

RESOLUTION No. 2005-108-285

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN AGREEMENT WITH CEMUSA MIAMI, LTD. FOR THE PROVISION OF BUS PASSENGER SHELTERS, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Miami Gardens entered into an Interlocal Agreement ("Agreement") with Miami-Dade County on July 27, 2004, whereby the City agreed to contract with Cemusa Miami, Ltd. for the provision of bus passenger shelters throughout the City of Miami Gardens, and

WHEREAS, the Agreement between the City and Cemusa contains substantially the same terms and conditions as those contained in an Agreement between Cemusa and Miami-Dade County, and

WHEREAS, pursuant to the Agreement, Cemusa will have the right to install bus passenger shelters at selected locations throughout the City of Miami Gardens through October, 2013,

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. AUTHORITY: The Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, that certain Agreement with Cemusa Miami, Ltd. for the provision of bus passenger shelters, a copy of which is attached hereto as **Exhibit "A."**

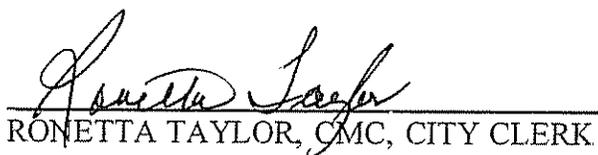
Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain three (3) fully executed copies of the subject Agreement, with one to be maintained by the City; with one to be delivered to Cemusa Miami, Ltd., and with one to be directed to the Office of City Attorney.

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 JULY 27, 2005.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, CMC, CITY CLERK

Prepared by SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: DANNY O. CREW, CITY MANAGER

MOVED BY: Vice Mayor Braynon
SECONDED BY: Councilwoman Pritchett

VOTE: 5-0

Mayor Shirley Gibson	<u> x </u> (Yes)	<u> </u> (No)
Vice Mayor Oscar Braynon, II	<u> x </u> (Yes)	<u> </u> (No)
Councilman Melvin L. Bratton	<u> x </u> (Yes)	<u> </u> (No)
Councilman Aaron Campbell, Jr.	<u> x </u> (Yes)	<u> </u> (No)

Councilwoman Audrey J. King
Councilwoman Sharon Pritchett
Councilwoman Barbara Watson

(Yes) (No) Not present
 (Yes) (No) Out of room
 (Yes) (No)

SKD/bfc

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City of Miami Gardens

1515-200 NW 167th Street
Miami Gardens, Florida 33169



Mayor Shirley Gibson
Vice Mayor Aaron Campbell
Councilman Melvin L. Bratton
Councilman Oscar Braynon II
Councilwoman Audrey King
Councilwoman Sharon Pritchett
Councilwoman Barbara Watson

MEMORANDUM

To: The Honorable Mayor and City Council Members
From: Dr. Danny O. Crew, City Manager
Date: July 22, 2005
Re: Bus Shelters

Over the past six months, the City Attorney and I have been meeting with CEMUSA, Inc. regarding the bus shelters erected in our City. These shelters were erected in error under County approval. We issued a stop order until the situation could be resolved.

We have now reached a proposed agreement with CEMUSA to complete the installation of the shelters and payment of a fee to the City for their use for advertising. The agreement we reached parallels the CEMUSA agreement with Miami-Dade County in most aspects.

The agreement calls for CEMUSA to construct a total of 75 shelters at a minimum with provisions to approve more. It also calls for the City to receive 10 free shelters (without advertising) to be placed at locations of our choosing. There is also a schedule of revenue associated with the shelters that should bring the City approximately \$70,000 per year. The contract expires in 2013 at which time the shelters become ours. There is also a provision that allows us to purchase additional shelters if we desire for \$15,000 each.

The new shelters will feature the City's logo in faux etched glass. The shelters will be burgundy to match our benches. The cost to convert the existing shelters to burgundy will be approximately \$36,000.

RECOMMENDATION: I recommend that City Council approve the agreement with CEMUSA and provide this important service to our residents who use the transit system..

AGREEMENT FOR THE PROVISION OF BUS SHELTERS

THIS AGREEMENT, made and entered into as of this 27th day of July, 2005, by and between the CITY OF MIAMI GARDENS, hereinafter referred to as the "City," and Cemusa Miami, Ltd., a Florida limited partnership, hereinafter referred to as "Contractor."

WITNESSETH:

THAT, for and in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1 **Premises and Terms**

- 1.01 Pursuant to the Interlocal Agreement entered into between the City of Miami Gardens and Miami-Dade County on July 27, 2004, and in accordance with the terms of that certain Bus Shelter Agreement between the Contractor and Miami-Dade County dated October 8, 2003, the City hereby grants to the Contractor for the period beginning with the date of execution of this Agreement, and terminating October 7, 2013 the right to implement a Bus Passenger Shelter Program in the City of Miami Gardens as per Article 2 of this Agreement.
- 1.02 Exclusive Rights and Non-Compete: City agrees that the Contractor shall have the exclusive right to engage in activities specifically related to advertising on bus passenger shelters. Neither the Contractor nor the City shall be permitted to advertise on any litterbins located at bus shelter sites.

ARTICLE 2 **Scope of Work**

2.01 Description of Work

Contractor shall install a minimum of 70 bus shelters within the City of Miami Gardens. All such bus shelters are to be approved by the City and must be constructed and installed in accordance with Paragraph 2.04. Contractor shall be responsible for the installation of the shelter structure and foundation. The work included under the terms of this Contract consists of furnishing all supervision, labor, materials, equipment, tools, plans, specifications, and calculations necessary to provide, install, and maintain attractive, clean, and safe bus passenger shelters in the City of Miami Gardens. Any work outside of the scope set forth herein is to be performed by the City at the City's expense. However, upon mutual agreement,

the City may choose to identify work outside of the scope, and the City and Contractor shall negotiate a price for any additional work.

Contractor shall also provide the connections from the shelter pad to the street and from the shelter pad to any existing sidewalk, located immediately behind the shelter. A five-foot (5') landing pad shall be provided by Contractor at street level. Any required connectors shall be three feet (3') wide. The redirecting of an existing sidewalk, if necessary, in front of a shelter shall utilize a three foot (3") apron or transition on either side of the shelter. Any concrete, grass or fill destroyed during construction shall be replaced by Contractor at Contractor's expense.

2.02 Location of Work

The Contractor may place bus passenger shelters only at bus stops designated in the bus stop inventory as shown on Exhibit "A" attached hereto. The parties will jointly determine the location of any bus shelters. Additional bus passenger shelters may be installed at other locations upon the mutual written agreement of the City, through the City Manager, and Contractor. However, no additional time shall be granted under this Contract beyond the end date specified in Section 1.01 above.

Contractor shall be responsible for applying for and obtaining all necessary permits for the installation of the bus passenger shelters. All bus passenger shelters shall be approved in accordance with the pre-approved plans attached hereto as Exhibit "B." The City of Miami Gardens Public Works Department shall review and may approve modifications to the pre-approved plans.

The City shall approve the location of all bus passenger shelters prior to the issuance of building permits. No bus passenger shelters shall be permitted at any location except at an established transit stop authorized by Miami-Dade Transit or Broward County Transit where regularly scheduled, periodic stops are made. The City in its sole and absolute discretion shall have the right to refuse approval of any location, or to require the removal of bus passenger shelters from any location(s). If the Contractor is not permitted to relocate any shelter(s) removed at the request of the City, the City shall reimburse the Contractor for the value of the Shelter(s). In addition, the City will pay the cost of removal. Said value shall be determined by amortizing \$15,000.00 over the term of the Contract. The Contractor shall be responsible for the removal of any shelters required to be removed due to the fault of the Contractor, and all costs associated therewith. The decision of the City in respect to the installation or maintenance of bus passenger shelters at any location shall be final.

2.03 Site Investigation

The Contractor, by virtue of signing this Contract, acknowledges that it has satisfied itself as to the nature and location of the bus stops, the general and local conditions including, but not restricted to, access to the proposed bus passenger shelter locations, transportation, storage and handling of materials, the conditions of the site, and the character of equipment and facilities needed preliminary to and during the work required to institute and maintain all bus passenger shelter programs as described in this Contract. Failure on the part of the Contractor to evaluate completely or properly any factors or costs prior to submittal of a proposal shall not form a basis for any reduction in the per shelter guarantee, or the minimum percentage payment, whichever is higher.

All bus passenger shelter sites shall have clean, stable and secure foundations, which must be installed and maintained at the Contractor's expense.

2.04 Bus Passenger Shelter Placement

No bus passenger shelter shall be placed or maintained within five (5) feet of the outer edge of the pavement of any road, except at approved locations where sidewalks and curbs exist. Where no sidewalks and curbs exist, the City shall require bus passenger shelters to be located such distance in excess of five (5) feet as may be deemed necessary or desirable for the public safety and welfare. At approved locations where curbs and sidewalks exist, bus passenger shelters may be placed and maintained at such locations, as the City shall designate, in order to ensure the safety and convenience of the public. The City prior to a permit being issued shall approve the location of each bus passenger shelter. Shelters placed on State maintained rights-of-way shall conform to applicable regulations of the State of Florida, Department of Transportation.

The Contractor may request substitute or additional locations subject to the approval of the City Manager. Contractor agrees to pay additional sums to the City for each additional or substitute location in accordance with Article 3 herein.

Other restrictions on bus passenger shelter placement are:

- A. Bus passenger shelters are prohibited in medians.
- B. Bus passenger shelters erected where posted operating speeds are 50 MPH or greater, must be located outside the clear recovery area (30 feet desirable, 18 feet minimum from any driving lane) of the highway.
- C. Bus passenger shelters shall not infringe upon or obstruct any sidewalk or pedestrian path, driveway, drainage structure (ditches), etc., and shall provide at least three feet clearance for pedestrian traffic and persons in wheelchairs, and shall meet all other ADA requirements.

- D. Bus passenger shelters shall not be placed on bicycle paths. If a bus passenger shelter is located at or near a bicycle path, the contractor must ensure that there is eight (8) feet clearance, preferably on the backside of the shelter.
- E. Bus passenger shelters shall not be located within 15 feet of a fire hydrant, a disabled parking space or curb cuts.
- F. Bus passenger shelters may be permitted to extend onto private property, subject to the written consent of the private property owner, or an easement in the City's favor from the property owner and, provided that all of the prohibitions and requirements specified by the City's Public Works Department or the State of Florida, Department of Transportation regulations, whichever is applicable, are met. Bus passenger shelters shall be allowed on private property only to the extent necessary to conform with clearance requirements necessary to meet ADA regulations or provide clearance to a pre-existing bike path. If Contractor does not obtain an easement from a property owner permitting a shelter to extend onto private property, said shelter shall be removed at the property owner's request, and Contractor shall be responsible for the cost of removal of such shelter(s).

2.05 Special Residential Criteria

In residentially zoned areas, the following special criteria shall apply.

- A. Bus passenger shelters must be in the public right-of-way.
- B. Bus passenger shelters must not interfere with or obstruct vehicular or pedestrian access to residential structures.
- C. Bus passenger shelters must be placed so as not to interfere with or obstruct line-of-sight between the streets and residential driveways.
- D. All shelters proposed to be placed in a residentially zoned area must be specifically approved by the City Manager, and the decision of whether to place bus shelters in such areas, shall be solely within the City Manager's discretion.

2.06 Number of Bus Passenger Shelters

A minimum of 70 bus shelters shall be placed in the City. The City Manager and the Contractor shall determine the location of any additional shelters within six (6) months of the execution of this Agreement. The shelters referenced in this section do not include the non-advertising shelters provided for in other sections of this Agreement.

A. Replacement of Pre-existing Bus Passenger Shelters

There are existing shelters throughout the City, which were not installed by Contractor. Contractor shall have the exclusive right to advertise in such shelters under the same terms and conditions as the shelters to be installed by Contractor pursuant to this Agreement, or Contractor shall remove them at Contractor's expense. Contractor shall notify the City of its intent to advertise on all pre-existing bus shelters within forty-five (45) days of execution of this Agreement.

B. Non-advertising Bus Passenger Shelters

Contractor acknowledges that the City has the right to place new non-advertising bus benches at bus stops throughout the City at its cost and discretion. If contractor desires to utilize the location of one of these benches as a site for a shelter, Contractor agrees to pay all costs of relocation and/or replacement of such bench at a location designated by the City.

C. Additional Bus Shelters

The City shall have the right to have contractor install additional bus shelters, at the City's expense, at other locations designated by the City. These additional bus shelters shall be owned and maintained by the City and the Contractor shall have no other responsibility with respect to these additional bus shelters after installation. These additional bus shelters shall not contain any advertisement. The City shall pay \$15,000.00 for each shelter installed pursuant to this paragraph if installed within one (1) year of execution of this Agreement. City and Contractor shall negotiate the costs of any shelters requested by the City to be installed after this one (1) year period,

2.07 Implementation Schedule

- A. The City shall approve all sites by August 15, 2005. Contractor shall apply for all permits within thirty (30) days of site approval, and all shelters must be installed within six (6) months of permit approval.
- B. Failure of Contractor to meet the above time frame for installation will result in liquidated damages to be assessed at the rate of \$100 per shelter, per week of delay, or any portion thereof. Failure to meet any of the above time frames beyond 6 months shall be cause for termination of this Agreement. In the event of a force majeure, the City shall grant a reasonable extension of time to Contractor.

The City Manager must approve any exception, change, or waiver to the requirements in Section 2.07 in writing.

2.08 Shelter Standards

A. Standard of Construction:

- 1) Building and other construction-related permits must be obtained from the City of Miami Gardens. The City will endeavor to ensure that permits are processed in an expeditious manner upon the receipt of all required information from Contractor.
- 2) Bus passenger shelters must be securely attached to their foundations and must provide for a clear opening between the structure and the ground or foundation to facilitate cleaning and to preclude the accumulation of debris.
- 3) If electricity is to be provided to the shelter in any form, it must be low voltage. Electrical power must come from a self-contained system such as batteries or solar panels. The system should not have an outside power source such as an FPL hook-up. The existing street light system may NOT be accessed for any electrical power to shelters. Bus passenger shelters with lights are preferred, but not required.
- 4) The seating area inside the bus passenger shelter shall be 58 inches long and 14 inches wide.

B. Material:

- 1) Bus passenger shelter component materials must be in accordance with the pre-approved plans as shown on Exhibit "B," or as otherwise agreed upon by City and Contractor.
- 2) Sides and internal dividers in bus passenger shelters shall be constructed in a manner to provide visibility of waiting passengers to passing traffic and pedestrians. All transparent material will be constructed of tempered glass. No bus passenger shelter shall be located in such a manner, or be constructed of such materials to adversely affect sight distances at any intersection or obstruct the view of traffic signs or other traffic control devices.

C. Size:

- 1) The maximum height of a bus passenger shelter cannot exceed ten feet.
- 2) Narrow shelters shall be placed in accordance with ADA requirements.

D. Colors:

Bus passenger shelters must have a uniform color design throughout the Contract area. Color(s) shall be in accordance with the pre-approved plans attached hereto as Exhibit "B."

E. Advertisement:

- 1) The Contractor shall provide, install and maintain, at its sole cost and expense, high quality, expertly designed commercial advertising displays on bus passenger shelters approved and designated by the City.
- 2) Advertising on a bus passenger shelter shall be no greater than 72 inches by 60 inches per side of the shelter. There shall be no more than one advertisement per side. Advertising is allowed at only one end of each shelter.
- 3) No advertising on bus passenger shelters shall contain the words STOP, LOOK, DRIVE IN, DANGER or any other word or symbol designed to distract vehicular traffic or to mimic traffic control symbols.
- 4) No advertising will be allowed under this Contract to contain material that is immoral, lascivious or obscene as defined in S.847.001, Florida Statutes. Moreover, no advertising will be allowed under this Contract for businesses engaged in any activity that requires the exclusion of minors pursuant to Chapter 847, Florida Statutes.
- 5) No alcoholic beverage advertising will be allowed under this Agreement, within one-quarter mile of schools, including pre-schools, elementary schools, middle schools, high schools, colleges and universities, houses of worship, including churches, synagogues, temples and mosques, hospitals or addiction treatment centers. Alcoholic beverages shall be defined as distilled spirits and any beverage containing 0.5 percent or more alcohol by volume. The percentage of alcohol by volume shall be determined in accordance with §561.01, Florida Statutes.
- 6) No tobacco advertising shall be permitted at all.
- 7) No advertising will be allowed under this Contract to contain material detrimental to the operation or goals of the City. All advertising materials, advertisements and manner of presentation shall be subject to approval by the City, but approval is not needed in advance. Should a question of material content arise, the City Manager or his designee will respond within 48 hours from original contact by the Contractor.

The City may disallow any such items at its sole absolute discretion. The Contractor shall immediately remove from the bus passenger shelter(s), at its sole cost and expense, upon written demand, any item that is disapproved. Any item previously approved, which may subsequently be considered objectionable by the City shall likewise be removed. In the event that such disapproved matter is not removed immediately, upon receipt of written demand, the City may cause to be removed said material or device and Contractor shall pay all costs and expenses. The City shall not be liable for any damages in connection therewith. Refusal or failure by Contractor to remove said material shall be considered a default of this Agreement, which shall be considered as waived by the corrective action on the part of the City and reimbursement by Contractor of City's removal costs.

- 8) The installation of advertising devices and the materials to be contained therein or thereon shall take place, whenever possible, during hours of minimum passenger and visitor activity.
- 9) Advertisements shall not be lit, except for the lighting provided for in the plans approved by the City, and attached hereto as Exhibit "B."

F. Identification:

The name of the bus passenger shelter company, telephone number and the City issued permit number shall be placed on the shelter as specified by the City. The City permit number will be the same as the bus stop inventory number.

G. Maintenance:

The Contractor will provide at its expense, a local phone number and furnish, 24 hours a day, 7 days a week, a responsible person who will receive calls relating to the bus passenger shelter program at that number. The phone number should be posted on each shelter in letters large enough to be readily visible by a pedestrian from ten feet away and should be posted on the front of the bus passenger shelter. Sufficient telephone lines should be secured such that incoming calls have reasonably free access to the Contractor's office. Questions, requests, and complaints from the public that are received by the City will be referred to the Contractor at the number provided.

- 1) It is understood by the parties that it is the Contractor's responsibility to maintain bus passenger shelters, which includes shelters, windows, seats, slabs, advertising copy, and any sidewalks constructed by Contractor.

- 2) The City shall provide litter containers, shall remove litter from bus shelter litter receptacles, and shall cut grass and weeds on Contractor's behalf. In exchange for this service, Contractor shall provide the City with two (2) additional non-advertising shelters at no cost to the City at locations to be determined by the City Manager. The shelters referenced in this section do not include the non-advertising shelters provided for in other sections of this Agreement.
- 3) Failure of Contractor to properly maintain the bus passenger shelters shall constitute cause for cancellation of the permit concerned, forfeiture of the permit fee, and removal of the bus passenger shelter. The removal for such cause(s) of more than 10 shelters during the life of this Agreement shall constitute cause for the termination of this Agreement.
- 4) The Contractor shall insure that all bus passenger shelter sites be prepared in such a manner as to prevent flooding and muddy conditions due to rainfall.
- 5) Bus Passenger Shelter Maintenance: The Contractor shall at its expense, insure that bus passenger shelters are maintained in a structurally safe and cosmetically attractive condition. This requirement shall include maintaining the bus passenger shelter in a clean and usable condition. Special emphasis shall be placed on the timely removal of any existing graffiti.
- 6) Failure to Maintain: If the Contractor fails to maintain or repair a bus passenger shelter as described above within **five (5) days** of receipt of written notification from the City, then the City may make the necessary repairs. Notice in writing shall be by Certified Mail or delivered in person, with a signed receipt. The Contractor shall be responsible for reimbursing the City for costs incurred by the City plus a 20% administrative fee. Continued failure to accomplish maintenance shall be considered grounds for termination.
- 7) In the event of a force majeure, a reasonable time period, based on circumstances, shall apply to the Contractor's maintenance obligations stated herein.

ARTICLE 3
Payments and Reports

3.01 Payments

The Contractor shall pay to the City on a monthly basis during the term of this Agreement a guaranteed monthly per shelter fee as described on Exhibit "C" attached hereto ("per shelter fee"), or thirty (30%) of the Contractor's earned monthly gross advertising revenues arising from bus passenger shelter advertising sales ("percentage fee"), whichever is greater.

- A. Contractor shall pay all required payments monthly to the City, on the 20th day of each month starting with the first full month after execution of this Agreement, and subsequent to the final approval of installed shelter(s) by the City. All payments shall be accompanied by reports to be submitted by the Contractor as per Article 3.02 (C) of this Agreement.
- B. **Per Shelter fee - (Exhibit C will describe these payments)**
- C. **Percentage Fee** - The term "gross revenues-bus passenger shelter advertising" as used herein shall be construed to include all monies paid or payable to the Contractor for sales made and for services rendered at or from advertising on bus passenger shelters, regardless of when or where, on a cash or credit basis, provided, however, that the term "gross revenues-bus passenger shelter advertising" shall be reduced by the following:
- 1) Advertising agency commissions actually paid (excluding Contractor and its agents), not to exceed 15% of the customer's billing.
 - 2) Any taxes imposed by law, which are separately stated to and paid by the customer and directly payable by the Contractor to a taxing authority.
 - 3) Insurance proceeds, other than business interruption insurance and/or other reimbursement for lost revenues.
 - 4) Refunds to third party clients that the Contractor provides according to sound business judgment and is the result of "arms length" transactions. This credit shall not include any refunds to political candidates or political campaigns.

- 5) All direct payments made to a private property owner for use of his property to install any shelter when a shelter is partially installed on public property and partially on private property.
- D. In the event the Contractor fails to pay any of the rentals, fees or charges required to be paid under the provisions of this Agreement within ten (10) days after they become due, interest at the rate of 1.5% per month shall accrue against the delinquent payment(s) from due date until same are paid. Implementation of this provision shall not preclude the City from terminating this Agreement for default in the payment of rentals, fees or charges or from enforcing any other provisions contained herein.
 - E. In the event that the bus passenger shelters and the advertising in the shelters are affected by Acts of God, terrorism or force majeure, the Contractor shall have thirty (30) days to repair or replace the damaged/destroyed shelters. During that month, there shall be an adjustment to the "per shelter fee" due for any damaged/destroyed shelter(s). Upon the termination of the thirty (30) days, the Contractor shall not be entitled to any continued abatement. The Contractor may request additional time and abatement for bus passenger shelter repair or replacement. The City Manager shall have the final authority to grant or deny any extensions to the repair/replacement time and any further abatement of required payments under this Contract by the Contractor.

3.02 Reports

- A. The Contractor shall maintain during the term of this Agreement all books of accounts and records of gross revenues, hereinafter referred to as "Records", customarily used in this type of bus passenger shelter advertising program. Records shall be in conformity with generally accepted accounting principles, and kept for such period of time thereafter as provided herein unless otherwise approved by the City. All such records shall be kept at all times within Miami-Dade County. The City Finance Department, the external auditing firm of the City, and all appropriate State and Federal auditing personnel shall be permitted to audit and examine all such records relating to this Agreement, without limitation as to time or frequency. The Contractor shall not be required to maintain such records for more than three (3) years after the end of the Contract closeout.
- B. The Contractor shall, at its expense, within ninety (90) days of each anniversary of the execution of this Agreement, submit to the City an audited report, prepared and attested to by an Independent Certified Public Accountant, as to the correct gross amount receivable for the

Contractor's operations under this Agreement. Said report shall be prepared in conformance with the American Institute of Certified Public Accountants' requirements for special reports. The first such report shall contain twelve (12) full calendar months of operation and any fraction of the first month. The last such report shall include the last day of operation.

If the Contractor fails to submit the annual report as required above, the Contractor will be given ten (10) days' opportunity to cure. After the time for an opportunity to cure has passed, the City may hire an Independent Certified Public Accountant to prepare the annual audit. The Contractor will be responsible for reimbursing the City for all costs incurred to complete said audit.

C. On or before the 20th day of each calendar month throughout the term of this Agreement or any extension thereof, the Contractor shall furnish to the City a report of gross billings, net billings and collections during the preceding calendar month. This report shall be in the form prescribed by the City and signed by the Contractor certifying the accuracy of such gross revenues. At a minimum, the report will contain the following information:

- 1) Monthly gross sales and billings
- 2) Advertising agency commissions paid
- 3) Number of shelters sold
- 4) Monthly trade contracts
- 5) Percentage fee due to the City, when applicable
- 6) Per shelter due to the City, when applicable
- 7) Year-to-date (Contract year) information for all of the above-mentioned items.

The parties may agree on changes to the reporting requirements as may be reasonably necessary based on existing operations by the Contractor.

D. On or before the 20th day of each calendar month throughout the term of this Agreement or any extension thereof, the Contractor shall furnish to the City a report including:

- 1) Total number of shelters removed and installed for the month

- 2) A running total of shelters removed and installed for the calendar year
 - 3) Shelter location list, divided into categories by type of shelters if more than one type is provided
 - 4) Total advertising space available
 - 5) Total space sold
 - 6) Total space traded or bartered, and
 - 7) Total space used for public service advertisements.
- E. Prior to commencement of operations under this Agreement, the Contractor shall secure in writing from the City approval of all records used for the purpose of temporarily or permanently recording the operations of the Contractor under this Agreement.
- F. For the purposes of the administration of this Agreement, the following shall apply: The City Manager or his designee is hereby designated as the Contract Administrator for this Agreement. Reports and information as the City may reasonably require regarding the administration of this Contract should be addressed to the City Manager.
- G. The Contractor shall submit all payments and submit an original copy of all related financial reports required by this Article to the following, or to any other place as may be designated from time to time by the City to the attention of the City Manager.

3.03 Trade or Barter

Contractor shall not engage in the trade or barter of advertising space on bus shelters for any purpose, unless the City Manager approves such trade, in advance, in writing. All trade contracts will be sold on a fifty-percent (50%) cash, fifty percent (50%) trade unless otherwise approved in writing by the City Manager, or his designee. The City will receive a minimum of 50% of all goods and/or services approved by the City Manager or his designee and acquired under trade/barter agreements.

3.04 Rates

The Contractor shall submit to the City a published monthly or multi-monthly bus passenger shelter advertising rate schedule.

3.05 Retroactive Payments

The City was incorporated on May 13, 2003, and Contractor has erected bus shelters within the City since that date. Contractor asserts that it has made payments to Miami-Dade County since May 13, 2003. The City reserves the right to seek reimbursement for all payments made by Contractor to Miami-Dade County from Miami-Dade County. As of November 20, 2004, Contractor has retained all payments due to the City and agrees to remit all such accrued payments to the City within ten (10) days of execution of this Agreement. Failure of Contractor to remit such a payment shall entitle the City to terminate this Agreement pursuant to Article 19 "Termination for Default, Damages for Delay, Timely Extensions."

ARTICLE 4 **Permits**

4.01 Issuance

- A. Each bus passenger shelter must have all applications, permits, and fees as required by the City. Each bus passenger shelter shall be issued a separate permit by the City with a distinct identification number corresponding to the bus stop district and inventory number.
- B. If a bus passenger shelter is installed at a bus stop prior to obtaining all required permits the Contractor shall be required by the City to pay a double permit fee.
- C. The City permit number must appear on the bus passenger shelter as specified by the City. Provided the applications meet the requirements of the City and the provisions of this Contract, the City permit will be granted at the discretion of the City and upon the receipt of a \$15.00 ANNUAL permit fee for each bus passenger shelter. All new City permits will be issued for the \$15.00 annual permit fee regardless of date of issuance. During the Contract period, the City permits will be renewed yearly on the anniversary of the execution of this Agreement, upon payment of the \$15.00 renewal permit fee. In lieu of paying annual permit fees, City can choose to direct Contractor to place the City's logo on the back-glass on the shelters to be installed pursuant to this Agreement. The City and Contractor shall approve the final design of the logo.
- D. No permits for a bus passenger shelter shall be issued by the City except to the Contractor. The Contractor shall have the right to place additional bus passenger shelters in the City, if approved by the City

during the Contract period subject to compliance with the provisions of this Contract.

- E. The Contractor may not transfer permit or contractual rights to any individual, partnership, corporation or other legal entity without the express written consent of the City. No transfer of more than 50% financial interest in the partnership, corporation, or legal entity shall be permitted without the express written consent of the City.

4.02 Removal of Bus Passenger Shelters

- A. All bus passenger shelters in the public right-of-way in the City, or under the authority of the City, shall be subject to this Contract and shall comply with all provisions hereof. Any bus passenger shelter found in violation must be corrected within 10 business days or may be removed immediately without prior notice by the City. City may remove any and all pre-existing bus shelters without penalty to City, upon 30 days notice to Contractor. Without modifying the provisions of 2.02, when, in the City Manager or his designee's sole discretion, a shelter constitutes a safety hazard, the City is authorized to require the immediate removal of the hazard. All shelters removed because of a safety hazard shall be removed at the cost of the City unless the safety hazard was caused by the Contractor, then the expense shall be borne by the Contractor. If the safety hazard was not caused by the Contractor, upon the consent and approval of the City Manager, Contractor shall be permitted to relocate the shelters in the City. If the City Manager does not permit Contractor to relocate the shelters, the City shall pay an amortized value for the shelters as per Section 2.02.
- B. In addition to the provisions of subsection (A) of this section, the City may, at its discretion, require Contractor to remove a bus passenger shelter and dispose of it appropriately if the City or the Contractor finds a bus passenger shelter that:
 - 1) Displays a bus passenger shelter company name different than the company name of the current bus passenger shelter Contractor.
 - 2) Lacks a bus passenger shelter company name, or any of the identification required in this Article 4.
 - 3) Is not located at an authorized bus stop.
 - 4) Is in violation of any of the terms, conditions and requirements of this Agreement.

Any bus shelters removed as a result of this section shall be removed at the sole cost of the Contractor.

ARTICLE 5 **Limitations**

5.01 Location limitation.

Provided that bus passenger shelters comply with applicable clear path requirements under the ADA, or if a pre-existing bicycle path necessitates additional clearance, shelters may be located at any bus stop unless the City determines that the placement of said bus passenger shelter would interfere with the free flow of vehicular, pedestrian or bicycle traffic or would impede disabled persons. Contractor is responsible for complying with all ADA requirements.

Unless the City, in its sole discretion, determines that there exists a need for additional bus passenger shelters, bus passenger shelters shall be limited to one per bus stop.

5.02 Change to bus stops.

Whenever an authorized bus stop is changed or created by the City, Miami Dade County or Broward County, the Contractor shall be notified. In the case of the deletion of an authorized bus stop, the Contractor shall have fourteen (14) business days to remove the bus passenger shelter or shelters.

5.03 Non-advertising Bus Shelters

The Contractor shall agree to locate and maintain one bus shelter containing no advertising, for every ten (10) approved bus shelters that are placed that carry advertising. Such bus passenger shelters carrying no advertising shall be placed at locations designated by the City. No City permit fee shall be charged for such bus passenger shelters, but permits will be required and an identification number shall be issued. A bus passenger shelter without advertising shall meet all bus passenger shelter standards and requirements as those with advertising, and as set forth in this Contract. In addition, to the aforementioned shelters, the City shall also have the right to require that Contractor install additional shelter(s), without advertising at the City's sole cost. The City shall pay \$15,000.00 for each shelter installed pursuant to this paragraph if installed within one (1) year of execution of this Agreement.

City and Contractor shall negotiate the costs of any shelters requested by the City to be installed after the one (1) year period,

The Contractor shall provide and maintain, at no cost to the City, suitable and attractive City self-promotional materials on bus passenger shelters without advertising, as directed by the City. The aforesaid does not include provision of artwork. The City will supply finished posters to the Contractor, or arrange with the Contractor for posters at cost. The combined installation and removal rate for City self-promotional materials shall be \$20.00 per bus passenger shelter. Should the City itself install, or remove any self-promotional material, there shall be no charge to the City. The Contractor shall submit an invoice to the City for installation and removal charges describing the location and type of City self-promotional materials at each site.

5.04 Bus Passenger Shelters, Locations on Private Property

Bus passenger shelters for public use shall only be permitted to extend onto private property subject to the written consent of the property owner, or an easement from the property owner to the City, provided all the following requirements are met:

- A. Location: Bus passenger shelters shall be permitted only at City authorized bus stops. They shall be allowed to extend onto private property only to the extent necessary to conform to the clear path requirements specified in Article 5.04 B of this Agreement and provided consent is obtained from the property owner.
- B. Clear path: Bus passenger shelters placed partially on a City or State of Florida maintained right-of-way shall comply with all of the terms and conditions of this Contract, the Americans with Disabilities Act, and all Miami-Dade County and City Codes. Failure to comply shall constitute cause for cancellation of the permit for and/or removal of the shelter that is in violation, at the sole option of the City.
- C. Consent: If Contractor does not obtain an easement from a property owner permitting a shelter to extend onto private property, said shelter shall be removed at the property owner's request, and Contractor shall be responsible for the cost of removal of such shelter(s).

5.05 Ownership of Shelters

The City agrees that the Contractor shall retain sole and exclusive ownership of the bus passenger shelters erected during the term of this Contract pursuant to the provisions hereof. At the end of the Contract term, all bus passenger shelters erected by the Contractor during the Contract term shall become the sole and exclusive property of the City. Nothing contained in this Article 5.05 or in any other provision of this Agreement shall be construed as creating an ownership interest in the Contractor with respect to any sidewalks, walkways, or curbs to which the bus passenger shelters are attached. In the event that the City terminates this Contract for reasons as provided in Articles 19, 20 and 21 of this Contract, all bus passenger shelters erected by the Contractor up to the time of termination shall become the sole and exclusive property of the City.

ARTICLE 6
Inspection

- 6.01** Bus passenger shelters and advertising will be subject to inspection by the City at any time during the Contract period. Such inspection shall be in addition to the Contractor's responsibilities required under this Contract.

ARTICLE 7
Assignment

- 7.01** The performance of the work under this Contract shall not be assigned except upon written consent of the City. Consent will not be given to any proposed assignment that would relieve the Contractor or its surety of their responsibilities under this Contract.
- 7.02** The laws of the State of Florida will govern the validity of the assignment and the rights of the assignee against the City.

ARTICLE 8
Performance Bond or Letter of Credit

8.01 The Contractor shall duly execute and deliver to the City each year for the entire term of this Agreement a Performance Bond in the amount equal to the annual total of the per shelter guarantee, as shown in 3.01 for that year in U.S. Dollars. The bond form shall be approved and supplied by the City. The completed form shall be delivered to the City within fifteen (15) calendar days after execution of this Agreement. If the Contractor fails to deliver the Performance Bond, the City shall declare the Contractor in default and the selected Contractor shall not be awarded this Contract. The City shall not accept any proposal from the Contractor for a twelve (12) month period following such default.

The following specifications shall apply to the bond required above:

1. All bonds shall be written through surety insurers authorized to do business in the State of Florida as surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

<u>Bond Amount</u>	<u>Best Rating</u>
500,001 to 1,500.00	B V
1,500,000 to 2,500,000	A VI
2,500,001 to 5,000,000	A VII
5,000,001 to 10,000,000	A VIII
Over 10,000,000	A IX

2. On contract amounts of \$500,000 or less, the bond provisions of Section 287.0935, Florida Statutes (1985) shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:
 - a. Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the Request for Proposal is issued;
 - b. Certifying that the surety is otherwise in compliance with the Florida Insurance Code; and
 - c. Providing a copy of the currently valid Certificate of Authority issued by the United States Department of the Treasury under § 31 U.S.C. 9304-9308.

Surety insurers shall be listed in the latest circular 570 of the U.S. Department of the Treasury entitled "Acceptable Sureties on

Federal Bonds," published annually. The bond amount shall not exceed the underwriting limitations as shown in this circular.

- 3) For contracts in excess of 500,000 the provision of Section B will be adhered to plus the company must have been listed for at least three consecutive years, or holding a valid Certificate of Authority of at least 1.5 million dollars and on the Treasury List.
- 4) Surety Bonds guaranteed through the U.S. Government Small Business Administration or Contractors Training and Development Inc. also will be acceptable.
- 5) The attorney-in-fact or other officer who signs a contract bond for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so. The surety's resident Florida agent must countersign the Contract bond.

8.02 The Contractor may furnish a Letter of Credit to the City each year for the entire term of this Agreement, in lieu of a Performance Bond, in an amount equal to the annual total of the per shelter guarantee as shown in 3.01 for that year, conditioned upon the full and faithful performance of all the covenants of this Agreement.

If a letter of credit is used, it must be an irrevocable letter of credit for the full amount of the annualized per shelter guarantee for each year of this Contract. Each Contract year, the irrevocable letter of credit shall be updated to reflect the new annualized per shelter guarantee Contract amount, and per shelter fee. The City shall have authority to withdraw funds from the account if the monthly payment is in arrears by more than 30 days. Written notice shall be provided ten (10) business days prior to intent to draw on the letter of credit. No funds shall be withdrawn in the event of arbitration on the draw down on the letter of credit has been requested and until final determination from the arbitrator on this issue.

ARTICLE 9 **Contractual Relations**

9.01 No contractual relationship will be recognized under this Contract other than the contractual relationship between the City and the Contractor.

ARTICLE 10 **Indemnification and Hold Harmless**

10.01 Contractor shall indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or

damages, including attorneys' fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners, principals or subcontractors. Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided.

ARTICLE 11
Agent to Accept Service

11.01 The Contractor shall maintain within Miami-Dade County, Florida a duly authorized agent to accept service of legal process on its behalf, and shall keep the City advised of such agent's name and address during the duration of this Contract.

ARTICLE 12
Entity or Contractor

12.01 If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

ARTICLE 13
Insurance

13.01 Prior to execution of this Contract by the City and commencement of work, the Contractor must obtain all insurance required under this Article and submit it to the City for approval. All insurance shall be maintained during the entire term of this Agreement. Certificates must be sent to the City Manager.

The Contractor shall furnish to the City:

- A. Certificate(s) of Insurance that clearly indicate that Contractor has obtained the insurance coverage required under Article 13.

B. Original Policies that indicate the coverage required under this Article section 13.01 B (1 through 5).

- 1) Worker's Compensation Insurance as required by Chapter 440, Florida Statutes.
- 2) Public Liability Insurance on Comprehensive basis in amounts not less than \$500,000, per occurrence for bodily injury and property damage combined with Completed Operations and Board Form property damage coverage included.
- 3) Contractual Liability Insurance covering all liability arising out of the terms of the Contract Documents.
- 4) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in amounts not less than \$500,000, per occurrence for bodily injury and property damage combined.
- 5) Owners protective Liability Insurance issued in the name of the City as sole insured, in amounts as indicated in (b) above. This policy must be endorsed to indicate that any premium, whether deposit or final, will be the sole obligation of the Contractor.

The Public Liability Insurance coverage as required in paragraph (b) above shall include those classifications as listed in Standard Liability Insurance Manuals that are applicable to the operations of the Contractor in the performance of this Contract.

13.02 Companies authorized to do business under the laws of the State of Florida, with the following qualifications as to management and financial strength shall issue all insurance policies required:

The company must be rated no less than "B" as to management, and no less than Class "V" as to financial strength, by latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey.

13.03 Cancellation of any insurance or bonds, or non-payment by the Contractor of any premium for any insurance policies or bonds required by this Contract shall constitute a breach of this Contract. The Contractor shall have 30 days opportunity to cure.

13.04 The Contractor shall furnish Certificates of Insurance to the City prior to the commencement of operations. The certificates shall clearly indicate that the

Contractor has obtained insurance in the type, amount and classifications as required for strict compliance with Article 15, and that no material change or cancellation of the insurance shall be effective without thirty (30) days' prior written notice to the City. The City shall be named as an additional insured on all policies of insurance. City reserves the right to reasonably amend the insurance requirements by the issuance of notice in writing to the Contractor. Compliance with the foregoing requirements shall not relieve the Contractor of its liability and obligations under any other portion of this Agreement.

- 13.05** Award of this Contract is contingent upon receipt of the insurance documents within fifteen (15) calendar days City Council approval. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Contract, Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the City. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Contract within thirty (30) calendar days after execution of this Agreement, this Agreement shall automatically terminate.
- 13.06** Contractor shall be responsible for ensuring that the insurance certificates required remain in force for the duration of the contractual period. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the City at a minimum of thirty (30) calendar days in advance of such expiration.

ARTICLE 14 **Superintendence by Contractor**

- 14.01** The Contractor shall provide a full time salaried Project Manager who shall be the Contractor's fully authorized representative with the responsibility for assuring the competent performance of all work under this Contract. The Project Manager shall provide to the City Manager or his designee any reports(s) that the latter may require. The Project Manager shall meet with the City Manager or his designee on a regular basis, as required by the latter. The Project Manager shall be readily accessible by phone on a daily basis during regular business hours.
- 14.02** Before starting work, the Contractor shall designate in writing the name, title qualifications and experience of its proposed Project Manager and scope of his/her authority. A facsimile of authorized representative's signature shall be submitted to the City Manager or his designee.
- 14.03** The Contractor shall notify the City Manager or his designee, in writing, when the Contractor desires to change its Project Manager, and shall

provide the information specified in paragraph 14.02 of this Article 14 regarding the new proposed Project Manager.

ARTICLE 15
Suspension of Work

- 15.01** The City reserves the right to temporarily suspend execution of the whole or any part of the work.
- 15.02** In case the Contractor is actually and necessarily delayed by any act or omission on the part of the City, as determined by the City in writing, the time for completion of the work shall be extended by the amount of the time of such delay as determined by the City. The City will negotiate equitable adjustments with the Contractor to the time for performance and Contractor's payment obligations to the City under this Contract, including the Minimum Monthly Guarantee after the Contractor has documented the delays and costs, expenses and loss of revenue due to such delays. Any disagreements shall be resolved in accordance with Article 16 of this Contract.
- 15.03** Permitting the Contractor to finish the work or any part thereof after the time fixed for completion or after the date to which the time for completion may have been extended shall not operate as a waiver on the part of the City of any rights under this Contract.
- 15.04** The Contractor shall insert in each subcontract a provision that the subcontractor shall comply immediately with a written order of the City to the Contractor to suspend the work, and that they shall further insert the same provision in each sub-subcontract.

ARTICLE 16
Disputes

- 16.01** By executing this Agreement, the Contractor agrees that the City will decide all questions, difficulties and disputes, of whatever nature, including defaults by either party, which may arise relative to the interpretation of the Contract Documents, construction, prosecution and fulfillment of this Contract, and as to the character, quality and amount of any work done and materials furnished under or by reason of this Contract.

ARTICLE 17
Termination

- 17.01** The termination of this Agreement, for any reason whatsoever, shall not relieve the Contractor of its obligation to make any payments that are due, but unpaid at the time of such termination.
- 17.02** Nothing in this Article shall be construed as waiving any rights that the City may have against the Contractor under this Agreement.

ARTICLE 18
Termination for Convenience of The City

- 18.01** The performance of work under this Contract may be terminated by the City in accordance with this Article in whole, or from time to time in part, whenever such termination is in the best interest of the City. Such termination for convenience, however, shall not occur within the first five (5) years after the execution of this Agreement. Such termination shall be effected by delivery to the Contractor of a Notice of Termination ninety (90) days prior to the effective date of termination specifying the extent to which performance of work under this Contract is terminated, and the date upon which such termination becomes effective. During such the ninety (90) day period, Contractor shall not commence the installation of any new shelters. However, Contractor shall complete the installation of any shelters that were commenced prior to the ninety (90) day period.
- 18.02** After receipt of a Notice of Termination, and except as otherwise directed by the City, the Contractor shall stop work under this Contract on the date and to the extent specified in the Notice of Termination. Upon termination at the convenience of the City contractor shall be released and relieved of all obligations or liabilities with respect to the terminated work.
- 18.03** In the event this Contract is terminated for the City's convenience, the City will accept, subject to the City Manager's recommendation regarding compliance with specification requirements, pay for and retain ownership of all items manufactured on the effective date of the Notice of Termination. The City agrees to not advertise on any of these shelters for remainder of the term of the Contract. The City shall reimburse Contractor the sum of \$15,000.00, per shelter, amortized over the term of this Contract, minus depreciation. Depreciation will be determined by utilizing Contractor's federal tax returns and Contractor agrees to permit City to review said tax returns for this purpose. The Notice of Termination will contain specific instructions and information regarding the termination and actions that will be required of the Contractor and the City to effect the termination of this Contract.
- 18.04** The City may, at any time, notwithstanding any other provision to the contrary, terminate for convenience if the Contractor or its General Partner(s) is convicted of a felony or its equivalent. Furthermore, the City

may terminate this Contract for convenience at any time if a member of the Board of Directors of the General Partner is convicted of a felony and not removed from the Board of Directors within one hundred twenty (120) days of the conviction.

ARTICLE 19

Termination for Default, Damages for Delay, Time Extensions

19.01 If the Contractor refuses or fails to prosecute work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Contract, or any extension thereof, or refuses or fails to complete said work within such time, the City may, by written notice to the Contractor, terminate for default its right to proceed with the work or such part of the work as to which there has been delay. In such event, the City may take over the work and prosecute the same to completion, by contract or otherwise. The Contractor shall have five (5) business days to cure.

Whether or not the Contractor's right to proceed with the work is terminated, it and its sureties shall be liable for any damage to the City resulting from his refusal or failure to complete the work in the specified time.

19.02 If the Contractor wishes to challenge the termination for cause, the contractor shall have ten (10) business days to submit a request for arbitration to the American Arbitration Association for binding arbitration. Said arbitration hearing shall be set for a date not to exceed 90 days from the date of the request. Such arbitration shall be in accordance with the rules and procedures of the American Arbitration Association (AAA). The parties shall share equally in the cost of the arbitration with each side paying their own attorneys' fees.

19.03 The right to terminate for default and any other rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

19.04 The Contractor shall not be liable for any excess cost if the failure to perform the Contract arises out of cause beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: Acts of God or of the public enemy, Acts of the City in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restriction, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

ARTICLE 20

Termination of Right to Proceed for Certain Defaults

20.01 In addition to the City's right to terminate for default under other Articles of this Contract, the City will have the right to terminate the Contractor's performance of work in whole or in part for default for any of the following reasons:

- A. The Contractor's or a subcontractor's performance of work is in violation of the terms of this Contract.
- B. The Contractor or a subcontractor has violated an authorized order or requirement of the City.
- C. Abandonment of this Contract.
- D. Assignment or subcontracting of this Contract or any work under this Contract without approval of the City.
- E. Bankruptcy or appointment of a receiver for the Contractor's property.
- F. Performance by the Contractor in bad faith.
- G. In violation of the provisions of the City's Code.

20.02 If the Contractor is in default of this Contract, the City will so notify the Contractor in writing, by Certified Mail or delivered in person with a signed receipt. If the Contractor fails to remedy, or commence to remedy, the default within a period of ten (10) business days (or such longer period as the contracting officer may authorize in writing) after receipt of such notice, the City may terminate the Contractor's right to proceed with the work or that portion of the work which the City determines is most directly affected by the default. In the event the City terminates this Contract in whole or in part as provided in this Section, the City may procure, upon such terms and in such manner as the City may deem appropriate, items or services similar to those so terminated, and the Contractor shall be liable to the City for any excess cost for such similar items or services; provided, that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Article.

ARTICLE 21

Rights and Obligations in Termination for Defaults

21.01 The Article shall apply to terminations for defaults covered in Articles 19 and 20 of this Agreement.

21.02 On receipt of a Notice of Termination from the City, the Contractor shall stop all work under this Contract on the date of and to the extent specified in the Notice of Termination.

21.03 Rights of Surety. The Surety on the performance bond provided for in this Contract shall not be entitled to take over the Contractor's performance of work in case of termination under this Article, except with the written consent of the City.

ARTICLE 22

Use of The City's Name in Contractor Advertising or Public Relations

22.01 The City reserves the right to review and approve all City-related copy prior to publication. The Contractor shall not allow the City-related copy to be published in Contractor's advertisement or public relations programs until submitting the City-related copy and receiving prior written approval from the City Manager or his designee. The Contractor shall agree that published information on the City or the City's program shall be factual and in no way imply that the City endorses Contractor's firm, service, or product. The Contractor shall insert the substance of this provision, including the previous sentence, in each subcontract and supply contract or purchase order.

ARTICLE 23

Compliance With Federal Standards

All items purchased or leased under this Contract shall be in accordance with all governmental standards, to include, but not limited to, those issued by the Occupational Safety and Health Administration (OSHA), the National Institute of Occupational Safety Hazards (NIOSH), and the National Fire Protection Association (NFPA).

ARTICLE 24

Conflict of Interest

24.01 The Contractor shall not be an employee of City.

24.02 No member, officer, or employee of the City during their tenure or for two years thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

24.03 The Contractor warrants that no person or company has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees; nor has the Contractor paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee, any fee, commission, contribution, donation, percentage, gift or any other consideration, contingent upon, or resulting from award of this Contract. For

any breach or violation of this provision, the City shall have the right to terminate this Contract without liability and, at their discretion to deduct from the Contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration and any other damages and shall be responsible for reporting the details of such breach or violation to the proper legal authorities, where and when appropriate.

In compliance with FTA Circular 4220.1D, immediate family is defined as parents, wife, husband, children, and brothers and sisters.

No employee, officer, or agent of the City shall participate in selection, or in the award or administration of this Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his immediate family, his or her partner, or an organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

City officers, employees, or agents shall neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts.

ARTICLE 25 **Notices**

The delivery of any items and the giving of notice in compliance with the terms of this Agreement shall be accomplished by making same, in writing, and by the delivery thereof to the party intended to receive it or by mailing the same to the address of such party as hereinafter set forth. In the event such notice is made by mail, the same shall be given via U.S. mail, Return Receipt Requested and, unless otherwise provided herein, notice or delivery by mail shall be effective when mailed. All notices required in this Agreement shall be sent by certified mail, return receipt requested, and shall be mailed to:

CITY: City of Miami Gardens
1515 N.W. 167 Street, Bldg. 5
Miami Gardens Florida 33169
Attention: DANNY O. CREW, City Manager

COPY TO: SONJA K.DICKENS, ESQ., City Attorney
C/O JAMES C. BRADY & ASSOCIATES
501 Northeast 8th Street
Fort Lauderdale, Florida 33304

CONTRACTOR: CEMUSA Miami, LTD.
C/O David Yagnesak
2119 N.W. 84th Avenue
Miami, Florida 33126

ARTICLE 26
Litigation

This Contract shall be construed in accordance with the laws of the State of Florida. Any litigation between the parties arising out of, or in connection with this Contract shall be initiated in Miami-Dade County.

ARTICLE 27
Attorney Fees

Should any dispute arise hereunder, the prevailing party shall be entitled to recover against the non prevailing party all costs, expenses and attorney's fees incurred by the prevailing party in such dispute, whether or not suit be brought, and such right shall include all of such costs, expenses and attorney's fees through all appeals or other actions.

ARTICLE 28
Waiver

No waiver by the CITY of any provision of this Agreement shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by CONTRACTOR of the same, or any other provision or the enforcement thereof. The CITY's consent to or approval of any act by CONTRACTOR requiring the CITY's consent or approval shall not be deemed to render unnecessary the obtaining of the CITY's consent to or approval of any subsequent consent or approval of CONTRACTOR, whether or not similar to the act so consented to or approved.

ARTICLE 29
Binding Effect

All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective assigns, successors, legal representatives, heirs and beneficiaries, as applicable.

ARTICLE 30
Construction

This Agreement and the terms hereof shall be construed in accordance with the laws of the State of Florida and venue for all actions in a court of competent jurisdiction shall lie in Dade County, Florida.

ARTICLE 31
Severability

Should any word, phrase, or provision hereof be declared illegal or invalid by a court of competent jurisdiction, such declaration of illegality and/or invalidity shall not affect the remainder hereof.

ARTICLE 32
Entire Agreement

No statements, representations, warranties, either written or oral, from whatever source arising, except as expressly stated in this Agreement, shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this Agreement contains the entire understanding and agreement of the parties. No modifications hereof shall be effective unless made in writing and executed by the parties hereto with the same formalities as this Agreement is executed.

ARTICLE 33
Captions and Paragraph Headings

Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this Agreement, nor the intent of any provisions hereof.

ARTICLE 34
Joint Preparation

The preparation of this Agreement 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 Agreement be construed liberally to achieve its intent.

ARTICLE 35
Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

ARTICLE 36
Exhibits are Inclusionary

All exhibits attached hereto or mentioned herein which contain additional terms shall be deemed incorporated herein by reference. Typewritten or handwritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year set forth below their respective signatures.

CITY OF MIAMI GARDENS

Shirley Gibson
Shirley Gibson, Mayor
8/1/05
Date

ATTEST:

Ronetta Taylor
City Clerk
Ronetta Taylor, CMC

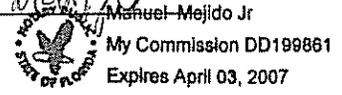
CEMUSA MIAMI, LTD

ATTEST:

[Signature]
By (Signature):
DAVID YAGNESAIL
Name:
Title: GENERAL MANAGER

[Signature]
By (Signature):
Manuel Mejido
Name:
Title: Account Manager

(SEAL)



S:\MIAMI\AGREEMENTS\CEMUSA

EXHIBIT "C" – PER SHELTER FEE

Contract Year	Per Shelter Fee
Year 1	$\$24,416.67 / (\text{avg. of } 0 \text{ to } 1,000 = 500) = \48.83
Year 2	$\$122,500.00 / (\text{avg. of } 1,000 \text{ to } 2,000 = 1,500) = \81.67
Year 3	$\$258,833.33 / (\text{avg. Of } 2,000 \text{ to } 3,000 = 2,500) = \103.53
Year 4	$\$319,916.67 / 3,000 = \106.64
Year 5	$\$329,500.00 / 3,000 = \109.83
Year 6	$\$339,416.67 / 3,000 = \113.14
Year 7	$\$349,583.33 / 3,000 = \116.53
Year 8	$\$360,083.33 / 3,000 = \120.03
Year 9	$\$370,916.67 / 3,000 = \123.64
Year 10	$\$382,000.00 / 3,000 = \127.33