

FOURTH AMENDMENT TO THE CONSTRUCTION MANAGER AT-RISK CONTRACT

This Fourth Amendment to the Construction Manager At-Risk Contract ("Fourth Amendment") is made and entered into by and between the CITY OF POMPANO BEACH, a Florida municipal corporation ("City"), and THE WHITING-TURNER CONTRACTING COMPANY, a Maryland corporation authorized to conduct business in the state of Florida, ("Contractor"), collectively referred to as the "Parties."

A. **WHEREAS**, the City entered into an Agreement with the Contractor ("Agreement"), consistent with Florida Statutes and City Code, signed by and through its Mayor and City Manager, authorized by the City Commission of the City of Pompano Beach action on September 26, 2019, in Ordinance 2019-94, following the City's RFQ No. P-08-19, to construct all segments of the Dixie Highway Streetscape Improvements ("Streetscape Improvements" or "Project"); and

B. **WHEREAS**, a First Amendment to the Agreement was authorized by the City Commission of the City of Pompano Beach action on December 8, 2020, in Ordinance 2021-24, to adjust the construction budget and schedule reflecting additional funding from Broward County Surtax Program; and

C. **WHEREAS**, a Second Amendment was similarly authorized by the City Commission of the City of Pompano Beach action on July 12, 2022, in Ordinance 2022-55, to comply with the terms and conditions for transportation surtax funding from Broward County Board of County Commissioners; and

D. **WHEREAS**, in an effort to make certain nonsubstantive changes, the Parties executed a Third Amendment dated November 7, 2022, to comply with the terms and conditions for transportation surtax funding; and

E. **WHEREAS**, Phase 1 of the Project is completed, and Phase 2 of the Project is nearing completion, the Parties are amending this Agreement to incorporate the scope and performance of Segment 3 of the Dixie Highway/Atlantic Boulevard Streetscape Improvements;

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, covenants, and payments outlined in this Fourth Amendment, the Parties agree to replace, substitute or supplement, where applicable or in conflict, the following sections of the original Agreement with the corresponding sections in this Fourth Amendment:

ARTICLE 1 - DEFINITIONS

Whenever the following terms, or pronouns in place of them, appear in the Contract Documents, the intent and meaning shall be interpreted as follows:

1.1 Contract Documents: This Fourth Amendment, the Third Amendment, the Second Amendment, the First Amendment, Agreement and its exhibits and attachments drawings and specifications, approved Shop Drawings and submittals, City’s RFQ Solicitation No. P-08-19 and Contractor’s response (as negotiated and accepted by the City), any Addenda to the Contract Documents, the record of the contract award by the City Commissioners, the Performance Bond and Payment Bond, the Notice of Award (all of which are incorporated by reference into this Agreement), the Notice(s) to Proceed, the Purchase Order(s), Work Order(s) and all Amendments, Change Orders or CPEAMS (defined below) issued after execution of this Agreement are the documents which are collectively referred to as the Contract Documents. Contract Documents shall also include any documents or information produced or resulting from each Project’s Preconstruction Services and approved by the Contract Administrator.

1.2 Effective Date: The last date the Parties fully execute this Fourth Amendment.

1.3 Exhibits

- A. Exhibit 4A-1 - FGMP Price Elements and Schedule of Values
- B. Exhibit 4A-2 – Project Construction Schedule
- C. Exhibit 4A-3 - List of Plans and Specifications and Drawings
- D. Exhibit 4A-4 - List of Allowances, Exclusions and Clarifications
- E. Exhibit B – Minimum Insurance Requirements
- F. Exhibit C – Davis Bacon Rate Determination
- G. Exhibit 4D - Contractor’s Statement of CBE Assurances

1.4 Final Guaranteed Maximum Price (FGMP): The maximum amount the City is obligated to pay the Contractor for the complete performance of the Work and construction of the Project, which amount shall include, but is not limited to, all profit, overhead, on-site and off-site conditions (known and unknown), and administrative costs as described in Exhibit 4A-1. The FGMP is made up of the sum of the following Contract Price Elements:

- A. Direct Construction Cost
- B. General Conditions Cost
- C. Fixed Fee
- D. Owner’s Allowance Account

1.5 Pricing Documents: The drawings and specifications for establishing the Final Guaranteed Maximum Price. Pricing Documents shall be enumerated and attached as Exhibit 4A-3.

ARTICLE 7 - CONTRACT PRICE ELEMENTS AND FGMP

The Project shall be managed by establishing a specific FGMP guaranteeing a maximum price to the City for that Project. The Contract Price Elements within the FGMP (“Contract Price

Elements”) are as follows:

7.1 Direct Construction Cost: The Direct Construction Cost of the Work, including labor and materials, as outlined in Exhibit 4A-1.

7.2 General Conditions Cost: Ancillary Project costs for the provision of administrative requirements, procedural requirements, temporary facilities and controls, performance requirements, and life cycle activities by the Contractor for items that are not part of the permanent construction or which do not lend themselves readily to inclusion in one of the separate trade contracts. The General Conditions shall be as outlined in Exhibit 4A-2.

7.7 Progress Payments: Contractor may make Application for Payment for Work completed at intervals of not more than once a month. Payment for the Direct Construction Cost and General Conditions Cost shall be made as set forth in this Article 7. Contractor shall also make application for payment for Work completed by Subcontractors during the Project at monthly intervals and shall pay its Subcontractors within ten (10) days following receipt of payment from the City for such subcontracted Work. Contractor’s application shall show a complete breakdown of the Project components, the percentages completed and the amount due in proportion to the percentage of the Work completed, based upon the Schedule of Values. General Conditions shall be billed at cost or, at Contract Administrator’s option, as a Negotiated Lump Sum payable in proportion to the percentage of the Work completed. Contractor shall submit with each Application for Payment, an updated Project Schedule acceptable to Consultant and Contract Administrator, a Certification of Payments to Subcontractors, and either release of liens from Contractor relative to the Work which is the subject of the Application or consent of the Surety as to such payment. All Applications for Payment shall be accompanied by a completed Statement of Compliance and a completed Certification of Payments to Subcontractors accompanied by a copy of the notification sent to each listed Subcontractor, explaining the good cause why payment has not been made. Each Application for Payment shall be submitted in triplicate to Consultant for certification and distribution to Contract Administrator.

ARTICLE 26 - MISCELLANEOUS

26.28 This Amendment shall bind the parties and their respective executors, administrators, successors, and assign and shall be fully effective as though the extension and amendment had been initially included in the Agreement.

26.29 In the event of any inconsistencies between the Agreement and the Fourth Amendment, the terms of this Fourth Amendment shall control to the extent of such inconsistency. Except as expressly outlined in this Fourth Amendment, the Agreement is otherwise unmodified and remains in full force and effect. Each reference in the Agreement to itself shall also be deemed to refer to this Fourth Amendment.

(REMAINDER OF PAGE IS BLANK)

IN WITNESS WHEREOF, the Parties have made and executed this Agreement: CITY OF POMPANO BEACH through its Board, signing by and through its Mayor or Vice-Mayor and City Manager, authorized to execute same by Board action on the _____ day of _____, 20____, and CONTRACTOR, signing by and through its _____, duly authorized to execute same.

Attest:

CITY OF POMPANO BEACH

KERVIN ALFRED, CITY CLERK

By: _____
REX HARDIN, MAYOR

(SEAL)

By: _____
GREGORY P. HARRISON, CITY MANAGER

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

CONTRACTOR

ATTEST:

The Whiting-Turner Contracting Company

Secretary

By _____

DocuSigned by:

Brent A Voyles

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President/Vice President

(Typed Name of Secretary)

Brent Voyles, Senior Vice President
(Typed Name and Title)

CORPORATE SEAL

3rd day of July, 2024.

JES/mcm
7/2/2024
L:agr/GO BOND/2024-681

DocuSigned by:

Ray Mackeen

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DocuSigned by:

Henry Shawah

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DocuSigned by:

Frank J. Zaremba

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