

**AGREEMENT BETWEEN CITY OF POMPANO BEACH AND MARLIN ENGINEERING, INC. FOR  
CONSULTANT SERVICES FOR RIVERSIDE DRIVE STREETScape IMPROVEMENTS  
(RFP/RLI/RFQ # P-32-20)**

This Agreement ("Agreement") is made and entered by and between the City of Pompano Beach, Florida, a political subdivision of the State of Florida ("City"), and Marlin Engineering, Inc., a Florida corporation ("Consultant") (each a "Party" and collectively referred to as the "Parties").

**RECITALS**

A. City has met the requirements of Section 287.055, Florida Statutes, the Consultants' Competitive Negotiation Act, and has selected Consultant to perform the services hereunder.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1. DEFINITIONS**

- 1.1 **Board** means the City Commission of the City of Pompano Beach, Florida.
- 1.2 **Contract Administrator** means the City Manager or such other person designated by the City Manager in writing. The Contract Administrator is the representative of City concerning the Project.
- 1.3 **Contractor** shall mean the person, firm, corporation, or other entity who enters into an agreement with City to perform the construction work for the Project.
- 1.4 **County Business Enterprise or CBE** means an entity certified as meeting the applicable requirements of Section 1-81, Broward County Code of Ordinances.
- 1.5 **Notice to Proceed** means a written authorization to proceed with the Project, phase, or task, issued by the Contract Administrator.
- 1.6 **Project** means **Riverside Drive Streetscape Improvements**.
- 1.7 **Purchasing Director** means City's Director of Purchasing or designee.
- 1.8 **Services** means the work set forth in Exhibit A, Scope of Services, and shall include civil, structural, mechanical, and electrical engineering, architectural services, and other professional design services as applicable for the Project, and any Optional Services procured under this Agreement.
- 1.9 **Small Business Enterprise or SBE** means an entity certified as meeting the applicable requirements of Section 1-81, Broward County Code of Ordinances.

1.10 **Subconsultant** means an entity or individual providing services to City through Consultant for all or any portion of the work under this Agreement. The term "Subconsultant" shall include all subcontractors.

## **ARTICLE 2. EXHIBITS**

<b>Exhibit A</b>	<b>Scope of Services</b>
<b>Exhibit B</b>	<b>Maximum Billing Rates</b>
<b>Exhibit B-1</b>	<b>Reimbursables for Direct Non-Salary Expenses</b>
<b>Exhibit C</b>	<b>Minimum Insurance Coverages</b>
<b>Exhibit D</b>	<b>Work Authorization Form</b>
<b>Exhibit E</b>	<b>CBE Subconsultant Schedule and Letters of Intent</b>

## **ARTICLE 3. SCOPE OF SERVICES**

3.1 Consultant shall provide all Services as set forth in Exhibit A, including all necessary, incidental, and related activities required for full and complete performance of this Agreement (the "Scope of Services").

3.2 This Agreement does not delineate every detail and minor work task required to be performed by Consultant to complete the Project. During the course of the performance of the Services included in this Agreement, if Consultant determines that work should be performed to complete the Project and, in Consultant's opinion, that work is outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, Consultant shall notify Contract Administrator in writing in a timely manner before proceeding with the work. If Consultant proceeds with such work without notifying the Contract Administrator, the work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by City to Consultant to perform the work. Unless there is a dispute as set forth in Section 6.4, any work performed by Consultant outside the originally anticipated level of effort without prior written City approval shall be at no additional cost to City.

3.3 Exhibit A identifies the initial services related to the Project, and additional negotiations may be required for other phases or additional services. City and Consultant may negotiate additional services, compensation, time of performance, and other related matters, including for other phases of the Project. Notwithstanding the foregoing, City shall have the right to terminate negotiations at any time at no cost to City and procure services for other Project phases from any other source.

3.4 City shall assist Consultant by placing at Consultant's disposal all information City has available pertinent to the Project, including previous reports and any other data relative to design or construction of the Project. City shall arrange for access to, and make all provisions for, Consultant to enter upon public and private property as required for Consultant to perform its Services. City shall review any itemized deliverables and documents required to be submitted by Consultant and respond in writing with any comments within the time set forth in Exhibit A. City shall give prompt written notice to Consultant whenever City observes or otherwise becomes

aware of any material defect in the work of the Contractor or other material development that affects the scope or timing of Consultant's Services.

#### **ARTICLE 4. TIME FOR PERFORMANCE; CONTRACTOR DAMAGES**

4.1 Consultant shall perform the Services within the time periods specified in Exhibit A. Time periods shall commence from the date of the applicable Notice to Proceed.

4.2 Consultant must receive a Notice to Proceed from the Contract Administrator prior to commencement of Services and any phase of Services under this Agreement. Prior to granting approval for Consultant to proceed to any phase, the Contract Administrator may, at his or her sole option, require Consultant to submit the itemized deliverables and documents identified in Exhibit A for the Contract Administrator's review.

4.3 If the Contract Administrator determines that Consultant is unable to complete Services because of delays resulting from untimely review by City or other governmental agencies having jurisdiction over the Project and such delays are not the fault of Consultant, or because of delays caused by factors outside the control of Consultant, City shall grant a reasonable extension of time for completion of the Services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of Consultant to notify the Contract Administrator in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and whenever a delay has been caused by factors outside of Consultant's control, and to inform the Contract Administrator of all facts and details related to the delay. Consultant must provide such written notice to the Contract Administrator within three (3) business days after the occurrence of the event causing the delay.

4.4 If (a) Contractor fails to substantially complete the Project on or before the substantial completion date specified in its agreement with City, or (b) if Contractor is granted an extension of time beyond said substantial completion date and Consultant's Services are extended beyond the substantial completion date through no fault of Consultant, then Consultant shall be compensated in accordance with Article 5 for all Services rendered by Consultant beyond the substantial completion date.

4.5 Notwithstanding Section 4.4, if Contractor fails to substantially complete the Project on or before the substantial completion date specified in its agreement with City, and the failure to substantially complete is caused in whole or in part by Consultant, then Consultant shall pay to City its proportional share of any claim for damages to Contractor arising out of the delay. The provisions for the computation of delay costs, damages, or any other amounts, whether direct or indirect, in the agreement between the Contractor and City are incorporated herein. This section shall not affect the indemnification rights or obligations of either Party otherwise set forth in this Agreement.

4.6 If Services are scheduled to end due to the expiration of this Agreement, at the request of the Contract Administrator, Consultant agrees to continue to provide Services for an extension period, not to exceed three months, upon the same terms and conditions as contained in this Agreement. Consultant shall be compensated for such Services at the rate in effect when the extension is invoked by City. To exercise an extension authorized by this section, the Purchasing

Director shall notify Consultant in writing prior to the end of the term of this Agreement.

## **ARTICLE 5. COMPENSATION AND METHOD OF PAYMENT**

5.1 Amount and Method of Compensation. The amounts set forth in this Article 5 are the total compensation payable to Consultant and constitute a limitation upon City's obligation to compensate Consultant for Services under this Agreement, but do not constitute a limitation of any sort upon Consultant's obligation to perform all Services required under this Agreement.

5.1.1 Maximum Amount Not-To-Exceed Compensation. For Basic Services identified in Exhibit A as payable on a "Maximum Amount Not-To-Exceed" basis, compensation to Consultant shall be based upon the Salary Costs as described in Section 5.2 up to a maximum not-to-exceed amount of \$N/A.

5.1.2 Lump Sum Compensation. For Basic Services identified in Exhibit A as payable on a "Lump Sum" basis, compensation to Consultant shall be not more than a total lump sum of \$637,762.10.

5.1.3 Optional Services. City may procure Optional Services up to a maximum not-to-exceed amount of \$60,000.00 pursuant to Article 6. Unused amounts of these Optional Services monies shall be retained by City.

5.1.4 Reimbursable Expenses. City will reimburse authorized Reimbursable Expenses as defined in Section 5.3 up to a maximum not-to-exceed amount of \$2,000.00. Unused amounts of those monies shall be retained by City.

5.1.5 Salary Costs. The maximum billing rates payable by City for each of Consultant's employee categories are shown on Exhibit B and are further described in Section 5.2.

5.1.6 Subconsultant Fees. Consultant shall bill Subconsultant fees using the employee categories for Salary Costs on Exhibit B as defined in Section 5.2 and Reimbursable Expenses defined in Section 5.3. Consultant shall bill Subconsultant fees with no mark-up and within any applicable maximum not to exceed amount.

5.1.7 Phased Payments. Payments for Basic Services shall be paid out pursuant to the Project phasing specified in Exhibit A and shall not exceed the amount set forth below for the applicable phase. The invoiced fee amount for each phase shall be subject to retainage as set forth in Section 5.5.

<b>Project Phase</b>	<b>Fee %</b>	<b>Phase Amount</b>
Predesign Services/Programming Phase	19.8%	\$126,409.46
Phase I: Schematic Design	15.9%	\$102,149.72
Phase II: Design Development	23.8%	\$151,627.00
Phase III: Construction Documents	23.8%	\$151,627.00
Phase IV: GMP Negotiations		\$ N/A
Phase V: Administration of the Construction Contract	16.8%	\$106,948.10

<b>Project Phase</b>	<b>Fee %</b>	<b>Phase Amount</b>
Phase VI: Warranty Administration and Post-Occupancy Services	___%	\$ <u>N/A</u>
<b>Total Basic Services Fee</b>	<b>100%</b>	<b><u>\$637,762.1</u></b>

5.2 Salary Costs. The term Salary Costs as used herein shall mean the hourly rate actually paid to all personnel engaged directly on the Project, as adjusted by an overall multiplier that consists of the following: 1) a fringe benefits factor; 2) an overhead factor; and 3) an operating margin. Said Salary Costs are to be used only for time directly attributable to the Project. The fringe benefit and overhead rates shall be Consultant's most recent and actual rates determined in accordance with Federal Acquisition Regulation ("FAR") guidelines and audited by an independent Certified Public Accountant. For the purposes of this Agreement, the rates must be audited for fiscal periods of Consultant within eighteen (18) months preceding the execution date of this Agreement. These rates shall remain in effect for the term of this Agreement except as provided for in this Section 5.2 inclusive of the subsections below.

5.2.1 Consultant shall require all of its Subconsultants to comply with the requirements of Section 5.2.

5.2.2 Salary Costs for Consultant and Subconsultants as shown in Exhibit B are the Maximum Billing Rates, which are provisional, subject to audit of actual costs, and if the audit discloses that the actual costs are less than the costs set forth on Exhibit B for Consultant or any Subconsultant, Consultant shall reimburse City based upon the actual costs determined by the audit. City may withhold the amount Consultant is required to reimburse City from any payment due Consultant.

5.2.3 Unless otherwise noted, the Salary Costs stated above are based upon Consultant's "home office" rates. Should it become appropriate during the course of this Agreement that a "field office" rate be applied, then it is incumbent upon Consultant to submit a supplemental Exhibit B reflective of such rates for approval by Contract Administrator and, upon such City approval, invoice City accordingly.

5.2.4 The total hours payable by City for any "exempt" or "nonexempt" personnel shall not exceed forty (40) hours per employee in any week. If the work requires Consultant's or Subconsultant's personnel to work in excess of forty (40) hours per week, any additional hours must be authorized in advance, in writing, by the Contract Administrator. If approved, Salary Costs for additional hours of service provided by nonexempt (hourly) employees or exempt (salaried) employees shall be invoiced at no more than one and one-half of the employee's hourly rate and in a manner consistent with Consultant's or Subconsultant's applicable certified FAR audit and all other provisions of Section 5.2. If a "Safe Harbor" rate is elected for use by Consultant or Subconsultant, then the additional hours are payable at no more than the employee's regular rate.

5.2.5 Consultant and any of its Subconsultants may alternatively use a "Safe Harbor" combined fringe benefit and overhead rate of 110% in lieu of providing fringe benefit and overhead cost factors certified by an independent Certified Public Accountant in

accordance with the FAR guidelines. The Safe Harbor rate, once elected, shall remain in place for the entire term of this Agreement, and be applicable for use as "home" and "field" fringe benefit and overhead rates, if applicable, and shall not be subject to audit under this Agreement. All other provisions of Section 5.2 remain in place.

5.3 Reimbursable Expenses. For reimbursement of any travel costs, travel-related expenses, or other direct nonsalary expenses directly attributable to this Project permitted under this Agreement, Consultant agrees to adhere to Section 112.061, Florida Statutes, except to the extent otherwise stated herein. City shall not be liable for any such expenses that have not been approved in writing in advance by the Contract Administrator. Reimbursable Subconsultant expenses must also comply with the requirements of this section.

5.4 Method of Billing.

5.4.1 For Maximum Amount Not-To-Exceed Compensation under Section 5.1.1. Consultant shall submit billings that are identified by the specific project number on a monthly basis in a timely manner for all Salary Costs and Reimbursable Expenses attributable to the Project. These billings shall identify the nature of the work performed, the total hours of work performed, and the employee category of the individuals performing same. Billings shall itemize and summarize Reimbursable Expenses by category and identify the personnel incurring the expense and the nature of the work with which such expense was associated. Where prior written approval by Contract Administrator is required for Reimbursable Expenses, a copy of said approval shall accompany the billing for such reimbursable. Billings shall also indicate the cumulative amount of CBE participation to date. The statement shall show a summary of Salary Costs and Reimbursable Expenses with accrual of the total and credits for portions paid previously. External Reimbursable Expenses and Subconsultant fees must be documented by copies of invoices or receipts that describe the nature of the expenses and contain a project number or other identifier that clearly indicates the expense is identifiable to the Project. Subsequent addition of the identifier to the invoice or receipt by Consultant is not acceptable except for meals and travel expenses. Internal expenses must be documented by appropriate Consultant's cost accounting forms with a summary of charges by category. When requested, Consultant shall provide backup for past and current invoices that records hours and Salary Costs by employee category, Reimbursable Expenses by category, and Subconsultant fees on a task basis, so that total hours and costs by task may be determined.

5.4.2 For Lump Sum Compensation under Section 5.1.2. Consultant shall submit billings that are identified by the specific project number on a monthly basis in a timely manner. These billings shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished. Billings for each phase shall not exceed the amounts allocated to said phase. Billings shall also indicate the cumulative amount of CBE participation to date. The statement shall show a summary of fees with accrual of the total and credits for portions paid previously. When requested, Consultant shall provide backup for past and current invoices that record hours, salary costs, and expense costs on a task basis, so that total hours and costs by task may be determined.

5.5 Method of Payment.

5.5.1 City shall pay Consultant within thirty (30) days after receipt of Consultant's proper invoice, minus any applicable retainage or other deductions permitted by this Agreement.

5.5.2 Unless otherwise provided in this section, retainage in the amount of ten percent (10%) of each invoice shall be retained by City until satisfactory completion of the applicable phase. When the Services to be performed on all phases of the Project are fifty percent (50%) complete, upon written request by Consultant and written approval by the Contract Administrator that the Project is progressing in a satisfactory manner, the Contract Administrator, in his or her sole discretion, may authorize the reduction of retainage to five percent (5%) of each invoice for subsequent payments. No amount shall be withheld from payments for Reimbursable Expenses or for Services performed during the construction phase.

5.5.3 Upon Consultant's completion of each phase to the satisfaction of the Contract Administrator, City shall remit to Consultant any amounts withheld as retainage for that phase. Final payment for the Project must be approved by the Purchasing Director.

5.5.4 Payment will be made to Consultant at the following address: 3363 W. Commercial Blvd Suite 115, Fort Lauderdale, FL 33309.

5.6 Fiscal Year; Surtax Funding. The continuation of this Agreement beyond the end of any City fiscal year is subject to both the appropriation and the availability of transportation surtax funds in accordance with Chapter 129, Florida Statutes. The Parties agree and acknowledge that all funding provided to Consultant under this Agreement shall be funded exclusively from and subject to the availability of funding received from Broward County from proceeds of the transportation surtax levied pursuant to Section 212.055(1), Florida Statutes, and not from City's or Broward County's general revenue or any other source. Consultant agrees and stipulates that the funding provided under this Agreement shall be utilized only for the purposes permitted under Section 212.055(1), Florida Statutes.

5.7 Consultant shall pay Subconsultants and suppliers providing Services under this Agreement within fifteen (15) days following receipt of payment from City for such subcontracted work or supplies. If Consultant withholds an amount as retainage from a Subconsultant or supplier, Consultant shall release such retainage and pay same within fifteen (15) days following receipt of payment of retained amounts from City. The Contract Administrator may, at its option, increase allowable retainage or withhold progress payments unless and until Consultant demonstrates timely payments of sums due to all Subconsultants and suppliers. Consultant shall include requirements substantially similar to those set forth in this section in its contracts with Subconsultants and suppliers.

**ARTICLE 6.      OPTIONAL AND ADDITIONAL SERVICES; CHANGES IN SCOPE  
OF SERVICES**

6.1 City or Consultant may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement. Unless otherwise expressly permitted herein, such changes must be made in accordance with the provisions of the City's procurement code and policies and must be contained in a written amendment, executed by the Parties hereto, with the same formality and of equal dignity herewith.

6.2 To the extent any goods or services under this Agreement, or the quantity thereof, are identified as optional ("Optional Services"), City may select the type, amount, and timing of such goods or services pursuant to a work authorization ("Work Authorization") in substantially the form attached as Exhibit A executed by Consultant and City pursuant to this section. No such selection, when combined with those goods or services required under this Agreement, may result in a payment obligation exceeding the applicable maximum amount stated in Article 5. A Work Authorization for Optional Services shall specify the method of compensation applicable to that Work Authorization and the required completion date for those additional services.

6.3 Notwithstanding anything to the contrary in this Agreement, Work Authorizations for Optional Services shall be executed on behalf of City as follows: (a) the Contract Administrator may execute Work Authorizations for which the total cost to City in the aggregate is less than \$50,000.00; (b) the Purchasing Director may execute Work Authorizations for which the total cost to City in the aggregate is within the Purchasing Director's delegated authority; and (c) any Work Authorization above the Purchasing Director's delegated authority requires express approval by the Board. Subsequent to the full execution of any Work Authorization, the Contract Administrator will issue a Notice to Proceed for those authorized Optional Services. Consultant shall not commence work on any Work Authorization until after receipt of a purchase order and Notice to Proceed.

6.4 If a dispute between the Contract Administrator and Consultant arises over whether any work requested by City is within the scope of contracted Services and such dispute cannot be resolved by the Contract Administrator and Consultant, such dispute shall be promptly presented to the City Manager or his or her designee for resolution, whose decision shall be in writing and shall be final and binding on the Parties. During the pendency of any dispute, Consultant shall promptly perform the disputed work.

**ARTICLE 7.      REPRESENTATIONS AND WARRANTIES**

7.1 Representation of Authority. Consultant represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Consultant, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Consultant has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Consultant. Consultant further represents and warrants that execution of this Agreement is within Consultant's legal powers, and each individual executing this Agreement on behalf of Consultant is duly authorized by all necessary and appropriate action to do so on behalf of Consultant and does so with full legal authority.



7.2 Claims Against Consultant. Consultant represents and warrants 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 Consultant, threatened against or affecting Consultant, the outcome of which may (a) affect the validity or enforceability of this Agreement, (b) materially and adversely affect the authority or ability of Consultant to perform its obligations under this Agreement, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Consultant or on the ability of Consultant to conduct its business as presently conducted or as proposed or contemplated to be conducted.

7.3 Solicitation Representations. Consultant represents and warrants that all statements and representations made in Consultant's proposal, bid, or other supporting documents submitted to City in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the date Consultant executes this Agreement, unless otherwise expressly disclosed in writing by Consultant.

7.4 Contingency Fee. Consultant represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. If this Agreement is subject to Section 287.055, Florida Statutes, the Parties agree and stipulate that the statutory language stated in Section 287.055(6)(a) is deemed included and fully incorporated herein.

7.5 Truth-In-Negotiation Representation. Consultant's compensation under this Agreement is based upon its representations to City, and Consultant certifies that the wage rates, factual unit costs, and other information supplied to substantiate Consultant's compensation, including, without limitation, in the negotiation of this Agreement, are accurate, complete, and current as of the date Consultant executes this Agreement. Consultant's compensation will be reduced to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

7.6 Public Entity Crime Act. Consultant represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Consultant 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 Consultant has been placed on the convicted vendor list.

7.7 Discriminatory Vendor and Scrutinized Companies Lists. Consultant represents that it has not been placed on the "discriminatory vendor list" as provided in Section 287.134, Florida Statutes, and that it is not a "scrutinized company" pursuant to Section 215.473, Florida Statutes. Consultant represents and certifies that it is not ineligible to contract with City on any of the grounds stated in Section 287.135, Florida Statutes.

7.8 Warranty of Performance. Consultant represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all required

and optional Services under this Agreement, and that each person and entity that will provide Services under this Agreement 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 Services. Consultant represents and warrants that the Services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

7.9 Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16½-157, Broward County Code of Ordinances, Consultant certifies and represents that it will comply with the provisions of Section 16½-157 for the duration of this Agreement. The contract language referenced in Section 16½-157" is deemed incorporated in this Agreement as though fully set forth in this section.

7.10 Breach of Representations. In entering into this Agreement, Consultant acknowledges that City is materially relying on the representations, warranties, and certifications of Consultant 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 Agreement without any further liability to Consultant, to deduct from the compensation due Consultant under this Agreement the full amount of any value paid in violation of a representation or warranty, and to recover all sums paid to Consultant under this Agreement. Furthermore, a false representation may result in debarment from City's procurement activities.

## **ARTICLE 8. TERMINATION**

8.1 Termination. This Agreement or any Work Authorization issued under this Agreement may be terminated for cause by the aggrieved Party if the Party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved Party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by City, which termination date shall be not less than thirty (30) days after the date of such written notice. If this Agreement or any Work Authorization was entered into on behalf of City by someone other than the Board, termination by City may be by action of the City Manager or the City representative (including his or her successor) who entered in this Agreement on behalf of City. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances if the City Manager determines that termination is necessary to protect the public health, safety, or welfare. If City erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience and shall be effective thirty (30) days after such notice of termination for cause was provided and Consultant shall be eligible for the compensation provided in Section 8.4 as its sole remedy.

8.2 This Agreement may be terminated for cause by City for reasons including, but not limited to, any of the following:

8.2.1 Consultant's failure to suitably or continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement or Work Authorization, or repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices;

8.2.2 By the Contract Administrator for any fraud, misrepresentation, or material misstatement by Consultant in the award or performance of this Agreement or that otherwise violates any applicable requirement of Section 1-81, Broward County Code of Ordinances; or

8.2.3 By the Contract Administrator upon the disqualification of Consultant as a CBE or SBE if Consultant's status as a CBE or SBE was a factor in the award of this Agreement and such status was misrepresented by Consultant, or upon the disqualification of one or more of Consultant's CBE or SBE participants if any such participant's status as a CBE or SBE firm was a factor in the award of this Agreement and such status was misrepresented by Consultant during the procurement or the performance of this Agreement.

8.3 Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of termination by the City Manager to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

8.4 If this Agreement or a Work Authorization issued under this Agreement is terminated for convenience, Consultant shall be paid for any Services properly performed under this Agreement or Work Authorization through the termination date specified in the written notice of termination, subject to any right of City to retain any sums otherwise due and payable. Consultant acknowledges that it has received good, valuable, and sufficient consideration for City's right to terminate this Agreement for convenience in the form of City's obligation to provide advance notice to Consultant of such termination in accordance with Section 8.1.

8.5 If this Agreement or a Work Authorization is terminated, for any reason, any amounts due Consultant shall be withheld by City until Consultant has provided all documents required to be provided to City. In addition to any right of termination stated in this Agreement, City shall be entitled to seek any and all available remedies, whether stated in this Agreement or otherwise available at law or in equity.

## **ARTICLE 9. INSURANCE**

9.1 For the duration of the Agreement, Consultant shall, at its sole expense, maintain the minimum insurance coverages stated in Exhibit C in accordance with the terms and conditions of this article. Consultant shall maintain insurance coverage against claims relating to any act or omission by Consultant, its agents, representatives, employees, or Subconsultants in connection with this Agreement. City reserves the right at any time to review and adjust the limits and types of coverage required under this article.

9.2 Consultant shall ensure that "City of Pompano Beach" and "Broward County" are both listed and endorsed as additional insureds on all policies required under this article.

9.3 On or before the date this Agreement is fully executed or at least fifteen (15) days prior to commencement of Services, Consultant shall provide City with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by City, Consultant shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after City's request.

9.4 Consultant shall ensure that all insurance coverages required by this article shall remain in full force and effect for the duration of this Agreement and until all performance required by Consultant has been completed, as determined by Contract Administrator. Consultant or its insurer shall provide notice to City of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide City with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). Consultant shall ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this article.

9.5 Consultant shall ensure that all required insurance policies are issued by insurers: (1) assigned an A. M. Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Section 626.917 or 626.918, Florida Statutes, with approval by City's Risk Management Division.

9.6 If Consultant maintains broader coverage or higher limits than the minimum insurance requirements stated in Exhibit C, City shall be entitled to any such broader coverage and higher limits maintained by Consultant. All required insurance coverages under this article shall provide primary coverage and shall not require contribution from any City insurance, self-insurance or otherwise, which shall be in excess of and shall not contribute to the insurance required and provided by Consultant.

9.7 Consultant shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit C and submit to City for approval at least fifteen (15) days prior to the date this Agreement is fully executed or commencement of Services. Consultant shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against City. City may, at any time, require Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Consultant agrees that any deductible or self-insured retention may be satisfied by either the named insured or City, if so elected by City, and Consultant agrees to obtain same in endorsements to the required policies.

9.8 Unless prohibited by the applicable policy, Consultant waives any right to subrogation that any of Consultant's insurer may acquire against City and agrees to obtain same in an endorsement of Consultant's insurance policies.

9.9 Consultant shall require that each Subconsultant maintains insurance coverage that adequately covers the Services provided by that Subconsultant on substantially the same insurance terms and conditions required of Consultant under this article. Consultant shall ensure

that all such Subconsultants comply with these requirements and that "City of Pompano Beach " and "Broward County" are both named as additional insureds under the Subconsultants' applicable insurance policies.

9.10 If Consultant or any Subconsultant fails to maintain the insurance required by this Agreement, City may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Consultant. Consultant shall not permit any Subconsultant to provide Services under this Agreement unless and until the requirements of this article are satisfied. If requested by City, Consultant shall provide, within one (1) business day, evidence of each Subconsultant's compliance with this section

9.11 If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the date this Agreement is fully executed; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit C, and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the date this Agreement is fully executed, Consultant must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit C.

#### **ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE**

10.1 No Party 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. Consultant shall include the foregoing or similar language in its contracts with any Subconsultants, 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.

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

10.3 Consultant will meet the required CBE goal by utilizing the CBE firms listed in Exhibit E (or a CBE firm substituted for a listed firm, if permitted) for thirty percent (30%) of total Services under this Agreement (the "Commitment").

10.4 In performing the Services, Consultant shall utilize the CBE firms listed in Exhibit E for the scope of work and the percentage of work amounts identified on each Letter of Intent. Promptly upon execution of this Agreement by City, Consultant shall enter into formal contracts with the CBE firms listed in Exhibit E and, upon request, shall provide copies of the contracts to the Contract Administrator and the Director of the Broward County Office of Economic and Small Business Development ("OESBD").

10.5 Each CBE firm utilized by Consultant to meet the CBE goal must be certified by OESBD. Consultant shall inform City immediately when a CBE firm is not able to perform or if Consultant believes the CBE firm should be replaced for any other reason, so that OESBD may review and verify the good faith efforts of Consultant to substitute the CBE firm with another CBE firm. Whenever a CBE firm is terminated for any reason, Consultant shall provide written notice to OESBD and, upon written approval of the Director of OESBD, shall substitute another CBE firm in order to meet the CBE goal, unless otherwise provided in this Agreement or agreed in writing by the Parties. Such substitution shall not be required in the event the termination results from modification of the Scope of Services and no CBE firm is available to perform the modified Scope of Services; in which event Consultant shall notify OESBD, and OESBD may adjust the CBE goal by written notice to Consultant. Consultant shall not terminate a CBE firm for convenience without OESBD's prior written consent, which consent shall not be unreasonably withheld.

10.6 The Parties stipulate that if Consultant fails to meet the Commitment, the damages to City arising from such failure are not readily ascertainable at the time of contracting. If Consultant fails to meet the Commitment and Broward County determines, in the sole discretion of the OESBD Program Director, that Consultant failed to make Good Faith Efforts (as defined in Section 1-81, Broward County Code of Ordinances) to meet the Commitment, Consultant shall pay City liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which Consultant failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total contract amount, excluding costs and reimbursable expenses. An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. 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 Consultant's breach of the Commitment, but shall not affect the availability of administrative remedies under Section 1-81. 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 Subconsultant where the OESBD Program Director has determined that such inability is due to no fault of Consultant, shall not be deemed a failure by Consultant to meet the Commitment.

10.7 Consultant acknowledges that OESBD 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 Consultant and shall include a deadline for Consultant to notify City in writing if Consultant concludes that the modification exceeds the authority under this section. Failure of Consultant to timely notify City of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by Consultant.

10.8 OESBD may modify the required participation of CBE firms under this Agreement in connection with any amendment, extension, modification, change order, or Work Authorization to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, change orders, or Work Authorizations, increases the initial Agreement price by ten percent (10%) or more. Consultant shall make a good faith effort to include CBE firms in work resulting from any such amendment, extension, modification, change order, or Work Authorization, and shall report such efforts, along with evidence thereof, to OESBD.

10.9 Consultant shall provide written monthly reports to the Contract Administrator and to the Director of OESBD attesting to Consultant's compliance with the CBE goal stated in this article. In addition, Consultant shall allow City and OESBD to engage in onsite reviews to monitor Consultant's progress in achieving and maintaining Consultant's contractual and CBE obligations. The Contract Administrator or OESBD shall perform such review and monitoring.

10.10 The presence of a "pay when paid" provision in a Consultant's contract with a CBE firm shall not preclude City or its representatives from inquiring into allegations of nonpayment or exercising any right stated in Section 5.7.

## **ARTICLE 11. MISCELLANEOUS**

11.1 Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Consultant to manage and supervise the performance of this Agreement. Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the City's codes or policies, the Contract Administrator may exercise any ministerial authority under this Agreement in connection with the day-to-day management of this Agreement provided that such instructions and determinations do not change the Scope of Services. The Contract Administrator may designate one or more City employees with authority pertaining to day-to-day Project management or activities. Consultant shall notify Contract Administrator in writing of Consultant's representative(s) to whom matters involving the Project shall be addressed.

11.2 Rights in Documents and Work. Any and all reports, photographs, surveys, documents, materials, or other work created by Consultant in connection with performing Services shall be owned by City, and Consultant hereby transfers to City all right, title, and interest, including any copyright or other intellectual property rights, in or to the work. Upon termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Consultant, whether finished or unfinished, shall become the property of City and shall be delivered by Consultant to the Contract Administrator within seven (7) days after termination of this Agreement. Any compensation due to Consultant may be withheld until all documents are received as provided in this Agreement. Consultant shall ensure that the requirements of this section are included in all agreements with its Subconsultant(s).

11.3 Ownership of Documents. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, specifications and reports prepared or provided by Consultant in connection with this Agreement shall be the property of City, whether the Project for which they are made is completed or not, and shall be delivered by Consultant to Contract Administrator within fifteen (15) days after the receipt of the written notice of termination. If applicable, City may withhold any payments then due to Consultant until Consultant complies with the provisions of this section.

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

11.4.1 Keep and maintain public records required by City to perform the services under this Agreement;

11.4.2 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;

11.4.3 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 or termination of this Agreement if the records are not transferred to City; and

11.4.4 Upon completion or termination of this Agreement, transfer to City, at no cost, all public records in possession of Consultant or keep and maintain public records required by City to perform the services. If Consultant transfers the records to City, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt. If Consultant keeps and maintains the public records, Consultant 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.

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. Consultant will provide any requested records to City to enable City to respond to the public records request.

Any material submitted to City that Consultant contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET." In addition, Consultant 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 Section 812.081, Florida Statutes, and stating the factual basis for same. If that a third party submits a request to City for records designated by Consultant 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 Consultant. Consultant 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 nondisclosure of any Trade Secret Materials in response to a records request by a third party.

**IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 786-4611, Recordscustodian@copbfl.com, POMPANO BEACH, FLORIDA 33060.**



**11.5 Audit Rights and Retention of Records.** Consultant shall preserve all Contract Records (as defined below) for a minimum period of three (3) years after expiration or termination of this Agreement 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 section may be performed by any City representative or Broward County representative (including any outside representative engaged by either). City or Broward County may conduct audits or inspections at any time during the term of this Agreement and for a period of three (3) years after the expiration or termination of this Agreement (or longer if required by law). City or Broward County may, without limitation, verify information, payroll distribution, and amounts through interviews, written affirmations, and on-site inspection with Consultant's employees, Subconsultants, vendors, or other labor.

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, memoranda, and any and all other documents that pertain to rights, duties, obligations, or performance under this Agreement. 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 Agreement, whether by Consultant or Subconsultants.

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

Consultant shall, by written contract, require its Subconsultants to agree to the requirements and obligations of this section.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to City of any nature by Consultant or its Subconsultants in excess of five percent (5%) of the total contract billings reviewed by City or Broward County, the reasonable actual cost of the audit shall be reimbursed to City or Broward County (as applicable) by Consultant in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of audit findings to Consultant.

**11.6 Subconsultants.** Consultant shall utilize only the Subconsultants identified in Exhibit F, Schedule of Subconsultants, to provide the Services for this Project. Consultant shall obtain

written approval of Contract Administrator prior to changing or modifying the Schedule of Subconsultants, which shall be automatically updated upon such written approval. Consultant shall bind in writing each and every approved Subconsultant to the terms stated in this Agreement, provided that this provision shall not, in and of itself, impose the insurance requirements set forth in Article 9 on Consultant's Subconsultants.

11.7 Assignment. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party. 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.

11.8 Indemnification of City. Consultant shall indemnify and hold harmless City and its current, past, 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 intentionally wrongful conduct of Consultant or other persons employed or utilized by Consultant in the performance of this Agreement. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and City Attorney, any sums due Consultant under this Agreement may be retained by City until all of City's claims subject to this indemnification obligation have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.

11.9 Prior Agreements Superseded. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or 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 this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

11.10 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

11.11 Notices. In order for a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

**FOR CITY:**

City of Pompano Beach  
Greg Harrison, City Manager  
100 W. Atlantic Blvd., 4<sup>th</sup> Floor  
Pompano Beach, FL 33060  
Email address: [greg.harrison@copbfl.com](mailto:greg.harrison@copbfl.com)

With a copy to:

Go Bond and Innovation District Director  
Horacio Danovich  
100 W Atlantic Blvd.  
Pompano Beach, FL 33060  
Email address: [Horacio.Danovich@copbfl.com](mailto:Horacio.Danovich@copbfl.com)

**FOR CONSULTANT:**

Marlin Engineering, Inc.  
3363 W Commercial Blvd., Suite 115  
Fort Lauderdale, FL 33309  
Email address: [rsoria@marlinengineering.com](mailto:rsoria@marlinengineering.com)

**11.12 Interpretation.** The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect 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.

**11.13 Consultant's Staff.** Consultant will provide the key staff identified in its proposal for Project as long as said key staff are in Consultant's employment. Consultant will obtain prior written approval of Contract Administrator to change key staff. Consultant shall provide Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. Contract Administrator will be reasonable in evaluating key staff qualifications. If Contract Administrator desires to request removal of any of Consultant's staff, Contract Administrator shall first meet with Consultant and provide reasonable justification for said removal; upon such reasonable justification, Consultant shall use good faith efforts to remove or reassign the staff at issue.

**11.14 Drug-Free Workplace.** To the extent required under Section 21.31(a)(2), Broward County Administrative Code, or Section 287.087, Florida Statutes, Consultant certifies that it has a drug-

free workplace program and that it will maintain such drug-free workplace program for the duration of this Agreement.

11.15 Independent Contractor. Consultant is an independent contractor under this Agreement, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Services under this Agreement, neither Consultant nor its agents shall act as officers, employees, or agents of City, except as authorized by the Contract Administrator for permitting, licensing, or other regulatory requirements. Consultant shall not have the right to bind City to any obligation not expressly undertaken by City under this Agreement.

11.16 Regulatory Capacity. Notwithstanding the fact that City is a political subdivision with certain regulatory authority, City's performance under this Agreement is as a Party to this Agreement and in the capacity as owner of the Project. If City exercises its regulatory authority, the exercise of such authority and the enforcement of any rules, regulation, laws, and ordinances shall have occurred pursuant to City's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to City as a Party to this Agreement.

11.17 Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by City nor shall anything included herein be construed as consent by City to be sued by third parties in any matter arising out of this Agreement. City is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

11.18 Third-Party Beneficiaries. Except for Broward County to the extent expressly identified herein, neither Consultant nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that, other than Broward County, there are no third-party beneficiaries to this Agreement and that no third party other than Broward County shall be entitled to assert a right or claim against either of them based upon this Agreement.

11.19 Conflicts. Neither Consultant nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Consultant's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the term of this Agreement, none of Consultant's officers or employees shall serve as an expert witness against City or Broward County in any legal or administrative proceeding in which he, she, or Consultant is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion that is adverse or prejudicial to the interests of City or Broward County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Consultant or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If Consultant is permitted pursuant to this Agreement to utilize Subconsultants to perform any Services required by this Agreement, Consultant shall require such Subconsultants,

by written contract, to comply with the provisions of this section to the same extent as Consultant.

**11.20 Materiality and Waiver of Breach.** Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the waiving Party.

**11.21 Compliance with Laws.** Consultant and the Services must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

**11.22 Severability.** If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

**11.23 Joint Preparation.** This Agreement has been jointly prepared by the Parties and shall not be construed more strictly against either Party.

**11.24 Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 11 of this Agreement, the provisions contained in Articles 1 through 11 shall prevail and be given effect.

**11.25 Law, Jurisdiction, Venue, 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 exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

11.26 Reuse of Project. City may, at its option, reuse (in whole or in part) the resulting end-product or deliverables resulting from Consultant's Services (including, but not limited to, drawings, specifications, other documents, and services as described herein and in Exhibit A); and Consultant agrees to such reuse in accordance with this provision. If the Contract Administrator elects to reuse the services, drawings, specifications, and other documents, in whole or in part, prepared for this Project for other projects on other sites, Consultant will be paid a reuse fee to be negotiated between Consultant and City, subject to approval by the proper awarding authority. Each reuse shall include all Basic Services and modifications to the drawings, specifications, and other documents normally required to adapt the design documents to a new site. This reuse may include preparation of reverse plans, changes to the program, provision for exceptional site conditions, preparation of documents for off-site improvements, provisions for revised solar orientation, provisions for revised vehicular and pedestrian access, and modifications to building elevations, ornament, or other aesthetic features. In all reuse assignments, the design documents shall be revised to comply with building codes and other jurisdictional requirements current at the time of reuse for the new site location. The terms and conditions of this Agreement shall remain in force for each reuse project, unless otherwise agreed by the Parties in writing.

11.27 Payable Interest.

11.27.1 Payment of Interest. City shall not be liable to pay any interest to Consultant for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Consultant waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This subsection shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

11.27.2 Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by City under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, one quarter of one percent (0.25%) simple interest (uncompounded).

11.28 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

11.29 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

(The remainder of this page is intentionally left blank.)

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

CITY

ATTEST:

\_\_\_\_\_  
CITY CLERK

By: \_\_\_\_\_  
REX HARDIN, CITY 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 BERMAN, CITY ATTORNEY

**AGREEMENT BETWEEN CITY OF POMPANO BEACH AND MARLIN ENGINEERING FOR  
CONSULTANT SERVICES FOR RIVERSIDE DRIVE DESIGN SERVICES  
(RFP/RLI/RFQ # P-32-20)**

CONSULTANT

WITNESSES:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
Signature

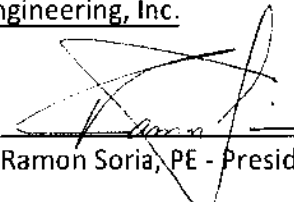
\_\_\_\_\_  
Print/Type Name

By \_\_\_\_\_

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

FOR CORPORATION:

Marlin Engineering, Inc.

  
\_\_\_\_\_  
Ramon Soria, PE - President

ATTEST:

  
\_\_\_\_\_  
Secretary

Carolina Bayona  
(Typed Name of Secretary)

18th day of April, 2022.

CORPORATE SEAL