RESOLUTION NO. 2015-03

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AWARDING A BID FOR THE SERVICE OF A GENERAL CONTRACTOR TO STATE CONTRACTING & ENGINEERING CORPORATION, INC., AS THE MOST QUALIFIED, RESPONSIVE AND RESPONSIBLE BIDDER PURSUANT TO INVITATION TO BID NO. 2014/15-3230-00-011, FOR THE CONSTRUCTION OF A NEW BUILDING ADDITION TO THE CITY OF HIALEAH EDUCATIONAL ACADEMY CHARTER SCHOOL LOCATED AT 2590 WEST 76 STREET, HIALEAH, FLORIDA, INCLUDING CONCRETE STAIRWAYS, PURSUANT TO THE DRAWINGS, PLANS AND SPECIFICATIONS, AND ALL THE ADDENDA PUBLISHED AND SUBMITTED AS PART OF THE BID, IN AN AMOUNT NOT TO EXCEED $1,183,001.00, ON TERMS AND CONDITIONS SET FORTH IN THE AGREEMENT; AND AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY OF HIALEAH, TO EXECUTE THE AGREEMENT, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT "1".

WHEREAS, the City, under Invitation to Bid No. 2014/15-3230-00-011, sought competitive bids for the construction of a new building addition to the City of Hialeah Educational Academy Charter School located at 2590 West 76 Street; and

WHEREAS, the City evaluated all the responses to the Bid, in accordance with the requirements and criteria included in the Bid and the City's Purchasing Code and Manual; and

WHEREAS, the City concluded that State Contracting & Engineering Corporation, Inc. is the most qualified, responsive and responsible bidder.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The City of Hialeah, Florida hereby awards a bid for the service of a general contractor to State Contracting & Engineering Corporation, Inc., as the most qualified,

responsive and responsible bidder pursuant to Invitation To Bid No. 2014/15-3230-00-011, for the construction of a new building addition to the City Of Hialeah Educational Academy Charter School located at 2590 West 76 Street, Hialeah, Florida, including concrete stairways, pursuant to the drawings, plans and specifications, and all the addenda published and submitted as part of the Bid, in an amount not to exceed $1,183,001.00, on terms and conditions set forth in the agreement; and authorizing the Mayor and the City Clerk, as attesting witness, on behalf of the City Of Hialeah, to execute the agreement, a copy of which is attached hereto as Exhibit "1".

PASSED AND ADOPTED this 13 day of January, 2015.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 23 day of January, 2015.

Carmen B. Hernandez
Acting Deputy City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

Lorena E. Bravo, City Attorney

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Resolution was adopted by a (5-0-2) vote with Council Members, Garcia-Martinez, Caragol, Casáls-Muñoz, Cue-Fuente, & Hernandez voting "Yes", and Council Vice President Gonzalez & Council Member Lozano absent.

AGREEMENT
(City of Hialeah Contract Number K-)

THIS AGREEMENT, made this ____ day of January, 2015, between the City of Hialeah, a Florida municipal corporation ("City"), having its principal place of business located at 501 Palm Avenue, Hialeah, Florida 33010 ("City"), and State Contracting & Engineering Corporation, Inc., a Florida corporation ("Contractor"), having its principal place of business in Florida located at 3800 North 29th Avenue, Hollywood, Florida 33020.

RECITALS

WHEAREAS, the City has issued an Invitation To Bid No. 2014/15-3230-00-011("Bid") for the service of a General Contractor for the construction of a new building addition to the City of Hialeah Educational Academy Charter School located at 2590 West 76 Street, in the City of Hialeah, Florida, including concrete stairways, pursuant to the drawings, plans and specifications, and all addenda published as part of the Bid;

WHEREAS, Contractor submitted a Proposal in response to the Bid and the City selected Contractor after engaging in the competitive bidding process;

WHEREAS, Contractor is the most responsive, responsible and qualified bidder and is able to perform the obligations set forth in the Bid in a capable, cost-effective manner; and

WHEREAS, the City has relied upon the information provided by the Contractor in its Response concerning the Contractor's experience and capability to provide the services requested by the City;

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and the City agree as follows:

ARTICLE I
CONTRACT DOCUMENTS AND INCORPORATION

The following documents are incorporated herein by reference as if fully set forth herein as (Attachment I) and shall be considered the Contract Documents:

A. Invitation to Bid provided by the City for Design and Engineering Services at the Hialeah Education Academy Charter School Expansion, inclusive of all addenda pertaining thereto, a copy of which is on file with the Construction and Maintenance Department and/or the Purchasing Division and incorporated by reference.

B. Proposal submitted by Contractor, a copy of which is on file with the Purchasing Division and incorporated by reference; and

C. Other:

1. Occupational Safety and Health Administration (OSHA) Excavating Standards, 29 C.F.R. Part 1926.650, Subpart P.

2. Insurance Checklist.

In the event of a conflict between the Proposal submitted by the Contractor and the Invitation to Bid, the Invitation to Bid shall prevail. In the event of a conflict between the Contract Documents and this Agreement, the terms and conditions of this Agreement shall prevail.

ARTICLE II
SCOPE OF WORK

The Scope of Work ("Work") is set forth in (Attachment II) referenced herein, to be performed within the City of Hialeah. The Contractor shall commence work only in accordance with and after the issuance of a Notice to Proceed and Work Orders by the City and thereafter shall construct and complete the Project in a good, workmanlike and competent manner, which will conform to the requirements of the Contract Documents.

ARTICLE III
CONTRACT TIME

Contractor shall substantially complete all assigned Work within time specified in the Notice to Proceed as calculated in calendar days from the issuance date of the Notice to Proceed by the City ("Contract Time"), unless the Contract Time is changed pursuant to Article VI or IX. The assigned Work shall include work orders that identify specific time periods within the time period for the completion of work assignments and tasks. Time is of the essence regarding the performance obligations set forth in this Agreement. Notwithstanding the Contract Documents, the Work must be substantially completed as determined by the City Project Manager by June 30, 2015.

ARTICLE IV
CONTRACT SUM

If the Contractor shall complete the Work in a good, workmanlike and competent manner within the Contract Time, the City shall pay to the Contractor an amount not to exceed One Million One-Hundred Eighty-Three Thousand One Dollars ($1,183,001.00) ("Contract Sum"). Unless otherwise specifically provided, payment shall be 30 days after (1) the City has received a complete and accurate invoice on actual work completed less 10% for retainage up to and including progress payments through 50% completion of the Scope of Work, including any change orders or modifications, or less 5% for retainage for progress payments after 50% completion of the Scope of Work, including change orders or modifications, all after approval by the City Project Manager or City Engineer; and (2) final payment, including retainage, shall be made after acceptance of all work by the City Project Manager or City Engineer under this Agreement and receipt of duly executed final releases of liens provided by the Contractor. The Contract Sum is the total amount payable by the City to the Contractor for performance of the Work under the Contract Documents.

ARTICLE V
ADMINISTRATION OF CONTRACT

The City Project Manager or City Engineer will provide administration of the Contract in accordance with accepted professional standards, including the determination of whether the Contract Documents comply with applicable laws, codes and regulations.

ARTICLE VI
CLAIMS AND DISPUTES

A. If any major dispute arises between the City and Contractor regarding the meaning or requirements of any part of this Agreement and no agreement is reached; such dispute shall be submitted first to the Mayor of the City who shall make a final decision. If the Contractor disagrees with the decision, the Contractor may elect arbitration under the rules of the American Arbitration Association. Any dispute arising out of or relating to the Agreement shall be settled by arbitration in accordance with the Construction Industry Rules of the American Arbitration Association. A major dispute is defined as a dispute that cannot be resolved amicably among the parties within a reasonable period of time. Pending resolution of a claim or dispute, unless otherwise agreed to by the parties, the Contractor shall proceed diligently with performance of the Agreement; provided the City is diligently performing all other obligations under the Agreement except those obligations that gave rise to the claim or dispute.

B. If the contractor desires to make a claim for an increase in the Contract Time, written notice shall be given in a timely fashion prior to or contemporaneously with the event or circumstances that necessitate the claim; or within 7 days of the event. The Contractor's claim shall include a cost estimate and describe the probable effect of delay on progress of the Work. Notwithstanding, there shall be no allowance for increase in the Contract Time for substantial completion of all assigned Work beyond June 30, 2015.

ARTICLE VII
LIQUIDATED DAMAGES

If the Contractor fails to substantially complete the Work within the Contract Time, set forth in Article III above, the City will deduct from the Contract Sum, as liquidated damages, the sum of Five Hundred and No/100th Dollars ($500.00) for each calendar day after the Contract Time that the Work is not substantially complete and is not approved by the City Project Manager, City Engineer or authorized City Representative. Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the City can utilize the Work for its intended use.

ARTICLE VIII
DUTIES OF CONTRACTOR

A. Contractor warrants that all work, materials, services and equipment that may reasonably be inferred from this Agreement, including but not limited to all implements, machinery, equipment, transportation, tools, materials, supplies, labor, as being necessary or required to produce the intended result, will be supplied by the Contractor at its own costs,

whether or not specifically identified and required in this Agreement. The City, at its expense, may enter upon and inspect the Work and the construction site at all reasonable times. The City may not interfere with the performance of the Work by the Contractor or its Subcontractors.

B. Contractor shall leave the surfaces of rights-of-way in exactly the same condition that existed prior to the start of the Work. Contractor shall keep and maintain all affected areas reasonably clean and in a good workmanlike manner as appropriate for the stage of completion of the Work.

C. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury and loss to the following:

1. Employees, subcontractors, materials on the Work and third parties on or adjacent to the Work;
2. The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor, Contractor's subcontractors or sub-subcontractors; and
3. Other property at the site or adjacent thereto, such as trees, shrubbery, lawns, pavements, rights-of-way, structures and utilities not designated for removal, relocation or replacement in the course of construction.

D. Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities relating to safety of persons or property or their protection from damage, injury or loss.

E. Contractor warrants and agrees that all work, materials, services and equipment necessitated by the inspection of City agencies or other regulatory agencies, in order to bring the Contractor's work into compliance with this Agreement and all applicable laws, shall be the responsibility of the Contractor and shall be provided at no additional cost to the City.

ARTICLE IX
CHANGE IN THE WORK

Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, by written change order. A change order may represent a change in the Work, an adjustment in the amount of the Contract Sum and an adjustment in the Contract Time. No claims, demands or invoices whatsoever for extra work will be considered or paid unless provided in a written change order duly authorized and signed by the City. The City has administrative authority to execute change orders that are less than $15,000.00. If the change order is equal to or exceeds $15,000.00, then such change order may require approval or authorization by resolution of the City Council and the Mayor. The Contractor shall not perform any change in the Work without first receiving a written, executed and valid Change Order. A Change Order is a written instrument prepared by the Contractor and signed by the City, stating

their agreement upon all of the following: A change in the Work, the amount of the adjustment in the Contract Sum, if any; and the extent of the adjustment in the Contract Time, if any.

ARTICLE X
CONFLICT OF INTEREST

A. Contractor covenants that no elected official, civil servant, employee or independent contractor who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interests, direct or indirect, in the Contractor. Contractor further covenants that, in the performance of this Agreement, the Contractor shall not allow such persons to have a personal financial interest, direct or indirect, in the Contractor. If any such financial interest shall arise, then the Contractor must disclose in writing to the City immediately upon discovery.

B. Contractor warrants that it has not employed or retained any person employed by the city to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person employed by the City any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this Agreement.

C. Contractor is aware of the conflict of interest laws of the City of Hialeah, particularly, Hialeah Code ch. 26, Art. I and II; Miami-Dade County, Florida, particularly, Code of Miami-Dade County, Florida §§ 2-11.1 et seq.; and the State of Florida, particularly, Chapter 112, Part III, Florida Statutes, and agrees that it shall fully comply in all respects with those provisions.

ARTICLE XI
COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS

Contractor agrees that it shall not discriminate as to religion, race, sex, color, creed, national origin, age or disability, in connection with its performance under this Agreement. Contractor shall comply with all federal, state and local laws applicable to Contractor's services, specifically those including Equal Opportunity Employments, minimum wage laws, the Americans with Disabilities Act and the Florida Building Code. Contractor is expected to comply with all applicable laws, ordinances, and codes, rules and regulations of federal, state and local governments, including the City. The City reserves the right, but not the obligation, to verify the Contractor's compliance with them. Failure to comply with any applicable laws will be grounds for termination of this Agreement for cause.

ARTICLE XII
DISCLOSURE

Contractor represents that there are no on-going civil or criminal litigation, investigations, arbitration or other administrative proceedings ("Proceedings") involving Contractor or Contractor's officers and directors where the Proceedings relate to the officer or director's business or financial activities. All Proceedings for the past five years involving Contractor have been disclosed in writing to the City. Contractor shall have a continuing duty to disclose all Proceedings promptly upon occurrence. The contractor shall not be required to

disclose any confidential settlement terms as part of its duty to disclose but shall indicate whether the Proceeding has been settled or not by confidential agreement. If, in the City's discretion, any Proceeding impairs or jeopardizes Contractor's ability or willingness to perform this Agreement, Contractor shall provide City, at City's request, reasonable assurances that Contractor will be able to perform the Agreement in accordance with its terms and conditions and that Contractor will not engage in conduct similar in nature to the conduct alleged in such Proceeding in its performance of the Agreement.

ARTICLE XIII
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 hand-delivery or by registered mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which hand-delivered; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

CITY

City of Hialeah
Department of Construction & Maintenance
900 East 56th Street
Hialeah, Florida 33013
Attention: Vicente Rodriguez, Director
(305) 687-2620 Office
(305) 687-2642 Fax

with a copy to the Mayor
501 Palm Avenue, 4th Floor
Hialeah, Florida 33010

with a copy to the Grants Dept.
501 Palm Ave., 1st Floor
Hialeah, Florida 33010

CONTRACTOR

State Contracting & Engineering Corp
3800 North 29th Avenue
Hollywood, Florida 33020
Attention: Paul Carty, V.P.
(954) 923-4747 Office

ARTICLE XIV
SUBCONTRACTORS

The obligations undertaken by the Contractor pursuant to this Agreement shall not be delegated or assigned to subcontractors, sub-subcontractors, except as so identified in the response to the Bid documents, unless City shall first consent in writing. The Contractor is fully responsible for satisfactory completion of the Work by any subcontractor. Subcontracting will not relieve the Contractor of its duties under this Agreement. If the City Project Manager or City Engineer has a reasonable objection to any subcontractor not presently identified in the proposal documents and proposed by the Contractor, the City shall give notice to the Contractor within 10 working days of the Contractor's proposal, and the Contractor shall propose another

subcontractor to the City for its consideration. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate change order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

ARTICLE XV
AUDIT

City reserves the right to audit documents and financial records of Contractor relating to compliance with this Agreement upon reasonable notice during the performance of this Agreement and for a period of five years after final payment is made. If any litigation, claim, negotiation, audit or other action involving the records has commenced, the records must be retained until completion of the action and resolution of all issues.

ARTICLE XVI
INDEMNITY

Contractor shall protect, defend, reimburse, indemnify and hold harmless the City, its officials, whether elected or appointed, officers, directors, employees, contractors, representatives, agents and attorneys (all collectively the "City's Released Parties") from and against all claims, liability, expenses, costs, losses, damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals), including all claims attributable to bodily injury, sickness, disease, death, injury or destruction of personal property; from and against all causes of action of every kind or character (including statutory, equitable, at common law), from and against any orders, judgments, or decrees which may be entered therefrom, and from and against all costs, attorney's fees, expenses and liabilities sustained and/or incurred in the defense of any such claims, or in the investigation thereof, through administrative proceeding, trial and appellate review, which may arise out of or result from the performance of the Work under this Agreement by Contractor, Contractor's subcontractors, and any supplier, vendor, person, entity or organization directly or indirectly employed by any of them (all collectively the "Indemnifying Parties"), including all negligent, reckless, willful or intentional acts or omissions of the Indemnifying Parties. The provisions of this Article shall survive the term of the Agreement. The Indemnifying Parties are not responsible for indemnification of claims, damages, loss or expense caused by the City's negligence or intentional wrongdoing.

ARTICLE XVII
INDEPENDENT CONTRACTORS

Contractor and its employees, representatives and agents shall be deemed to be independent contractors, and not agents or employees of City, and shall not attain any rights or benefits under the civil service or pension laws, rules and regulations of the City, or any rights generally afforded classified or unclassified employees. The Contractor, its employees, representatives and agents shall not be deemed entitled to the Florida Workers' Compensation benefits as an employee of City.

ARTICLE XVIII
TERMINATION FOR CAUSE

The City may terminate this Agreement for cause. Cause shall include the following acts or omissions of the Contractor:

A. Failure to materially comply and/or perform in accordance with this Agreement;

B. Refusal to submit to an audit or failure to provide the City with accurate and complete financial records relating to the Work;

C. Failure to supply sufficient and/or properly skilled workers or proper materials;

D. Failure to make payment to Subcontractors for materials or labor in accordance with agreements between the Contractor and the Subcontractors where the Subcontractor has fully performed as required by its agreement with the Contractor;

E. Disregard of laws, ordinances, rules, regulations or orders of a public authority having jurisdiction following written notice to the Contractor and a reasonable opportunity to cure;

F. Filing of a voluntary petition in bankruptcy or reorganization, or making any assignment for the benefit of creditors, or seeking any similar relief under any present or future statute, law or regulation relating to relief of debtors; or

H. Adjudicated bankrupt or have any involuntary petition in bankruptcy filed against it.

The Contractor may terminate this Agreement for cause. Such cause shall include the following:

A. City Project Manager, City Engineer or other authorized City Representative refuses to approve an invoice submitted by the Contractor pursuant to Article IV and refuses to give the Contractor written reasons for that action, upon request; and

B. The City refuses to pay an invoice as provided in Article IV.

Prior to any termination for cause, a party shall give the defaulting party written notice of the alleged cause and default and a reasonable opportunity to cure of not less than 7 days.

ARTICLE XIX
SUSPENSION BY CITY FOR CONVENIENCE

The City may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine for a period up to 60 days, without approval of the Contractor; or for longer than 60 days, if approved by the Contractor. An adjustment may be made for increases in the cost of performance of the Agreement, unless the suspension, delay or interruption is attributable to a cause for which the Contractor is responsible.

ARTICLE XX
MINORITY BUSINESS ENTERPRISE

The Contractor shall provide written statement to the City of Hialeah as to whether they are a minority business enterprise, as defined in Section 288.703, Fla. Stat. (Attachment IV).

ARTICLE XXI
INSURANCE

The Contractor shall maintain during the term of this Agreement, the insurance specified below.

A. Insurance policies required above shall be issued in companies authorized to do business under the laws of the State of Florida. They shall have a general policy holders rating of "A" or better and a financial rating not less than "X" as reported by Best's Key Rating Guide, published by A.M. Best Company, latest edition, or its equivalent, subject to the approval of the City's Risk Manager; and

B. The Contractor agrees to furnish Certificates of Insurance to the City, and a copy to the Grants Department, subject to approval of the City's Risk Manager, prior to the execution of this Agreement and issuance of the Notice to Proceed. The City of Hialeah shall be named as an additional insured on all policies required herein. Certificates of Insurance shall be sent to Robert Lloyd-Still, Risk Manager, City of Hialeah, 501 Palm Avenue, Third Floor, Hialeah, Florida 33010.

C. All policies shall provide a notice of cancellation or reduction of coverage limits. The policy or policies must be endorsed to provide City with 30 days notice of cancellation and/or restriction.

1. Business Automobile Liability Insurance with$1,000,000 single limit for bodily injury and property damage combined each occurrence . Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include: (1) Owned vehicles, if applicable; and (2) Hired and Non-Owned vehicles.

2. Commercial General Liability Insurance with minimum limits of $1,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent Contractors; and (3) Personal Injury Coverage with Employee and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

3. All other insurance coverage identified in the Insurance Checklist. See Exhibit "I".

4. If work being performed involves hazardous materials, the need to procure and maintain any or all of the following coverage will be specifically addressed upon review of exposure. However, if hazardous materials are identified while carrying out this Agreement, no further work is to be performed in the area of the hazardous materials until the Risk Manager has been consulted as to the potential need to procure and maintain any or all of the following coverage through a change order to the project.

a. Contractor's Pollution Liability. For sudden and gradual occurrences in the amount no less than $1,000,000 for each claim and $2,000,000 in the aggregate arising out of work performed under this Agreement, including, but not limited to, all hazardous materials identified under this Agreement.

b. Disposal. When applicable, the Contractor shall designate the disposal site and furnish a Certificate of Insurance from the disposal facility for Environmental Impairment Liability Insurance covering liability for sudden and accidental occurrences in an amount not less than $1,000,000 for each claim and $2,000,000 in the aggregate and shall include liability for non-sudden occurrences in an amount not less than $1,000,000 for each claim and $2,000,000 in the aggregate.

c. Hazardous Waste Transportation. When applicable, the Contractor shall designate the hauler and furnish a Certificate of Insurance form the hauler for Automobile Liability Insurance and Endorsement MCS90 for liability arising out of the transportation of hazardous materials with an amount not less than $2,000,000 annual aggregate and provide valid EPA identification number.

d. Certificates of Insurance shall clearly state the hazardous materials exposure work being performed under the Agreement.

5. Builder's Risk. A special form coverage shall include, but not be limited to, storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to this Agreement, theft coverage, waiver of occupancy clause endorsement, limits of insurance and maximum deductible clause acceptable to the Risk Manager.

ARTICLE XXII
COMPLETION, PUNCH LIST AND CLOSE-OUT

Upon receipt of written notice, the City will ascertain whether the Work or designated portions thereof is ready for the City Project Manager, City Engineer or Architect's Substantial Completion inspection. Substantial Completion of the Work shall be achieved when the Work has been completed to the point where the City can occupy or utilize the Work for its intended purpose. If the City has designated portions of the Work to be turned over to the City prior to Substantial Completion of the entire Work, the City Project Manager, City Engineer or Architect shall certify the date as to when Substantial Completion of such designated portions of the Work has been achieved. The entire Work shall be fully completed and ready for final acceptance by the City within 30 calendar days after the Substantial Completion date, or within 30 calendar days after the Contractor's receipt of the Punch List, whichever date occurs later. To the extent items are contained on the Punch List, the City shall reasonably estimate the cost to make each correction or to complete each such item, and the City shall be entitled to withhold from payment of the retained funds an amount equal to 150% of the aggregate value of such items, in addition to the amount of unresolved or unbonded claims by third parties. Upon certification by the City Project Manager, City Engineer or Architect that Final Completion has occurred, the City shall release to the Contractor all remaining retained funds, excluding any interest accrued, if any, on the retained funds, which interest shall be for the account of the City. If a good faith dispute exists as to whether one or more items identified on the Punch List has been completed pursuant to the Agreement, the City may continue to withhold an amount not to exceed 150% of the total costs to complete such items. All times that required correction under the Agreement and that are identified after the preparation and delivery of the Punch List remain the obligation of the Contractor as defined by the Agreement.

ARTICLE XXIII
PAYMENT AND PERFORMANCE BONDS

The Contractor shall provide payment and performance bonds equal to the Contract Sum in a form acceptable to the City within 7 days of execution of this Agreement in accordance with section 255.05, Florida Statutes, as amended. The Contractor acknowledges that such payment and performance bonds shall be recorded in the Public Records of Miami-Dade County, Florida.

ARTICLE XXIV
MISCELLANEOUS PROVISIONS

A. This Agreement and the Contract documents constitute the sole and only Agreement of the parties hereto relating to this project and sets forth the rights, duties and obligations of each to the other as of its date. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force or effect.

B. This Agreement shall be construed and enforced according to the laws of the State of Florida. The Contractor agrees to be subject to the jurisdiction (subject matter and in personam) of the courts of Miami-Dade County, Florida, and amenable to service of process. Venue for any litigation arising out of or in connection with this Agreement shall be in Miami-Dade County, Florida.

C. This Agreement shall be binding upon the parties herein, their heirs, executors, legal representatives, successors and assigns.

D. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof; and no waiver shall be effective unless made in writing.

E. Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of any applicable law, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed several, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.

F. The terms "City" and "Contractor", as herein contained, shall include the singular and/or the plural, the masculine, the feminine and/or the neuter, the heirs, successors, executors, administrators, personal representatives and/or assigns, wherever and whenever the context so requires.

G. The captions of the various paragraphs of this Agreement have been inserted for the purposes of convenience only. Such captions are not a part of this Agreement and shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions contained in this Agreement.

H. This Agreement may be executed in several counterparts; all of which shall constitute one of the same Agreement between the City and the Contractor.

I. All parties hereto upon the request of any other party shall execute such further instruments or documents as may be reasonably required by the requesting party to implement the terms, conditions and provisions of this Agreement.

J. No term of this Agreement is written for the direct benefit of any third party and there are no third party beneficiaries of this Agreement.

K. Neither party shall be responsible for delays or lack of performance as a result of force majeure. Force majeure means strikes, boycotts, shipwrecks or obstructions to navigation, acts of God, material shortages, riots, acts of war, terrorism or any other circumstance or condition for which the party is reasonably responsible or which is not within the control of the party.

L. Neither Party may assign this Agreement without the prior written consent of the other Party. Consent of such assignment will not be unreasonably withheld by the parties.

M. No provision in this agreement shall be construed as a waiver of the City's sovereign immunity beyond the limited waiver in section 768.28, Florida Statutes.

(THIS SPACE LEFT INTENTIONALLY BLANK.)

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by the respective officials thereunto duly authorized, this the day and year first above written.

Signed, sealed and delivered in the presence of:

State Contracting & Engineering Corp.
3800 North 29th Avenue
Hollywood, Florida 33020

Witness Signature

Witness Name

Authorized signature on behalf of
State Contracting & Engineering Corp.

Witness Signature

Witness Name

Paul Carty, Date
Vice President

City of Hialeah, Florida
501 Palm Avenue
Hialeah, Florida 33010

Authorized signature of behalf of the City of Hialeah, Florida

Attest:

Marbelys L. Rubio-Fatjo
City Clerk

Carlos Hernandez Date
Mayor

(SEAL)

Approved as to legal sufficiency and form:

Lorena E. Bravo, Esq.
City Attorney

Annette Quintana, Esq.
Acting Director of Grants & Human Services

ATTACHMENT II

SCOPE OF WORK

Contractor shall provide all personnel, equipment, materials and supplies, necessary to perform the Work, in compliance with the Agreement, and in accordance with the following Scope of Work.

1. Contractor warrants and represents that its employees, subcontractors or agents performing the Work under the Agreement have the proper skill, training, background, knowledge, experience, integrity, and character necessary to perform the Work in a competent and professional manner.
2. Contractor warrants that it will at all times employ, maintain and assign to the performance of the Work a sufficient number of competent and qualified personnel necessary to perform in accordance with the Agreement.

Project Description

The City has hired a Contractor to build a new two-story addition with eight classrooms to accommodate increased enrollment for the 2015-2016 school year at the City of Hialeah Educational Academy. The new building includes exterior concrete stairways, walkway connections to the existing school building, hallways, mechanical, electrical and fire alarm systems, interior and exterior finishes, acoustical ceilings, impact windows and doors, modifications to the existing parking lot, fencing, gates, landscaping and irrigation. The building design and specifications has been permitted the City's building department under building permit no. 2014-_____.

General Conditions and Summary of Work

The summary of work and general conditions provided for in the Bid and all addenda is incorporated herein by reference in their entirety.

Contractor shall construct the addition pursuant to the building permit and incorporated plans, drawings and specifications to completion until a certificate of occupancy is issued and the building is ready for its intended use. Contractor warrants that all work, materials, services and equipment that may be reasonably inferred from this Agreement, including but not limited to all implements, machinery, equipment, transportation, tools, materials, supplies, labor, as being necessary or required to produce the intended result will be supplied by Contractor at its own cost.

Additional Duties of Contractor

Contractor shall complete the specific tasks within the following deadlines:

1. Completion of the concrete shell structure, including all necessary approved inspections, no later than May 31, 2015
2. Complete installation of the entire roof system, including all necessary approved inspections, no later than June 30, 2015

3. Complete installation of the electrical conduits, wiring, outlets, light fixtures and fire alarm system, including all necessary approved inspections, no later than June 30, 2015
4. Complete installation of all windows, including all necessary approved inspections, no later than June 30, 2015
5. Substantial completion as determined by the City Project Manager no later than June 30, 2015