services for the referenced project.

The architect shall become the "Professional of Record", and become responsible for all work from this period forward as provided in the rules governing succession of architects in accord with DBPR Regulations.

The work of the contract shall include the following Basic services:

Detailed review and evaluation of the plans and specifications and all data, correspondence, communications and decisions made to date for the purpose of becoming familiar with the project requirements. The project's constraint of time and budgeted expenditures and any factors found that will affect the completion of the work. The evaluation shall result in a report of findings identifying issues that will need to be addressed immediately and as the project proceeds to completion. The architect shall provide as required approvable drawings to meet the requirements of the Florida Building Code and the requirements of all governing agencies affecting the work on the project.

The work shall include attending and chairing weekly project construction meetings to determine the status of all work as well as issues involving the work completion and prepare continuous minutes of all discussions and decisions made.

The Architect shall manage the work of the project engineers and evaluate, direct and assess their responsiveness and capabilities as the project proceeds.

The architect shall make recommendations to the CMG during the progress of the work regarding their addressing the specific need of the project in a timely manner.

The architect shall receive request for information and clarifications and all communications from the contractor and render in a timely manner an interpretation of the intent of the contract documents.

The architect shall review all pending and previously reviewed shop drawing submittals and make determination as to the acceptability of the submittals for use in the project.

The architect shall address changes in the field and provide the best recommended course of action to be taken by the contractor to resolve

construction deficiencies as well as the mitigation of changes to arrive at the best solution to construction issues as they arise.

The architect shall review and analyze requests for payments for the construction work and make recommendations to the CMG as to the adequacy and acceptability of the work in place prior to recommending the authorization of payments to the contractor.

The architect shall provide designs and supplemental detailing as may be required from time to time to address issues that require clarification, redesign and supplemental drawing descriptions in order for the contractor to successfully prosecute the successful completion of the work of the contract.

The architect shall conduct project observations during construction and maintain records of all issues found and provide at the close of the project a final walkthrough of the facility to create a punch list leading to the project close out and Owner Occupancy and Building Commissioning.

EXHIBIT "B"

CONSULTANT COMPENSATION RATES

1. Hourly rate schedule for personnel including overhead and profit.

Principals	\$ 150
Senior Project Manager	\$135
Project Manager	\$ 125
Architectural Technician	\$ 100
Administrative Support	\$ 75

Sub-consultant @ cost +5% overhead & 5% profit

No reimbursement for normal office procedures including but not limited to facsimiles, photo copies, regular postage and local mileage.

A maximum reimbursable allowance of \$5,000 shall be provided for blueprints and digital copies. If this amount is reached, the City and Consultant shall review and extend this amount as maybe deemed appropriate.

The City agrees to reimburse our office for anytime required by office for any and all litigation issues that may be associated with any part of this project. These rates will be 1.5 times the normal hourly rates listed above.

ADDENDUM

This ADDENDUM is made to that certain agreement between the City and Miami Gardens and CPZ Architects, Inc., dated ~~SEP~~ Oct. 22, 2008

The parties agree that that Paragraph 17.1.4 shall be deleted and replaced with the following:

Professional Liability: The Consultant, its officers, employees and agents will provide the City a Certificate of Insurance evidencing professional liability insurance with limits of not less than \$1,000,000.00 aggregate with respect to acts, errors or omissions in connection with professional services to be provided under this Agreement and any deductible is not to exceed \$25,000 for each claim. Consultant represents it is financially responsible for the deductible amount.

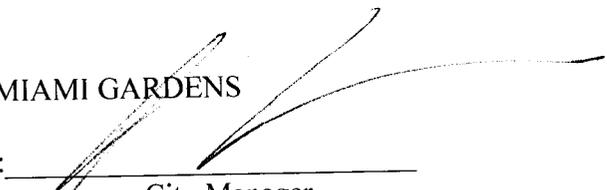
The Consultant shall maintain professional liability insurance during the term of this Agreement and for a period of four (4) years from the date of completion of each Project. In the event that Consultant goes out of business during the term of this Agreement or the four (4) year period described above, Consultant shall purchase Extended Reporting Coverage for claims arising out of Consultant's negligent acts errors and omissions during the term of the Professional Liability Policy.

IN WITNESS WHEREOF, this Agreement is effective as of the date first written above.

CPZ ARCHITECTS, INC.

CITY OF MIAMI GARDENS

By: 

By: 

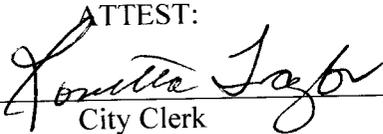
City Manager

Name: CHRIS P. ZIMMERMAN

Title: PRESIDENT

Corporate Secretary

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney