

AIA® Document A133™ – 2009 Exhibit A

Guaranteed Maximum Price Amendment

for the following PROJECT

POMPANO BEACH FISHING PIER

THE OWNER:

*City of Pompano Beach
100 W. Atlantic Boulevard
Pompano Beach, FL 33060*

THE CONSTRUCTION MANAGER:

*The Whiting-Turner Contracting Company
1901 West Cypress Creek Road, Suite 101
Fort Lauderdale, Florida 33309*

ARTICLE A.1

§A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.1.13.1 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price, also referred to as the Contract Sum. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Cost of the Work required by the Contract Documents as defined in Section 8 of the Agreement, the Construction Manager's Fixed Fee as defined in Section 6 of the Agreement, the Contingency Fund and the Construction Manager's Lump Sum General Conditions as defined in Section 7 of the Agreement.

§A.1.1.1 The Contract Sum. The Contract Sum is guaranteed by the Construction Manager not to exceed Eleven Million Five Hundred Forty Eight Thousand Eight Hundred Fifty Nine Dollars and Zero Cents (\$11,548,859.00), subject to additions and deductions by Change Order as provided for elsewhere in the Contract Documents. Costs which would cause the GMP to be exceeded shall be paid by the Construction Manager without recourse or reimbursement by the Owner.

§A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, the Construction Manager's Fee, Direct Purchase Tax Savings and other items that comprise the Guaranteed Maximum Price.

See Attachment 'A'

§A.1.1.3 Allowances included in the Guaranteed Maximum Price, if any:

\$500,000.00 is the agreed upon sum to be included in the "Construction Contingency Fund." This Fund may be utilized, upon written approval beforehand by the Owner, for the purpose of defraying the expenses due to unforeseen circumstances relating to the construction such as, but not limited to, increases in Subcontractor costs due to insolvency, correction of defective work (provided that such defective Work was not caused by the negligence or failure to fulfill a specific responsibility of the Construction Manager) and only to the extent that the costs therefore are not recoverable by Construction Manager from insurance, sureties, Subcontractors or suppliers, through commercially reasonable efforts), overtime ordered by Owner to improve the schedule, but not to make up for lost time due to Construction Manager's delays, field issues/conditions which were not anticipated and which result in documented costs to the Work, Owner Furnished/Contractor Installed ("OFCI") material or OFCI equipment failures, and any other cost agreed to mutually by the parties, in writing. The Contractor shall furnish documentation evidencing expenditures charged to this Contingency prior to the release of funds by the Owner. The necessary documentation, and the sufficiency thereof, required for invading the Construction Contingency Fund shall be reasonably determined by the Owner. The Design Professional shall verify the actual costs, if requested by the Owner. There shall be no entitlement to overhead, fee, and general conditions in connection with any approved payments from the Contingency Fund.

The Construction Contingency Fund shall NOT be used for a) design errors or omissions which a prudent Construction Manager should reasonably have detected during its Pre-Con performance; b) Construction Manager/Sub-Contractor mistakes in the fabrication, installation, or erection of the Work; c) liquidated damages; and d) any costs and expenses in the event that this Agreement is terminated for cause, as elsewhere provided for in the Original Agreement.

The Guaranteed Maximum Price shall be reduced by the amount of the Contingency Fund, if any, remaining at the time of Final Completion of the Project.

§A.1.1.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:

\$73,889.00 is the estimated tax savings to Owner from electing to engage in Direct Purchases. All Subcontractors have read and accept all conditions of the Construction Manager at Risk Agreement with Owner, can provide all insurance criteria required under such Agreement, all subcontracts are to be inclusive of state and local sales tax and do not cover parking at the Project Site, all construction debris shall be disposed of in accordance with Owner's Agreement with Waste Management, and overhead and profit is not to exceed 10% in the aggregate.

§A.1.1.5 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract: The Construction Manager certifies that all factual unit costs supporting the fees and costs specified in this GMP Amendment are accurate, complete and current at the time of execution; and that any other factual unit costs that may be furnished to the Owner in the future to support any additional fees that may be authorized will also be accurate and complete. The fees specified in this Agreement and any additional fees that may be authorized in the future shall be adjusted to exclude any significant sums by which the Owner determines the fee was increased due to inaccurate, incomplete or non-current factual unit costs.

§A.1.1.6 The Guaranteed Maximum Price is based upon the following Specifications:

| Number | Title | Date |
|-------------|------------------|-----------------|
| P1-P76 | General plans | 5/2016-1/5/2017 |
| P0.1-P2.3 | Plumbing Plans | 5/2016-1/5/2017 |
| FP0.1-FP1.1 | Fire Protection | 5/2016-1/5/2017 |
| E0.1-E2.1 | Electrical Plans | 5/2016-1/5/2017 |

§A.1.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:

TASK 1 – Maintenance of Traffic



In support of construction work and to ensure the safety of pedestrians and vehicular traffic, the Construction Manager shall provide a maintenance of Traffic (MOT) plan in accordance with applicable Broward County standards and implement said plan for the duration of the project. The approach to the MOT will be as generally outlined on the MOT plans, which are incorporated into this Amendment as a component of Attachment "A".

TASK 2 – Coordination with Adjacent Development

Construction Manager recognizes that the Concession Stand immediately to the south, as well as the C-2 parcel located immediately to the north are planned to be in construction simultaneously with the construction of the pier, and the Construction Manager has developed staging and sequencing plans to coordinate the sequencing of the pier construction with that of the surrounding operations.

TASK 3 – Compliance with Environmental Permit Requirements and Mitigation

The Construction Manager has familiarized himself with the various Environmental Permit requirements unique to this type of Project, such as reef mitigation approximately 400 feet east of the existing pier east side and the requirements of dune restoration to the north of the project.

Prior to beginning work on the pier in the morning hours during sea turtle nesting season, the Construction Manager will obtain clearance from the County's sea turtle monitoring permit holder to work in the Project area. Likewise, the Construction Manager will ensure that his staff and subcontractors are properly trained and aware of the requirements for observance of marine life, and that they stop work appropriately in the presence of any such marine life exists or is discovered during Work on the Project.

TASK 4 – Demolition and Construction Services

Construction Manager shall demolish the old pier and replace it utilizing the "Top-Down Approach" as required by permit. In this manner, the Construction Manager will work from west to east generally removing and rebuilding the pier in 30-foot increments.

TASK 5 – Utilities, Security System, Shade Structures, Other Equipment Installation

Construction Manager shall plan utility routes for plumbing, lighting, and cameras, so that such routing is safely planned and implemented, and typically should be located below the decking in reasonably accessible locations for future maintenance. Construction Manager shall coordinate and oversee installation of selected equipment per approved plans and specifications. All pier appurtenances including shade structures, aluminum handrail, wood handrail, security cameras, underwater Camera, Wi-Fi, benches, bait cutting stations, etc. shall be furnished and installed by the CM in support of the project.

ARTICLE A.2

§A.2.1 Project Schedule. The anticipated date of Substantial Completion established by this Agreement:

The Construction Manager shall achieve Substantial Completion of the entire Work within eighty-nine weeks of the issuance of the notice to proceed (subject to outside government approvals) and final completion will be four weeks afterwards.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]



"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
GREG HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved by:

MARK E. BERMAN, CITY ATTORNEY
STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by **LAMAR FISHER** as Mayor, **GREG HARRISON** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"CM"

Witnesses:

The Whiting-Turner Contracting Company

Claudia A. Swiecicki

**CLAUDIA A. SWIECICKI
ASSISTANT SECRETARY**

Printed Name

By: *Kevin P. Higgins*

Signature

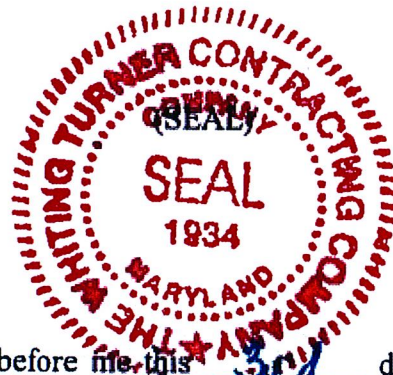
KEVIN P. HIGGINS
Name Printed

Erin P. Flynn

Erin P. Flynn
Printed Name

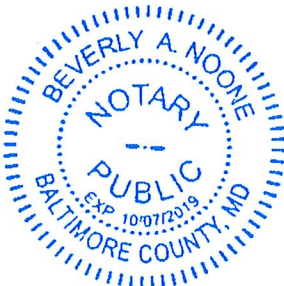
Title: SR. VICE PRESIDENT

STATE OF ~~FLORIDA~~ MARYLAND
COUNTY OF BALTO



The foregoing instrument was acknowledged before me, this 3rd day of April, 2017 by _____, as _____ of The Whiting-Turner Contracting Company, a Maryland corporation authorized to do business in the State of Florida, on behalf of the corporation, who is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:



Beverly Noone

NOTARY PUBLIC, STATE OF FLORIDA
(Signature of Notary Taking Acknowledgment) MARYLAND

BEVERLY NOONE
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number _____

Certification of Document's Authenticity
AIA Document D401 – 2003

I, _____ hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 10:14:29 on 9/13/2011 under Order No. 9108637905_1 from AIA Document A133 – 2009 Exhibit A. Guaranteed Maximum Price Amendment, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)