

## **CONSTRUCTION AGREEMENT No. 1570**

THIS AGREEMENT is dated \_\_\_\_\_ by and between CITY OF POMPANO BEACH, FLORIDA (hereinafter called OWNER) and Shiff Construction & Development, Inc., a Florida corporation (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### **Article 1. WORK**

The project consists of the furnishing of all labor, equipment and materials for: Kester Park Improvements

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: (Bid Name) P-26-19.

### **Article 2. ENGINEER**

The Project has been designed by Bermello Ajamil who is hereinafter called ENGINEER and who is to act as OWNER'S representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

### **Article 3. CONTRACT TIME**

The Work will be substantially completed within 228 days from the date the Contract Time commences to run as provided in the EXHIBIT "B" GENERAL CONDITIONS, and completed and ready for final payment in accordance with the EXHIBIT "B" GENERAL CONDITIONS within 288 days from the date the Contract Time commences to run.

### **Article 4. PRECONSTRUCTION PHASE REQUIREMENTS**

Contractor shall be instructed to commence the Work by written instruction in the form of a Purchase Order issued by the OWNER's General Services Department and a Notice to Proceed issued by the Contract Administrator. The first Notice to Proceed and Purchase Order will not be issued until Contractor's submission to OWNER of all required documents and after execution of this Contract by both Parties. Preliminary work, including submission of a project schedule, schedule of values, submittals, submittal schedule, and other documents required for permitting, and performance of work that does not require permits, shall be commenced within ten (10) calendar days after the date of the first Notice to Proceed. Contractor shall have ten (10) days after receipt of signed and sealed contract drawings from Consultant to apply for construction permits to the applicable permitting authority. Issuance of all permits by the permitting authority shall be a condition precedent to the issuance of a second Notice to Proceed for all other Work. Except for the reimbursement of permit application fees as may be provided in the Contract Documents, Contractor shall not be entitled to compensation of any kind during the permitting process. The

Work to be performed pursuant to the second Notice to Proceed shall be commenced within ten (10) calendar days of the Project Initiation Date specified in the second Notice to Proceed.

#### **Article 5. LIQUIDATED DAMAGES**

OWNER and CONTRACTOR recognize that time is of the essence of the Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in Article 3, above, plus any extensions thereof allowed in accordance with the EXHIBIT "B" GENERAL CONDITIONS. They also recognize the delays, expense and difficulties involved in the proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER two hundred and 00/100 dollars ( ) for each day that expires after the time specified in Article 3 for Substantial Completion, plus any monies paid by the OWNER to the ENGINEER for additional engineering and inspection services until the Work is substantially complete. After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay the OWNER one hundred and 00/100 ( ) for each day that expires after the time specified in Article 3 for completion of Work and readiness for final payment, plus any monies paid by the OWNER to the ENGINEER for additional engineering and inspection services.

#### **Article 6. CONTRACT PRICE**

Contract Price means Guaranteed Maximum Price ("GMP"), and the terms may be used interchangeably.

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents in current funds as follows:

The total sum of the work shall not exceed a GMP of two million nine hundred sixty three thousand five hundred seventy eight dollars and fifteen cents (\$2,963,578.15).

CONTRACTOR understands and agrees that a material inducement for the OWNER entering into this Contract, following a competitive award process authorized under Florida law, was CONTRACTOR's representations about its expertise in the scheduling, sequencing and construction of the Project, as well as its superior familiarity with the unique local conditions and geography of the Project site, and the jobsite area. CONTRACTOR understands that time is of the essence in connection with the performance of the Work set forth in this Contract, and that even a minor breach of its terms may have a substantial, adverse impact upon the OWNER. Accordingly, CONTRACTOR hereby affirms that the foregoing is true and correct, and that all anticipated costs to achieve the schedule and design intent have been included in the GMP for the Project.

GMP includes the cost of the work required by the documents, the construction manager's fixed fee, contingency fund and CONTRACTOR's lump sum. The GMP is guaranteed by the CONTRACTOR not to exceed the amount established herein, subject to additions and deductions by Change Order as provided for elsewhere in this Contract. Cost which would cause the GMP to be exceeded shall be paid by the CONTRACTOR without recourse or reimbursement by the Owner.

Construction Manager's Lump Sum General Conditions during the Construction Phase includes, without limitation, the following:

- a. The cost of its home or branch office employees or consultants not at the Project site, including the cost of all benefits, insurance, and taxes attributable to wages and salaries and other company overhead expenses for said home office employees.
- b. The cost of its field employees, or their approved replacements, including the cost of all benefits, insurance, and taxes attributable to wages and salaries for said field employees.
- c. General operating expenses of the Construction Manager's principal and branch offices other than the field office.
- d. Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- e. Overhead and profit, or general expenses of any kind, except as may be expressly included in Article 8, herein, as Cost of the Work.
- f. All travel and per diem costs of Construction Manager's employees and consultants.
- g. Expenses such as long distance telephone calls, telephone service at the site, postage, office supplies, expressage, and similar items in connection with the Work.
- h. Cost of equipment such as laptops, cameras, radios, computers, cell phones, copiers, telephones, dictating units, trailers, vehicles and furniture purchased or rented by the Construction Manager.

## **Article 7. PAYMENT PROCEDURES**

7.1 CONTRACTOR shall submit Applications for Payment in accordance with the EXHIBIT "B" GENERAL CONDITIONS. Applications for Payment will be processed by ENGINEER as provided in the EXHIBIT "B" GENERAL CONDITIONS.

7.2 Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or about the 1st day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in the EXHIBIT "B" GENERAL CONDITIONS (and in the case of Unit Price

Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

7.2.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and such amounts as ENGINEER shall determine, or OWNER may withhold, accordance with the EXHIBIT "B" GENERAL CONDITIONS.

5% of Work completed will be withheld by OWNER as retainage.

7.2.2 Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with the EXHIBIT "B" GENERAL CONDITIONS.

7.3 Final Payment. Upon final completion and acceptance of the Work in accordance with the EXHIBIT "B" GENERAL CONDITIONS, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said EXHIBIT "B" GENERAL CONDITIONS.

## **Article 8. CONTRACTOR'S REPRESENTATIONS**

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

8.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract documents,

Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

8.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the bid, and accepts the determination set forth in the bid of the extent of the technical data contained in such reports and Drawings upon which CONTRACTOR is entitled to reply.

8.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies in addition to or to supplement physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with other terms and conditions of the Contract Documents, including specifically the provisions of the EXHIBIT "B" GENERAL CONDITIONS; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

8.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the

site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, or investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

8.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

8.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

8.7 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 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.

## **Article 9. CONTRACT DOCUMENTS**

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of this Agreement and the following Exhibits, attached hereto and by reference incorporated herein and made a part hereof:

**Exhibit "A"** – Request for Qualifications (RFQ), including, but not limited to, original RFQ, general conditions, specifications, drawings, exhibits to the IFB, insurance requirements, any addenda issued and all documentation submitted by the CONTRACTOR; including, but not limited to, CONTRACTOR's Bid Pages, CONTRACTOR's sworn statement on drug-free workplace, CONTRACTOR'S insurance certificate, any documentation submitted by the CONTRACTOR prior and after award in relation to the RFQ and this Agreement

**Exhibit "B"** – EXHIBIT "B" GENERAL CONDITIONS

This Agreement and the exhibits listed above, including any approved amendments to the Agreement comprise the entirety of the contract documents between the OWNER and CONTRACTOR. This Agreement may only be amended, modified or supplemented as provided in Exhibit "B", General Conditions.

Any inconsistency in this Agreement and its exhibits listed above shall be resolved by giving precedence in the following order:

- a) This Agreement
- b) Exhibit "B", General Conditions
- c) Exhibit "A", IFB, addenda and documentation

## **Article 10. MISCELLANEOUS**

10.1 Terms used in this Agreement which are defined in the EXHIBIT "B" GENERAL CONDITIONS will have the meanings indicated in the EXHIBIT "B" GENERAL CONDITIONS.

10.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the Contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

10.4 Project Web Requirements:

- a. This project shall utilize e-Builder Enterprise (Software), a web-based project management software. OWNER shall use the Software to manage all project documents, communications and costs between the CONTRACTOR and OWNER. Training will be provided for the CONTRACTOR and all subcontractors that require access to the software.
- b. CONTRACTOR shall conduct project controls outlined by the OWNER utilizing the Software. **The designated web-based application license(s) shall be provided by the OWNER to the CONTRACTOR and subcontractors.** No additional software will be required.
- c. CONTRACTOR shall have the responsibility for logging in to the project web site on a daily basis, and as necessary to be kept fully apprised of project developments and required action items. These may include but are not limited to: Contracts, Contract Exhibits, Contract Amendments, Drawing Issuances, Addenda, Bulletins, Permits, Insurance & Bonds, Safety Program Procedures, Safety Notices, Accident Reports, Personnel Injury Reports, Schedules, Site Logistics, Progress Reports, Correspondence, Daily Logs, Non-Conformance Notices, Quality Control Notices, Punch Lists, Meeting Minutes, Requests for Information, Submittal Packages, Substitution Requests, Monthly Payment Request Applications, Supplemental Instructions, Owner Change Directives, Potential Change Orders, Change Order Requests, Change Orders and the like. All supporting data including

but not limited to shop drawings, product data sheets, manufacturer data sheets and instructions, method statements, safety SDS sheets, Substitution Requests and the like will be submitted in digital format via the Software.

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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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
GREGORY P. HARRISON, CITY MANAGER

\_\_\_\_\_  
MARK E. BERMAN, CITY ATTORNEY

(SEAL)



**“CONTRACTOR”**

**Shiff Construction & Development, Inc.**

Witnesses:

By: \_\_\_\_\_  
Justen D. Shiff, President

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Print or Type Name)

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Justen D. Shiff as President of Shiff Construction & Development, Inc., a Florida corporation on behalf of the corporation. He is personally known to me or who has produced \_\_\_\_\_  
\_\_\_\_\_ (type of identification) as identification.

NOTARY’S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number