

AGREEMENT FOR CIVIC CENTER RENOVATIONS AT NORTH POMPANO PARK

BETWEEN

CITY OF POMPANO BEACH, FLORIDA

AND

SHIFF CONSTRUCTION & DEVELOPMENT, INC.

THIS AGREEMENT made and entered into this _____ day of _____, 2016,
(hereinafter "Effective Date") by and between:

CITY OF POMPANO BEACH, a municipal corporation organized and existing under the laws of the State of Florida, having its principal office at 100 W. Atlantic Blvd., Pompano Beach, Florida 33060, referred to here as "City."

and

Shiff Construction & Development, Inc., authorized to do business in the state of Florida, whose mailing address is 1350 NE 56th Street Suite 100, Fort Lauderdale, FL 33334 (hereinafter "Contractor").

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

W I T N E S S E T H:

WHEREAS, the City wishes to enter into this Agreement for the Civic Center renovations at North Pompano Park to improve and reconfigure the interior space to maximize the use of the facility to its fullest potential; and

WHEREAS, the Code of the City of Pompano Beach at Section 32.41(A) provides authority for the City to purchase goods and services in cooperation with other governmental units within the state through joint cooperative bids; and

WHEREAS, the parties wish to incorporate the terms and conditions of the solicitation and contractual arrangement between National Joint Powers Alliance (NJPA) and Contractor in accordance with IFB #FL 06-022912-SCD, Indefinite Quantity Construction Agreement, a copy of which is referenced hereto at Exhibit "A" and adopted in its entirety by City and Contractor

(hereinafter Construction Contract”), together with and including contract renewals, amendments and change orders to the extent applicable hereto; and

WHEREAS, the City Manager has determined that a cooperative purchase via the Construction Contract is necessary for renovations to the Civic Center at North Pompano Park and is the most economically advantageous way to procure these necessary materials, products, and/or services in a timely and efficient manner.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **RECITATIONS.** The foregoing “WHEREAS” clauses are hereby adopted and incorporated herein.

2. **TERM.** The term of this Agreement shall commence on the Effective Date and continue through December 2017 unless terminated earlier or extended by the Parties.

3. **CONTRACT TERMS.** Contractor agrees to provide renovations to the Civic Center at North Pompano Park within the city limits of the City of Pompano Beach as requested by City through a written Notice to Proceed. The Construction Contract is hereby incorporated into this Agreement for all purposes. In the event of conflict between the Construction Contract and this Agreement, the order of priority shall be: (1) IFB #FL06-022912-SCD; (2) this Agreement; and (3) the Construction Contract.

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

A. City shall pay Contractor no more than the unit prices set forth in the Construction Contract and in accordance with the provisions of the Construction Contract in the total amount **Not To Exceed \$282,032.48**. If the City requires services not covered by unit prices already made a part of the Construction Contract, the Contractor shall submit a detailed written proposal to the authorized City representative before providing any such services. Such services shall be approved by the City Attorney. For these purposes, City of Pompano Beach City Manager Dennis W. Beach shall be the City Representative.

B. If permits are required as part of the North Pompano Park Civic Center Renovations required hereunder, Contractor shall submit complete and accurate permit applications to all applicable permitting agencies within five (5) days of receiving all documents from City necessary to file such permit applications. City shall pay all permit and related fees directly to the permitting agencies, including any permit fees charged by the City.

C. City of Pompano Beach shall be deemed substituted for NJPA, with regard to any and all provisions of the Construction Contract, including, for example and not limitation, with regard to bond requirements, insurance, indemnification, licensing, termination, default, and ownership of documents, including the additional provisions in sections D, E, F, and G, below. All recitals, representations and warranties of Contractor made in the Construction Contract are restated as if fully set forth herein, made for the benefit of City, and incorporated herein.

D. Within five (5) days of final execution of this Agreement, Contractor shall furnish City with a certificate of insurance in a form acceptable to Risk Manager for the insurance required. Such certificate provided my Contractor must state the City will be given thirty (30) days written notice prior to cancellation or material change in coverage. Contractor shall not commence work on the Disaster Services unless and until the requirements for insurance have been fully met by Contractor and appropriate evidence thereof, in the City's sole discretion, has been provided to and approved by the City.

E. Contractor shall indemnify and hold harmless City, its elected officials, officers, employees and agents, from and against all claims, suits, actions, damages, causes, or action or judgments arising out of the terms of this Agreement for any personal injury, loss of life, or damage to property sustained as a result of the performance or non-performance of services, from and against any orders, judgments, or decrees, which may be entered against City, its elected officials, officers, employees and agents; and from and against all costs, attorney's fees, expenses, and other liabilities incurred in the defense of any such claim, suit, or action, and the investigation thereof. Nothing in the award, resulting agreement, contract or purchase order shall be deemed to affect the rights, privileges, and immunities of the City as set forth in Florida Statute section 768.28. The parties agree that one percent (1%) of the total compensation paid to Contractor for work under this contract shall constitute specific consideration to contractor for the indemnification to be provided under the contract.

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

G. Public Records and Retention.

a. City is a public agency subject to Chapter 119, Florida Statutes. Contractor and its subcontractors shall comply with public records laws, specifically to:

b. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.

c. Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

d. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

e. Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information systems of the public agency.

4. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement without the consent of the other.

5. **NOTICE.** Notice hereunder shall be provided in writing by certified mail return receipt requested, or customarily used overnight transmission with proof of delivery, to the following parties, with mandatory copies, as provided below:

For City: Tammy Good, PMP
Project Manager
City of Pompano Beach
1201 NE 5th Ave
Pompano Beach, Florida 33060

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

For Contractor: Justen Shiff
1350 NE 56th Street
Suite 100
Fort Lauderdale, FL 33334

6. **ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement between Contractor and City with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties. This Agreement may not be modified except by the parties' mutual agreement set forth in writing and signed by the parties.

7. **SEVERABILITY.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, such provision will be fully severable, this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance here from and in lieu of such illegal, invalid or unenforceable provision, City and Contractor shall negotiate in good faith to restore insofar as practicable the benefits to each party that were affected by such ruling and to include as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

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

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

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
Lamar Fisher, Mayor

By: _____
Dennis W. Beach, City Manager

Attest:

(SEAL)

Asceleta Hammond, City Clerk

Approved As To Form:

Mark E. Berman, City Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this _____ day of _____, 2016 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"CONTRACTOR":

Witnesses:

SHIFF CONSTRUCTION AND DEVELOPMENT, INC.
(Type Name of Entity)

Print Name

By: [Signature]
JUSTEN SHIFF
Typed or Printed Name

Print Name

Title: PRESIDENT
(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 15th day of November, 2016, by JUSTEN SHIFF as PRESIDENT of SHIFF CONSTRUCTION & DEVELOPMENT INC a GENERAL CONTRACTOR on behalf of the _____. He/she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL



[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number