

## SECOND AMENDMENT TO THE CONSTRUCTION MANAGER AT-RISK CONTRACT

This Second Amendment to the Construction Manager At-Risk Contract ("Second 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, in the interest of its residents and as an approved General Obligation (GO) Bond project, desired to select and assign a Managing General Contractor (MGC) to all segments of the Dixie Highway Streetscape Improvements ("Streetscape Improvements" or "Project"), and

B. **WHEREAS**, the City entered into an Agreement with the Contractor ("Agreement"), consistent with Florida Statutes and City Code, signed by and through its City Mayor and City Manager, authorized to execute this Agreement by City Commission of the City of Pompano Beach action on September 26, 2019, in accordance with the City's RFQ No. P-08-19, and a First Amendment, authorized by City Commission of the City of Pompano Beach action on December 16, 2020; and

C. **WHEREAS**, the Project has been determined statutorily eligible for partial funding and subsequently approved for partial funding by the Broward County Board of County Commissioners through the use of transportation surtax funding consistent with the terms and conditions for such funding as determined by Broward County; and

D. **WHEREAS**, the Parties are amending the Agreement to comply with the terms and conditions for transportation surtax funding from Broward County Board of County Commissioners;

**NOW, THEREFORE, IN CONSIDERATION** of the mutual terms, conditions, promises, covenants, and payments set forth in this Second Amendment, the Parties agree to replace and substitute, where applicable or in conflict, as follows:

### 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 Change Order: A written document ordering a change in the Final Guaranteed Maximum Price, Contract Time, or a material change in the Work.

1.2 County Business Enterprise or "CBE": A small business located in Broward County, Florida,

which meets the criteria and eligibility requirements of Broward County's CBE Program and which is certified by County's Office of Economic and Small Business Development (OESBD).

1.3 Consultant: Architect(s) or engineer(s) who has contracted with City, or who is an employee of City, to provide professional services for a Project.

1.4 Contract Administrator: The GO Bond Director, who is the representative of City concerning the Projects. In the administration of this Agreement and any Work Order or Amendment pursuant to this Agreement, as contrasted with matters of policy, all Parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Work.

1.5 Contract Documents: This 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 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.

1.6 Contract Price Element Adjustment Memorandum (CPEAM): A document issued by the Contract Administrator to memorialize the reallocation of sums between Contract Price Elements included within the FGMP.

1.7 Contract Time: The time specified in a Project's FGMP starting on the Project Initiation Date(s) specified in a Notice(s) to Proceed and Final Completion of the Work, or a phase of the Work, including any milestone dates, established in the Project's FGMP (defined below), as may be amended by a Change Order.

1.8 Contractor: The Whiting-Turner Contracting Company with whom City has contracted and who is responsible for the acceptable performance of the Work and for the payment of all legal debts pertaining to the Work. All references in the Contract Documents to third parties under contract or control of Contractor shall be deemed to be a reference to Contractor.

1.9 Effective Date: The last date upon which this Second Amendment is fully executed by the Parties.

1.10 Exhibits

A. Exhibit A-1 - FGMP Price Elements (Surtax)

- B. Exhibit A-2 – Schedule of Values
- C. Exhibit A-3 - Project Construction Schedule
- D. Exhibit A-4 - List of Plans and Specifications and Drawings
- E. Exhibit A-5 - List of Allowances, Exclusions and Clarifications
- F. Exhibit A-6 – Staffing Plan and Organization Chart
- G. Exhibit A-7 – Construction Management Plan
- H. Exhibit B – Minimum Insurance Requirements
- I. Exhibit C – Davis Bacon Rate Determination
- J. Exhibit D - Contractor’s Statement of CBE Assurances and CBE Letters of Intent

1.11 Final Completion: The date certified by Consultant in the Final Certificate of Payment for a Project and as finally determined by the Contract Administrator in its sole discretion upon which all conditions and requirements of any permits and regulatory agencies have been satisfied; all documents required by the Contract Documents have been received by City; all other documents required to be provided by Contractor have been received by City; and to the best of Consultant's knowledge, information and belief, the defined Work, as applicable to the Project, has been fully completed in accordance with the terms and conditions of the Contract Documents.

1.12 Final Guaranteed Maximum Price (FGMP): The maximum amount City is obligated to pay 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 A-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

1.13 Notice to Proceed: One or more written notices to Contractor from the Contract Administrator authorizing the commencement of Work for a Project.

1.14 Owner’s Construction Project Manager ("OCPM"): The entity or individual that has been selected by City to perform construction project management services as defined by City and as an agent of the City, when designated as OCPM for a Project by the Contract Administrator.

1.15 Preconstruction Services: INTENTIONALLY OMITTED.

1.16 Pricing Documents: The set of drawings and specifications upon which the Final Guaranteed Maximum Price is established. Pricing Documents shall be enumerated and attached as Exhibit A-2.

1.17 Project: The construction project described in the City’s RFQ Solicitation No. P-08-19 and

Contract Documents, including the Work described for improvements along Atlantic Boulevard and Dixie Highway and as further provided for in the FGMP.

1.18 Project Initiation Date: The date(s) upon which the Contract Time commences for the Work, or a phase of the Work.

1.19 Project Manager: The designee of the Contract Administrator having day-to-day administrative and managerial responsibility for the Project.

1.20 Resident Project Representative: An authorized representative of Consultant on the Project.

1.21 Subcontractor: A person, firm, or corporation having a contract with Contractor to perform services on the Project.

1.22 Substantial Completion: The date, as certified in writing by Consultant and as finally determined in the sole discretion of Contract Administrator, on which the construction of the Work, or any portion, as designated by the Contract Administrator, for the Project is at a level of completion in substantial compliance with the Contract Documents such that all conditions of permits and regulatory agencies have been satisfied and City or its designee, can enjoy use or occupancy and can use or operate it in all respects for its intended purpose. A Certificate of Occupancy (CO) or a Temporary Certificate of Occupancy (TCO) or other alternate municipal/City authorization for limited or conditional occupancy or use by City acceptable to the Contract Administrator must be issued for Substantial Completion to be achieved; however, the date of issuance of a Certificate of Occupancy or the date the Project is available for City's use is not to be determinative of the achievement or date of Substantial Completion.

1.23 Summary of Terms and Conditions: INTENTIONALLY OMITTED.

1.24 Surety: The surety company or individual which is bound by the performance bond and payment bond with and for Contractor who is primarily liable, and which surety company or individual is responsible for Contractor's acceptable and timely performance and completion of the Work under this Agreement and for the payment of all debts in accordance with Section 255.05, Florida Statutes.

1.25 Work: The totality of the obligations, including, but not limited to, preconstruction services, administration, procurement, materials, equipment, labor, construction and other services necessary for Contractor, or its agents, to fulfill Contractor's obligations under this Agreement for each Project.

## ARTICLE 2 - PRIORITY OF PROVISIONS

2.1 The Contract Documents are intended to include all items necessary for the proper

execution and completion of the Work by Contractor. Any labor, services, materials, supplies, equipment or documentation that may reasonably be inferred from the Contract Documents or trade usage from prevailing custom as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to City.

2.2 The Contract Documents are complementary, and wherever possible the provisions of the Contract Documents shall be construed in such manner as to avoid conflicts between provisions of the various Contract Documents. In the event of any inconsistency in the Contract Documents, where such inconsistency is not clarified by change order, addendum or amendment, the Contract Documents for each Project shall be construed according to the following priorities:

- First priority: Approved Change Orders, CPEAM's, Addendums or Amendments
- Second priority: Specifications (quality) and Drawings (location and quantity)
- Third priority: FGMP or any Amendment
- Fourth priority: Project Work Order
- Fifth priority: Supplemental Conditions or Special Terms
- Sixth priority: General Terms and Conditions
- Seventh priority: The Agreement
- Eighth priority: RFQ Solicitation No. P-08-19
- Ninth priority: Contractor's Response to RFQ Solicitation No. P-08-19

2.3 Anything shown on the drawings and not mentioned in the specifications, or mentioned in the specifications and not shown on the drawings, shall have the same effect as if shown or mentioned respectively in both. In the event of a conflict among the Contract Documents, the latest, most stringent, and more technical requirement(s), including, but not limited to, issues of quantities or cost of the Work, to Contractor shall control, as determined by the Consultant.

2.4 The organization of the specifications into divisions and sections and the arrangement of drawings for a Project shall not control Contractor in dividing the Work among Subcontractors or in establishing the extent of the Work to be performed by any trade. The organization of the specifications and the arrangement of the drawings are for the convenience of Contractor and are not intended to relieve Contractor from its obligation to conduct a complete study of the Contract Documents for the purpose of directing and coordinating the various Subcontractors and suppliers as to their respective responsibilities.

Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of permit issuance.

### ARTICLE 3 - THE WORK

Intention of City: It is the intent of City to describe in the Contract Documents a functionally complete Project (or part) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied by Contractor, whether or not specifically called for by the Contract Documents. When words, which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. City shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.

### ARTICLE 4 - CONTRACTOR'S RESPONSIBILITIES

4.1 Contractor accepts full responsibility for the Work against all loss or damage of whatsoever nature sustained until Substantial Completion of the Project and shall promptly repair any damage done from any cause whatsoever.

4.2 Contractor shall be responsible for all materials, equipment and supplies. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to Substantial Completion of the Project, Contractor shall replace same without cost to City. Contractor shall be responsible to protect all materials, equipment and supplies, keeping them free from deterioration, weathering, rusting or other action detrimental to the materials.

4.3 City reserves the right to award other contracts, or perform work with its own forces, in connection with these Projects. Contractor shall afford other persons or contractors reasonable opportunity for the introduction and storage of materials and the execution of work and services under such separate contracts. Contractor shall properly connect and coordinate its Work with the work and services of any other persons or contractors.

4.4 If any part of Contractor's Work depends for proper execution or results upon the services or work of any other person or contractor, Contractor shall inspect and promptly report to Consultant and OCPM any defects in such services or work that render it unsuitable for Contractor's proper execution of the Work. Contractor's failure to so inspect and report shall constitute an acceptance of the other person's or contractor's work and services as fit and proper for the reception of Contractor's Work, except as to defects which may develop in other person's contractor's work or services after the execution of Contractor's Work.

4.5 Contractor shall conduct its operations and take all reasonable steps to coordinate the prosecution of the Work so as to create no interference or impact on any other contractor or City operations on the Project site. Should such interference or impact occur, and Contractor did not take reasonable steps, Contractor shall be liable for the cost of such interference or impact.

4.6 Contractor shall cause all materials and other parts of the Work to be readily available as and when required or needed for or in connection with the construction, furnishing, and equipping of the Project's improvements.

4.7 Contractor shall plan, record, and update, at least monthly through Final Completion, the construction schedule of the Project ("Project Schedule"). The Project Schedule shall indicate the dates for the commencement and completion of the various stages of construction and shall be revised as required by the conditions of the Work. The Project Schedule shall encompass all of the Work of all trades necessary for the construction of the Project and shall be sufficiently complete and comprehensive to enable progress to be monitored through the end of the warranty phase of the Project. The Project Schedule shall incorporate sufficient time for important City milestone events and required coordination points.

4.8 Contractor shall be solely responsible for construction means, methods, techniques, sequences and procedures employed in the performance of the Work.

4.9 Contractor acknowledges, understand and agrees that the FGMP is based upon current prices for the materials and supplies, and that the market for such materials and supplies are considered to be volatile, and sudden price increases can occur. As a result, the Contractor agrees to use its best efforts to obtain the lowest possible prices from available material suppliers at its earliest opportunity following execution of this Agreement to limit any exposure to price escalations for such materials, equipment and supplies.

#### ARTICLE 5 - RESPONSIBILITIES OF CONSULTANT AND OWNER'S CONSTRUCTION PROJECT MANAGER

5.1 Consultant shall monitor the overall quality, progress, and FGMP.

5.2 Consultant shall provide on-site review of Work in progress, review of pay requests submitted by Contractor, assistance in the interpretation of the intent of the Contract Documents for the proper execution of the Work, and such other assistance as Contract Administrator may request.

5.3 Consultant shall have no authority, without Contract Administrator's prior written approval, to order or approve any deviation from the Contract Documents, whether or not such deviation affects the FGMP or the date of Substantial Completion.

5.4 If at any time Consultant observes or becomes aware of any fault or defect in the Work or of any nonconformance with the Contract Documents, Consultant will promptly notify Contract Administrator and Contractor in writing and will direct that all reasonable steps be taken to correct such fault, defect or nonconformance. Consultant shall have the authority to reject

Work that does not, in its opinion, or in the opinion of Contract Administrator, conform to the Contract Documents.

5.5 When designated by the Contract Administrator (it being acknowledged by the Parties that the OCPM may not be designated by the Contract Administrator for each Project), the OCPM will serve as the primary point of contact for Contractor for correspondence and other communications for a Project, and the OCPM will have decision authority on behalf of City on day to day decisions for that Project. However, Contract Administrator will have final authority over all OCPM decisions. When designated by the Contract Administrator, the OCPM will:

5.5.1 Represent the Contract Administrator in Project meetings and shall be the point of contact for Contractor's relations with City, the users of the Streetscape Improvements and any separate vendors, consultants or contractors employed by City for that Project.

5.5.2 Coordinate Consultant's comments and recommendations with Contractor.

5.5.3 Represent City at the Project on a day to day basis and shall have duties which include, but are not limited to, daily monitoring and observance of the construction activities, daily monitoring of Contractor's compliance with the Contract Documents, review of communications between Contractor and City, monitoring of the Contractor's safety program, and witnessing various tests of the Work as described in the Contract Documents.

5.5.4 Review all Contractor Applications for Payment and evaluate the earned value for purposes of making approval recommendations to the Contract Administrator.

5.5.5 Review all Contractor claims for changes to Contract Time or Contract Price and provide independent cost analysis and schedule analysis to establish the validity of such claims.

5.5.6 Not have the authority to authorize additional Work or approve change orders except that in an emergency situation is authorized to direct additional Work to prevent damage or injury. The OCPM has no authority to waive the requirements of the Contract Documents, change the design or the Work required by the Contract Documents.

5.5.7 Assist in the preparation of and shall issue all Requests for Proposals, CPEAM's, Construction Change Directives and other administrative documents, where applicable, on behalf of the Contract Administrator.

5.5.8 Have the authority to issue Supplemental Instructions to Contractor which will not affect the Contract Price or Contract Time on behalf of the Contract Administrator.

5.5.9 Have the authority to issue Non-Conforming Work Notices to Contractor, except



as otherwise provided in this Agreement, and monitor Contractor's efforts to cure any such non-conforming Work and report on Contractor's progress in that regard to the Contract Administrator.

5.5.10 Not have authority to stop the progress of the Work except in the case of an emergency affecting the safety of life, or of the Work or property, including adjoining property.

## ARTICLE 6 - PRECONSTRUCTION SERVICES

INTENTIONALLY DELETED.

## ARTICLE 7 - CONTRACT PRICE ELEMENTS AND FGMP

The Project shall be managed by the establishment of a specific FGMP that establishes a guaranteed maximum price to City for that Project. The Contract Price Elements within the FGMP ("Contract Price Elements") are as follows:

7.1 Preconstruction Services Cost: INTENTIONALLY OMITTED.

7.2 Direct Construction Cost: The Direct Construction Cost of the Work, including labor and materials as forth in Exhibit A-2.

7.3 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 Contractor for items which 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 set forth on Exhibit A-2.

7.4 Fixed Fee: The method of determining the Fixed Fee for construction phase services was established in the solicitation document. To the extent that this Agreement is subject to the Surtax Ordinance, Contractor shall provide all required Construction- phase Work at a fixed fee calculated as a percentage of the sum of a Project's direct construction costs and general conditions as follows: Fixed fee not to exceed 4% for Projects greater than five (5) million dollars.

7.5 Owner's Allowance Account: The Owner's Allowance Account is available at the discretion of Contract Administrator to cover increases to the scope of the Work due to differing site conditions, reconciliation of Direct Construction Cost after bidding, or errors or omissions in the Contract Documents, or City requested changes.

7.6 Establishment of FGMP: Upon execution of this Second Amendment, Contractor assumes all risk of any Contract Price Element, except for the Owner's Allowance Account, in excess of the

accepted FGMP, as adjusted by City approved change orders, Construction Change Directives, or CPEAMs, to the extent such additional costs should have been included in the FGMP in Contractor's exercise of commercially reasonable efforts.

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, where the Project involves CBE Subcontractors, make application for payment for Work completed by such 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.

7.7.1 Five percent (5%) of all monies earned by Contractor shall be retained by City, except for General Conditions. Nothing contained in this Agreement requires the City to pay or release any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to Section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the City or Contractor. Subsequent to Final Completion and prior to final payment, retainage may be reduced to a nominal amount at the sole discretion of Contract Administrator. Contract Administrator may authorize release of retainage to a particular Subcontractor or trade when the Work of that Subcontractor or trade is satisfactorily completed. Any interest earned on retainage shall accrue solely to the benefit of City.

7.7.2 City may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of defective Work not remedied; claims filed or reasonable evidence indicating probable filing of claims by third-parties; failure of Contractor to make payments properly to Subcontractors or for material or labor; damage to another contractor not remedied; Liquidated Damages and costs incurred by City for extended construction administration; failure of Contractor to provide all required documents to City; or other City claims.

7.7.3 The Schedule of Values, prepared in accordance with project specific formats and content agreed to by Contractor and Contract Administrator, shall expand and detail the cost of materials, the cost of labor, the cost of equipment and the cost of Subcontractor Work separately for all the portions of the Work delineated. Each monthly application for payment shall be for a sum equal to the total of (i) that portion of Direct Construction Cost equal to the percentage of the Work completed; (ii) actual General Conditions Cost; and (iii) an appropriate amount of Fixed Fee as related to the percentage of Direct Construction Cost and actual General Conditions Cost paid. The calculation of the percentage of the Work completed shall be in accordance with the approved Project Schedule as updated.

7.8 Consultant and Contract Administrator shall review each such Application for Payment and may make such exceptions as Consultant and Contract Administrator reasonably deem necessary or appropriate under the circumstances then existing. In no event shall the City be required to make payment for items of Contractor's Application for Payment to which the Consultant or Contract Administrator reasonably take exception.

7.9 Contractor shall remain solely liable for the Work for each Project and for any unpaid laborers, material suppliers or Subcontractors in the event it is later discovered that any Work is deficient or that any laborers, material suppliers or Subcontractors did not receive payments.

7.10 Within thirty (30) days after Final Completion of the applicable Project, Contractor shall submit a final Application for Payment for that Project, which shall set forth all amounts due and remaining unpaid to Contractor. Upon approval of the final Application for Payment, Contract Administrator will issue a Final Certificate of Payment for the Project and the Contractor shall deliver to Contract Administrator the Form of Final Receipt.

#### ARTICLE 8 - CONTRACT TIME; SUBSTANTIAL COMPLETION; LIQUIDATED DAMAGES

8.1 Contractor shall be directed in writing to commence Work in the form of a separate Notice(s) to Proceed issued by Contract Administrator as and when the commencement of that Work is required by City. Each Notice(s) to Proceed with construction of specific Work will not be issued until after Contractor's submission to City of all required documents for that particular Work.

##### 8.2 Notice(s) to Proceed:

8.2.1 Contract Administrator shall have the authority to issue multiple Notices to Proceed for the Work or any portions. The Work identified within a Notice to Proceed shall be commenced within ten (10) days after the effective date set forth in a Notice to Proceed.

8.2.2 Prior to the issuance of a Notice to Proceed for construction of the Project Work, Contractor shall submit to Contract Administrator and Consultant for approval all of the following items:

822.1 A Project Schedule in compliance with the requirements of This Article. Additionally, at the request of Contract Administrator, Contractor shall also provide a cost loaded schedule for review and approval.

822.2 A preliminary schedule of planned Shop Drawing and submittal submissions.

822.3 A preliminary Schedule of Values in sufficient detail to serve as the basis for progress payments during construction of the Project. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

822.4 Contractor shall meet with all utility owners and secure from them a utility coordination schedule of each utility relocation. City shall not be responsible for the nonperformance or delay by the utility owners.

822.5 All permits required by authorities having jurisdiction for all portions of the Work, unless otherwise provided by the Contract Documents.

8.2.3 Meeting: Project Manager shall schedule a Meeting to discuss procedures for conducting the Project Work, including but not limited to: designating individuals to receive communications for required submissions, inspections and approvals; procedures for processing Applications for Payment; and to establish a working understanding among the Parties as to the Work.

8.2.4 Notice to Proceed for Construction: After the Meeting, Contractor can begin to perform the balance of the Work on the Project Initiation Date specified in the Notice to Proceed for construction of the Project Work.

8.3 Time is of the essence throughout the Agreement and its addenda. This Project and any Work or any portions of Work must be substantially completed within the time set forth in Exhibit A-3, Project Construction Schedule. Liquidated Damages shall be imposed in the amount of One Thousand Dollars (\$1000.00) per day for the following events:

8.3.1 Upon failure of Contractor to substantially complete the Project Work, or any portions, within the specified period of time, plus approved time extensions. Liquidated damages shall be assessed daily until Substantial Completion.

8.3.2 After Substantial Completion, should Contractor fail to complete the remaining Project or Work within the time specified for Final Completion, Liquidated Damages shall be assessed daily until Final Completion. The liquidated amounts are not penalties but are Liquidated Damages to City for costs incurred due to Contractor's untimely performance. Liquidated Damages are fixed and agreed upon between the Parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by City as a consequence of such delay, and both Parties desiring to obviate any question of dispute concerning the amount of damages and the cost and effect of the failure of Contractor to complete the Project, Work, or portions on time. The amounts established for Liquidated Damages for Preconstruction Services, Substantial Completion, Final Completion, and any intermediate Milestones are stipulated by the Parties as fair and reasonable. Such Liquidated Damages shall apply separately to each portion of Work for which a time for completion is given. Contractor waives any and all challenges and legal defenses to the validity of any Liquidated Damages established in the FGMP, including that the Liquidated Damages are void as penalties or are not reasonably related to the actual damages sustained by the City as a result of Contractor's untimely performance.

8.4 Contractor, in addition to being responsible to City for Liquidated Damages for untimely performance, shall reimburse City for all costs incurred by City to repair, restore, or complete the Project Work, including all costs incurred by City for services provided by Consultant in administering the construction of the Project beyond the completion dates, or beyond an approved extension of time granted to Contractor, whichever date is later. All such costs shall be deducted from the monies otherwise due Contractor for performance of Project Work under this Agreement by means of unilateral credit Change Orders issued by City.

8.5 Contract Administrator, directly or through OCPM, may direct Contractor to expedite the Work by whatever means Contractor may use, including, without limitation, increasing staffing or working extended hours and overtime to bring Project Work back within the Project Schedule. If the expediting of Work is required due to reasons within the control or responsibility of Contractor, then any additional costs incurred shall be at the sole responsibility of Contractor. If the expediting of Work is required due to reasons outside the control or responsibility of Contractor, then the additional costs incurred shall be the subject of an appropriate equitable adjustment.

8.6 Substantial Completion Date: When Contractor considers that the Project Work, or portion designated by Contract Administrator, has reached Substantial Completion, Contractor shall notify Contract Administrator, OCPM, and Consultant in writing, including a comprehensive list of items to be completed or corrected by Contractor. Consultant shall then promptly make a preliminary inspection of the Work. When Consultant, on the basis of the preliminary inspection, determines that the Project Work, or City designated portion, is substantially complete, Consultant will notify Contract Administrator. Contract Administrator shall then, with Consultant and Contractor, perform Contract Administrator's Substantial Completion Inspection.

8.6.1 If Substantial Completion of the Project Work, or City designated portion, has been

achieved, Consultant shall prepare a Certificate of Substantial Completion for execution. The Certificate of Substantial Completion shall include: 1) the Date of Substantial Completion; 2) the responsibilities of City and Contractor for security, maintenance, utilities, damage to the Work, and insurance; and 3) a Substantial Completion Punch List, including submittals, to satisfy the requirements for Final Completion of the Project.

8.6.2 The failure to include any items of corrective Project Work on the Substantial Completion Punch List does not alter the responsibility of Contractor to complete all of the Project Work in accordance with the Contract Documents.

8.6.3 Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, or designated portion, unless otherwise provided in the Contract Documents or Certificate of Substantial Completion.

8.7 Use of Completed Portions: Contractor acknowledges that portions of some Projects are currently occupied and in use. City shall coordinate its occupancy and use with Contractor and if Contractor demonstrates to Contract Administrator's satisfaction that Contractor has been delayed and/or impacted on a Project by City's occupancy or use, Contractor shall be entitled to make a claim for an equitable adjustment to the Project's FGMP and Contract Time in accordance with Article 9. Furthermore, City, at Contract Administrator's sole option, shall have the right to take possession of and use any completed or partially completed portions of Projects. Such possession and use shall not be deemed an acceptance of any of the Project's Work not completed in accordance with the Contract Documents. In the event City takes possession of any completed or partially completed portions of a Project, the following shall occur:

8.7.1 Contract Administrator shall give notice to Contractor in writing at least thirty (30) days prior to City's intended occupancy of a designated area.

8.7.2 Contractor shall complete the designated area to the point of Substantial Completion and request inspection and issuance of a Certificate of Substantial Completion.

8.7.3 Upon Consultant's issuance of a Certificate of Substantial Completion, the applicable warranty(ies) shall commence and City will assume full responsibility for maintenance, utilities, subsequent damages by the City and the public, and adjustment of insurance coverages for the occupied area unless otherwise agreed in writing.

8.7.4 Contractor shall complete all items noted on the Substantial Completion Punch List and request final inspection and final acceptance of the portion of the Project Work occupied.

8.7.5 If City finds it necessary to occupy or use a portion or portions of a Project's Work prior to Substantial Completion, such occupancy or use shall not commence prior to a time

mutually agreed upon by City and Contractor. Insurance on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. Consent of Contractor to such occupancy or use shall not be unreasonably withheld.

8.8 If and only in the event that this Project is substantially complete within the scheduled substantial completion date, as may be adjusted as provided for elsewhere in this Agreement, the following shared savings provisions shall apply: Upon final completion of the Work, if the total cost of the Work (excluding any unused portion of the Owner's Contingency Fund and funds from Broward County Transportation Surtax Program) is less than the Guaranteed Maximum Price, taking into account any adjustments made during the term of this Contract, as provided for elsewhere in this Agreement, the City and Contractor will be entitled to share this savings, as follows: Contractor will receive an amount equal to 50% of the difference between the actual cost of the Work and the final GMP amount (excluding any unused portion of the Owner's Contingency Fund and funds from Broward County Transportation Surtax Program), not to exceed, in any event, 3% of the adjusted GMP amount (excluding any unused portion of the Owner's Contingency Fund and funds from Broward County Transportation Surtax Program) ("Savings"). Contractor's portion of these shared savings will be added to Contractor's Fee, and included in Contractor's Final Payment. Liquidated damages, if any, are different from, and are not a part of, this calculation.

#### ARTICLE 9 - NOTIFICATION OF CHANGE IN CONTRACT TIME OR FGMP

9.1 Any claim for a change in the Contract Time or Contract Price shall be made by written notice by Contractor to the Contract Administrator, OCPM and to Consultant within five (5) days of the commencement of the event giving rise to the claim or Contractor's knowledge of the claim, and the notice shall state the general nature and cause of the claim. Thereafter, within twenty (20) days after the termination of the event giving rise to the claim or Contractor's knowledge of the claim, Contractor shall submit written notice of the extent of the claim with supporting information and documentation to the Contract Administrator and Consultant ("Claim Notice"). The Claim Notice shall include Contractor's written notarized certification that the adjustment claimed is the entire adjustment to which Contractor has reason to believe it is entitled as a result of the occurrence the event giving rise to the claim. If the Contract Administrator and Contractor cannot resolve a claim for changes in the Contract Time or Contract Price within twenty (20) days after receipt of the Claim Notice by the Contract Administrator and Consultant, then Contractor shall submit the claim to Consultant within five (5) days after the date of impasse in accordance with the Contract Documents. All claims for adjustment in the Contract Time or FGMP shall be determined by Consultant in accordance with Section 26.4, if Contract Administrator and Contractor cannot otherwise agree. **IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE CONTRACT TIME OR FGMP SHALL BE WAIVED IF NOT SUBMITTED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.**

9.2 No Damages for Delay: No claim for damages or any claim, other than for an extension of

time, shall be made or asserted against City by reason of any delay in a Project. Contractor shall not be entitled to an increase in the applicable FGMP or payment or compensation of any kind from City for direct, indirect, general conditions, consequential, impact or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by Contractor for hindrances or delays due solely to fraud, bad faith, or active interference on the part of City or Consultant. Otherwise, Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

9.3 Excusable Delay: Delay which extends the completion of Project Work and which is caused by circumstances beyond the control of Contractor or its subcontractors, material persons, suppliers, or vendors is Excusable Delay. Contractor is entitled to a time extension of the Contract Time for each day the Work is delayed due to Excusable Delay. Contractor shall document its claim for any time extensions as provided in Section 9.1. Failure of Contractor to comply with Section 9.1 as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay. Excusable Delay may be compensable or non-compensable, as provided below.

9.3.1 Compensable Excusable Delay: Excusable Delay is compensable when (i) the delay extends the Contract Time; (ii) is caused by circumstances beyond the control of Contractor or its Subcontractors, suppliers, or vendor; and (iii) is caused solely by fraud, bad faith, or active interference on the part of Municipality or its agents. In no event shall Contractor be compensated for interim or non-critical delays which do not extend the Contract Time. Contractor shall be entitled to direct and indirect costs for Compensable Excusable Delay. Direct costs recoverable by Contractor shall be limited to the actual additional costs allowed pursuant to Article 11.

City and Contractor recognize and agree that the amount of Contractor's precise actual indirect costs for delay in the performance and completion of the Project Work is impossible to determine as of the date of execution of the Contract Documents, and that proof of the precise amount will be difficult. Therefore, indirect costs recoverable by Contractor shall be liquidated on a daily basis for each day the applicable Project's Contract Time is delayed due to a Compensable Excusable Delay. These liquidated indirect costs shall be paid to compensate Contractor for all indirect costs caused by a Compensable Excusable Delay and shall include, but not be limited to, all profit on indirect costs, home office overhead, acceleration, loss of earnings, loss of productivity, loss of bonding capacity, loss of opportunity and all other indirect costs recoverable and shall be in the amount of Five Hundred Dollars (\$500.00) per day for each day the Project Work is delayed due to a Compensable Excusable Delay.



9.3.2 Non-Compensable Excusable Delay : When Excusable Delay is (i) caused by circumstances beyond the control of Contractor, its subcontractors, material persons, suppliers and vendors; (ii) is caused by circumstances beyond the control of the City; or (iii) is caused jointly or concurrently by Contractor or its subcontractors, material persons, suppliers or vendors and by the City or Consultant, then Contractor shall be entitled to a time extension equal to the actual number of days delayed on the Project's critical path.

9.3.4 Extensions to the Contract Time for delays caused by the effects of inclement weather shall be submitted as a request for change in Contract Time pursuant to Section 9.1. These time extensions are justified only when rain or other inclement weather conditions or related adverse soil conditions prevent Contractor from productively performing controlling items of Work identified on the accepted schedule or updates resulting in Contractor being unable to work at least fifty (50%) of the normal workday on controlling items of Work identified on the accepted schedule or updates due to adverse weather conditions.

9.4 Differing Site Conditions: If during the course of the Work, Contractor encounters (1) subsurface or concealed conditions at the Project site that differ materially from those shown in the Contract Documents and from those ordinarily encountered and generally recognized as inherent in work of the character called for in this Contract; or (2) unknown physical conditions of the Project site, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in this Contract, then Contractor, without disturbing the conditions and before performing any Work affected by such conditions, shall, within twenty-four (24) hours of their discovery, notify Contract Administrator and Consultant in writing of the existence of the conditions. Consultant and Contract Administrator shall, within two (2) business days after receipt of Contractor's written notice, investigate the site conditions identified by Contractor. If, in the sole opinion of Contract Administrator, the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, the performance of any part of the Work, whether or not charged as a result of the conditions, Contract Administrator may recommend an equitable adjustment to the Contract Price, or the Contract Time, or both. If Contract Administrator and Contractor cannot agree on an adjustment in the Contract Price or Contract Time, the adjustment shall be referred to Consultant for determination in accordance with the provisions of the Contract Documents. No request by Contractor for an equitable adjustment to this Contract under this provision shall be allowed unless Contractor has given written notice to Contract Administrator in strict accordance with the provisions of this article. **NO REQUEST FOR AN EQUITABLE ADJUSTMENT OR CHANGE TO THE CONTRACT PRICE OR CONTRACT TIME FOR DIFFERING SITE CONDITIONS SHALL BE ALLOWED IF MADE AFTER THE DATE CERTIFIED BY CONTRACT ADMINISTRATOR AS THE DATE OF SUBSTANTIAL COMPLETION.**

## ARTICLE 10 - CHANGES IN THE WORK OR TERMS OF CONTRACT DOCUMENTS

10.1 Without invalidating this Agreement, City reserves and shall have the right, from time to

time, to make such increases, decreases or other changes in Project Work including, but not limited to, the character and quantity of the Work as may be considered necessary or desirable. Any changes to the scope of a Project must be accomplished by means of appropriate 1) Field Orders or Supplemental Instructions; 2) CPEAMs or 3) Change Orders. Any sums moved between Contract Price Elements included within the FGMP must be accomplished by an appropriate CPEAM. The amount of any CPEAM or Change Order shall be determined pursuant to Articles 9 and 10. In no event shall the FGMP be modified except by appropriate Change Order or amendment.

10.2 Field Orders and Supplemental Instructions: Contract Administrator or Consultant have the authority to issue Field Orders or Supplemental Instructions ordering minor changes in the Work, providing the Field Order or Supplemental Instructions involve no change in the Direct Construction Cost or Contract Time.

10.3 Contract Price Element Adjustment Memoranda (CPEAM): Contract Administrator is authorized to issue a CPEAM to reallocate sums between the Contract Price Elements within the FGMP. In no event shall the FGMP be modified except by Change Order or Amendment. If City changes a Project's Scope of Work, the Fixed Fee shall be adjusted as set forth in Section 10.4. Contractor shall advise Contract Administrator in writing within seven (7) days of receipt of a CPEAM of any objections or claims arising from the CPEAM or same shall be deemed waived. The following specific CPEAMs are contemplated, but additional or different CPEAMs may be issued:

10.3.1 When subcontracts of the Project are bid and have been executed, if the sum of the bids for Contractor's Direct Construction Costs or the biddable portions of the General Conditions are below those respective amounts shown in the Project's EGMP, a CPEAM shall be issued by Contract Administrator to move the surplus amount(s) to the Owner's Allowance Account. If the sum of the subcontracts awarded for Contractor's Direct Construction Costs or the biddable portions of the General Conditions exceeds the respective amounts shown on the Project's EGMP, the deficiency may be taken by CPEAM from the Owner's Allowance Account at the sole discretion of Contract Administrator, provided however, it shall not be cause to increase the FGMP.

10.4 Change Orders: Changes in the quantity or character of the Work within the scope of the Project which are not properly the subject of Field Orders or Supplemental Instructions, including all changes resulting in changes in the FGMP, or the Contract Time, shall be authorized only by written Change Orders approved and issued in accordance with the provisions of the City's Procurement Code or as otherwise approved by City.

10.4.1 Fees for Change Orders shall be determined as follows:

10.4.1.1 The Fixed Fee shall be adjusted if the City increases or decreases the scope of the Work. Adjustments to the Fixed Fee shall be in the percentage

amount established in the solicitation document and as further established in Section 7.4.

10.4.1.2 Whenever a change in Subcontractor Work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, Contractor shall submit an initial cost estimate obtained from the Subcontractor and acceptable to Consultant. The breakdown shall list, for each Subcontractor, the quantities and unit prices for materials, labor, equipment, overhead, profit, and other items of the Cost of the Work.

10.4.2 Contractor shall not start work on any changes requiring an increase in the FGMP until a Change Order setting forth the adjustments is approved and issued by the City. Upon receipt of a Change Order, Contractor shall promptly proceed with the Work set forth within the document.

10.4.3 On approval of any change increasing the FGMP, Contractor shall ensure that the Performance Bond and Payment Bond are increased so that each reflects the total FGMP as increased.

10.4.4 To avoid delays to the Project and to mitigate damages to the Parties, Change Orders may be issued unilaterally by City. Upon receipt by Contractor of a unilateral Change Order, Contractor shall proceed with the Work set forth in the unilateral Change Order.

## ARTICLE 11 - PAYMENTS AND COST OF THE WORK

11.1 The term "Cost of the Work" shall mean the sum of all direct costs necessarily and reasonably incurred and paid by Contractor in the performance of construction Work. The basis of payment for Direct Costs shall be Contractor's actual direct costs as established in Exhibit A-2. Such costs shall be at rates not higher than those customarily paid in the locality of the Project except with the prior written consent of City. The Cost of the Work shall include only the items as follows:

11.1.1 Contractor's Direct Construction Cost: Contractor's Direct Construction Cost, as generally described on Exhibit A-2 and incorporated into the FGMP. Where the Work is covered by unit prices contained in the Contract Documents or an applicable subcontract, the Cost of the Work shall be determined by application of unit prices to the quantities of items involved. If the subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work shall be determined in the same manner as Contractor's Cost of the Work.

11.12 Materials and Equipment: Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage, and manufacturers' field services required in connection with transportation and storage, adjusted in accordance with Article 12 pertaining to Discounts, Rebates and Refunds; rentals of all construction equipment, machinery and parts, in accordance with rental agreements and the costs of transportation, loading, unloading, installation, dismantling and removal, all in accordance with the terms of such agreements. The rental of any such equipment, machinery and parts shall cease when such use is no longer necessary for the Work.

11.13 Miscellaneous costs:

11.1.3.1 The cost, as documented by Contractor's detailed receipts, of telephone, telegrams, postage, photographs, blueprints, office supplies, first aid supplies and related miscellaneous costs reasonably incurred in direct support of the Work at the Project Location.

11.1.3.2 Premiums (net) on bonds and insurance, including Subcontractor bonds, if any, that Contractor is obligated to secure and maintain under the terms of the Contract Documents and such other insurance and bonds as may be required, subject to the written approval of the City. Premiums paid shall be net of trade discounts, volume discounts, dividends and other adjustments. All insurance and bonds shall be provided by companies acceptable to the City. Self-insurance by Contractor or insurance through any affiliates of Contractor shall not be permitted without the City's prior written approval. City's approval shall not be required on Subcontractor bonds, and premiums shall be considered a Cost of the Work.

11.1.3.3 The cost of obtaining and using any utility services required for the Work that are not paid directly by City, including fuel and sanitary services at the Project site.

11.1.3.4 The cost of removal of debris from the site. The Project site, lay-down locations, and staging sites will be kept clear of all debris on a daily basis. All subcontracts shall require Subcontractors to remove all debris daily created by their activities, and Contractor shall exercise its best efforts to enforce such requirements or to effect the removal of the debris of the Subcontractors who fail in this regard, provided, however, Contractor shall not be required to remove debris created by the City's separate contractors except pursuant to Change Order procedures.

11.1.3.5 Federal, state, municipal, sales, use and other taxes, as applicable to

the Project, all with respect to services performed or materials furnished for the Work, it being understood that none of the foregoing includes federal, state or local income or franchise taxes.

11.1.3.6 All reasonable costs and expenditures necessary for the operation of the Project job site office(s), including cost of field computer equipment and software.

11.1.3.7 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of Contractor.

11.2 Exclusions to Cost of The Work: Overhead is defined as any and all other costs, not referenced in Section 11.1, of Contractor and its operation which are not in direct support of the Project. Contractor agrees to furnish and perform, as a part of Contractor's Fee and without reimbursement, such overhead items. The term "Cost of the Work" shall not include any of the following:

11.2.1 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorship), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor, whether at the Project site or in its principal or a branch office, for general administration that are not specifically included in the General Conditions. All such costs are to be considered administrative costs covered by Contractor's fee.

11.2.2 Other than those expenses authorized by this Agreement, expenses of Contractor's principal and branch offices.

11.2.3 Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

11.2.4 Other overhead, general expense costs, or charges of any kind.

11.2.5 Entertainment and meal expenses, car allowances (except for vehicle allowances for full-time employees stationed on Project site with advance approval by the Contract Administrator), and charges of a personal nature.

11.2.6 Bonuses, profit-sharing, or other special labor charges.

11.2.7 Costs due to the negligence or neglect of Contractor, any Subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of

materials or equipment wrongly supplied, and repairing or remedying any damage to property

11.3 Progress Payments: Contractor may make Application for Payment for Work completed during the Project at intervals of not more than once a month. Contractor shall, where the Project involves CBE Subcontractors, make application for payment for Work completed by such 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, a completed Certification of Payments to Subcontractors, and a Monthly (CBE) Utilization Report; all forms to be provided by City. The Certification of Payments to Subcontractors shall be accompanied by a copy of the notification sent to each Subcontractor listed in the Statement of Compliance, 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.

11.3.1 Five percent (5%) of all monies earned by Contractor shall be retained by City, except for General Conditions. After ninety percent (90%) of the Work has been completed, Contract Administrator may reduce the retainage to two and one-half percent (2½%) of all monies previously earned and all monies earned thereafter. Nothing contained in this Article requires the City to pay or release any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to Section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the City or Contractor. Subsequent to Final Completion of a Project and prior to final payment, retainage on that Project may be reduced to a nominal amount at the sole discretion of Contract Administrator. Contract Administrator may authorize release of retainage to a particular Subcontractor or trade when the Work of that Subcontractor or trade has been satisfactorily completed. Any interest earned on retainage shall accrue solely to the benefit of City.

11.3.2 City may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of defective Work not remedied; claims filed or reasonable evidence indicating probable filing of claims by other parties; failure of Contractor to make payments properly to Subcontractors or for material or labor;

damage to another contractor not remedied; Liquidated Damages and costs incurred by City for extended construction administration; failure of Contractor to provide all required documents to City; or other City claims.

11.3.3 The Schedule of Values shall expand and detail the cost of materials, the cost of labor, the cost of equipment and the cost of Subcontractor Work separately for all the portions of the Work delineated. Each monthly application for payment shall be for a sum equal to the total of (i) that portion of Direct Construction Cost equal to the percentage of the Work completed; (ii) actual General Conditions Cost; and (iii) an appropriate amount of Fixed Fee as related to the percentage of Direct Construction Cost and actual General Conditions Cost paid. The calculation of the percentage of the Work completed shall be in accordance with the approved Project Schedule as updated.

11.4 Consultant and Contract Administrator shall review each such Application for Payment and may make such exceptions as Consultant and Contract Administrator reasonably deem necessary or appropriate under the circumstances then existing. In no event, shall the City be required to make payment for items of Contractor's Application for Payment to which the Consultant or Contract Administrator reasonably take exception.

11.5 Contractor shall remain solely liable for the Work and for any unpaid laborers, material suppliers or Subcontractors in the event it is later discovered that any Work is deficient or that any laborers, material suppliers or Subcontractors did not receive payments.

11.6 Within thirty (30) days after Final Completion, Contractor shall submit a final Application for Payment, which shall set forth all amounts due and remaining unpaid to Contractor. Upon approval of the final Application for Payment, Contract Administrator will issue a Final Certificate of Payment and the Contractor shall deliver to Contract Administrator the Final Receipt.

## ARTICLE 12 - DISCOUNTS, REBATES, REFUNDS AND TAXES

12.1 All cash discounts obtained on payments made by Contractor shall accrue to the City unless Contractor actually advanced its own funds, prior to receipt of funds from City, to make the payment giving rise to the discount. When Contractor becomes aware that a cash discount may be available to City, Contractor shall, prior to advancing its own funds, notify Consultant and Contract Administrator of such opportunity so City may, at its option, make the required payment to achieve the discount for City.

12.2 All trade discounts, rebates and refunds, including those pertaining to insurance, and all returns from sale of surplus materials and equipment shall accrue to City, and Contractor shall make provisions so that they may be obtained.

12.3 Contractor shall pay all applicable sales, consumer, use and other taxes required by law. Contractor is responsible for reviewing the pertinent state statutes involving state taxes and

complying with all requirements.

12.4 Notwithstanding, nothing in this Article or Agreement shall prevent the City from directly procuring materials, equipment or supplies for this Project to realize any savings

#### ARTICLE 13 - SUBCONTRACTS AND PURCHASE ORDERS

13.1 Unless waived by Contract Administrator, Contractor shall obtain competitive pricing for One Hundred Percent (100%) of Direct Construction Cost and those biddable elements of the General Conditions for the Work required under this Agreement.

13.2 Contractor's subcontract agreement shall provide that: Subcontractor shall perform its portion of the Work in accordance with all applicable provisions of this Agreement and the Contract Documents; Subcontractor is bound to Contractor to the same extent Contractor is bound to City; and Subcontractor is subject to the terms and conditions of the Agreement, i.e., a "flow-down" provision. Further, the subcontractor agreement shall provide that in the event this Agreement is terminated for any reason, the Subcontractor shall, at City's option, perform its subcontract for City, or for another contractor designated by City, without any additional or increased cost, provided Subcontractor is paid in accordance with its subcontract. Contractor shall sign and cause each Subcontractor to sign an Assignment of Rights under its subcontract.

13.3 Nothing contained in this Article shall impose on City an obligation to assume any subcontract or make payment to any Subcontractor, vendor, or supplier to perform pursuant to this section. Further, nothing contained in this Article shall create any contractual relationship between City and any Subcontractor, vendor, or supplier.

13.4 All subcontracts shall, so far as practicable, contain unit prices for use in determining the cost of any required changes in the Work.

#### ARTICLE 14 - INSURANCE

14.1 The specific insurance coverage requirements for this Project are identified in the Minimum Insurance Requirements, Exhibit B, which is a part of the Contract Documents. For purposes of this article, the term "City" shall include the City of Pompano Beach and its members, officials, officers, and employees.

14.2 Contractor shall maintain, at its sole expense and at all times during the term of this Project (unless a different time period is otherwise stated), at least the minimum limits of insurance coverage designated in Exhibit B as applicable (inclusive of any amount provided by an umbrella or excess policy) in accordance with the terms and conditions stated in this article. All required insurance shall apply on a primary basis, and shall not require contribution from, any other insurance or self-insurance maintained by City. Any insurance, or self-insurance, maintained by City shall be in excess of, and shall not contribute with, the insurance provided by



Contractor. The Certificate of Insurance must be approved by the City's Risk Manager prior to execution of this Agreement.

14.3 Within fifteen (15) days after the full execution of this Agreement or notification of award, whichever is earlier, Contractor shall provide to City satisfactory evidence of the insurance required in this Agreement with the exception of property, builder's risk or installation floater coverage. With respect to the Workers' Compensation/Employer's Liability Insurance, Professional Liability and Business Automobile Liability Insurance, an appropriate Certificate of Insurance identifying the project and signed by an authorized representative of the insurer shall be satisfactory evidence of insurance. With respect to the Commercial General Liability, an appropriate Certificate of Insurance identifying the project, signed by an authorized representative of the insurer, and copies of the actual additional insured endorsements as issued on the policy(ies) shall be satisfactory evidence of such insurance.

14.4 Coverage for each Project is not to cease and is to remain in force until City determines all performance required of Contractor is completed, unless the Contract Administrator approves cessation of any Project coverage in writing in advance of cessation. If any of the insurance coverage will expire prior to the completion of the Project Work, proof of insurance renewal shall be provided to City prior to the policy's expiration.

14.5 Contractor shall provide City thirty (30) days' advance notice of any cancellation of the policy except in cases of cancellation for non-payment for which City shall be given ten (10) days' advance notice.

14.6 Contractor shall provide, within thirty (30) days after receipt of a written request from City, a copy of the policies providing the coverage required by this Agreement. Contractor may redact provisions of the policies that are not relevant to the insurance required by this Agreement.

14.7 City and Contractor, each for itself and on behalf of its insurers, to the fullest extent permitted by law without voiding the required insurance, waive all rights against the other party and any of the other party's contractors, subcontractors, agents and employees for damages or loss to the extent covered and paid for by any insurance maintained by the other party. If Contractor uses a Subcontractor, Contractor shall require each Subcontractor to endorse City and Consultant as "Additional Insureds" on the Subcontractor's Commercial General Liability policy.

#### ARTICLE 15 – INDEMNIFICATION

15.1 Contractor shall indemnify and hold harmless City, its past, present and future officers and employees, from liabilities, damages, losses, and costs, including but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional misconduct of Contractor and persons employed or utilized by Contractor in the performance of this Agreement. Except as specifically provided in this Agreement, this Agreement does not require Contractor to indemnify City, its employees, officers, directors, or agents from any liability,

damage, loss, claim, action, or proceeding, where caused by the sole negligence of the City, its employees, officers directors or agents. Nothing in this Agreement shall be construed as a waiver of the City's sovereign immunity under Section 768.28, Florida Statutes. These indemnifications shall survive the term of this Agreement. In the event that any action or proceeding is brought against City by reason of any such claim or demand, Contractor shall, upon written notice from City, resist and defend such action or proceeding by counsel satisfactory to City. Any resulting liability to the City shall be limited to the lesser of the contract amount, or the limits of sovereign immunity under Section 768.28, Florida Statutes, or the actual damages. No recovery of attorney's fees and costs shall be permitted.

15.2 The indemnification provided above shall obligate Contractor to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at City's option, any and all claims of liability and all suits and actions of every name and description covered by Section 15.1 above that may be brought against City whether performed by Contractor, or persons employed or utilized by Contractor.

#### ARTICLE 16 - PERFORMANCE AND PAYMENT BOND AND QUALIFICATIONS OF SURETY

16.1 Within fifteen (15) days after execution of the FGMP, Contractor shall furnish a Performance Bond and a Payment Bond for the Project in a form acceptable to the City. Each Bond shall be maintained in the amount of one hundred percent (100%) of the applicable FGMP guaranteeing to City the completion and performance of the Work covered in the respective FGMP as well as full payment of all suppliers, material providers, laborers, or subcontractors employed pursuant to this project. Each Bond shall be with a surety company which is qualified pursuant to Section 16.3. Each Bond shall continue in effect for one year after Final Completion and acceptance of the Project Work with liability equal to one hundred percent (100%) of the applicable FGMP, or an additional bond shall be conditioned that Contractor will, upon notification by City, correct any defective or faulty Work or materials which appear within one year after Final Completion.

Pursuant to the requirements of Section 255.05, Florida Statutes, Contractor shall ensure that the bond(s) referenced above shall be recorded in the public records of Broward County and provide City with evidence of such recording.

16.2 Alternate Form of Security: In lieu of a Performance Bond and a Payment Bond, Contractor may furnish alternate forms of security which may be in the form of cash, money order, certified check, cashier's check or unconditional letter of credit in a form acceptable to City. Such alternate forms of security shall be subject to the approval of City and for same purpose and shall be subject to the same conditions as those applicable above and shall be held by City for one year after Final Completion and acceptance of the Work by City.

16.3 Qualifications of Surety:

16.3.1 Each bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida as surety, having a resident agent in the State of Florida, and having been in business with a record of successful continuous operation for at least five years.

16.3.2 The surety company shall hold a current certificate of authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised July 1, 1997 (31 C.F.R. Section 223.10, Section 223.111). Further, the surety company shall provide City with evidence satisfactory to City that such excess risk has been protected in an acceptable manner.

16.3.3 The surety company shall hold a current Certificate of Authority with the Florida Office of Insurance Regulation.

16.3.4 The surety company shall have at least the following minimum ratings:

<b>Amount of Bond</b>	<b>Policy Holder's Ratings</b>	<b>Financial Size Category</b>
<b>500,001 to 1,000,000</b>	<b>A,A-</b>	<b>Class I</b>
<b>1,000,001 to 2,000,000</b>	<b>A,A-</b>	<b>Class II</b>
<b>2,000,001 to 5,000,000</b>	<b>A</b>	<b>Class III</b>
<b>5,000,001 to 10,000,000</b>	<b>A</b>	<b>Class IV</b>
<b>10,000,001 to 25,000,000</b>	<b>A</b>	<b>Class V</b>
<b>25,000,001 to 50,000,000</b>	<b>A</b>	<b>Class VI</b>
<b>50,000,001 or more</b>	<b>A</b>	<b>Class VII</b>

#### ARTICLE 17 - INDEPENDENT CONTRACTOR

In performing its contractual obligations, Contractor shall be deemed an independent contractor and not an agent or employee of the City. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement, unless the Contract Documents give other specific instructions concerning these matters.

#### ARTICLE 18 - PROJECT RECORDS AND RIGHT TO AUDIT

18.1 Contractor shall preserve all Contract Records (as defined below) for a minimum period of three (3) years after expiration or termination of this Contract or until resolution of any audit findings, whichever is longer. Contract Records shall, upon reasonable notice, be open to inspection and subject to audit and reproduction during normal business hours. Audits and inspections pursuant to this article may be performed by any representative of City or Broward County (where Broward County surtax funds are being used) (including any outside representative engaged by either entity). City and County may conduct audits or inspections at any time during the term of this Contract and for a period of three (3) years after the expiration or termination of this Contract (or longer if required by Applicable Law, City or County). County may, without limitation, verify information, payroll distribution, and amounts through interviews, written affirmations, and on-site inspection with Contractor's employees, Subcontractors, vendors, or other labor.

18.2 City and County (where applicable) shall have the right to audit, review, examine, inspect, analyze, and make copies of all Contract Records at a location within Broward County, Florida. Contractor grants City and County the right to conduct such audit or review at Contractor's place of business, if deemed appropriate by City or County, with seventy-two (72) hours' advance notice. Contractor agrees to provide adequate and appropriate workspace for such review. Contractor shall provide City and County with reasonable access to Contractor's facilities, and City and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract.

18.3 Contract Records include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions,

recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, drawings, receipts, vouchers and memoranda, and any and all other documents that pertain to rights, duties, obligations, or performance under this Contract. Contract Records include hard copy and electronic records, written policies and procedures, time sheets, payroll records and registers, cancelled payroll checks, estimating work sheets, correspondence, invoices and related payment documentation, general ledgers, insurance rebates and dividends, and any other records pertaining to rights, duties, obligations or performance under this Contract, whether by Contractor or Subcontractors, or otherwise necessary to adequately permit evaluation and verification of any or all of the following:

- a) Compliance with Contract
- b) Compliance with Municipality's code of ethics
- c) Compliance with Contract provisions regarding the pricing of Change Orders
- d) Accuracy of Contractor representations regarding the pricing of invoices
- e) Accuracy of Contractor representations related to claims submitted by Contractor including Subcontractors, or any of its other payees.

In addition to the normal documentation Contractor typically furnishes to City, in order to facilitate efficient use of City resources when reviewing or auditing Contractor's billings and related reimbursable cost records, Contractor agrees to furnish (upon request) the following types of information in the specified computer readable file format(s):

Type of Record	File format
Monthly Job Cost Detail	.pdf and Excel
Detailed Job Cost History To Date	.pdf and Excel
Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)	.pdf and Excel
Total Job to date Labor Distribution detail (if not already included in the detailed Job Cost History to date)	.pdf and Excel
Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project	.pdf
Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project	.pdf
Daily Superintendent Reports	.pdf
Detailed Subcontract Status Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to Subcontractors, etc.	.pdf and Excel
Copies of Executed Subcontracts with all Subcontractors	.pdf
Copies of all executed Change Orders issued to Subcontractors	.pdf
Copies of all documentation supporting all reimbursable job costs (Subcontractor payment applications, vendor invoices, internal cost charges, etc.)	.pdf

18.4 Contractor shall, by written contract, require its Subcontractors to agree to the requirements and obligations of this Article.

18.5 Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment reliant upon such entry.

18.6 If an audit inspection or examination in accordance with this article discloses overpricing or overcharges to Municipality of any nature by Contractor or its Subcontractors in excess of five percent (5%) of the total contract billings reviewed, in addition to making adjustments for the overcharges, Contractor shall pay the actual cost of the audit or, if the actual cost is unreasonably high, the reasonable cost. Any adjustments or payments due as a result of any such audit or inspection shall be made within thirty (30) days after presentation of the audit findings to Contractor.

#### ARTICLE 19 - SURVEY

As required by the technical specifications (or, in absence of technical specification requirements prior to submission of the final Application for Payment), Contractor shall furnish final surveys in electronic file, AUTOCAD (latest version) format utilizing CAD Standards as designated by Contract Administrator, in addition to one (1) complete set in Adobe PDF format and two (2) sets of hard copy, showing the exact locations of all structures and underground site utilities installed by Contractor, including all water, sewer, gas, fuel, telephone, security and electric lines and main, and locations of all easements for such utilities then existing. Such surveys shall be prepared, signed, and sealed by a licensed Florida surveyor who shall certify that the Work is installed and erected entirely upon the Project Site and within the building restriction lines, if any, and does not overhang or encroach upon any easement or right-of-way of others.

#### ARTICLE 20 - OCCUPATIONAL HEALTH AND SAFETY

20.1 In compliance with Chapter 442, Florida Statutes, as amended, any toxic substance listed in Section 38F-41.03, Florida Administrative Code, delivered as a result of this Project must be accompanied by a Material Safety Data Sheet (MSDS) which may be obtained from the manufacturer. The MSDS must include the following information:

20.1.1 The chemical name and the common name of the toxic substance.

20.1.2 The hazards or other risks in the use of the toxic substance, including: (1) the potential for fire, explosion, corrosion, and reaction; (2) the known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and (3) the primary routes of entry and symptoms of overexposure.

20.1.3 The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of overexposure.

20.1.4 The emergency procedure for spills, fire, disposal, and first aid.

20.1.5 A description in lay terms of the known specific potential health risks posed by the toxic substance intended to alert any person reading this information.

20.1.6 The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

20.2 Contractor agrees that it shall not knowingly transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in Section 20.5), except in accordance with applicable Environmental Laws. Further, in performing the Work, Contractor shall not knowingly cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws.

20.3 In the event Contractor encounters on the Project site any Hazardous Substance, or what Contractor reasonably believes to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project Location, in violation of any applicable Environmental Laws, Contractor shall immediately stop Work in the area affected and report the condition to the Consultant and Contract Administrator in writing. The Work in the affected area shall not thereafter be resumed except by written authorization of the Consultant and Contract Administrator if in fact a Hazardous Substance has been encountered and has not been rendered harmless.

20.4 Contract Administrator, through the Consultant, may direct Contractor by utilization of Owner's Allowance Account funds to remediate or render harmless the Hazardous Substance in accordance with any applicable permits then in existence, but Contractor shall not be required to remediate or render harmless the Hazardous Substance absent such direction or if Contractor cannot obtain the appropriate insurance. If Contractor is not so directed, Contractor shall not be required to resume Work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated or rendered harmless.

20.5 For purposes of this Agreement, the term "Hazardous Substance" shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound or mixture, which are defined in or included under or regulated by any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the Resource Conservation and Recovery Act

(RCRA), the Toxic Substances Control Act (TSCA), the Clean Water Act (CWA), the Clean Air Act (CAA), and the Marine Protection Research and Sanctuaries Act (MPRSA), the Occupational Safety and Health Act (OSHA), the Superfund Amendments and Reauthorization Act of 1986 (SARA), or other state super lien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively herein as "Environmental Laws"). It is Contractor's responsibility to comply with this article based on the law in effect at the time its services are rendered and Work performed and to comply with any amendments to those laws for all services and Work rendered after the effective date of any such amendments.

**20.6 Safety and Protection:** Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to: (1) all employees on the Project site and other persons who may be affected thereby; (2) all the Work and all materials or equipment to be incorporated in such Work, whether in storage on or off the Project site; and (3) other property at or adjacent to the Project site, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**20.7** Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property referred to in Sections 20.6(2) and 20.6(3) above, caused directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work achieves Final Completion and acceptance by City.

**20.8** Contractor shall designate a responsible member of its organization at the Work site whose duty shall be the prevention of accidents. This person shall be Contractor's Superintendent unless otherwise designated in writing by Contractor to City.

#### ARTICLE 21 - PERMITS, LICENSES AND IMPACT FEES

**21.1** Pursuant to the Public Bid Disclosure Act, EACH LICENSE, PERMIT OR FEE A CONTRACTOR WILL HAVE TO PAY THE CITY BEFORE OR DURING CONSTRUCTION OR THE PERCENTAGE METHOD OR UNIT METHOD OF ALL LICENSES, PERMITS AND FEES REQUIRED BY THE CITY AND PAYABLE TO THE CITY BY VIRTUE OF THIS CONSTRUCTION AS PART OF THE CONTRACT ARE AS FOLLOWS: Occupational Licenses must be in effect as required by Florida Statutes Section 205.065, and must be submitted within fifteen (15) days of execution of this Agreement. Licenses, permits and fees which may be required by the State of Florida, State Agencies or by other local governmental



entities are not included in the above.

21.2 Contractor shall secure and City will pay for the master building permit. Except as otherwise provided by the Contract Documents, all trade permits, sub-permits, and licenses required by federal, state or local laws, rules and regulations necessary for the prosecution of the Work undertaken by Contractor pursuant to this Agreement shall be secured and paid for by Contractor. It is Contractor's responsibility to have and maintain appropriate Certificate(s) of Competency, valid for the Work to be performed and valid for the jurisdiction in which the Work is to be performed for all persons working on the Project for whom a Certificate of Competency is required.

21.3 Impact fees levied by any municipality shall be paid by City.

21.4 Contractor shall notify the Contract Administrator in writing of all conflicts between the Contract Documents and any laws, ordinances, rules, regulations and restrictions that come to the attention of Contractor. If Contractor performs any of the Work knowing it to be contrary to any such laws, ordinances, rules, regulations or restrictions and fails to give the Contract Administrator written notice prior to performance thereof, Contractor shall bear all costs, liabilities and expenses arising therefrom.

21.5 Contractor shall be responsible for obtaining all necessary licenses, building and other permits, and similar authorizations from governmental authorities required or necessary to perform its obligations, and shall give all notices required by, and otherwise comply with, all applicable laws, ordinances, rules, regulations and restrictions.

## ARTICLE 22 - PERSONNEL

22.1 All personnel used or employed by Contractor in the performance of the Work shall be qualified by training and experience to perform their assigned tasks. At the request of the Contract Administrator or the Consultant, Contractor shall not use in the performance of the Work any personnel deemed by the Contract Administrator or the Consultant to be incompetent, careless, unqualified to perform the work assigned to that person him, or otherwise unsatisfactory to the City.

22.2 Contractor shall employ only such labor, and engage Subcontractors that employ only such labor, as will not delay or interfere with the speedy and lawful progress of the Project, and as will be acceptable to and work in harmony with all other workers employed on the Project site or on any other building, structure, or other improvement which Contractor or any other contractor may then be erecting or altering on behalf of the City. Contractor shall not employ any labor that will interfere with labor harmony at the Project site or with the introduction and storage of materials and the execution of Work by other contractors or by subcontractors.

22.3 Contractor shall furnish the Contract Administrator and Consultant on request résumés

of Contractor's key personnel involved in the day-to-day Work on the Project.

22.4 Prevailing Wage Rate Ordinance: This Project is not federally funded. If the Agreement is in excess of \$250,000, the following sections shall apply:

22.4.1 The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as the most recently published in the Federal Register.

22.4.2 All mechanics, laborers, and apprentices, employed or working on the site of the Work, shall be paid in accordance with the above referenced wage rates. Contractor shall post this section of the Contract (Supplemental Wage Requirements) at the site of the Work in a prominent place where it can be easily seen by the workers.

22.4.3 If the Parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices that will be used on the Work site, the Contract Administrator shall submit the question, together with its recommendation, to the City Manager for final determination, which shall be binding.

22.4.4 If the Contract Administrator determines that any laborer or mechanic or apprentice employed by Contractor or any Subcontractor on the site of the Work has been or is being paid wages less than the rate of wages required by the Prevailing Wage Ordinance, Section 26-5 of the Broward County of Ordinances, as amended, the Contract Administrator may (1) by written notice to Contractor direct Contractor to terminate the Work or such part of Work for which there has been a failure to pay the required wages; and (2) contract with another party to perform the Work or portion to completion. Contractor and its Sureties shall be liable to City for any and all costs incurred by City to complete such Work to the extent such costs exceed any amounts that Contractor would be due for performance of such Work.

22.4.5 Contractor shall maintain payrolls and basic records relating to and during the course of the Work and shall preserve such for a period of three (3) years thereafter for all laborers, mechanics, and apprentices working at the site of the Work. Such records shall contain the name and address of each such employee; the employee's current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.

22.4.6 Contractor shall submit, with each application for payment, a signed and sworn "Statement of Compliance" (on a form provided by City) attesting to compliance with the Prevailing Wage Ordinance, Section 26-5 of the Broward County of Ordinances, as amended. Notwithstanding, the Parties agree that, in lieu of the Prevailing Wage Rate Determination, the Contractor shall comply with the comparable Davis -Bacon Wage Rate Determination, attached and incorporated in this Agreement as Exhibit C.

22.4.7 The Contract Administrator may withhold or cause to be withheld from Contractor so much of the payments requisitioned as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and guards employed by Contractor or any Subcontractor on the Work, the full amount of wages required by this Contract.

22.4.8 If Contractor or any Subcontractor fails to pay any laborer, mechanic, or apprentice employed or working on the site of the Work all or part of the wages required by this Contract, the Contract Administrator may, after written notice to Contractor, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

22.4.9 Sections 22.4.1 through 22.4.8 above shall apply to this Agreement to the extent that it is (1) a prime contract subject to the Surtax Ordinance, or (2) a subcontract subject to the Surtax Ordinance under such prime contract.

#### ARTICLE 23 - CONTRACTOR'S WARRANTIES

23.1 Contractor warrants to City that all materials and equipment under this Agreement will be new unless otherwise specified and that all of the Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized by Contract Administrator and Consultant, may be considered defective.

23.2 Contractor shall collect and transmit to the City any and all manufacturer's warranties and manufacturer's guarantees specified in the Contract Documents. The obligation and liability of Contractor or its Surety is limited to the collection and proper transmittal of these warranties and guarantees to Contract Administrator.

23.3 Contractor further represents and warrants:

23.3.1 It is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to perform this Agreement; that it is able to furnish the materials, and services; that it is experienced in and competent to perform the Work contemplated by this Agreement; and it is qualified to do the Work and is authorized to do business in the State of Florida.

23.3.2 It holds a license, permit or other special license to perform the Work included in this Agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license.

23.3.3 The Work shall be performed in a good and professional manner, free from defects in materials and execution, and that all materials shall be new and approved by or acceptable to the Consultant, except as otherwise expressly provided for in the

## Contract Documents.

23.3.4 Contractor has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes, and, further, Contractor is not ineligible to contract with City on any grounds stated in Section 287.135, Florida Statutes.

23.3.5 Contractor is a Maryland for profit corporation validly existing and in good standing under the laws of the State of Florida. Contractor has the legal authority to carry out the Work and services under the terms of and in accordance with this Agreement. The execution, delivery, and performance of this Agreement by Contractor are within Contractor's powers and have been duly authorized by all necessary action of Contractor. This Agreement is the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms and all applicable requirements. Each individual executing this Agreement on behalf of Contractor has been duly authorized by all necessary and appropriate action to do so on behalf of Contractor and does so with full legal authority.

23.3.6 That all statements and representations made in Contractor's proposal, bid, or other supporting documents submitted to City in connection with the solicitation, negotiation, or award of this Contract, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the date Contractor executes this Contract, unless otherwise expressly disclosed in writing by Contractor.

23.3.7 That there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of Contractor, threatened against or affecting Contractor, the outcome of which may (a) affect the validity or enforceability of this Contract, (b) materially and adversely affect the authority or ability of Contractor to perform its obligations under this Contract, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Contractor or on the ability of Contractor to conduct its business as presently conducted or as proposed or contemplated to be conducted.

23.3.8 That it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Work and services and that each person and entity that will provide Services is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render such Services. Contractor represents and warrants that the Services and Work shall be performed in a skillful and respectful manner, and that the quality of all such services and Work shall equal or exceed prevailing industry standards for the provision of such services and Work.

23.4 Breach of Representations. In entering into this Contract, Contractor acknowledges that City is materially relying on the representations, warranties, and certifications of Contractor

stated in this article. City shall be entitled to recover any damages it incurs to the extent any such representation or warranty is untrue. In addition, if any such representation, warranty, or certification is false, City shall have the right, at its sole discretion, to terminate this Contract without any further liability to Contractor, to deduct from any amounts due Contractor under this Contract the full amount of any value paid in violation of a representation or warranty, and to recover all sums paid to Contractor under this Contract. Furthermore, a false representation may result in debarment from City's procurement activities.

23.5 Contractor's express warranties shall be in addition to, and not in lieu of, any other warranties or remedies the City may have under this Agreement, any addenda, the Contract Documents or law.

## ARTICLE 24 - DEFECTIVE WORK

24.1 Consultant and Contract Administrator shall have the authority to reject or disapprove Work which is found to be defective. If required by Consultant or Contract Administrator, Contractor shall promptly either correct all defective Work or remove such defective Work and replace it with non-defective Work. Contractor shall be responsible for all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

24.2 Should Contractor fail or refuse to remove or correct any defective Work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by Consultant or Contract Administrator, City shall have the authority to cause the defective Work to be removed or corrected, or make such repairs as may be necessary at Contractor's expense. Any expense incurred by City in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to Contractor and deducted from the FGMP, or may be charged against the Performance Bond. In the event of failure of Contractor to make all necessary repairs promptly and fully, City may declare a default.

24.3 If, within one (1) year after the date of a Project's Substantial Completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor, after receipt of written notice from City, shall promptly correct the defect(s) or non-conformance(s) within the time specified by City without cost to City. Nothing contained in this Agreement shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents and any claim regarding latent defects.

24.4 Failure by City to reject any defect or non-conformance in the Work shall not in any way prevent later rejection when such defect or non-conformance is discovered, or obligate City to

accept or pay for the Work.

24.5 Contractor shall (i) replace any part of the Work that fails to conform with the requirements of this Agreement that appear during progress of the Work on the Project; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work or any portions or within such longer period of time as may be set forth in the Contract Documents or as may be required by law; and (iii) replace, repair or restore any parts of the Project or furniture, fixtures, equipment or other items placed in the Project (whether by the City or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of this Agreement or are due to defects in the Work. This article shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor or subcontractor of the City unless Contractor is acting in such capacity or capacities.

24.6 If the City and Contractor deem it inexpedient to require the correction of Work damaged or not performed in accordance with the Contract Documents, an equitable deduction from the FGMP shall be made by agreement between Contractor and the City. Until such settlement, the City may withhold such sums as the City deems just and reasonable from moneys, if any, due Contractor. If no monies are held by the City, reimbursement shall be made to the City within thirty (30) days by Contractor.

#### ARTICLE 25 - CITY'S RIGHT TO TERMINATE CONTRACT

25.1 If Contractor fails to begin the Project Work within ten (10) days after the Project Initiation Date set forth in the Project's Notice to Proceed, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Work, or performs the Work unsuitably, or causes it to be rejected as defective and unsuitable, or discontinues the prosecution of the Work pursuant to the accepted schedule, or fails to perform any material term set forth in the Contract Documents, or becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or makes an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, Contract Administrator may give notice in writing to Contractor and its Surety of such delay, neglect or default, specifying the same. If Contractor, within a period of ten (10) days after such notice, does not proceed in accordance therewith, then City may upon written certificate from Consultant of the fact of such delay, neglect or default and Contractor's failure to comply with such notice, terminate the services of Contractor, exclude Contractor from the Project site and take the prosecution of the Work out of the hands of Contractor, and appropriate or use any or all materials and equipment that are an integral part of the Work on the Project site as may be suitable and acceptable. In such case, Contractor shall not be entitled to receive any further payment until the Project is completed. In addition, City may enter into an agreement for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in City's sole opinion shall be required for the completion of the

Project according to the terms and provisions of the Contract Documents, or use such other methods as in City's sole opinion shall be required for the completion of the Project in an acceptable manner. All damages, costs and charges incurred by City, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to Contractor. In case the damages and expenses so incurred by City shall exceed the unpaid balance, then Contractor shall be liable and shall pay to City the amount of such excess.

25.2 If, after Notice of Termination of Contractor's right to proceed, it is determined for any reason that Contractor was not in default, the rights and obligations of City and Contractor shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause as set forth below.

25.3 Termination for Convenience: This Agreement may be terminated for convenience, in whole or in part, in writing by City upon ten (10) days written notice to Contractor (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, Contractor shall be paid for all Work executed and expenses incurred prior to termination in addition to termination settlement costs reasonably incurred by Contractor relating to commitments which had become firm prior to the termination. Payment shall include reasonable profit for Work or services performed. No payment shall be made for profit for Work or services that have not been performed. Contractor acknowledges and agrees that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which is acknowledged by Contractor, for City's right to terminate this Agreement for convenience.

25.4 Upon receipt of Notice of Termination, Contractor shall promptly discontinue all affected Work unless the Notice of Termination directs otherwise and deliver or otherwise make available to City all data, drawings, specifications, reports, estimates, summaries and such other information as may have been required by the Contract Documents whether completed or in process.

25.5 This Agreement may also be terminated by the City:

25.5.1 Upon the disqualification of Contractor as a CBE if Contractor's status as a CBE was a factor in the award of this Agreement and such status was misrepresented by Contractor;

25.5.2 Upon the disqualification of Contractor by the City due to fraud, misrepresentation, or material misstatement by Contractor in the course of obtaining this Agreement or attempting to meeting the CBE contractual obligations;

25.5.3 Upon the disqualification of one or more of Contractor's CBE participants if any such participant's status as a CBE firm was a factor in the award of this Agreement and such status was misrepresented by Contractor or such participant;

25.5.4 Upon the disqualification of one or more of Contractor's CBE participants if such CBE participant attempted to meet its CBE contractual obligations through fraud, misrepresentation, or material misstatement;

25.5.5 If Contractor is determined by the City to have been knowingly involved in any fraud, misrepresentation, or material misstatement concerning the CBE status of its disqualified CBE participant.

25.6 Notice of Termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

25.7 In the event this Agreement is terminated for any reason, any amounts due Contractor shall be withheld by City until all documents are provided to City.

## ARTICLE 26 - MISCELLANEOUS

26.1 Public Entity Crime Act: Contractor represents that it is familiar with the requirements and prohibitions of the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act.

In addition to the foregoing, Contractor further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Contractor has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this paragraph is false, City shall have the right to immediately terminate this Agreement and recover all sums paid to Contractor under this Agreement.

26.2 Ownership of Contract Documents: Drawings, specifications, designs, models, photographs, reports, surveys, and other data submitted by Contractor provided in connection with this Agreement are and shall remain the property of the City whether the Project for which they are made is completed or not. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by Contractor shall become the property of City and shall be delivered by Contractor to City within seven (7) days of termination of the Agreement by either party. Any compensation due to Contractor shall be withheld until all documents are received as provided herein.

26.3 Contractor's Representative: Contractor shall advise the City, in writing, of any limitations on the authority of Contractor's representative; otherwise, Contractor's representative shall be considered to have full authority to execute any and all instruments requiring Contractor's



signature and to act on behalf of Contractor with respect to all matters arising out of this Agreement.

26.4 Resolution of Disputes: Questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Agreement as to the character, quality, amount and value of any Work done and materials furnished, or proposed to be done or furnished under or, by reason of, the Contract Documents which cannot be resolved by mutual agreement of Contract Administrator and Contractor shall be submitted to Consultant for resolution. When either party has determined that a disputed question, claim, difficulty or dispute is at an impasse that party shall notify the other party in writing and submit the question, claim, difficulty or dispute to the Consultant for resolution. The Parties may agree to a proposed resolution at any time without the involvement and determination of the Consultant.

26.4.1 Consultant shall notify Contract Administrator and Contractor in writing of Consultant's decision within twenty-one (21) days from the date of the submission of the question, claim, difficulty or dispute, unless Consultant requires additional time to gather information or allow the Parties to provide additional information. Consultant's estimates and decisions upon all questions, claims, difficulties and disputes shall be final and binding.

26.4.2 All non-technical administrative disputes (such as billing and payment and CBE reporting issues) shall be determined by Contract Administrator.

26.4.3 During the pendency of any dispute and after a determination, Contractor, Consultant, and Contract Administrator shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction. During the pendency of any dispute arising under this Agreement, other than termination, Contractor shall proceed diligently with performance of this Agreement and the City shall continue to make payments for undisputed amounts in accordance with the Contract Documents.

26.4.4 In the event the determination of a dispute by the Consultant under this article is unacceptable to any of the Parties hereto, the party objecting to the determination must notify the other party, the City Manager or designee, in writing within ten (10) days of receipt of the written determination. The notice must state the basis of the objection and the objecting party's proposed resolution. If notice is given by Contractor, it must be accompanied by a statement that any Contract Price adjustment claimed is the entire adjustment to which Contractor has reason to believe it is entitled to as a result of the question, claim, difficulty or dispute. Resolution of such dispute shall be made by the City Manager or designee. The City Manager's decision shall be final and binding on the Parties subject to judicial review.

26.4.5 For any disputes which remain unresolved, within sixty (60) days after Final Completion of the Work, the Parties shall participate in mediation to address all unresolved disputes. A mediator shall be mutually agreed upon by the Parties. Mediation shall take place in Broward County, Florida. Should any objection not be resolved in mediation, the Parties retain all their legal rights and remedies provided under applicable law. If a party objecting to a determination, fails to comply in strict accordance with the requirements of this article, such party specifically waives all of its rights, including its rights and remedies under applicable law.

26.5 Notices: All notices to be given hereunder shall be in writing, and may be given by depositing the same in the United States Mail addressed to the party to be notified, postage prepaid, return receipt requested or by sent by commercial express carrier with acknowledgment of delivery, or by hand delivery, with a simultaneous copy sent via electronic mail, addressed to the party for whom it is intended at the last place specified. All notices to be given to the Parties hereto shall be sent to or made to the addresses as shown in the Summary of Terms and Conditions. The place for giving notice shall remain the same as set forth herein unless changed in the manner provided in this section.

26.6 EEO Compliance:

26.6.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Contractor shall include the foregoing or similar language in its contracts with any Subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26. Failure by Contractor to carry out any of the requirements of this section shall constitute a material breach of this Agreement, which shall permit the City to terminate this Agreement or to exercise any other remedy provided under this Agreement, or under applicable law, with all of such remedies being cumulative.

26.6.2 Contractor shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability) and all applicable regulations, guidelines, and standards. In addition, Contractor shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

26.6.3 By execution of this Agreement, Contractor represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. City materially relies on such representation in entering into this Agreement. An untrue

representation of the foregoing shall entitle City to terminate this Agreement and recover from Contractor all monies paid by City pursuant to this Agreement and may result in debarment from City's competitive procurement activities.

26.7 CBE Compliance:

26.7.1 No party to this Contract may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Contract, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26. Contractor shall include the foregoing or similar language in its contracts with any Subcontractors.

26.7.2 Contractor shall comply with all applicable requirements of Section 1-81, Broward County Code of Ordinances ("CBE Ordinance"), in the award and administration of this Contract. Failure by Contractor to carry out any of the requirements of this Section 26.7 shall constitute a material breach of this Contract, which shall permit City to terminate this Contract or exercise any other remedy provided under this Contract, the Broward County Code of Ordinances, the Broward County Administrative Code, this Agreement, or under other applicable law, all such remedies being cumulative.

26.7.3 Contractor will meet or exceed the required CBE or SBE goal, to the extent that the Project involves (1) a prime contract subject to the Surtax Ordinance, or (2) a subcontract subject to the Surtax Ordinance under such prime contract. The goal is thirty five percent (35 %) of total Direct Construction Costs and the biddable elements of the General Conditions of the FGMP (the "Commitment") in accordance with Exhibit D, Contractor's Statement of CBE Assurances.

26.7.4 In performing work, Contractor shall utilize the CBE or SBE firms listed in the applicable Exhibit for the scope of Work and the percentage of Work amounts identified on each Letter of Intent. Promptly upon execution of this Amendment, Contractor shall enter into formal contracts with the CBE or SBE firms listed in the applicable Exhibit and, upon request, shall provide copies of the contracts to the Contract Administrator and County OESBD.

26.7.5 Each CBE or SBE firm utilized by Contractor to meet the CBE or SBE goal must be certified by Broward County OESBD. Contractor shall inform City immediately when a CBE or SBE firm is not able to perform or if Contractor believes the CBE or SBE firm should be replaced for any other reason, so that the City can review and verify the good faith efforts of Contractor to substitute the CBE or SBE firm with another CBE or SBE firm. Whenever a CBE or SBE firm is terminated for any reason, Contractor shall provide written notice to the City and, upon written approval of the City, shall substitute another CBE or SBE firm in order to meet the CBE or SBE goal, unless otherwise provided in this Contract or agreed

to in writing by the Parties. Such substitution shall not be required in the event the termination results from modification of the Scope of Work and no CBE or SBE firm is available to perform the modified Scope of Work; in which event, Contractor shall notify City, and the City may adjust the CBE or SBE goal for that Work by written notice to Contractor. Contractor shall not terminate a CBE or SBE firm for convenience without City's prior written consent, which consent shall not be unreasonably withheld.

26.7.6 The Parties stipulate that if Contractor fails to meet the Commitment for any Work, the damages to City arising from such failure are not readily ascertainable at the time of contracting. If Contractor fails to meet the Commitment and City determines, in its sole discretion, that Contractor failed to make Good Faith Efforts (as defined in the CBE Ordinance) to meet the Commitment, Contractor shall pay City liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which Contractor failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total amount of the FGMP, excluding costs and reimbursable expenses. An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances.

26.7.7 As elected by City, such liquidated damages amount shall be either credited against any amounts due from City or must be paid to City within thirty (30) days after written demand. These liquidated damages shall be City's sole contractual remedy for Contractor's breach of the Commitment, but shall not affect the availability of administrative remedies under Section 1-81, Broward County Code of Ordinances. Contractor acknowledges and agrees that the liquidated damages provided in this section are proportionate to an amount that might reasonably be expected to flow from a breach of the Commitment and are not a penalty. Any failure to meet the Commitment attributable solely to force majeure, changes to the scope of Work by City, or inability to substitute a CBE or SBE Subcontractor where the OESBD Program Director has determined that such inability is due to no fault of Contractor, shall not be deemed a failure by Contractor to meet the Commitment.

26.7.8 Contractor acknowledges that the City may make minor administrative modifications to Section 1-81, Broward County Code of Ordinances, which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to Contractor and shall include a deadline for Contractor to notify City in writing if Contractor concludes that the modification exceeds the authority under this section. Failure of Contractor to timely notify City of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by Contractor.

26.7.9 City, through Broward County OESBD, may modify the Commitment in connection with any amendment, extension, modification, change order, or Work Authorization to a FGMP that, by itself or aggregated with previous amendments, extensions, modifications, change orders, or Work Authorizations, increases the initial FGMP by ten percent (10%) or more. Contractor shall make a good faith effort to include CBE or SBE firms in Work

resulting from any such amendment, extension, modification, change order, or Work Authorization, and shall report such efforts, along with such evidence, to the City.

26.7.10 No later than ten (10) business days after the end of the month, Contractor shall provide written monthly reports to the Contract Administrator attesting to Contractor's compliance with the Commitment on all Work. In addition, Contractor shall allow City to engage in onsite reviews to monitor Contractor's progress in achieving and maintaining Contractor's contractual and CBE or SBE obligations. The Contract Administrator in conjunction with County OESBD shall perform such review and monitoring, unless otherwise determined by the City Manager.

26.7.11 The Contract Administrator may withhold progress payments if Contractor fails to demonstrate timely payments of sums due to all Subcontractors and suppliers. The presence of a "pay when paid" provision in a Contractor's contract with a CBE or SBE firm shall not preclude City or its representatives from inquiring into allegations of nonpayment.

26.7.12 Workforce Investment Program. This Contract constitutes a "Covered Contract" under the Broward Workforce Investment Program, Broward County Administrative Code Section 19.211 ("Workforce Investment Program"). Contractor affirms it is aware of the requirements of the Workforce Investment Program and agrees to use good faith efforts to meet the First Source Referral Goal and the Qualifying New Hires Goal as set forth therein, including by (a) publicly advertising any vacancies that are the direct result of this Contract (whether those vacancies are with Contractor or its Subcontractors) exclusively with CareerSource Broward for at least five (5) business days and using good faith efforts to interview any qualified candidates referred under the Workforce Investment Program, and (b) using good faith efforts to hire Qualifying New Hires, as defined by the Workforce Investment Program, for at least fifty percent (50%) of the vacancies that are the direct result of this Contract. Until at least one year after the conclusion of this Contract, Contractor shall maintain and make available to Municipality upon request all records documenting Contractor's compliance with the requirements of the Workforce Investment Program, and shall submit the required Workforce Investment Reports to the Contract Administrator annually by January 31 and within thirty (30) days after the expiration or termination of this Contract. Failure to demonstrate good faith efforts to meet the First Source Referral Goal and the Qualifying New Hires Goal shall constitute a material breach of this Contract. This Section shall apply to this Agreement to the extent that it is (1) a prime contract subject to the Surtax Ordinance, or (2) a subcontract subject to the Surtax Ordinance under such prime contract.

## 26.8 Hurricane and Disaster Preparedness

26.8.1 Pre-Hurricane and Disaster Provisions: During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning or alert, Contractor, except as specified below, shall take all reasonable precautions necessary to

secure the Project site in response to all threatened storm events, regardless of whether the City or Consultant has given notice of same. Compliance with any specific hurricane warning or alert precautions will not constitute additional Work. Suspension of the Work caused by a threatened or actual storm event, regardless of whether the City has directed such suspension, will entitle Contractor to additional Contract Time as non-compensable, excusable delay, and shall not give rise to a claim for compensable delay. At the discretion of Contract Administrator, Contractor shall be reimbursed actual documented expenses for materials and labor incurred due to hurricane preparations that are outside of the normal daily General Conditions costs.

**26.8.2 Post-Hurricane and Disaster Provisions:** The City may issue, through its Director of Public Works or Contract Administrator, Construction Change Directives or other enabling documents to mobilize Contractor and its subcontractors in the aftermath of a hurricane, natural disaster or other emergency for the purposes of damage assessment and providing temporary and permanent repairs to City facilities (or other facilities as may be assigned by City). Contractor shall mobilize upon mutual agreement of specific terms for this Work.

In the immediate aftermath of a storm, natural disaster or other emergency, Contractor and Contract Administrator shall establish communications to determine an assessment and recovery plan and to establish a preliminary list of emergency recovery activities that Contractor shall undertake. Contractor and Contract Administrator shall utilize that preliminary list of emergency recovery activities to develop one or more Construction Change Directives for execution by Contract Administrator and Contractor. Upon mutual agreement, Contract Administrator shall issue the executed Construction Change Directives upon receipt of which, Contractor shall immediately undertake the emergency actions described therein.

Contractor shall mobilize personnel, Subcontractors and equipment as necessary to complete the tasks required by a Construction Change Directive for hurricane or other disaster recovery.

City shall issue Purchase Orders and other procurement documents as necessary to support of Construction Change Directives as issued by the Director of Public Works or Contract Administrator.

Contractor shall maintain detailed records of the Work and provide full information required for evaluation and to substantiate costs and time adjustments as may be necessitated by these required changes in the Work.

Contractor shall coordinate invoicing and payment procedures for emergency recovery work with Contract Administrator to ensure expeditious payment and segregation of such

payments from those applicable to the non-emergency Work required by this Agreement.

26.9 Third Party Beneficiaries: Neither Contractor nor City intend to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

26.10 Conflicts: Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Agreement. Contractor agrees that none of its employees shall, during the term of this Agreement, serve as an adverse or hostile witness against City in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her opinion, which is adverse or prejudicial to the interests of City in any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding. Contractor agrees to prohibit its subcontractors, by written contract, from having any conflicts as within the meaning of this section.

26.11 Joint Preparation: Preparation of this Agreement has been a joint effort of City and Contractor and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.

26.12 INTENTIONALLY OMITTED.

26.13 Assignment: Contractor shall not assign this Agreement or subcontract it as a whole without the prior written consent of City; nor shall Contractor assign any monies due or to become due to it hereunder, without the prior written consent of City. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit the non-assigning Party to immediately terminate this Agreement, in addition to any other remedies available to the non-assigning Party at law or in equity.

26.14 Waiver: No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other or future breach or default by such party hereunder, nor deemed to be a modification of this Agreement. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder, provided however this section shall not alter or amend the notice provisions set forth in the Agreement. Inspection by, payment by or tentative

approval or acceptance by the City, or the failure of the City to perform any inspection hereunder shall not constitute a final acceptance of the Work or any part thereof and shall not release Contractor from any of its obligations hereunder.

**26.15 Entire Agreement; Severability; Amendments:** This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in the Contract Documents. Accordingly, the Parties agree that no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with Article 10. In the event any provision of the Contract Documents shall be found by a court of competent jurisdiction to be invalid or otherwise unenforceable, the remainder of this Agreement shall not be affected thereby and each remaining provision, term, covenant or condition of the Contract Documents shall continue to be effective.

**26.16 Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**26.17 Governing Law, Venue and Waiver of Jury Trial:** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either Party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AND CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO OR ARISING OUT OF THIS AGREEMENT. CONTRACTOR SHALL SPECIFICALLY BIND ALL SUBCONTRACTORS TO THE PROVISIONS OF THIS CONTRACT.**

**26.18 Truth in Negotiations:** Contractor's compensation under this Agreement is based upon representations supplied to City by Contractor, and Contractor certifies that the wage rates, factual unit costs, and other factual information supplied to substantiate Contractor's compensation is accurate, complete and current at the time of contracting. City shall be entitled to recover any damages it incurs to the extent such representation is untrue.

**26.19 E-Verify Certification:** Where required by Florida Executive Order and by Section 448.095, Florida Statutes, Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of: (a) all persons



employed during the contract term by Contractor to perform employment duties within Florida; and (b) all persons (including subcontractors) assigned by Contractor to perform Work pursuant to this Agreement with City.

26.20 Scrutinized Vendor certification: This Agreement may be terminated for cause if Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, as amended or if Contractor provides a false certification (Form 11) submitted pursuant to Section 287.135, Florida Statutes, as amended.

26.21 Representative of City and Contractor: The Parties recognize that questions in the day-to-day conduct of the Project will arise. The Contract Administrator, upon Contractor's request, shall advise Contractor in writing of one (1) or more City employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed. Contractor shall inform the Contract Administrator in writing of Contractor's representative to whom matters involving the conduct of the Project shall be addressed.

26.22 Interpretation: The language of this Agreement has been agreed to by both Parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days unless otherwise expressly stated.

26.23 Representation of Authority: Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full and legal authority.

26.24 INTENTIONALLY OMITTED.

26.25 Regulatory Authority: In the event City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred pursuant to City's authority as a governmental body and shall not be attributable in any manner to City as a party to this Agreement.

26.26 Public Records: To the extent Contractor is acting on behalf of City as stated in Section 119.0701, Florida Statutes, Contractor shall:

- a. Keep and maintain public records required by City to perform the Work under this Agreement;
- b. Upon request from City, provide City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that 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 record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the records are not transferred to City; and
- d. Upon completion of this Agreement, transfer to City, at no cost, all public records in possession of Contractor upon termination of this Agreement or keep and maintain public records required by City to perform the Work. If Contractor transfers the records to City, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt. If Contractor keeps and maintains public records upon completion of this Agreement, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to City upon request in a format that is compatible with the information technology systems of City.

The failure of Contractor to comply with the provisions of this section shall constitute a material breach of this Agreement entitling City to exercise any remedy provided in this Agreement or under applicable law.

A request for public records regarding this Agreement must be made directly to City, who will be responsible for responding to any such public records requests. Contractor will provide any requested records to City to enable City to respond to the public records request.

Any material submitted to City that Contractor contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Florida Statutes Chapter 119) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCT – TRADE SECRET." In addition, Contractor must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Florida Statutes Section 812.081 and stating the factual basis for same. In the event that a third party submits a request to City for records designated by Contractor as Trade Secret Materials, City shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Contractor. Contractor shall

indemnify and defend City and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the non-disclosure of any Trade Secret Materials in response to a records request by a third party.

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

**CITY CLERK**

**100 W. Atlantic Blvd., Suite 253**

**Pompano Beach, Florida 33060**

**(954) 7 8 6 - 4 6 1 1**

**RecordsCustodian@copbfl.com**

**26.27 Waiver of Consequential Damages: THE PARTIES SHALL NOT BE LIABLE TO EACH OTHER FOR LOST PROFITS, PUNITIVE DAMAGES AND CONSEQUENTIAL DAMAGES, AND ANY LIABILITY OF A PARTY TO THE OTHER PARTY FOR LOST PROFITS, PUNITIVE DAMAGES AND CONSEQUENTIAL DAMAGES IS WAIVED BY EACH PARTY.**

**(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.

CITY OF POMPANO BEACH

ATTEST:

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

By: \_\_\_\_\_

\_\_\_\_\_  
REX HARDIN, MAYOR

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

By: \_\_\_\_\_

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

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

I CERTIFY that I have approved  
this Agreement as to form and legal  
sufficiency subject to execution by the parties:

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

WHITING-TURNER CONTRACTING COMPANY

WITNESSES:

Frank Zaremba  
Signature

Frank Zaremba  
Print/Type Name

M. Wholly  
Signature

MATTHEW Moe-YOUNG  
Print/Type Name

By

RM MAJ

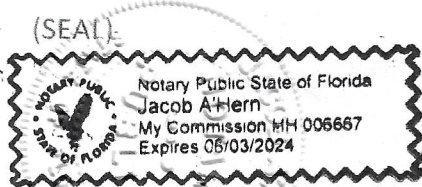
ROBERT MINUTOLI JR / Sr. Vice President  
Print/Type Name/Title

6<sup>th</sup> day of JULY, 2022

STATE OF FLORIDA )  
 ) SS.  
COUNTY OF BROWARD )

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this 6 day of JULY, 2022, by Bob Minutoli, who is personally known to me or who has produced Personally Known as identification and who did/did not take an oath.

WITNESS my hand and official seal, this 6 day of JULY, 2022.



Jacob A'Hern  
Signature of Notary Public

Jacob A'Hern  
(Typed or printed name)

00667  
Commission Number  
My Commission Expires: 06/03/2024