

## **PIGGYBACK AGREEMENT FOR ROADWAY AND MISCELLANEOUS CONSTRUCTION**

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019,  
(hereinafter "Effective Date") by and between:

**CITY OF POMPANO BEACH**, a Florida municipal corporation, having its  
principal office at 100 W. Atlantic Blvd., Pompano Beach, Florida 33060,  
referred to as "City"

and

**DP DEVELOPMENT, LLC**, a Florida limited liability company, whose  
mailing address is 1014 S Congress Avenue, Palm Springs, FL 33406,  
referred to as "Contractor".

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

### **W I T N E S S E T H:**

**WHEREAS**, the City wishes to enter into this Agreement for Roadway and Miscellaneous Construction ("Agreement") with Contractor to provide improvements to the intersection of Dr. Martin Luther King, Jr. Boulevard and N.W. 27<sup>th</sup> Avenue within the city limits of the City of Pompano Beach when requested by the City through a written Notice to Proceed; and

**WHEREAS**, the Parties wish to incorporate the terms and conditions of the solicitation and contractual arrangement between Broward County and Contractor in accordance with contract #PNC2117271B1, which provides for goods and services set forth in **Exhibit A**, together with and including the Scope of Work, contract renewals, amendments and change orders, attached and referenced to as the "Broward Contract"; and

**WHEREAS**, Section 32.41(C) of the Code of the City of Pompano Beach authorizes the City to utilize joint bids, cooperative bids, state contract prices and prices obtained by other governmental agencies through competitive bidding to satisfy the formal bidding requirements; and

**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 acknowledged, the parties agree as follows:

1. **RECITATIONS.** The foregoing "WHEREAS" clauses are adopted and incorporated in this Agreement.
2. **TERM.** The term of this Agreement shall be one (1) year and shall commence on the Effective Date, unless terminated earlier or extended by the Parties.

3. **CONTRACT TERMS.** Contractor agrees to provide the goods and services for the roadway improvements in the intersection of Dr. Martin Luther King, Jr. Boulevard and N.W. 27<sup>th</sup> Avenue located within the city limits of the City of Pompano Beach as requested by City through a written Notice to Proceed. The Broward Contract is incorporated into this Agreement for all purposes. In the event of conflict between the Broward Contract and this Agreement, the order of priority shall be: (1) this Agreement; and (2) the Broward Contract. The City reserves the right, however, to terminate this Agreement and bid or negotiate a new Agreement, if the procurement by the City under this Agreement are significantly greater than the estimated amounts in the Broward Contract.

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

A. City shall pay Contractor no more than the unit prices set forth in the Broward Contract and in accordance with the provisions of the Broward Contract in the total amount **Not To Exceed \$484,970.90.**

B. If permits are required as part of the required Scope of Work, 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 Broward County, with regard to any and all provisions of the Broward 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 Broward Contract are restated as if fully set forth, made for the benefit of City, and incorporated in this Agreement.

D. In the event that the Broward Contract is terminated for any reason, including Broward County's failure to exercise any or all options granted, the City shall have the right to continue this Contract in full force and effect, despite such termination; and to exercise any and all options which Broward County fails to exercise.

E. 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 by Contractor must state the City will be given thirty (30) days written notice prior to cancellation or material change in coverage. The City shall be named as an additional insured for Work under this Agreement. 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 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.

F. 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 this Agreement.

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

H. Public Records.

1. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law, as amended. Specifically, the Contractor shall:

a. Keep and maintain public records required by the City in order to perform the service.

b. 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.

c. 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.

d. 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.

2. Failure of the Contractor to provide the above described public records to the City within a reasonable time 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: Horacio Danovich, Project Manager  
City of Pompano Beach  
100 West Atlantic Avenue  
Pompano Beach, Florida 33060

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

For Contractor: Patrick Borrico, Managing Member  
DP Development, LLC  
2240 N.W. 22<sup>nd</sup> Street  
Pompano Beach, FL 33069

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. Any modifications to the Broward Contract shall be applicable to the City only if so agreed to in writing by the City. In the event that such changes or modification adversely impacts the City, the City may terminate this Agreement.

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. **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.

**IN WITNESS WHEREOF,** the parties have accepted, made and executed this Agreement upon the terms and conditions above stated on the day and year entered below.

**"CITY":**

Witnesses:

**CITY OF POMPAÑO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
Rex Hardin, Mayor

\_\_\_\_\_

By: \_\_\_\_\_  
Gregory P. Harrison, City Manager

Attest:

\_\_\_\_\_  
Asceleta Hammond, City Clerk

(SEAL)

Approved As To Form:

\_\_\_\_\_  
Mark E. Berman, City Attorney

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by **REX HARDIN** as Mayor, **GREGORY P. 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 are personally known to me.

NOTARY'S SEAL:

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

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

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

**"CONTRACTOR":**

Witnesses:

**DP DEVELOPMENT, LLC**

\_\_\_\_\_  
Print Name

By: \_\_\_\_\_  
Daniel Petrillo, Managing Member

\_\_\_\_\_  
Print Name

By: \_\_\_\_\_  
Patrick Borrico, Managing Member

(SEAL)

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Daniel Petrillo and Patrick Borrico as Managing Members of DP Development, LLC, on behalf of the company. They are personally known to me or who have produced \_\_\_\_\_  
\_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:

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

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

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

JES:acp:jrm  
4/2/19  
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