

PLEASE RETURN TO:
Mary L. Chambers, MMC
City Clerk
P.O. Drawer 1300, Suite 253
Pompano Beach, FL 33061

EXHIBIT

AGREEMENT

among

BROWARD COUNTY

and

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

and

CITY OF POMPAÑO BEACH

for

**PROGRAMMING, DESIGN AND CONSTRUCTION
OF LIBRARY FACILITY**

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AGREEMENT

among

BROWARD COUNTY

and

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

and

CITY OF POMPANO BEACH

for

PROGRAMMING, DESIGN AND CONSTRUCTION OF A LIBRARY FACILITY

This is an Interlocal Agreement ("Agreement") between Broward County, a political subdivision of the State of Florida, its successors and assigns ("COUNTY"), through its Board of County Commissioners, the Pompano Beach Community Redevelopment Agency, a body corporate and politic created pursuant to Part III, Chapter 163, Florida Statutes, its successors and assigns ("CRA"), and the City of Pompano Beach, a Florida municipal corporation, its successors and assigns ("CITY"), all of which are singularly or collectively referred to herein as the "Party(ies)."

WHEREAS, this Agreement replaces in its entirety the former Agreement between COUNTY and CITY for Conveyance of Property for Public Library dated October 18, 2007, as twice amended;

WHEREAS, the CITY presently owns and intends to develop as a Civic Campus those certain vacant real properties within its corporate limits described in Exhibit 1 (the "Property");

WHEREAS, the COUNTY has budgeted and appropriated Seven Million Two Hundred Thirty-Three Thousand Two Hundred Sixty-Four Dollars (\$7,233,264.00) for design, programming and construction in the City of Pompano Beach of an approximately 25,000 to 30,000 gross square foot public library together with one hundred thirty (130) dedicated parking spaces and the appurtenances as specified hereinafter (collectively the "Library Facility") to replace the existing public library located at 1213 East Atlantic Boulevard, Pompano Beach, FL 33060; and

WHEREAS, utilizing the aforementioned COUNTY funds, the Parties desire to construct parking for the library and a building, both to be owned by the CITY on a portion of the Property, the ground floor of the building which shall be leased to the COUNTY for use as the Library Facility for a fifty (50) year term pursuant to the fifty (50) year Lease Agreement (the "Lease") attached hereto and made a part hereof as Exhibit 2;

WHEREAS, the City may desire to fund and construct an approximately 25,000 to 30,000 gross square foot second floor onto the Library Facility building to be utilized by CITY as the Pompano Beach Cultural Center ("PBCC") in a manner at all times compatible with the Library Facility use;

WHEREAS, the CRA and CITY have agreed to program, design and construct the Library Facility and the proposed PBCC, either or both of which singularly or collectively constitute the "Project"; and

WHEREAS, the COUNTY has no objection to the foregoing PBCC construction and cultural use provided the CITY has formally budgeted and approved the funding required to program, design and construct the PBCC prior to the Phase II Design Development for the Library Facility and said development and subsequent cultural use is otherwise carried out in accordance with the terms of this Agreement and the Lease and the Work Letter for Design and Construction Services attached hereto and made a part hereof as Exhibits 2 and 3, respectively.

NOW, THEREFORE, In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, the Parties agree as follows:

ARTICLE 1 DESCRIPTION OF LAND AND LEASE

CITY agrees to lease the Library Facility to COUNTY for one dollar (\$1.00) per year in accordance with the Lease attached hereto as Exhibit 2.

CITY shall deliver copies of available information relating to the Property including its Master Plan for the Property boundary and site surveys, utility location drawings, soil borings, environmental reports, "as-built" documentation of existing structures, and other similar documentation concerning the Property, which are in records currently held by CITY. The CITY shall not be obligated to obtain, create or draft such documents if such are not within its possession or control.

The Lease shall contain documentation whereby the CITY shall grant to COUNTY and any successors in title to the Library Facility, its tenants and their respective employees, patrons, licensees, invitees, and guests, a perpetual, non-exclusive easement of ingress and egress more particularly described in Lease as the Access Easement Agreement, upon, over, and across Property, for the purposes of access and parking on the Library Site, for loading and unloading, and dumpster uses.

In addition, the Lease shall provide that the CITY is to provide a non-exclusive Parking Lot Easement Agreement for 130 dedicated vehicular parking spaces.

ARTICLE 2 PROJECT DESCRIPTION

In accordance with the terms of this Agreement and the Work Letter for Design and Construction Services attached as Exhibit "3", the CRA and CITY hereby agree to program, design and construct the Library Facility in consideration of \$7,233,264 to be paid by COUNTY (in accordance with Article 3) and the proposed PBCC to be financed by the CITY, either or both of which singularly or collectively constitute the "Project".

The Parties desire to construct a building to be owned by the CITY on a portion of the Property, the ground floor of which shall be leased for a fifty (50) year term to COUNTY as the Library Facility, which includes one hundred thirty (130) dedicated parking spaces and certain appurtenances.

In addition, the CITY may desire to fund and construct an approximately 25,000 to 30,000 gross square foot second floor onto the Library Facility to be utilized for cultural or educational purposes as the PBCC in a manner at all times compatible with the Library Facility use;

ARTICLE 3 COMPENSATION, FUNDING AND METHOD OF PAYMENT FOR THE COUNTY LIBRARY FACILITY

3.1 COUNTY, CITY and CRA agree that the compensation, funding and method of payment for the funding of the programming, design and construction costs for the Library Facility shall be governed by the provisions set forth in Article 3 herein and the Work Letter attached as Exhibit 3. Further, in the event the CITY decides not to move forward with the Library Facility, the CITY shall reimburse the COUNTY for design fees and other out-of-pocket expenses that resulted in developing the construction documents to build the Library Facility.

3.1.1 The COUNTY has budgeted the funds for programming, design and construction of the Library Facility, including furniture, fixtures, equipment and collection(s) for the library, Public Art and Design Program and other project costs accruable to COUNTY.

3.1.2 COUNTY shall be solely responsible for providing the funds for artist's services and for purchase of the required artwork in compliance with the Public Art and Design Program's requirements for the Project. The budget for these expenses, \$70,000, is not included in the allocation to the CITY for programming, design and construction of the Library Facility.

3.1.3 The Lump Sum compensation includes any and all costs (including inflation) for the CITY and the design and construction team for the Project consisting of consultants and contractors (collectively the "Design-Construction Team") to comply with the terms of this Agreement, including but not limited to the Prevailing Wage Ordinance requirement and the County Business Enterprise ("CBE") goals requirements.

3.2 LIBRARY FACILITY

3.2.1 The COUNTY shall pay CITY the Lump Sum Compensation pursuant to the payment schedule 3.3.3 of this Agreement. The Parties agree that the Lump Sum Compensation represents the total compensation that will be paid to CITY for the following, including but not limited to, the programming, design and construction of the Library Facility, site development and improvements, signage for the Library Facility, any roadway or right-of-way improvements made necessary by the programming, design and construction of the Library Facility, and any necessary cross-access and cross-parking easements.

3.2.2 Any increases in the costs of the Project to design necessities, changes in scope, construction necessities, inflation, unforeseen conditions, damages or Acts of God shall be the sole responsibility of CITY, including all cost overruns as a result of such conditions and/or actions except where such increases are the result of delay or changes caused by COUNTY and are not related to any action of CITY. Any costs associated with delay caused solely by COUNTY, or change orders requested by COUNTY, which are not related to actions of CITY and the Design-Construction Team shall be the sole responsibility of the COUNTY.

3.2.3 COUNTY shall be responsible for acquiring its own furniture, fixtures, equipment and collection(s) for the 25,000 to 30,000 square foot Library Facility. The budget for these expenses, \$2,840,000 is not included in the allocation to the CITY for programming, design and construction of the Library Facility.

3.2.4 CITY shall use the PBCC for cultural or educational activities, as well as any compatible other uses mutually agreed upon by the COUNTY and CITY. CITY shall finish the PBCC as necessary for its intended purposes including, but not limited to, the provision of furnishings, fixtures and equipment.

3.3 PAYMENT OF LUMP SUM COMPENSATION TO CITY

3.3.1 COUNTY agrees to pay CITY the Lump Sum Compensation as compensation for performance of all services required under the terms of

this Agreement. It is understood that the method of compensation is that of Lump Sum, which means that CITY and CRA shall perform all services set forth herein for total compensation in the amount stated above.

3.3.2 CITY acknowledges and agrees that the Lump Sum compensation includes any and all reimbursable expenses. COUNTY shall not pay CITY or CRA any additional sum for reimbursable expenses, if any.

3.3.3 The Lump Sum Compensation shall be paid out in accordance with a Preliminary Payment Schedule mutually agreed upon in writing by the COUNTY and CITY's Contract Administrators as defined in the Work Letter for Design and Construction Services, within sixty (60) days of execution of this Agreement.

3.3.4 METHOD OF BILLING: Lump Sum Compensation

CITY shall submit billings, which are identified by the specific project number and name on a monthly basis in a timely manner. These billings shall identify the nature of the work performed, the phase or schedule of work, and the estimated percentage of work accomplished. Billings for each phase or schedule shall only be for the Library Facility portion of the Project and shall not exceed the amounts allocated to said phase or schedule pursuant to the Payment Schedule. 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, CITY shall provide backup for past and current invoices.

3.3.5 METHOD OF PAYMENT: Lump Sum Compensation

3.3.5.1 COUNTY shall pay CITY within thirty (30) calendar days from receipt of CITY's proper statement, as defined by COUNTY's Prompt Payment Ordinance, ninety percent (90%) of the total shown to be due on such statement. When the services to be performed on each phase or schedule of the Library Facility are fifty percent (50%) complete and upon written request by CITY's Contract Administrator and written approval by the COUNTY's Contract Administrator that the Library Facility is progressing in a satisfactory manner, the COUNTY's Contract Administrator, in his or her sole discretion, may authorize that subsequent payments for each phase or schedule may be increased to ninety-five percent (95%) of the total shown to be due on subsequent statements.

3.3.5.2 Upon CITY's satisfactory completion of each phase or schedule and after the COUNTY's Contract Administrator review and approval, COUNTY shall remit to CITY that ten percent (10%)

or five percent (5%) portion of the amounts previously withheld. Final payment for the Library Facility must be approved in writing by the COUNTY's Contract Administrator.

3.3.5.3 Payment will be made payable to "City of Pompano Beach" and forwarded to CITY as follows:

Public Works Director
1201 NE 5th Avenue
Pompano Beach, Florida 33060

3.3.6 As more specifically provided in any agreements for programming design, construction or other related services between the CRA, CITY and the Design-Construction Team, the CITY shall be solely responsible for all payments to the Design-Construction Team and/or its sub-consultants or subcontractors, if any. CITY shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from the COUNTY for such subcontracted work or supplies. CITY agrees that if it withholds an amount as retainage from its subcontractors or suppliers, that it will release such retainage and pay same within thirty (30) days following receipt of payment of retained amounts from COUNTY, or within thirty (30) days after the subcontractor has satisfactorily completed its work, whichever shall first occur.

3.3.7 CRA and CITY shall pay for or provide in kind services in the form of providing staff, equipment and other material for project management services including CRA's Project Director, CITY's Contract Administrator, and any other personnel necessary to administer and manage the programming, design, development, and construction phases of the Project, at no cost to COUNTY; provided, however, the COUNTY shall cooperate with the CRA and CITY in supervision of the Design Consultant.

3.3.8 The Lump Sum Compensation paid to the CITY pursuant to this Article shall be exclusive of the costs to the COUNTY for the COUNTY's public art contribution for the Project.

3.3.9 All payments pursuant to this Article shall be received by the designated party on or before the scheduled date of the payment. Failure to make such timely payment shall require the applicable written notice of breach and a thirty (30) days' opportunity to cure.

ARTICLE 4 **CONSTRUCTION**

4.1 CRA and CITY hereby agree to program, design and construct upon the Property, the Project consisting of an up to 60,000 square foot public Library

Facility/PBCC together with parking, lighting, landscaping, ingress and egress, in accordance with the terms of this Agreement and the Work Letter for Design and Construction Services attached hereto and made a part hereof as Exhibit 3, provided, however, the COUNTY shall cooperate with the CITY in the supervision and construction of the Library Facility. CITY shall work with all reasonable diligence to complete construction of the Library Facility. CRA and CITY agree and shall comply with all of COUNTY's legal requirements, including, without limitation, COUNTY's Business Enterprise ("CBE"), Prevailing Wage Rate and Public Arts and Design Ordinances, as have been and as may be amended from time to time.

4.2 Additionally, in connection with the Library Facility use, CRA and CITY agree to program, design, and construct a parking lot with a minimum of 130 dedicated parking spaces on the Property for the patrons, staff, and service personnel of the Library Facility during normal operating hours; the farthest point of which shall not exceed 300 feet from the Library Facility. Such parking shall be located on surface lots until such time, if ever, a parking garage is constructed on the Property, which parking within the garage shall be located within 250 feet of the Library Facility, situate on the lowest floors of the garage and able to provide the COUNTY with an equivalent number of dedicated parking spaces. The Parking, whether in a parking lot or in a garage, shall be at no additional cost to the COUNTY other than the original cost allocated from the amounts paid to the CITY per the Interlocal Agreement. CITY shall designate 130 and enforce reserved parking for COUNTY's employees who work at the Library to the same extent that reserved parking is designated and enforced for CITY's officials and employees who work at the City Hall. Such designated parking shall be located as close as is practical to the Library Facility subject to applicable law and Code requirements.

4.3 The Parties acknowledge and agree that the COUNTY originally intended to construct a single story community library on the Property and that the contemplated second floor PBCC is being designed and constructed for use by the CITY. The intent of the Parties is that the PBCC space be designed in such a manner as to, where possible, isolate telecommunications, telephone, cable, and computer (collectively, the "Building Systems") so that the PBCC space can function independently from the Library Facility on the first floor. Without limiting the foregoing, the overall design and construction of the Project shall be accomplished in such a manner so that the Building Systems of both the Library Facility and the PBCC have adequate capacity.

4.4 Prior to the commencement of schematic design of the Project, CRA and CITY shall submit to COUNTY for review and approval, a finalized Building Program documenting functional spaces, providing conceptual arrangements of interior building elements and adjacencies, and conceptual site plans illustrating the Project's relationship to the Parking, general parking, street, and other building elements attendant to development of the Property.

4.5 Following approval of the final Building Program, CRA and CITY shall submit to COUNTY for review and approval, plans and specifications including a site

plan consistent with the Conceptual Plan for and through all phases of Project design and construction (e.g., schematic, design development, and construction) and such written approval shall not be unreasonably withheld or delayed. Once any plans and specifications receive written approval of the COUNTY, such plans and specifications shall be deemed "Approved Plans" under this Agreement.

4.6 COUNTY approval of the final Building Program for the Project and any plans, specifications, site plans, designs or other documents submitted to the COUNTY pursuant to the terms and conditions of this Agreement shall not constitute a representation or warranty that such comply with all applicable laws, ordinances, rules, and building code regulations and procedures, including the Comprehensive Plan and the CITY's Land Development Code, it being expressly understood that the responsibility therefore shall at all times remain with CRA and CITY. COUNTY acknowledges, however, that any use of the Library Facility shall be subject to, and conform with, the Comprehensive Plan and all zoning and land use regulations of the CITY as may be amended or superseded from time to time, including, but not limited to the payment of any application, impact, concurrency, building and any equivalent residential connection fees.

The CITY shall be responsible for obtaining all governmental approvals applicable to the Project, including, but not limited to, the CITY's site plan review and approval procedures, and applicable building codes and all permits and approvals from all governmental agencies having jurisdiction over the Property for the Project and Parking to be constructed by CITY, including but not limited to departments, divisions or offices of the State of Florida, COUNTY, CITY, and the federal government. Other than the Permitted Changes defined in Article 4.7 below, no changes or alterations shall be made to any Approved Plans without COUNTY prior written approval which shall not be unreasonably withheld or delayed.

4.7 The CITY shall be permitted to make Permitted Changes without the COUNTY's approval. A "Permitted Change" shall mean: (i) a change which is required to be made to comply with applicable governmental requirements; (ii) a change which involves only substituting materials of comparable or better quality; (iii) a change required by failure of the Approved Plans to satisfy field conditions where the change will not have a material adverse effect on the quality, appearance or function of the Project; and, (iv) a change which is made to correct inconsistencies in various plans and specifications.

The CITY and the Design-Construction Team shall meet with the COUNTY staff in periodically scheduled meetings to assess the current status of completion.

4.8 Within one hundred twenty (120) days after the date a Certificate of Occupancy or Use, as applicable, is issued for the Project, CITY shall provide the COUNTY with a complete set of "as built" plans and specifications, for the entire Library Facility and/or PBCC, as applicable, including Mylar reproducible "record" drawings, and, if available, one set of machine readable disks containing electronic data in an

AUTOCAD format that meets the COUNTY's graphic standards of the "as-constructed" or "record" plans. All "as built" plans submitted by CITY must show the square footage of the Library Facility or PBCC, as applicable.

4.9 The Parties shall develop a schedule that is predicated on CITY's provision of infrastructure, utilities, roadways and other site improvements necessary to provide a Certificate of Occupancy for the Project. The aforesaid schedule shall take into account that the first phase of construction will include the Library Facility/PBCC and all other on-site and off-site improvements necessary to obtain a Certificate of Occupancy.

4.10 All items purchased through the CRA and CITY must have full express warranty for parts, labor and service.

ARTICLE 5 CONSTRUCTION CLAIMS

CITY shall pay, when due, all claims for labor or materials furnished to or for the Project at or for use at the Property, which claims are or may be secured by any mechanics' or material person's lien against the Property, including the Library Facility or any interest therein. The CITY's Contract Administrator shall give COUNTY's Contract Administrator not less than ten (10) days' written notice prior to the commencement of any construction work on the Property or Project and COUNTY's shall have the right to post notices of COUNTY's non-responsibility in or on such Premises as provided by law. If CITY's Contract Administrator shall, in good faith, contest the validity of any such lien, claim or demand, then to the extent permitted by law, CITY shall, at its expense, defend itself and COUNTY against same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the COUNTY, CITY, the Property or the Project. COUNTY, through its Contract Administrator or County Administrator may, at its sole option, require CITY to have its contractor furnish to COUNTY a surety bond or other acceptable security satisfactory to COUNTY's Contract Administrator or County Administrator in an amount equal to one hundred (100%) percent of the amount of such contested lien, claim or demand indemnifying or protecting COUNTY and CITY, to the extent permitted by law, against liability for the same and holding the Property, including the Library Facility, free from the effect of such lien or claim.

ARTICLE 6 PREVAILING WAGE RATE

The Parties agree Broward County Ordinance No. 83-72 (Exhibit 4), as may be amended from time to time, shall apply to the construction work to be provided by CITY as to the COUNTY's Library Facility, through the Design-Construction Team, as stated more fully herein. COUNTY and CITY agree that Broward County Prevailing Wage Ordinance shall apply to the construction of the Library Facility. The COUNTY's

Prevailing Wage Ordinance No. 83-72 provides in part, specifically Section 1, as follows:

Every construction contract in excess of \$250,000 to which Broward County is a party shall include a provision that the rate of wage and fringe benefits, or cash equivalent, for all laborers, mechanics, and apprentices employed by any contractor or subcontractor on the work covered by the contract, shall be not less than the prevailing rate of wages and fringe benefit payments or cash equivalents for similar skills or classifications of work as established by the federal register, in Broward County, Florida.

The Parties agree that Broward County's Prevailing Wage Ordinance No. 83-72 applies to the construction services for the Library Facility and shall be complied with by CITY and the Design-Construction Team. CITY shall include a statement containing similar language as set forth herein in its contract with its Design-Construction Team providing construction services for the Project which will be jointly funded by COUNTY's Library Bond and CITY and CRA funding. CITY shall also require the Design-Construction Team to include a statement containing similar language in its contract(s) with any subcontractor(s), providing construction services for the Project.

ARTICLE 7 CHANGE ORDERS/AMENDMENTS

All Parties shall be solely responsible for costs of change orders issued at their respective request not relating to soil conditions or actions or inactions of CITY, CRA and/or the Design-Construction Team.

ARTICLE 8 USE OF PREMISES

The Project shall be used in accordance with the permitted uses in the Lease. While the Lease Agreement is in effect, the COUNTY shall use the Library Facility for library purposes and agrees to operate the Library as part of a COUNTY public library system which shall include, but not be limited to, providing library staff, library books, library materials, library equipment, and library services and other ancillary governmental uses. COUNTY shall be responsible for the costs of operating and maintaining the Library Facility. In the event COUNTY uses the Library Facility for principally other than library purposes, CITY shall have the right to give written notice to COUNTY demanding discontinuation of the improper use. If COUNTY does not discontinue the improper use within thirty (30) days after it receives the notice from CITY, this Agreement shall terminate and the Library Facility shall revert to CITY.

In addition, the Project may also include an approximately 25,000 to 30,000 gross square foot second floor to be utilized as the PBCC for cultural and educational purposes in a manner at all times compatible with the Library Facility use.

ARTICLE 9
PUBLIC ART AND DESIGN PROGRAM

9.1 The CITY and CRA acknowledge that the COUNTY has a Public Arts and Design Program ("Public Art Program") established and codified in Broward County Code, Section 1-88 as amended. The purpose of the Public Art Program is to integrate art into capital projects and to integrate artists' design concepts into the overall design project. All Parties acknowledge that only the Library Facility (and not the PBCC) is subject to the aforesaid Public Art Program and that the COUNTY has selected an Artist for the Library Facility through an independent process administered by the Broward County Cultural Division. The artwork shall be functionally integrated and shall meet the criteria defined in Section 1-88 (as amended).

9.2 The Public Art Program requires appropriations for COUNTY's capital improvement projects of up to two percent (2%) of eligible construction costs, including design and construction costs, to be used for artist design services and for acquisition of artwork unless otherwise authorized by Board action. COUNTY's contribution for the Library Facility is as provided for in Article 1 of this Agreement. The CRA and CITY shall cooperate and ensure coordination between the Design-Construction Team and COUNTY and COUNTY's Artist in order to comply with the Public Art Program requirements for the Library Facility.

9.3 The CITY and CRA shall ensure the Design-Construction Team and others performing services for the Library Facility, will be made aware of the COUNTY's Public Art Program and the requirement of working with the COUNTY's Artist. The CITY, CRA and the Design-Construction Team shall (i) cooperate with Artist, in writing, of all design meetings and provide Artist with a schedule of milestone dates; and (ii) provide work space for Artist during the preliminary design phases. The Artist's and the COUNTY's Contract Administrator's written approval is required before the use of any artwork design proposal. Additionally, the approval of the Broward County Board of County Commissioners may be required of the artwork design proposal before use of any artwork design proposal for fabrication and installation and prior to commencement of fabrication and installation.

9.4. Upon completion of artwork installation, the Contract Administrators for the COUNTY, CITY, Public Art Program shall conduct an inspection of the artwork and artwork site together and note any remaining incomplete items on a "Sign-Off Letter" executed by the ARTIST and the Contract Administrators for the COUNTY, CITY and Public Art Program.

9.5 CITY shall provide the COUNTY's Contract Administrator with written notice of completion of the artwork installation prior to the COUNTY's issuance of the conservation funds to the CITY.

The COUNTY will convey conservation funds in the amount of Ten Thousand Five Hundred Dollars (\$10,500) to the CITY upon completion and installation of the

artwork and CITY shall notify COUNTY in writing that a separate account has been established for said funds. Conservation funds are to be reserved by CITY for conservation of the artwork and may not be used for routine maintenance or any other purpose not related to conservation. Maintenance includes insuring the artwork under the CITY's self-insurance or commercial insurance or both. The CITY and COUNTY's Contract Administrators shall develop a written procedure for maintenance and conservation based on the ARTIST'S recommendations.

All Parties acknowledge the ARTIST shall attribute the artwork to both the COUNTY's Public Art Program and the CITY. Subject to the provisions of the ARTIST's agreement, the CITY and COUNTY agree that video and still image photo-documentation may be used by the COUNTY, CITY, CRA, and ARTIST for educational, promotional, and non-commercial purposes. The CITY acknowledges and agrees that the COUNTY's ARTIST retains copyright to the artwork design and in the event said design is used without authorization by parties other than the CITY, CRA and COUNTY, the ARTIST shall have the right to pursue any and all legal remedies available to stop the unauthorized use subject to the provisions of the ARTIST's agreement.

9.6 In the event the artwork is sited exterior to, or on the exterior of, the Library Facility, the CITY will take title to the applicable artwork upon COUNTY's final payment to ARTIST, and thereafter CITY will be solely responsible for maintenance, conservation and fulfillment as will be defined by formal agreement between the CITY, COUNTY and ARTIST. In the event title to the artwork is transferred to the CITY, ~~COUNTY shall assign the contract between the ARTIST and the COUNTY to CITY who shall agree to accept and perform and abide by all of the duties, obligations, ARTIST's rights and terms of the contract although COUNTY shall continue to have the right to use the artwork design for non-commercial purposes and for purposes of the Public Art Program, including its cataloging.~~

In the event the artwork is sited within the interior of the Library Facility and is not integrated into the interior of the Library Facility so as to become a permanent improvement to the Library Facility, the COUNTY will retain title to artwork, and thereafter COUNTY will be solely responsible for maintenance, conservation, and fulfillment as will be defined by formal agreement between the CITY, COUNTY and ARTIST and no conservation funds will be transferred by the COUNTY. If the artwork is integrated into the interior of the Library Facility and becomes a permanent improvement, title to the artwork shall transfer to the CITY and thereafter the CITY will be solely responsible for maintenance, conservation and fulfillment as will be defined by formal agreement between the CITY, COUNTY and ARTIST.

Once the COUNTY transfers title of the artwork to the CITY, the CITY will be solely responsible for its maintenance and conservation, including all subsequent expenses other than those agreed herein. The COUNTY shall provide CITY a copy of the complete artwork maintenance instructions titled "Cataloging Form" upon completion of artwork installation.

If, after the final completion of the artwork and transfer of the artwork to CITY, COUNTY observes that CITY is not adequately maintaining the artwork, so as to retain the integrity of the artistic design and construction, COUNTY's Contract Administrator shall notify CITY in writing of such deficiency. The notice will include a condition report and proposed treatment plan provided by COUNTY's contracted conservation professional (or other individual acting in such capacity). If the CITY does not resolve the issue within sixty (60) calendar days of issuance of said written notice, COUNTY is authorized to hire appropriate contractor(s) to correct the deficiency. COUNTY will require such contractor(s) to carry insurance, which will name CITY as an additional insured and the contractor will be required to indemnify the CITY to the extent that it indemnifies COUNTY. Both the conservation professional (or other individual acting in such capacity) and the repair contractor may be contractually subject to the Code of Ethics and Guidelines for Practice of the American Institute for Conservation of Historic and Artistic Works, as appropriate to the nature and extent of repairs. CITY shall reimburse COUNTY for the costs of such services, including an administration fee equal to fifteen percent (15%) of the total conservation expenses, within thirty (30) calendar days of COUNTY presenting a bill to CITY for same.

9.7 Once the artwork is completed and installed and title has transferred to the CITY, should the CITY desire to modify or change the artwork or artwork site, or wish to relocate it to another site, the CITY shall forward a written request to make said change before the fact to the Public Art Program's Contract Administrator. The Contract Administrator for the Public Art Program (in his or her sole discretion) shall review the request in a timely manner and respond in writing to the CITY within thirty (30) calendar days of receipt of the request.

9.8 In the event of damage or destruction of the artwork titled to CITY, the CITY shall be obligated to rebuild at the same site or restore the affected features of the artwork to the condition they were in prior to such damage or destruction. Thereafter, if CITY chooses to dispose of the artwork, COUNTY shall be offered first right of refusal to obtain the artwork at no cost to the COUNTY in consideration for the period of time used by the CITY. CITY shall provide COUNTY's representatives access to the artwork periodically for appraisal and condition review throughout its useful life as estimated by COUNTY's conservation specialist at the completion of the artwork.

9.9 CITY agrees that COUNTY shall prepare and install at COUNTY's expense, on or near the artwork, a permanent plaque or sign identifying the artwork. Further, all publications, media productions, and exhibit graphics concerning the artwork shall include the COUNTY's logo and the following statement in the same size, type, style, and location as credit to CITY.

"This Project is funded in part by Broward County through the
Broward County Board of County Commissioners."

ARTICLE 10
PUBLICITY

All Parties agree all advertisements, press releases or other type of publicity activities concerning the design and construction activities for the Library Facility, undertaken by CRA in connection with this Agreement shall wherever feasible, include the following statement:

Library Bond Dollars at Work,
A joint project of the Broward County Board of County Commissioners,
the Pompano Beach Community Redevelopment Agency,
and the City of Pompano Beach

ARTICLE 11
CBE COMPLIANCE

The CBE Program, which is implemented under County Business Enterprise Act of 2009 (Broward County Ordinance No. 2009-40, as may be amended from time to time), referred to as the "Act," provides for the establishment and implementation of CBE participation goals, initiatives, and other opportunities for COUNTY contracts.

In completing this Project, CRA and CITY agree to and shall comply with all applicable requirements of the CBE Program in the award and administration of the Agreement. Additionally, CRA and CITY agree to incorporate the CBE requirements into all contracts with its Design-Construction Team. Failure by CRA to carry out any of the CBE Program requirements shall constitute a material breach of this Agreement which shall permit COUNTY to terminate this Agreement or to exercise any other remedy available under this Agreement, under the Broward County Administrative Code, under the Broward County Code of Ordinances, or under applicable law, all of which remedies being cumulative.

CRA and CITY acknowledge that the Broward County Board of County Commissioners, acting by and through the Director of the Broward County Office of Equal Opportunity, may make minor administrative modifications to the CBE Program which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to CITY and CRA and shall include a deadline to notify COUNTY if CITY or CRA concludes that the modification exceeds the authority of this Article. Failure of the CITY or CRA to timely notify COUNTY of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification.

11.1 COUNTY, acting by and through its Small Business Development Division, shall have the right to review each proposed amendment, extension, modification, or change order to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, or change orders increases the initial

Agreement price by ten percent (10%) or Fifty Thousand Dollars (\$50,000), whichever is less, for opportunities to include or increase the participation of CBE firms already involved in this Agreement. CRA and CITY shall make a good faith effort to include CBE firms in work resulting from any such amendment, extension, modification, or change order and shall report such efforts, along with evidence thereof, to the Small Business Development Division.

11.2 COUNTY, CITY and CRA agree that subcontract awards to CBE firms are crucial to the achievement of the Project's CBE participation goal. CRA and CITY understand that each CBE firm utilized on the Project to meet the participation goal must be certified by the Broward County Small Business Development Division. In an effort to assist COUNTY in achieving its established goal for this Project, CRA and CITY agree to meet the following CBE participation goal by requiring the Design-Construction Team to utilize CBE firms for the work and dollar values described in this Article.

Total CBE Goal	31 %
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CRA and CITY may not terminate for convenience a certified CBE listed as a subcontractor without the COUNTY's prior written consent which shall not be unreasonably withheld. CRA and CITY shall inform COUNTY immediately when a CBE firm is not able to perform or if CRA or CITY believes the CBE firm should be replaced for any other reason, so that the Small Business Development Division may review and verify the good faith efforts of CRA or CITY to substitute the CBE firm with another CBE firm. Whenever a CBE firm is terminated for any reason, including cause, CRA and CITY shall make good faith efforts to find another CBE firm to perform the work required of the original CBE firm.

11.3 In performing services for the Project, CITY shall incorporate a Schedule of CBE Participation indicating participating CBE firms, addresses, scope of work, and dollar value in each of its design and construction contracts. CRA, CITY or the Design Construction Team shall enter into a formal contract with each CBE firm selected to fulfill the CBE participation goal for this Agreement and agree to provide copies of all said contracts to COUNTY's Contract Administrator and its Small Business Development Division. CRA, CITY and the Design-Construction Team shall not terminate a CBE firm listed on the Schedule of Participation without cause unless they have received COUNTY's prior written consent. CRA and CITY understand that each replacement CBE firm utilized on the Project to meet the participation goal must also be certified by COUNTY's Small Business Development Division,

11.4 CRA and CITY shall allow COUNTY to engage in on-site reviews to monitor CRA and CITY's progress in achieving and maintaining their contractual and CBE Program obligations. Such review and monitoring shall be by the COUNTY's Contract Administrator in conjunction with the Small Business Development Division. On five (5) business days' notice, COUNTY shall have access, without limitation, to CRA, CITY and Design-Construction Teams books and records, including payroll records, tax returns and records, and books of account, to allow COUNTY to determine

compliance with CRA and CITY's commitment to the CBE participation goal and the status of any CBE firm performing any portion of this Agreement.

11.5 CRA and CITY understand that it is the responsibility of the COUNTY's Contract Administrator and the Broward County Small Business Development Division to monitor compliance with the CBE requirements. In that regard, CITY agrees to furnish monthly reports regarding compliance with its CBE obligations to the COUNTY's Contract Administrator with its partial pay requests under Article 3 of this Agreement, which report shall, as a minimum, include all expenditures made to achieve compliance with the assigned CBE goal or other contractual conditions, including the name and business address of each CBE firm participating in this Agreement; a description of the work performed and/or product or service supplied by each CBE firm; the date and amount of each expenditure; and any other information requested by COUNTY's representative which may assist COUNTY in determining CRA and CITY's compliance with their contractual obligations, or which may assist in the implementation and enforcement of the Act. The submission of the report required by this subsection shall be a condition of payment to CITY. The monthly reports shall be submitted on a form which may be obtained at the Small Business Development Division. The first report shall be due at the end of the first month of the City's agreement with the Design-Construction Team.

11.6 In the event of CRA or CITY's noncompliance with their participation commitment to a CBE firm (including without limitation the unexcused reduction of the CBE firm's participation), the affected CBE firm shall have the right to the following remedies if the noncompliance is or was alleged to be due to no fault of the CBE firm, and alleged to be due to the willful action or omission of CRA or CITY:

11.6.1 The affected CBE firm shall be entitled to damages pursuant to its agreement with CRA and/or CITY.

11.6.2 If the CBE firm has the right to arbitrate and institutes arbitration proceedings claiming non-compliance with the Act by CRA or CITY, then in such event the CBE firm may submit the dispute to arbitration. However, arbitration shall not be available as to any dispute between CRA, CITY and COUNTY; nor shall COUNTY incur any cost, fee, or liability relative to any arbitration proceeding.

11.6.3 Nothing under this Subsection 11.6. shall be construed to limit the rights of and remedies available to COUNTY, including the right to seek its own damages pursuant to this Agreement.

11.7 CRA and CITY agree that nonpayment of a CBE subcontractor or CBE supplier shall be a material breach of this Agreement and that COUNTY's Contract Administrator may, at its option, increase allowable retainage or withhold progress payments unless and until CRA or CITY demonstrate timely payments of sums due to such subcontractors or suppliers. CRA and CITY agree that the presence of a "pay

when paid" provision in their contract with a CBE firm shall not preclude COUNTY or its representatives from inquiring into allegations of nonpayment. The foregoing remedies under this Subsection 11.7 shall not be employed when CRA or CITY demonstrate that failure to pay results from a bona fide dispute with its CBE subcontractor or supplier.

11.8 If CRA or CITY fail to comply with the requirements of this Agreement or fail to enforce CBE requirements in contracts with the Design-Construction Team, or the requirements of the County Business Enterprise Act of 2009, COUNTY shall have the right to exercise any administrative remedies provided by the Business Opportunity Act of 2004, or any other right or remedy provided in this Agreement or under applicable law, with all such rights and remedies being cumulative.

ARTICLE 12 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other two Parties. In addition, CRA and CITY shall not subcontract any portion of the work required by this Agreement except as provided in the Work Letter for Design and Construction Services (Exhibit 3). Any Party may terminate this Agreement, effective immediately, if any Party makes any assignment, or attempts to assign, transfer, or encumber any right or interest herein without both other Parties' written consent.

CRA and CITY represent that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

CRA and CITY shall perform their duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CRA and CITY's performance and all interim and final product(s) provided to or on behalf of COUNTY shall be comparable to the best local and national standards.

ARTICLE 13 NOTICES

Whenever a Party desires to give notice to the others, such notice must be in writing to COUNTY and CITY's Contract Administrators and the CRA's Project Director, sent by certified United States mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the Party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this Article. For the present, the Parties designate the following as their respective Contract Administrator(s) and Project Director.

FOR BROWARD COUNTY:

Director of Construction Management, Broward County Governmental Center,
County Contract Administrator
115 South Andrews Avenue, Room 550-A
Fort Lauderdale, FL 33301

With an additional copy to:

Director of Libraries
100 South Andrews Avenue
Fort Lauderdale, Florida 33301

County Administrator
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

County Attorney
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

FOR CRA:

Executive Director, Project Director
Pompano Beach Community Redevelopment Agency
100 West Atlantic Boulevard
2nd Floor, Suite 276
Pompano Beach, Florida 33060

With an additional copy to:

City Attorney
100 West Atlantic Boulevard
Suite 467
Pompano Beach, Florida 33060

FOR CITY:

Director of Public Works, City Contract Administrator
1201 NE 5th Avenue
Pompano Beach, Florida 33060
With an additional copy to:

City Manager
100 West Atlantic Boulevard
Pompano Beach, Florida 33060

City Attorney
100 West Atlantic Boulevard
Suite 467
Pompano Beach, Florida 33060

ARTICLE 14 **WARRANTIES**

The CITY warrants that it has not received any notice from any governmental authority as to violation of any law, ordinance or regulation regarding the Property. If the Property is subject to restrictive covenants, CITY warrants that CITY has not received any notice from any person or authority as to a breach of the covenants. CRA warrants that COUNTY and patrons of the Library Facility shall have a continuous right of access to the Library Facility, the parking and the Property from the public right-of-way.

ARTICLE 15 **DEFAULT**

If any Party to this Agreement defaults in any of the material terms herein, either or both of the remaining Parties may terminate in accordance with the termination provisions of this Agreement. If this Agreement is not so terminated, this provision shall not deprive any Party of the right to recover damages for breach of this Agreement or of the right to specific performance of this Agreement.

ARTICLE 16 **ENVIRONMENTAL CONTAMINATION**

Portions of the Property are the subject of two Brownfield Site Rehabilitation Agreements (BSRAs) between COUNTY and CITY. CITY, as owner, retains responsibility for compliance with the BSRA remediation and all standards contained therein. Anything further that is discovered and required to be remediated, whether unknown or discovered shall be remediated by CITY.

With the exception of the foregoing, CITY represents and warrants to COUNTY that as of the date of execution of this AGREEMENT, neither CITY, nor to the best of CITY's knowledge has any third party, used, produced, manufactured, stored, disposed of or discharged any hazardous wastes or toxic substances in, under or about the Library Facility during the time in which CITY owned the Library Facility. COUNTY covenants that it will not use, produce, manufacture, store, dispose of or discharge any hazardous wastes or toxic substances in, under or about the Library Facility (other than the normal and customary petroleum products used in the operation of motor vehicles on the Library Facility) during the term of this Agreement and the term of the Lease.

ARTICLE 17
BONDING

CITY shall require that the construction contractor obtain separate performance and payment bonds in a form allowed by Section 255.05, Florida Statutes, each bonding at least one hundred percent (100%) of the Project's construction cost.

ARTICLE 18
INSURANCE, SOVEREIGN IMMUNITY AND LIABILITY

CRA and CITY are state agencies as defined by Section 768.28, Florida Statutes, and are self-insured. CRA and CITY shall furnish COUNTY with written verification of liability protection in accordance with state law prior to final execution of this Agreement.

CITY shall not allow any contractor to commence work on construction of the Library Facility or the Parking until such contractor has provided CITY with evidence of insurance coverage consistent with customary CITY requirements, including separate payment and performance bonds in the form prescribed by the CITY, complying with Section 255.05, Florida Statutes. Bonding of each is conditioned to at least the amount of one hundred percent (100%) of the construction cost of work.

ARTICLE 19
INSURANCE REQUIRED OF DESIGN-CONSTRUCTION TEAM

19.1 In order to insure their indemnification obligation to COUNTY, CITY, CRA and the Design-Construction Team as set forth herein, shall provide, pay for, and maintain in force at all times during the term of this Agreement, such insurance, including Comprehensive General Liability Insurance, Workers Compensation Insurance, and Employer's Liability Insurance to assure COUNTY of the protection contained in the foregoing indemnification provisions and the work to be undertaken by the Design-Construction Team and with respect to any and all liability arising out of the operations performed for COUNTY by or on behalf of the Design-Construction Team or with respects to any acts and omissions of the Design-Construction Team in connection with such operation.

19.1.1 Such policy or policies shall be without any deductible amount and shall be issued by approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in Broward County, Florida.

19.1.2 In such policy or policies, the Design-Construction Team shall specifically protect CRA, CITY and COUNTY by naming each as additional insureds under the Comprehensive General Liability Insurance Policy.

19.2 The Design-Construction Team shall maintain in full force at all times throughout this Agreement, Workers Compensation Insurance to apply to and cover all its employees in full compliance with the Worker's Compensation Law of the State of Florida and all applicable federal laws. The policy must also include the employers liability provided hereunder which shall contain minimum limits of One Million Dollars (\$1,000,000.00) for each accident or incident.

19.3 The Design-Construction Team shall maintain in full force at all times throughout this Agreement, Comprehensive General Liability Insurance which shall contain minimum limits of One Million Dollars (\$1,000,000.00) per occurrence, \$2,000,000 in the aggregate combined single limit for bodily injury liability and property damage liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include the following:

Premises and Operations Explosion, Collapse Hazard, Underground Hazard and Products/Completed Operations Hazard;

Independent Contractors;

Broad Form Property Damage;

Broad Form Contractual Coverage applicable to this specific Agreement including holding harmless and/or indemnification provisions of this Agreement; and

Personal Injury Coverage with Employee and Contractual Exclusions removed and with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

19.4 The Design-Construction Team shall maintain in full force at all times throughout this Agreement, Business Automobile Liability Insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be provided and afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, filed by the Insurance Services Office and must include:

Owned vehicles

Hired and non-owned vehicles.

19.5 The Design-Construction Team shall maintain in full force at all times throughout this Agreement, such policy or policies, including, but not limited to, the Comprehensive General Liability Policy and the Business Automobile Liability Insurance Policy, with Notice and Cancellation and/or Endorsement provisions requiring individual

notices to be sent separately to CRA, CITY and COUNTY's Risk Managers with thirty (30) days advance written notice of any such cancellation and/or restriction.

19.6 Professional Liability Insurance Consultant shall maintain Professional Liability Insurance on a claims-made basis with the limits of liability provided by such policy for each claim to be no less than One Million Dollars (\$1,000,000.00) and Two Million Dollars (\$2,000,000.00) aggregate. Any deductible amount shall not exceed (\$100,000.00) for each occurrence. Consultant and Contractor shall notify CRA and CITY in writing within thirty (30) days of any claim filed or made against their Professional Liability Insurance Policy.

19.7 Builder's Risk At issuance of the Notice to Proceed for construction, the CITY's contractor(s) shall provide Builder's Risk Insurance. This coverage shall be "All Risk Perils" including wind and flood coverage for one hundred percent (100%) of the completed Project value naming both CITY as an insured with a deductible not to exceed 10% of the Project value each occurrence for all risks except wind and flood. Wind and flood deductible shall be subject to available terms of the market not to exceed 5% percent, said percentage to be determined at the sole discretion of the CITY. Such policy shall list CITY as owner of the Library Facility. CITY's contractor shall be responsible for all deductibles. Proof of coverage shall be provided within ten (10) days prior to the commencement of any construction activity.

19.7.1 Waiver of Occupancy Clause or Warranty Policy must be specifically endorsed to eliminate any "Occupancy Clause" or similar warranty or representation that the building(s), addition(s) or structure(s) in the course of construction shall not be occupied without specific endorsement of the policy. The policy must be endorsed to provide that the Builder's Risk coverage will continue to apply until final acceptance of the building(s), addition(s) or structure(s) by CITY.

19.7.2 Flood Insurance When the buildings or structures are located within an identified special flood hazard area, flood insurance must be afforded for the lesser of the total insurable value of such buildings or structures or the maximum amount of flood insurance coverage available under the National Flood Program.

19.8 The Design-Construction Team shall provide individually and separately to COUNTY, CITY and CRA, a Certificate of Insurance for insurance policies required herein, at least ten (10) days prior to the commencement of any construction work relating to the Project. COUNTY and CITY reserve the right to require and obtain a certified copy of any and all such policies upon request from the Design-Construction Team. All such Certificates of Insurance and all endorsements relating to the required policy or policies shall be provided individually and separately to COUNTY, CITY and CRA's Risk Management Division with at least thirty (30) days advance written notice prior to the expiration or cancellation of any such policy or policies.

19.9 For the purpose of the insurance notification provision required to be provided by the Design-Construction Team to COUNTY herein, notice to COUNTY shall be in writing and shall be served by certified mail and/or by hand-delivery to the following: Broward County Risk Management Division, Attention: Risk Insurance and Contracts Manager, 115 South Andrews Avenue, Room 210, Fort Lauderdale, Florida 33301-1869.

19.10 For the purpose of the insurance notification provisions required by this Article, notice shall be in writing and served by certified mail and/or hand-delivery to the following Parties.

FOR COUNTY:

Risk Manager, Risk Management Division
115 South Andrews Avenue, Room 210
Fort Lauderdale, Florida 33301-1869

FOR CITY and CRA:

Risk Manager, City of Pompano Beach
100 West Atlantic Boulevard, Room 219
Pompano Beach, Florida 33060

19.11 The Design-Construction Team shall obtain and keep in effect until the expiration or termination of this Agreement, the insurance coverage required under this Article.

19.12 CRA and CITY shall include in any Professional Services Agreement(s) that entered into for architectural services for design of the Project, insurance as set forth in this Agreement. All insurance requirements set forth in this subsection shall equally apply to any Professional Services or Construction Agreement(s) between the CRA, CITY and the Design-Construction Team for architectural services under this Agreement.

19.13 CRA and CITY shall not allow the Design-Construction Team or any subcontractor thereunder to commence any design, development or construction work required under this Agreement until after the CITY's Contract Administrator has obtained all the minimum insurance herein described and the policies of such insurance detailing the provisions of coverage have been received and approved by COUNTY, CITY and CRA's Risk Managers.

19.14 Prior to commencement of any construction activities on the Property, CITY's Contract Administrator through the Design-Construction Team who shall be the obligor on the bond(s), shall deliver or cause to be delivered to COUNTY and CITY, separate Payment and Performance Bond(s) ("Bond") for the Project naming Broward County and Board of County Commissioners and the CITY as co-obligees in said Bond;

each Bond shall be in an amount at least equal to one hundred percent (100%) of the contract price.

19.15 CITY's Contract Administrator shall ensure that all insurance, payment bond and performance bond, warranties and guarantees for any construction, workmanship and/or materials and equipment constructed, installed and/or affixed on the Property, shall run to COUNTY and CITY, as applicable.

ARTICLE 20 **HOLD HARMLESS CLAUSE**

CRA and CITY are state agencies or political subdivisions as defined in Chapter 768.28, Florida Statutes, and agree to be fully responsible for acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement or any other contract thereunder.

ARTICLE 21 **CONFLICT RESOLUTION**

The Parties will abide by Chapter 164, Florida Statutes, The Florida Governmental Conflict Resolution Act, as amended from time to time, in resolving controversies or disputes arising under this Agreement.

To prevent all disputes and litigation, all Parties agree the CITY shall make the initial determination regarding all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the design and construction of the Project 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 and CITY's estimates and decisions upon all claims, questions, difficulties and disputes shall be final and binding to the extent provided for by this Article provided that all decisions of the CITY shall be in full compliance with the terms, conditions and provisions of the Work Letter.

Any claim, question, difficulty or dispute which cannot be resolved by mutual agreement of COUNTY, CRA, and the Design-Construction Team, as applicable, shall be submitted to CITY in writing within twenty-one (21) calendar days. Unless a different period of time is set forth herein or the CITY requires additional time to gather information or allow the Parties to provide additional information, CITY shall notify in writing the COUNTY, CRA, and the Design-Construction Team of CITY's decision within twenty-one (21) calendar days from the date of the submission of the claim, question, difficulty or dispute, unless CITY requires additional time to gather information or allow the Parties to provide additional information.

All non-technical administrative disputes shall be determined by the CITY's Contract Administrator pursuant to the time periods provided herein. During the pendency of any dispute and after a determination thereof, contractor, CITY and COUNTY shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction.

Day-to-day decision making and dispute resolution authority shall rest with the CRA's Project Director and the CITY and COUNTY Contract Administrators. In the event they are unable to resolve such issues and disputes, then such issues and disputes shall be elevated to the CRA's Executive Director, the CITY's City Manager, and the County Administrator for their mutual resolution.

The CITY's Contract Administrator shall inform and include the CRA's Project Director and COUNTY Contract Administrator in discussions, decisions and disputes with the Design-Construction Team that impact the programming, design and construction of the Project. The CITY's Contract Administrator shall mediate disputes with or objections to the programming, design and construction work as performed by the Design-Construction Team. The CITY's Contract Administrator shall ensure that COUNTY's programmatic, quality, budgetary and schedule needs are met by the Design-Construction Team.

In the event the determination of a dispute under this Article is unacceptable to any Party hereto, the Party objecting to the determination must notify the other Party(ies) in writing within ten (10) days of receipt of said written determination. The notice must state the basis of the objection and be accompanied by a statement that any claimed adjustment to the lump sum amount of this Agreement is the entire adjustment to which the objecting Party has reason to believe it is entitled to as a result of said written determination.

Within sixty (60) days after final completion of the work, the Parties shall participate in mediation to address all objections to any determinations hereunder and to attempt to prevent litigation. The mediator shall be mutually agreed upon by affected Parties. Should any objection not be resolved in mediation, the Parties retain all their legal rights and remedies provided under state law. A Party objecting to a determination specifically waives all of its rights provided hereunder, including its rights and remedies under state law, if said Party fails to comply in strict accordance with the requirements of this Article.

ARTICLE 22 THIRD PARTY RIGHTS.

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the CRA, CITY and COUNTY.

ARTICLE 23

TERMINATION

23.1 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 written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for cause if CRA, CITY or any of the Design-Construction Team are 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 CRA, CITY or any of the Design-Construction Team provide a false certification submitted pursuant to Section 287.135, Florida Statutes, as amended. Until such time as the COUNTY's First Notice to Proceed for construction is issued, this Agreement may also be terminated for convenience by the Board of County Commissioners. Termination for convenience by the Board of County Commissioners shall be effective on the termination date stated in written notice provided by COUNTY, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health or safety. The Parties agree that if COUNTY erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

23.2 This Agreement may be terminated for cause for reasons including, but not limited to, CRA or CITY's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. This Agreement may also be terminated by the Board of County Commissioners upon failure of CRA or CITY to enforce the provisions of the CBE Program or to ensure that all contracts entered into by CRA and CITY contain the applicable CBE requirements,

23.3 Notice of termination shall be provided in accordance with the "NOTICES" Article of this Agreement except that notice of termination by the County Administrator, which the County Administrator 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" Article of this Agreement.

23.4 In the event this Agreement is terminated for convenience, CRA and CITY shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. CRA and CITY acknowledge and agree that they have received good, valuable and sufficient consideration from COUNTY, the receipt and adequacy of which are, hereby acknowledged by CRA and CITY, for COUNTY's right to terminate this Agreement for convenience.

23.5 In the event this Agreement is terminated for any reason, any amounts due CRA shall be withheld by COUNTY until all documents are provided to COUNTY pursuant to Article 24.

ARTICLE 24 OWNERSHIP OF DOCUMENTS

All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared for or provided by CITY or CRA in connection with this Agreement shall become the property of COUNTY and CITY, as applicable, whether the Project for which they are made is completed or not, and shall be delivered to COUNTY and CITY, as applicable, within thirty (30) days of the receipt of the written notice of termination. Final As-Built Project Record Documents shall be provided pursuant to the Work Letter for Design and Construction Services.

If applicable, COUNTY may withhold any payments then due to CITY until CITY complies with the provisions of this Article.

ARTICLE 25 EEO COMPLIANCE

25.1 Failure to comply with the following requirements is a material breach of this Agreement which may result in its termination or such other remedy as COUNTY deems appropriate:

25.1.1 CRA and CITY shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity and expression in performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in performance of this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time, and shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall also comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended.

25.1.2 CRA and CITY shall (i) not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement; (ii) affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA regarding nondiscrimination on the basis of disability, and all applicable regulations, guidelines, and standards; and

(iii) take affirmative steps to ensure nondiscrimination in employment against disabled persons.

25.2 By execution of this Agreement, CRA and CITY represent that they have not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes, as may be amended from time to time as COUNTY materially relies on such representation in entering into this Agreement. An untrue representation by CRA or CITY of the foregoing shall entitle COUNTY to terminate this Agreement and recover from CITY all monies paid pursuant to this Agreement and may result in debarment from COUNTY's competitive procurement activities.

ARTICLE 26 AUDIT RIGHT AND RETENTION OF RECORDS

COUNTY shall have the right to audit the books, records, and accounts of CRA, CITY and the Design-Construction Team related to this Project. CRA, CITY and the Design-Construction Team shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of CRA, CITY and the Design-Construction Team shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CRA, CITY or the Design-Construction Team, as applicable, shall make same available in written form at no cost to COUNTY.

CRA, CITY and the Design-Construction Team shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable; or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement.

If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If COUNTY determine the Florida Public Records Act is applicable to the records of CRA, CITY and the Design-Construction Team, CRA, CITY and its Design-Construction Team shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CRA, CITY and the Design-Construction Team.

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

CRA and CITY, shall, by written contract, require the Design-Construction Team to agree to the requirements and obligations of this Article.

ARTICLE 27
SUCCESSORS

This Agreement shall inure to and be binding upon the authorized successors and assigns of the Parties subject to the provisions of Article 12 herein.

ARTICLE 28
SURVIVAL OF OBLIGATIONS

The obligations set forth in this Agreement shall survive execution of the Lease.

ARTICLE 29
MATERIALITY AND WAIVER OF BREACH

All Parties agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the Parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

A Parties' 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.

ARTICLE 30
COMPLIANCE WITH LAWS

CRA, CITY and COUNTY shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing their duties, responsibilities, and obligations pursuant to this Agreement.

ARTICLE 31
SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless any Party elects to terminate this Agreement in accordance with Article 23 herein. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the court's finding of such invalidity becomes final.

ARTICLE 32
JOINT PREPARATION

Each Party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that its preparation has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not,

solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.

ARTICLE 33
PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Article 1 through the end of this Agreement, the term, statement, requirement, or provision contained in the Exhibits shall prevail and be given effect, and in terms of priority the Work Letter shall control all the Exhibits.

ARTICLE 34
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. All 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, CRA, CITY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

ARTICLE 35
AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by all Parties or others delegated authority to or otherwise authorized to execute same on their behalf.

ARTICLE 36
PRIOR AGREEMENTS

This Agreement represents the final and complete understanding of all Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, most notably the former Agreement between the COUNTY and CITY For Conveyance of Property For Public Library dated October 18, 2007, as twice amended.

All Parties agree there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action on the 30th day of August, 2011, and POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY through its BOARD, signing by and through its Chair, duly authorized to execute same by Board action on the 19th day of July, 2011, and CITY OF POMPANO BEACH through its CITY COMMISSION, signing by and through its Mayor, authorized to execute same by City Commission action on the 19th day of July, 2011.

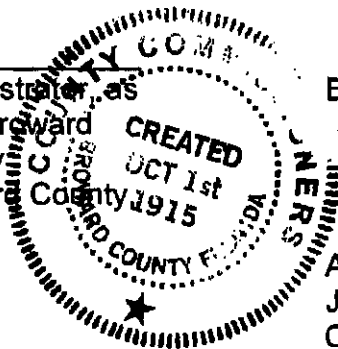
COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

for
Broward County Administrator,
Ex-officio Clerk of the Broward
County Board of County
Commissioners, Broward County
Florida

By [Signature]
Mayor 8/30/11



Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
JONI ARMSTRONG COFFEY,
County Attorney
for Broward County, Florida
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By [Signature]
Risk Manager
Risk Management Division

By [Signature]
Nancy Rubin
Assistant County Attorney

Jacqueline A. Binns
Insurance and
Contracts Manager

AGREEMENT BETWEEN BROWARD COUNTY, CITY OF POMPANO BEACH AND
THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY FOR
CONVEYANCE OF REAL PROPERTY FOR PUBLIC LIBRARY AND DESIGN AND
CONSTRUCTION OF A LIBRARY FACILITY

CRA

Signed, Sealed and Witnessed
In the Presence of:

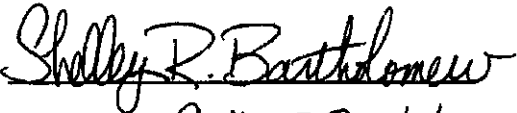
POMPANO BEACH COMMUNITY
REDEVELOPMENT AGENCY



Print Name: Christine Wodka

By: 

Lamar Fisher, Chairman




Print Name: Shelley R. Bartholomew

ATTEST:


Margaret Gallagher, Secretary

EXECUTIVE DIRECTOR:

Redevelopment Management Associates, LLC
a Florida limited liability company



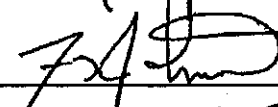
Print Name: Floyd T. Johnson

By: MetroStrategies, Inc., a Florida corporation
a managing member

By: 

Kim Briesemeister, President

and



Print Name: Floyd T. Johnson

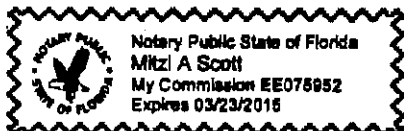
By: 

Christopher J. Brown
a managing member

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 22nd day of July, 2011 by LAMAR FISHER as Chairman of the Pompano Beach Community Redevelopment Agency, who is personally known to me.

NOTARY'S SEAL:



Mitzi A. Scott
NOTARY PUBLIC, STATE OF FLORIDA

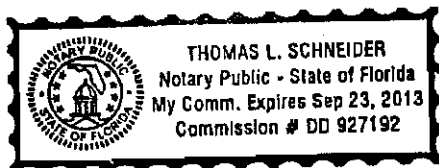
Mitzi A. Scott
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 22nd day of July, 2011 by MARGARET GALLAGHER, Secretary of the Pompano Beach Community Redevelopment Agency, who is personally known to me.

NOTARY'S SEAL:



Thomas L. Schneider
NOTARY PUBLIC, STATE OF FLORIDA

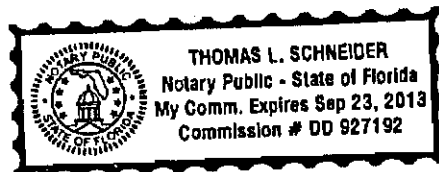
THOMAS L. SCHNEIDER
(Name of Acknowledger Typed, Printed or Stamped)

DD 927192
Commission Number

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 21st day of July, 2011, by Kim Briesemeister, President of MetroStrategies, Inc., as Managing Member of Redevelopment Management Associates, LLC on behalf of the limited liability company. She is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:



Thomas L. Schneider
NOTARY PUBLIC, STATE OF FLORIDA

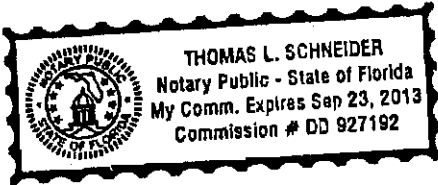
THOMAS L. SCHNEIDER
(Name of Acknowledger Typed, Printed or Stamped)

DD 927192
Commission Number

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 21st day of July, 2011, by Christopher J. Brown, as Managing Member of Redevelopment Management Associates, LLC, on behalf of the limited liability company. He is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:



Thomas L. Schneider

NOTARY PUBLIC, STATE OF FLORIDA

THOMAS L. SCHNEIDER

(Name of Acknowledger Typed, Printed or Stamped)

DA 927192

Commission Number

AGREEMENT BETWEEN BROWARD COUNTY, CITY OF POMPANO BEACH AND
THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY FOR
CONVEYANCE OF REAL PROPERTY FOR PUBLIC LIBRARY AND DESIGN AND
CONSTRUCTION OF A LIBRARY FACILITY

CITY

Witnesses:

Christine Wadka

Shelly R. Bartholomew

CITY OF POMPANO BEACH

By: Lamar Fisher

LAMAR FISHER, MAYOR

By: Dennis W. Beach

DENNIS W. BEACH, CITY MANAGER

Attest:

Mary L. Chambers
MARY L. CHAMBERS, CITY CLERK

(SEAL)

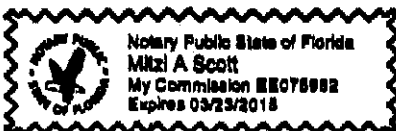
Approved by:

Gordon B. Linn
GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 22nd day of July, 2011 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **MARY L. CHAMBERS** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:



Mitzi A. Scott
NOTARY PUBLIC, STATE OF FLORIDA

Mitzi A. Scott
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number