

AGREEMENT FOR THE POMPANO BEACH AMPHITHEATER PLAZA REMODEL

BETWEEN

CITY OF POMPANO BEACH, FLORIDA

AND

SHIFF CONSTRUCTION & DEVELOPMENT, INC.

THIS AGREEMENT made and entered into on _____, (hereinafter "Effective Date") by and between:

CITY OF POMPANO BEACH, a municipal corporation organized and existing under the laws of the State of Florida, having its principal office at 100 W. Atlantic Blvd., Pompano Beach, Florida 33060, referred to here as "City."

and

SHIFF CONSTRUCTION & DEVELOPMENT, INC., authorized to do business in the state of Florida, whose mailing address is 1331 S. Dixie Highway, #SA, Pompano Beach, FL 33060 (hereinafter "Contractor").

City and Contractor may also be referred to herein individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the City wishes to enter into this Agreement for the remodeling of the Pompano Beach Amphitheater Plaza (hereinafter "Agreement") with Contractor to provide renovations scope and services within the city limits of the City of Pompano Beach when requested by the City through a written Notice to Proceed; and

WHEREAS, the Code of the City of Pompano Beach at Section 32.41(C) provides authority for the City Manager to piggyback City purchase of goods and services with state or local public contracts within certain codified guidelines, which guidelines have been met; and

WHEREAS, the parties wish to incorporate the terms and conditions of the solicitation and contractual arrangement between Sourcewell and Contractor in accordance with contract #FL-SEA-GC02-041019-SCD Indefinite Quantity Construction Agreement a copy of which is referenced hereto at Exhibit A and adopted in its entirety by City and Contractor (hereinafter "IRC Contract"), Detail Scope of Work identified in Exhibit B, together with and including contract renewals, amendments and change orders to the extent applicable hereto; and

WHEREAS, the City Manager has determined that piggybacking with the IRC Contract is necessary for remodeling to the Pompano Beach Amphitheater Plaza and is the most economically advantageous way to procure these necessary materials, products, and/or services in a timely and efficient manner.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. RECITATIONS. The foregoing "WHEREAS" clauses are hereby adopted and incorporated herein.
2. TERM. The term of this Agreement shall commence on the Effective Date and continue through six (6) months unless terminated earlier or extended by the Parties.
3. CONTRACT TERMS. Contractor agrees to provide remodeling of the Pompano Beach Amphitheater Plaza located within the city limits of the City of Pompano Beach as requested by City through a written Notice to Proceed. The IRC Contract is hereby incorporated into this Agreement for all purposes. In the event of conflict between the IRC Contract and this Agreement, the order of priority shall be: (1) Scope of Work; (2) this Agreement; and (3) the IRC Contract.

The following provisions are included as supplementary to and amending the IRC Contract:

A. City shall pay Contractor no more than the unit prices set forth in the IRC Contract and in accordance with the provisions of the IRC Contract in the total amount Not To Exceed one hundred eight four thousand one hundred eighty four dollars and sixty one cents (\$184,184.61). If the City requires services not covered by unit prices already made a part of the IRC Contract, the Contractor shall submit a detailed written proposal to the authorized City representative before providing any such services. For these purposes, City of Pompano Beach City Manager Gregory P. Harrison shall be the City Representative.

B. If permits are required as part of the Pompano Beach Amphitheater Plaza remodeling required hereunder, Contractor shall submit complete and accurate permit applications to all applicable permitting agencies within five (5) days of receiving all documents from City necessary to file such permit applications. City shall pay all permit and related fees directly to the permitting agencies, including any permit fees charged by the City.

C. City of Pompano Beach shall be deemed substituted for Sourcewell, with regard to any and all provisions of the IRC Contract, including, for example and not limitation, with regard to bond requirements, insurance, indemnification, licensing, termination, default, and ownership of documents, including the additional provisions in sections D, E, F, and G, below. All recitals, representations and warranties of Contractor made in the IRC Contract are restated as if fully set forth herein, made for the benefit of City, and incorporated herein.

D. Within five (5) days of final execution of this Agreement, Contractor shall furnish City with a certificate of insurance in a form acceptable to City for the insurance required. Such certificate provided my Contractor must state the City will be given thirty (30) days written notice prior to cancellation or material change in coverage. A copy of the additional insured endorsement must be attached and contain language no less restrictive than ISO Form CG 20 10 07 04 or ISO Form CG 20 33 07 04. Contractor shall not commence work on the Disaster Services unless and until the requirements for insurance have been fully met by Contractor and appropriate evidence thereof, in the City's sole discretion, has been provided to and approved by the City.

E. Contractor shall indemnify and hold harmless City, its elected officials, officers, employees and agents, from and against all claims, suits, actions, damages, causes, or action or

judgments arising out of the terms of this Agreement for any personal injury, loss of life, or damage to property sustained as a result of the performance or non-performance of services, from and against any orders, judgments, or decrees, which may be entered against City, its elected officials, officers, employees and agents; and from and against all costs, attorney's fees, expenses, and other liabilities incurred in the defense of any such claim, suit, or action, and the investigation thereof. Nothing in the award, resulting agreement, contract or purchase order shall be deemed to affect the rights, privileges, and immunities of the City as set forth in Florida Statute section 768.28. The parties agree that one percent (1%) of the total compensation paid to Contractor for work under this contract shall constitute specific consideration to contractor for the indemnification to be provided under the contract.

F. Both parties agree that City may terminate this Agreement for any reason with ten (10) day notice to Contractor.

G. ~~Public Records and Retention: City is a public agency subject to Chapter 119, Florida Statutes. Contractor and its subcontractors shall comply with public records laws, specifically to:~~ 1. Keep and maintain public records required by the City in order to perform the service; 2. Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City; and 4. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

Failure to comply with said statutory requirements may subject Contractor to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CITY CLERK

100 W. Atlantic Blvd., Suite 253

Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com

4. ASSIGNMENT. Neither party may assign its rights or obligations under this Agreement without the consent of the other.

5. NOTICE. Notice hereunder shall be provided in writing by certified mail return receipt requested, or customarily used overnight transmission with proof of delivery, to the following parties, with mandatory copies, as provided below:

For City:

Robert McCaughan
P.O. Box 2083
Pompano Beach, FL 33060

Copy to:

Mark E. Berman City Attorney
P.O. Box 2083
Pompano Beach, Florida 33061

For Contractor:

Justen Shiff
1331 S. Dixie Highway Suite 5A
Pompano Beach, FL 33060

6. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement between Contractor and City with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties. This Agreement may not be modified except by the parties' mutual agreement set forth in writing and signed by the parties.

7. SEVERABILITY. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, such provision will be fully severable, this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance here from and in lieu of such illegal, invalid or unenforceable provision, City and Contractor shall negotiate in good faith to restore insofar as practicable the benefits to each party that were affected by such ruling and to include as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

8. GOVERNING LAW. Agreement must be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement will be in the state courts of the Seventeenth Judicial Circuit in and

for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

9. FORCE MAJEURE. Neither party shall be obligated to perform any duty, requirement or obligation hereunder if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of nature or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of Force Majeure. If either party is unable to perform or delayed in their performance of any obligations hereunder by reason of any event of Force Majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of Force Majeure.

Contractor must follow all Federal, State, County, and City safety guidelines, including all CDC safety guidelines in effect during the term of the program, including but not limited to social distancing, and personal protection equipment. Inability to conduct the program and follow any and all required safety guidelines applicable to the COVID-19 virus or other similar pandemic or emergency, or failure to follow such requirements, including but not limited to, social distancing, shall constitute grounds for immediate cancellation of this Agreement unilaterally by the City upon written notice, which may be provided via electronic mail.

10. EMPLOYMENT ELIGIBILITY. By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit or County Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination

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

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Attest:

CITY OF POMPANO BEACH

ASCELETA HAMMOND, CITY CLERK

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

APPROVED AS TO FORM:

MARK E. BERMAN, CITY ATTORNEY

(SEAL)

"CONTRACTOR"

Shiff Construction & Development, Inc.

Witnesses:

[Signature]

Kyle Bennett
(Print or Type Name)

[Signature]
Lanika Jennings
(Print or Type Name)

By: [Signature]
Justen D. Shiff, President

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 4 day of NOVEMBER, 2021, by Justen D. Shiff as President of Shiff Construction & Development, Inc., a Florida limited liability company on behalf of the company. He is personally known to me or who has produced _____
PERSONALLY KNOWN TO ME (type of identification) as identification.

NOTARY'S SEAL:



[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

RIA Q. Picone
(Name of Acknowledger Typed, Printed or Stamped)

HH 34962
Commission Number