

AGREEMENT

THIS AGREEMENT is dated as of the _____ day of _____ in the year 2019 by and between CITY OF POMPANO BEACH, FLORIDA (hereinafter called OWNER) and Man-Con, Incorporated (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

The project consist of the furnishing of all labor, equipment and materials for:

Emergency on call utilities repair services.

The Project for which the services are required are identified pursuant to Request for Proposal (RFP) P-27-19.

CONTRACTOR is authorized to conduct work up to two hundred thousand dollars (\$200,000.00). For any work that will exceed this amount, CONTRACTOR shall attain Payment and Performance bonds in accordance with Exhibit "B", General Conditions, attached hereto and by reference incorporated herein and made a part hereof. Prior to execution of this Agreement, CONTRACTOR shall provide the OWNER with a letter from their surety company that states CONTRACTOR is able to attain said bonds within twenty four (24) hours or a reasonable time that will not impact the emergency utilities repair services to be provided to the OWNER as part of this Agreement. Failure to provide the bonds as required herein may result in liquidated damages and any other remedy afforded to the OWNER by law.

Article 2. ENGINEER

Not Applicable

Article 3. CONTRACT TERM

This Contract shall be for a term of five (5) years or less beginning with the date this Agreement is fully executed by both parties. In addition to the requirements of Article 4 below, CONTRACTOR shall include, to the best of their ability, a substantial and final completion time with their plan to provide work under this Agreement. Specific assigned tasks performed pursuant to this Agreement shall be timely completed as directed by staff depending upon the emergent circumstances and as required to repair and protect the utility facilities and the public. Upon mutual agreement of substantial and final completion times for a project between both parties, failure of the CONTRACTOR to meet the substantial and final completion times for a project shall result in the application of liquidated damages as per Article 5 below.

Article 4. PRECONSTRUCTION PHASE REQUIREMENTS

Upon request by OWNER, CONTRACTOR shall appear on site within four (4) hours to make an assessment of the efforts required to execute the repair. CONTRACTOR shall provide owner a plan to execute the repairs and if possible an estimate for the work. After evaluation of the CONTRACTOR's proposed plan for the repairs,

OWNER may at its sole discretion, use a different CONTRACTOR, award the work to the CONTRACTOR or perform the work internally.

Article 5. LIQUIDATED DAMAGES

OWNER and CONTRACTOR recognize that time is of the essence of the Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in Article 3, above, plus any extensions thereof allowed in accordance with the EXHIBIT "B" GENERAL CONDITIONS. They also recognize the delays, expense and difficulties involved in the proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER two hundred and 00/100 dollars (\$200.00) for each day that expires after the time specified in Article 3 for Substantial Completion, plus any monies paid by the OWNER for additional engineering and inspection services until the Work is substantially complete. After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay the OWNER one hundred and 00/100 (\$100.00) for each day that expires after the time specified in Article 3 for completion of Work and readiness for final payment, plus any monies paid by the OWNER for additional engineering and inspection services.

Article 6. CONTRACT PRICE

CONTRACTOR shall provide OWNER, unless directed by the OWNER otherwise, a quote as per the attached Exhibit D rates for each emergency repair CONTRACTOR is called to perform.

Article 7. PAYMENT PROCEDURES

7.1 CONTRACTOR shall submit Applications for Payment in accordance with the EXHIBIT "B" GENERAL CONDITIONS. Applications for Payment will be processed by OWNER as provided in the EXHIBIT "B" GENERAL CONDITIONS.

7.2 Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by OWNER, on or about the 1st day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in the EXHIBIT "B" GENERAL CONDITIONS (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

7.2.1 Ten percent (10%) of payment for Work completed will be withheld by OWNER as retainage, in accordance with Florida Statute 255.078 as amended.

7.2.2 Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 90% of the Contract Price, less such amounts as OWNER shall determine, or OWNER may withhold, in accordance with the EXHIBIT "B" GENERAL CONDITIONS.

7.3 Final Payment. Upon final completion and acceptance of the Work in accordance with the EXHIBIT "B" GENERAL CONDITIONS, OWNER shall pay the remainder of the Contract Price as recommended by OWNER as provided in said EXHIBIT "B" GENERAL CONDITIONS.

Article 8. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

8.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract documents,

Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

8.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the bid, and accepts the determination set forth in the bid of the extent of the technical data contained in such reports and Drawings upon which CONTRACTOR is entitled to reply.

8.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies in addition to or to supplement physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with other terms and conditions of the Contract Documents, including specifically the provisions of the EXHIBIT "B" GENERAL CONDITIONS; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

8.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, or investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

8.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

Article 9. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of this Agreement and the following Exhibits, attached hereto and by reference incorporated herein and made a part hereof:

Exhibit "A" – RFP, including, but not limited to, original IFB, specifications, drawings, exhibits to the IFB, insurance requirements and any addenda issued.

Exhibit "B" – EXHIBIT "B" GENERAL CONDITIONS

Exhibit “C” – Supplementary Conditions

Exhibit “D” – All documentation submitted by the CONTRACTOR; including, but not limited to, CONTRACTOR’s Bid Pages, CONTRACTOR’s sworn statement on drug-free workplace, CONTRACTOR’S insurance certificate, any documentation submitted by the CONTRACTOR prior and after award in relation to the IFB and this Agreement

Exhibit “E” – Payment, Performance bonds and/or other performance security

This Agreement and the exhibits listed above, including any approved amendments to the Agreement comprise the entirety of the contract documents between the CITY and CONTRACTOR. This Agreement may only be amended, modified or supplemented as provided in Exhibit “B”, General Conditions.

Any inconsistency in this Agreement and its exhibits listed above shall be resolved by giving precedence in the following order:

- a) This Agreement
- b) Exhibit “B”, General Conditions
- c) Exhibit “C”, Supplementary Conditions
- d) Exhibit “A”, IFB, addenda and documentation

Article 10. MISCELLANEOUS

10.1 Terms used in this Agreement which are defined in the EXHIBIT “B” GENERAL CONDITIONS will have the meanings indicated in the EXHIBIT “B” GENERAL CONDITIONS.

10.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the Contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

10.4 If any work by CONTRACTOR requires trenching as defined under Florida Statute 553.60, CONTRACTOR shall comply with all requirements of the Statute as amended.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Witnesses:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 20____ by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

“CONTRACTOR”

Man-Con Incorporated

Witnesses:

By: _____
Anthony J. Mancini, Vice President

(Print or Type Name)

(Print or Type Name)

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Anthony J. Mancini as Vice President of Man-Con, Incorporated, a Florida corporation on behalf of the corporation. He is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number