



Hallandale Beach
PROGRESS. INNOVATION. OPPORTUNITY.

**REQUEST FOR PROPOSAL
(RFP) # FY 2014-2015-016**

**DESIGN BUILD
DESIGN BUILD FOSTER PARK PLAZA
CONSULTANTS' COMPETITIVE NEGOTIATION ACT (CCNA)**

**EXHIBIT II TERMS AND CONDITIONS, FORMS
AND AGREEMENT**

**PREPARED BY:
CITY OF HALLANDALE BEACH
CITY MANAGER'S OFFICE AND
PROCUREMENT DEPARTMENT**

I. SUBMISSION AND RECEIPT OF PROPOSALS

1. Proposals to receive consideration must be received on or prior to the specified time and date of opening, as designated in the proposal.
2. Unless otherwise specified, firms **MUST** use the proposal form(s) furnished by the City. Failure to do so may be cause for rejection of proposal. Removal of any part of the proposal forms may invalidate proposal.
3. Proposals having any erasure or corrections **MUST** be initialed by the Proposer in **INK**. Proposals shall be signed in INK; all forms shall be typewritten or printed with pen and ink.

II. GENERAL TERMS AND CONDITIONS

These General Terms and Conditions apply to all responses made to the City of Hallandale Beach by all prospective Proposers. The City of Hallandale Beach reserves the right to reject any or all proposals, to waive any informalities or irregularities in any proposals received, to re-advertise for proposals, to enter into contract negotiations with the selected Proposer(s) or take any other actions that may be deemed to be in the best interest of the City of Hallandale Beach.

1. CONE OF SILENCE:

- (a) *Purpose.* A cone of silence shall be applicable to all requests for proposal (RFP), invitations to bid (ITB), RFLI, or any other advertised solicitations for the provision of goods and services, professional services, and public works or improvements for amounts greater than fifty thousand (\$50,000) dollars, unless otherwise exempted in this section.
- (b) *Definition.* The term "cone of silence" means a prohibition on:
 - (1) Any communication regarding a particular RFP, RFQ, ITB, RFLI, or any other advertised solicitation between a potential proposer, offeror, respondent, bidder, lobbyist or consultant and the City's staff including, but not limited to, the City Manager and her staff;
 - (2) Any communication regarding a particular RFP, RFQ, RFLI, ITB or any other advertised solicitation between a potential proposer, offeror, respondent, bidder, lobbyist, or consultant and any member of the selection/evaluation committee therefor;

- (3) Any communication regarding a particular RFP, RFQ, RFLI, ITB or any other advertised solicitation between a potential proposer, offeror, respondent, bidder, lobbyist, or consultant and the mayor and commissioners and their respective staff.
- (c) *Exemptions.* Notwithstanding the foregoing, the cone of silence shall not apply to:
- (1) Communications between a potential proposer, offeror, respondent, bidder, consultant and City purchasing staff, prior to bid opening date or receipt of proposals, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;
 - (2) Duly noticed pre-bid/proposal conferences and site inspections;
 - (3) Duly noticed site visits to determine the competency of bidders/proposers regarding a particular solicitation during the time period between the opening of bids/receipt of proposals and the time the City Manager presents her written recommendation to the city commission;
 - (4) Emergency procurements;
 - (5) Communications with the City Attorney;
 - (6) Sole source procurements;
 - (7) Those purchases that are exempted from competitive requirements in accordance with Code of Ordinances, Section 23-8
 - (8) Bid waivers;
 - (9) Oral presentations before selection/evaluation committees and communications occurring during duly noticed meetings of selection/evaluation committees;
 - (10) Public presentations made to the city commission and communications occurring during any duly noticed public meeting;
 - (11) Communications in connection with the collection of industry comments or the performance of market research regarding a particular RFP, RFQ, RFLI, ITB or any other advertised solicitation by the purchasing staff;
 - (12) Contract negotiations that occur after an award; and
 - (13) Any communication regarding a particular RFP, RFQ, RFLI, ITB or any other advertised solicitation between the City Manager and her staff, and the mayor and city commission and their staff.
- (d) *Procedure.*
- (1) *Imposition.* A cone of silence shall be imposed upon each RFP, RFQ, RFLI, ITB or any other advertised solicitation when the solicitation is advertised. At the time of imposition of the cone of silence, the city manager or her designee shall issue a notice thereof to the affected department, the city

clerk, mayor and city commission and shall include in any advertised solicitation a statement disclosing that the solicitation is subject to the cone of silence.

- (2) Termination; city commission awarding authority. Except as otherwise provided herein, the cone of silence shall terminate at the date and time of the city commission meeting where the award will be made; provided, however, that if the city commission defers the matter to a future date, the cone of silence shall be re-imposed until such time as the matter is brought back before the city commission for further deliberation. In the event the city commission decides to reject all bids, then the cone of silence shall be lifted.
 - (3) City Manager awarding authority. Except as otherwise provided herein, the cone of silence shall terminate at the time the originating department issues a written recommendation to the city manager; provided, however, that if the city manager refers the recommendation back for further review, the cone of silence shall be reinstated until such time as the city manager issues a recommendation for award pending the bid protest period.
- (e) Penalties. Violation of the cone of silence by a particular bidder or proposer shall render the award to said bidder or proposer voidable by the city commission. A violation of this section by a particular bidder, proposer, offeror, respondent, lobbyist or consultant shall subject said bidder, proposer, offeror, respondent, lobbyist or consultant to five hundred (\$500.00) dollar fine per violation and debarment.

2. DOMESTIC PARTNER BENEFITS REQUIREMENT:

A requirement for City of Hallandale Beach Contractors to provide equal benefits for domestic partners. Contractors with five (5) or more employees contracting with the City of Hallandale Beach, in an amount valued over \$50,000, provide benefits to employees' spouses and the children of spouses. All firms must complete and provide with their response the Domestic Partnership Certification Form.

Equal Benefits Requirements

As part of the competitive solicitation and procurement process a Contractor seeking a Contract shall certify that upon award of a Contract it will provide benefits to Domestic Partners of its employees on the same basis as it provides benefits to employees' spouses. The certification shall be in writing and signed by an authorized officer of the Contractor.

Failure to provide such certification shall result in a Contractor being deemed non-responsive.

Contracts

Every Contract, unless otherwise exempt as per the section below, shall contain language that obligates the Contractor to comply with the applicable provisions of this section. The Contract shall include provisions for the following:

- (i) The Contractor certifies and represents that it will comply with this section during the entire term of the Contract.
- (ii) The failure of the Contractor to comply with this section shall be deemed to be a material breach of the contract, entitling the City to pursue any remedy stated below or any remedy provided under applicable law.
- (iii) The City may terminate the Contract if the Contractor fails to comply with this section.
- (iv) The City may retain all monies due or to become due until the Contractor complies with this section.

Exception and waiver

The provision of this section shall not apply where:

- a. The contractor provides benefits neither to employees' spouses nor spouse's dependents.
- b. The contractor is a religious organization, association, society or any non-profit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.
- c. The contractor is a governmental entity.
- d. The contract is for the sale or lease of property.
- e. The covered contract is necessary to respond to an emergency.
- f. The provision of this section would violate grant requirements, the laws, rules or regulations of federal or state law.
- g. The city commission waives compliance of this section in the best interests of the city, including but not limited to, the following circumstances:

1. Where only one (1) solicitation response is received.
2. Where more than one (1) solicitation response is received, but the solicitation demonstrates that none of the proposed solicitations can comply with the requirements of this section.

3. LOBBYIST REGISTRATION:

Registration. Every lobbyist shall file the registration with the City Clerk's Office on the form provided by the City. Under no circumstances shall a lobbyist working for the City and lobby the City Commission.

Annual registration. Commencing January 1, 2005, and annually thereafter, every lobbyist shall submit to the City Clerk's office a signed statement under oath identifying themselves and their respective principals or clients and/or the party they represented on City matters over the past year or in accordance with administrative policy. Such annual disclosure statements shall be submitted on the form provided by the City Clerk's Office. A fee of \$50.00 shall be paid to the City for annual lobbyist registration.

4. SCRUTINIZED COMPANIES:

The City, entering into a contract for goods or services of \$1 million or more, entered into or renewed on or after July 1, 2011, can terminate such contract at the option of the City if the firm awarded the contract is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

5. PROPOSAL ACCEPTANCE PERIOD:

Proposer warrants by virtue of submitting a proposal that costs, terms and conditions quoted in the Proposal will remain firm for acceptance by City Commission until such time as the City Commission approves award of contract.

6. PUBLIC RECORDS:

Sealed bids, or replies received by an agency pursuant to a competitive solicitation are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier. In the event the City Commission elects to reject all bids and indicates its intent to reissue the solicitation of bids, the submitted proposals remain exempted from s. 119.07(1) and s. 24(a) Art. I of the State Constitution

until the City gives notice of its intent to award the contract under the reissued solicitation.

If the bidder/proposer believes any of the information contained in his or her response is exempt from the Public Records Law, then the Proposer, must in his or her response, specifically identify the material which is deemed to be exempt and cite the legal authority for the exemption. City's determination of whether an exemption applies shall be final, and bidder/proposer agrees to hold harmless and releases the City, and to defend, indemnify, by Counsel chosen by the City Attorney, the City and City's officers, employees, and agents against any loss or damages incurred by any person or entity as a result of the City's treatment of records as public records.

7. ADDENDA AND MODIFICATIONS:

All addenda and other modifications to the documents or this RFP made prior to the time and date of proposal opening shall be issued as separate documents identified as changes to the proposal project document. The City shall make reasonable efforts to issue addenda within seven days prior to proposal opening.

If any addenda are issued, the City will attempt to notify known prospective Proposers. Addenda to this solicitation will be posted on the City's webpage <http://fl-hallandalebeach.civicplus.com/index.aspx?nid=417>.

Firms are solely responsible to check the website or contact the Procurement Department prior to the Proposal submittal deadline to ensure addenda has not been released. All Proposals shall be construed as though all addenda had been received and acknowledged and the submission of his/her Proposal shall constitute acknowledgment of receipt of all addenda, whether or not received by him/her. It is the responsibility of each prospective Proposer to verify that he/she has received all addenda issued before depositing the Proposal with the City.

8. PERFORMANCE:

It is the intention of the City to obtain the products and services as specified herein from a source of supply that will give prompt and convenient service. The awarded Proposer must be able to perform as required under the Scope of Service. Any failure of Contractor to comply with these conditions may be cause for terminating any resulting contract immediately upon notice by the City. The City reserves the right to obtain these products and services from other sources, when necessary, should Contractor be unable to perform on a timely basis and such delay may cause harm to the using department or City residents.

9. DELIVERY:

Time is of the essence. City reserves the right to cancel orders, or any part thereof, without obligation, if delivery is not made at the time specified on the proposal form.

10. DEFAULT PROVISION:

In case of default by the successful firm the City may procure the products or services from other sources and hold the firm responsible for any excess cost occasioned or incurred thereby.

11. COPYRIGHTS AND/OR PATENT RIGHTS:

Proposer warrants that there has been no violation of copyrights and/or patent rights in the manufacturing, producing or selling the goods, shipped or ordered, as a result of this proposal and the Proposer agrees to hold the City harmless from any and all liability, loss, or expense occasioned by any such violation.

12. TAXES:

The City is exempt from any taxes imposed by the State of Florida and/or Federal Government. State Sales Tax Exemption Certificate No. 85-8015922477C-2; United States Treasury Department. Exemption Certificates provided on request.

13. FAILURE TO SUBMIT PROPOSAL:

If your firm does not submit a proposal, PLEASE return the form, "**UNABLE TO SUBMIT A PROPOSAL**", stating thereon and request that your name be retained on the City mailing list, otherwise, your firm's name will be removed from the City's bid mailing list.

14. SIGNED PROPOSAL CONSIDERED AN OFFER:

The signed Proposal shall be considered an offer on the part of the Proposer or firm, which offer shall be deemed accepted upon approval by the City Commission of the City of Hallandale Beach, Florida and in case of default on the part of the successful Proposer or firm, after such acceptance, the City may take such action as it deems appropriate, including legal action, for damages or specific performance.

15. LIABILITY, INSURANCE, LICENSES AND PERMITS:

Where Proposers are required to enter onto City of Hallandale Beach property to deliver materials or perform work or services, as a result of proposal award, the Proposer will assume full duty, obligation and expense of obtaining all necessary licenses, permits, inspections and insurance, as required. The Proposer shall be liable for any damage or loss to the City occasioned by negligence of the Proposer (or agent) or any person the Proposer has designated in the completion of a contract as a result of the proposal.

16. RESERVATION FOR REJECTION AND AWARD:

The City reserves the right to accept or reject any or all proposals, to waive irregularities and technicalities, and to request re-submission of proposals. The City also reserves the right to award the contract on such material the City deems will best serve its interests.

The City also reserves the right to waive minor variations to specifications (interpretation of minor variations will be made by applicable City Procurement personnel). In addition, the City reserves the right to cancel any contract by giving thirty (30) days written notice. **The City reserves the right to negotiate the type and cost of specific types of services to be purchased. These negotiations may be held with one or more proposers, as is deemed in the best interest of the City.**

17. OMISSION OF INFORMATION:

Any omissions of detailed specifications stated herein, that would render the materials/services not suitable for use as specified, will not relieve the Proposer from responsibility.

18. INSPECTION OF FACILITIES / SITE VISIT:

Proposers wishing to inspect facilities where services are to be rendered must make an appointment by calling the City's Procurement Department.

19. PROPOSER'S COSTS:

The City shall not be liable for any costs incurred by proposers in response to the RFP.

20. NONDISCRIMINATION, EQUAL OPPORTUNITY AND AMERICANS WITH DISABILITIES ACT

CONTRACTOR shall not discriminate against any person in its operations and activities in its use or expenditure of funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines and standards.

CONTRACTOR's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16 ½), gender identity, gender expression, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

CONTRACTOR shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, gender identity, gender expression, national origin, marital status, political affiliation, or physical or mental disability. In addition, CONTRACTOR shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions or employment, training (including apprenticeship, and accessibility).

CONTRACTOR shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16 ½), gender identity, gender expression, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff; termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

CONTRACTOR shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16 ½) in performing any services pursuant to this Agreement.

21. PROTEST PROCEDURES:

Any party may present a written protest about the award of a contract as a result of an RFP, RFQ or Bid to the Director of Procurement. Emergency procurements, purchases for goods, supplies, equipment, and services, the estimated cost of which does not exceed fifty thousand (\$50,000.00) dollars, are not subject to protests.

(1) Time for Protest

The submission of a protest about the award of a contract, as a result of an RFP, RFQ or Bid, to the Director of Procurement must be made no later than ten (10) calendar days of approval of Notice of Award.

(2) Form and Content of Protest

The protest shall be filed in writing with the Director of Procurement and shall state the contested information about the RFP, RFQ or Bid.

The Procurement Director will provide a copy of the written protest to the City Attorney and/or City Attorney and other appropriate City staff.

(3) Protest Filing Fee

The written protest must be accompanied by a filing fee in the form of a money order or cashier's check payable to the City of Hallandale Beach in an amount equal to one (1%) percent of the contract value, which resulted from an RFP, RFQ or Bid, but no greater than five thousand (\$5,000.00) dollars. The filing fee shall guarantee the payment of all costs which may be adjudged against the protestor in any administrative or court proceeding. If a protest is upheld by the Director of Procurement, the filing fee shall be refunded to the protestor less any costs assessed under section 4. "Costs" below.

(4) Costs

All costs accrued from a protest shall be assumed by the protestor.

(5) Authority to resolve protests

The Procurement Director shall have the authority, subject to the approval of the City Manager Executive Director and the City Attorney, to settle and resolve any written protest within thirty (30) days after receipt of the written protest.

(6) Special Magistrate

In the event the protest is not resolved by the Procurement Director, a hearing shall be scheduled by the City before a special magistrate selected by the City, who shall only determine whether procedural due process has been afforded, whether

the essential requirements of law have been observed, and whether the Procurement Director's finding are arbitrary, capricious, or an abuse of discretion. Any hearing shall be limited to two (2) hours per side, unless the special magistrate rules otherwise. This requirement is a jurisdictional prerequisite to the institution of any civil action regarding the same subject matter.

22. QUALIFICATIONS OF PROPOSER:

Proposals shall be considered only from firms normally engaged in performing the type of work specified within the RFP Project Document. The firm proposing must have adequate organization, facilities, equipment, and personnel to ensure prompt and efficient service to the City. In determining a Proposer's responsibility and ability to perform the contract, the City has the right to investigate the financial condition, experience record, personnel, equipment, facilities, and organization of the Proposer. The City has the right to conduct further investigation of the firm's responsibility. The unreasonable failure of Proposer or firm to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for determination of non-responsibility with respect to such Proposer or firm.

23. TAX SAVINGS DIRECT PURCHASES (TSDP)

The City of Hallandale Beach is recognized by the State of Florida as being exempt from state sales tax and use tax and is therefore, qualified for an exemption from Florida and all other state sales taxes on the purchase of tangible personal property if certain criteria are met. The City may realize savings of sales tax on selected material and equipment needed for use in public works contracts. Public works contracts are projects for public use or enjoyment, financed and owned by the City, in which private firms install tangible property that becomes part of a City facility. See Rule 12A-1.094 and Section 212.08(6) Florida Statutes.

The City will implement the TSDP for projects of \$1 million or above and apply it if applicable to this project.

FORMS

ALL FIRMS' MUST COMPLETE, SIGN AND RETURN ALL FORMS WITH
THE FIRM'S SUBMITTAL.

ALL FIRMS THAT ARE SUBMITTING A RESPONSE TO THIS RFP, EITHER
THROUGH A JOINT VENTURE, A JOINT COLLABORATIVE PROPOSAL,
ETC. MUST SIGN
AND SUBMIT ALL FORMS AS PART OF THE RESPONSE TO THIS RFP

UNABLE TO SUBMIT A RESPONSE? We sincerely hope this is not the case. If your firm cannot submit a proposal at this time, please provide the information requested in the space provided below and return form to procurement_department@cohb.org.

HAVE RECEIVED THE RFP

(COMPANY NAME)

UNABLE TO RESPOND TO THE RFP AT THIS TIME DUE TO THE FOLLOWING REASONS:

COMPLETE INFORMATION BELOW:

SIGNATURE:	
TITLE:	
STREET ADDRESS: (OR)	
P.O. BOX:	
CITY:	
STATE:	ZIP CODE:
TELEPHONE/AREA CODE: ()	
EMAIL ADDRESS:	

RETURN THIS UNABLE TO SUBMIT FORM ONLY TO EMAIL ABOVE:
CITY OF HALLANDALE BEACH
PROCUREMENT DEPARTMENT
400 SOUTH FEDERAL HIGHWAY, ROOM 242
HALLANDALE BEACH, FL 33009
TITLED: RFP # FY 2013-2014-016 DESIGN BUILD FOSTER PARK PLAZA

THIS PROPOSAL SUBMITTED BY:

COMPANY:
ADDRESS:
CITY & STATE:
ZIP CODE:
TELEPHONE:
DATE OF RFP:
FACSIMILE NUMBER:
E-MAIL ADDRESS:
FEDERAL ID NUMBER:
NAME & TITLE PRINTED:
SIGNED BY:

WE (I) the above signed hereby agree to furnish the item(s), service(s) and have read all attachments including specifications, terms and conditions and fully understand what is required.

The Request for Proposals, Specifications, Proposal Forms, and/or any other pertinent document form a part of this proposal and by reference made a part hereof. Signature indicates acceptance of all terms and conditions of the RFP.

The City's preferred method of payment is listed below in order of preference:

- 1) E-payables – it is an electronic method of payment. Vendors are provided a credit card by the City's bank, Suntrust. Invoice payments will be transferred/deposited to the credit card and the vendor will receive a remittance via e-mail. The Vendor is required to swipe the card to receive the funds. Invoice payments will be processed and issued upon invoice receipt.
- 2) PCard - Vendor must be able to accept Visa credit card payments. Invoice payments are processed and issued upon invoice receipt.
- 3) Automated Clearing House (ACH) payment - A direct bank draft to a vendor's bank account. This method will only be authorized by the City if your firm provides a discount to the City for this payment method. Payments made within 30 days require a 1% discount. Payments made within 20 days require a 2% discount. Payments made within 10 days require a 3% discount. Invoice minimum amount is \$500 to receive payment via ACH.

Firm to choose which payment term firm will accept for this project.
<p>1. E-payables – it is an electronic method of payment. Vendors are provided a credit card by the City's bank, Suntrust. Invoice payments will be transferred/deposited to the credit card and the vendor will receive a remittance via e-mail. The Vendor is required to swipe the card to receive the funds. Invoice payments will be processed and issued upon invoice receipt. _____ Yes _____ No</p>
<p>2. PCard - Vendor must be able to accept Visa credit card payments. Invoice payments are processed and issued upon invoice receipt. Firm will accept this payment term _____ Yes _____ No</p>
<p>3. Automated Clearing House (ACH) payment - A direct bank draft to a vendor's bank account. This method will only be authorized by the City if your firm provides a discount to the City for this payment method. Payments made within 30 days require a 1% discount. Payments made within 20 days require a 2% discount. Payments made within 10 days require a 3% discount. Invoice minimum amount is \$500 to receive payment via ACH. Firm will accept this payment term _____ Yes _____ No</p>

PUBLIC ENTITY CRIME FORM

**SWORN STATEMENT PURSUANT TO SECTION 287.133(2) (a),
FLORIDA STATUTES,
PUBLIC ENTITY CRIME INFORMATION**

“A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.”

By: _____

Title: _____

Signed and Sealed _____ day of _____, 2015

Domestic Partnership Certification Form
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This form must be completed and submitted with your firm's submittal.

Equal Benefits Requirements As part of the competitive solicitation and procurement process a Contractor seeking a Contract shall certify that upon award of a Contract it will provide benefits to Domestic Partners of its employees on the same basis as it provides benefits to employees' spouses. Failure to provide such certification shall result in a Contractor being deemed non-responsive.

Domestic Partner Benefits Requirement means a requirement for City Contractors to provide equal benefits for domestic partners. Contractors with five (5) or more employees contracting with City, in an amount valued over \$50,000, provide benefits to employees' spouses and the children of spouses.

The firm providing a response, by virtue of the signature below, certifies that it is aware of the requirements of City of Hallandale Beach Ordinance 2013-03 Domestic Partnership Benefits Requirement, and certifies the following:

Check only one box below:

- 1. The Contractor certifies and represents that it will comply during the entire term of the Contract with the conditions of the Ordinance 2013-03, Section 23-3, Domestic Partner Benefits Requirement of the City of Hallandale Beach, or
- 2. The firm does not need to comply with the conditions of Ordinance 2013-03, Section 23-3, Domestic Partner Benefits Requirement of the City of Hallandale Beach, because of allowable exemption: **(Check only one box below):**
 - The firm's price for the contract term awarded is \$50,000 or less.
 - The firm employs less than five (5) employees.
 - The firm does not provide benefits to employees' spouses nor spouse's dependents.
 - The firm is a religious organization, association, society, or non-profit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.
 - The firm is a government entity.
 - The contract is for the sale or lease of property.

- The covered contract is necessary to respond to an emergency.
- The provision of Ordinance 2013-03, Section 23-3 Definition, of the City of Hallandale Beach, would violate grant requirements, the laws, rules or regulations of federal or state law.

I, _____,
Name of authorized Officer per Sunbiz Title

of _____
Name of Firm as it appears on Sunbiz

hereby attest that I have the authority to sign this notarized certification and certify that the above referenced information is true, complete and correct.

Signature Print Name

STATE OF _____

COUNTY OF _____

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF
_____, 20__ BY _____

TO ME PERSONALLY KNOWN OR PRODUCED IDENTIFICATION:

(type of ID)

Signature of Notary Commission expires

Print Name of Notary Public

Seal Below:

CONFLICT OF INTEREST NOTIFICATION REQUIREMENT QUESTIONNAIRE

If you are an employee, board member, elected official(s) or an immediate family member of any such person, please indicate the relationship below. Pursuant to the City of Hallandale Beach Standards of ethics any potential conflict of interest must be disclosed and if requested, obtain a conflict of interest opinion or waiver from the Board of Directors prior to entering into a contract with the City.

1. Name of firm submitting a response to this RFP.

2. Describe each affiliation or business relationship with an employee, board member, elected official(s) or an immediate family member of any such person of the City of Hallandale Beach or Hallandale Beach Community Redevelopment Agency, if none so state.

3. Name of City of Hallandale Beach or Hallandale Beach Community Redevelopment Agency employee, board member, elected official(s) or immediate family member with whom filer/respondent/firm has affiliation or business relationship, if none so state.

4. Describe any other affiliation or business relationship that might cause a conflict of interest, if none so state.

CONFLICT OF INTEREST NOTIFICATION REQUIREMENT QUESTIONNAIRE

5.

Signature of person/firm

Date

DRUG-FREE WORKPLACE FORM

The undersigned vendor in accordance with Florida Statute 287.087

Hereby certified that _____ does:
(Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of or plea of guilty or nolo contendere to, any violation of Chapter 1893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As a person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

DATE:	BIDDER'S SIGNATURE:
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DESIGN-BUILD
AGREEMENT
FOSTER PARK PLAZA

THIS AGREEMENT (this "Agreement"), made and entered into the ____ day of _____, 201_ by and between:

CLIENT:

CITY OF HALLANDALE BEACH, FLORIDA
a municipal corporation, and its assigns
400 South Federal Highway
Hallandale Beach, FL 33009
(hereinafter to referred to as "CITY"), and

AND

DESIGN BUILDER:

a Florida corporation
(hereinafter referred to as "CONTRACTOR")

PROJECT:

Foster Park Plaza hereinafter referred to as the "PROJECT" and which shall be further defined in this Agreement)

This Agreement may refer to the CLIENT or CONTRACTOR, individually, or as "Party" or as "Parties."

WHEREAS, the CITY, has identified a certain parcels of real property located in the CITY (the "Land" specifically described in Exhibit "A"), which the CITY owns and upon which it intends to have constructed site improvements consisting of a Park Plaza and all incidentals thereto including as further defined in this Agreement;

WHEREAS, the CITY wishes to retain the CONTRACTOR to perform all design, construction and other services associated with and/or necessary to timely construct a code compliant Project within the Guaranteed Maximum Price (hereinafter referred to as "Design-Build" services which shall be further defined in this Agreement);

WHEREAS, the CONTRACTOR agrees to complete the Design-Build services within the contract times and for a specified and fixed contract price as set forth in this Agreement; and

WHEREAS, CITY has determined that entering into this Agreement with CONTRACTOR to provide the Design-Build services for this Project is in the best interests of the health, safety, and welfare of the citizens and residents of Broward County and of the CITY of Hallandale Beach, Florida; and

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and undertakings and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties do mutually covenant and agree as follows:

ARTICLE 1 - DEFINITIONS ARTICLE 1 - DEFINITIONS

Wherever used in this Agreement or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.1 Agreement - The written agreement between the CITY and CONTRACTOR covering the Work to be performed including other Contract Documents that are attached to the Agreement or made a part thereof.

1.2 Building Department - The Building Department of the CITY of Hallandale Beach, Florida, or its authorized employees.

1.3 Change Order - A document which is signed by the CONTRACTOR and CITY, through its duly designated and formally authorized agent, which authorizes the performance of the Extra Work. The CONTRACTOR shall not perform Extra Work of any kind, however characterized, for which it expects to claim additional compensation without written authorization from the CITY. If the CITY authorizes the CONTRACTOR to perform Extra Work, then prior to performing the Extra Work, the CITY and CONTRACTOR shall enter into a written Change Order specifying the services or work to be performed, the additional Contract Time that may be required and the compensation to be paid for this Extra Work. Any Extra Work performed by the CONTRACTOR without the CITY'S prior written approval shall not be compensable, without exception. The CONTRACTOR intentionally, knowingly and voluntarily waives any claim for unjust enrichment or quantum merit with respect to any work performed in the absence of a written Change Order. Any waiver of this provision must be in writing and signed by both Parties and in no event shall such written waiver extend to any subsequent event.

1.4 CITY - The CITY Commission of the CITY of Hallandale Beach, Florida and its designated official authorized to provide approval or consent with respect to this Agreement.

1.5 City Manager- City Manager of the City of Hallandale Beach or his/her designee.

1.6 Contract Documents - The Contract Documents consist of the Drawings, Plans and Specifications, Non-Collusive Affidavit, Public Entity Crimes Form, this Agreement, Notice of Award, Notice to Proceed, Certificate(s) of Insurance, Payment and Performance Bonds and any additional documents which are required to be submitted under this Agreement, and all Written Amendments and Change Orders issued on or after the effective date of the Contract.

1.7 Defective - An adjective which when modifying the Work refers to Work that is defective under Applicable Building Codes and General Industry Standards, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to final payment.

1.8 Design-Build Work – Shall be defined to include Park Plaza, all design services associated with and/or necessary to timely construct the code compliant Project and construction services associated with and/or necessary to timely complete the Project within the Guaranteed Maximum Price, including, but not limited to, all site related work without limitation, furnishing all labor and services, the procurement of all equipment and materials reasonably inferable from the Contract Documents that will be used and/or incorporated into the Project.

1.9 Drawings (also referred to as “Plans”) – shall be defined to mean the “Issued for Construction” design package, which are signed and sealed by a Florida Licensed Engineer and which are sufficient to secure a permit, that the CONTRACTOR is obligated to produce to the complete satisfaction of the CITY and which is deemed one hundred percent (100%) complete for the construction of the entire Project.

1.10 Effective Date of the Agreement - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

1.11 Extra Work - shall be defined to mean work totally outside the scope of the Drawings, Specifications and/or the contemplation of the Contract Documents. All extra work shall require an executed change order from the designated official authorized to provide the approval. Any Extra Work performed by the CONTRACTOR without the CITY’S prior written approval shall not be compensable without exception. Any waiver of this provision must be in writing and signed by both Parties and in no event shall such written waiver extend to any subsequent event.

1.12 Field Order - A written order issued by City Manager or designee which orders minor changes in the work but which does not involve a change in the Guaranteed Maximum Price or the Contract Time.

1.13 Guaranteed Maximum Price – shall be defined to mean that the CONTRACTOR warrants and guarantees that the maximum price to the CITY for all of the Design-Build Work on the Project shall be Dollars (\$0) (hereinafter referred to as “GMP” and/or “Contract Price”). The GMP is deemed to include costs, fees, prices, expenses, overhead, profit, including all sales, use, consumer and other taxes mandated by applicable law, and any escalation associated therewith with respect to all equipment material and labor through the completion of the entire Project. A portion of the GMP shall be attributed to the design phase of the Project and the remainder attributed to the construction phase.

1.14 Notice of Award - The written notice by CITY to the CONTRACTOR stating that the CONTRACTOR is awarded the privilege to design and construct the Project on the condition that the Parties are able to negotiate, to the CITY’S complete satisfaction, and execute an Agreement for the design and construction of the entire Project.

1.15 Notice to Proceed - A written notice given by CITY to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start the design and construction phases under this Agreement.

1.16 Specifications – Shall be defined to mean the written technical descriptions, that accompany the Drawings of all materials, equipment and other construction systems, including the quantity and quality associated therewith, as well as other standards and workmanship as applied to the Work and certain administrative details applicable thereto that the CONTRACTOR is obligated to prepare to the complete satisfaction of the CITY which is deemed one hundred percent (100%) complete for the construction of the entire Project

1.17 Project – The Project means the total and complete design and construction a Park Plaza consistent with structural design and aesthetic standards of City Community Center located at Foster Park, associated landscape, irrigation work, underground drainage system, and as generally described in a schematic proposal submitted to the CITY on , and all other incidentals thereto identified by the CITY during the design and construction phases of the Project which the CITY concludes, at its sole discretion, are required to be included complete the Project. The schematic proposal is attached hereto as Exhibit “B”, as may be modified in accordance with 5.1 3 of this Agreement.

1.18 Subcontractor - An individual, firm or corporation having a direct Contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.

1.19 Supplier - A manufacturer, fabricator, supplier, distributor, materialman or vendor.

1.20 Work – Shall be defined to include all of the services under the definition of Design-Build.

1.21 Work Change Directive - A written directive to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by CITY and recommended by City Manager or designee ordering an addition, deletion or revision in the Work. A Work Change Directive shall not change the Guaranteed Maximum Price or Time, but demonstrates a desire that the parties expect that the change directed or documented by a Work Change Directive may be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Guaranteed Maximum Price or Contract Time. Notwithstanding the foregoing, the CONTRACTOR understands and agrees that the decision by the CITY to sign a Change Order is completely and totally within the CITY'S discretion and that if the CITY decides not to execute a Change Order, the CONTRACTOR shall not be entitled to recover any compensation whatsoever for the work performed under the Work Change Directive. The CONTRACTOR understands and agrees that any work, however characterized, performed by the CONTRACTOR without the CITY'S prior written approval shall not be compensable, without exception. The CONTRACTOR intentionally, knowingly and voluntarily waives any claim for unjust enrichment or quantum meruit with respect to any work performed in the absence of a written Change Order. Any waiver of this provision must be in writing and signed by both Parties and in no event shall such written waiver extend to any subsequent event.

1.22 Written Amendment - A written amendment of the Contract Documents, signed by CITY and CONTRACTOR on or after the Effective Date of the Agreement.

ARTICLE 2 - CONTRACT DOCUMENTS ARTICLE 2 - CONTRACT DOCUMENTS

2.1 Enumeration of Contract Documents.

The Contract Documents which comprise the entire agreement between CITY and CONTRACTOR are attached to this Agreement, made a part hereof and consist of the following:

- 2.1.1 This Agreement (pages 1-___ + Exhibits A & B + other items and documents identified on the attached Enumeration of Contract Documents).
- 2.1.2 Construction performance bond.
- 2.1.3 Construction payment bond.
- 2.1.4 Drawings and Specifications.
- 2.1.5 Insurance certificate.
- 2.1.6 Notice of Award and Notice to Proceed.
- 2.1.7 Clarifications and Exclusions.

2.1.8 All applicable provisions of State, Federal or local law.

2.1.9 Any modification, including all Change Orders, Field Orders and Written Amendments duly delivered after execution of Agreement.

2.2 Entire Agreement and Contract Interpretation.

The Contract Documents comprise the entire agreement between CITY and CONTRACTOR concerning the Work. This Agreement shall be governed by the laws of the State of Florida, without regard to its conflict of law provisions. The Contract documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with the express qualification that the Contract Documents must be read in such a manner as to afford the greatest possible protection to the CITY, including, but not limited to, ensuring that all of the Design-Build Work for the Project is completed within the warranted Guaranteed Maximum Price.

2.3 Amending and Supplementing Contract Documents.

The Contract Documents may be amended to modify the terms and conditions of the Agreement in one or more of the following ways:

2.3.1 A Change Order;

2.3.2 A Written Amendment;

2.3.3 A Work Change Directive.

2.4 Supplements, Minor Variations or Deviations.

CITY will not authorize any Change Orders to the Contract Documents, except in a manner set forth in this Agreement and allowed by law. CONTRACTOR covenants and agrees that CITY shall not be responsible for the costs above those set forth herein unless the same are set forth in a Change Order. Any and all Change Orders issued by the authority of an entity not a party to this Agreement shall not be compensated by CITY, and shall not constitute a Change Order.

2.5 Representation of CONTRACTOR.

Execution of the Contract by the CONTRACTOR is a representation that CONTRACTOR has visited the site and become familiar with the local conditions under which the Work is to be performed.

2.6 Before Commencing Operations.

Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon.

ARTICLE 3 – SCOPE OF WORK

3.1 Scope of Work.

3.1.1 The CONTRACTOR shall provide services for the designing and construction of the Project as described in the Contract Documents with all required minimum standards of construction as required by the Contract Documents. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of contract award, except as may be otherwise specifically stated.

3.1.2 The CONTRACTOR agrees to provide each and every item of expense necessary for the design and construction of the Project in accordance with and within the scope of the Guaranteed Maximum Price. It is agreed between the Parties that the Contract Documents describe a functionally complete Project consisting of total design performed by the design professional and construction to be completed in accordance with the Contract Documents. It is further agreed that the CONTRACTOR warrants that any and all Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied by the CONTRACTOR at its own costs within the Guaranteed Maximum Price, whether or not specifically called for. The CONTRACTOR warrants and accepts that any and all repair work required during the construction phase, irrespective of the cause, shall be deemed the responsibility of the CONTRACTOR and included in the Guaranteed Maximum Price. The CONTRACTOR warrants and accepts that any and all work necessitated by inspections which is not prescribed in the Plans or Specifications, but necessitated to bring the project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures and/or considered inside the contemplation of the Contract Documents shall be deemed the responsibility of the CONTRACTOR and included in the Guaranteed Maximum Price. The CONTRACTOR warrants and accepts that all other work of any kind, however characterized, not prescribed in the Plans or Specifications, but necessitated to bring the project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures and/or considered inside the contemplation of the Contract Documents shall be deemed the responsibility of the CONTRACTOR and included in the Guaranteed Maximum Price. Finally, the CONTRACTOR accepts, understands and agrees that this provision of the Agreement is a material inducement for the CITY to enter into this Agreement

and that the CITY has indeed relied on this particular provision in making its decision to enter into this Agreement.

ARTICLE 4 - CONTRACT TIME

4.1 Time is of the Essence of this Contract.

CONTRACTOR agrees to obtain site plan approval for the Project from the City Commission of the City of Hallandale Beach no later than. CONTRACTOR further agrees to apply for a building permit for the Project with the Building Division City of Hallandale Beach no later than. The Work shall be substantially completed no later than (___ days from Notice to Proceed, or the issuance of a Temporary Certificate of Occupancy ("TCO"), whichever event occurs first. The total project shall be completed and ready for final payment within 60 days from the date certified by the Project Manager as the date of substantial completion. The Notice to Proceed shall be issued for the construction of the Project upon the submittal of an application for building permit for the Project or the approval of 90% percent design by the CITY, whichever occurs first. The CONTRACTOR shall commence on site construction of the Project no later than ninety (90) days after the City's issuance of the Notice to Proceed. CONTRACTOR agrees that all Work shall be prosecuted regularly, diligently and uninterrupted at such rate of progress as will ensure full completion thereof within the time specified. Failure to achieve timely, substantial and/or final completion shall be regarded as a breach of this Agreement and subject to the appropriate remedies including but not limited to, liability for liquidated damages in accordance with Paragraph 12.3 herein.

ARTICLE 5 CONTRACT SUM - GUARANTEED MAXIMUM PRICE

5.1 Guaranteed Maximum Price.

5.1.1 CITY shall pay CONTRACTOR in current funds as full compensation for the performance of all the Work for the design and construction of the Project which shall consist of a Park Plaza which is subject to additions and deductions by Change Order or Written Amendment as provided in this Agreement, and subject further to possible reductions as set forth in Article 6.2.1 below, the sum of (\$_____) (the "Guaranteed Maximum Price"). This Article is subject to the terms and conditions below.

5.1.2 The initial sum total of (\$_____) Dollars shall be attributed to the design phase, with the remaining amount attributed to the construction phase. Ownership in the signed and sealed 100% "Issued for Construction" set of Plans and Specifications shall vest in the CITY once a permit is issued to commence construction.

ARTICLE 6 CONTRACTOR'S RESPONSIBILITIES

6.1 Responsibilities - Construction Phase.

6.1.1 Consultation: CONTRACTOR will schedule and attend regular meetings and will consult with CITY regarding site use and improvements, and the selection of materials, building systems, and equipment.

6.1.2 Subcontractors and Suppliers: CONTRACTOR shall develop subcontractor interest in the Project and shall furnish to the CITY, information, a list of subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design. The receipt of such list shall not require the CITY to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the CITY later to object to or reject any proposed subcontractor or supplier, and is furnished by CONTRACTOR to CITY for informational purposes only. Subject to the rights of the CITY to purchase supplies and materials in furtherance of the sales tax program as described in Article 6.16 hereof, CONTRACTOR shall have authority in awarding subcontractors and purchase orders.

6.1.3 Extent of Responsibility: CONTRACTOR shall be responsible for all field tests , architecture, engineering, construction and completion of the Project, including project closeout as stated in the RFP.

6.2 Guaranteed Maximum Price.

6.2.1 The Guaranteed Maximum Price is also subject to further reduction by an amount calculated by multiplying the applicable Florida sales tax rate times the amount of material and supplies purchased by the CITY under the sales tax program described in Article 6.16 hereof. The Guaranteed Maximum Price may be modified only as herein provided including possible changes as a result of Extra Work as may be documented in a City Commission approved Change Order[s].

6.2.2 The Guaranteed Maximum Price shall include in the Cost of Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

6.2.3 The Guaranteed Maximum Price shall include all direct and indirect costs associated with the design and construction phases of the Project, including but not limited to, procurement of materials and equipment, labor, overhead, profits, contingency, permits, insurance, performance and payment bonds, utilities, fees, and taxes.

6.3 Administration.

6.3.1 The CONTRACTOR shall schedule and conduct weekly meetings at which the CITY and CONTRACTOR, and appropriate Subcontractors can discuss the status of the Work. The CONTRACTOR shall prepare and promptly distribute meeting minutes.

6.3.2 The CONTRACTOR shall provide monthly written reports to the CITY and designated consultants on the progress of the entire Work.

6.3.3 The CONTRACTOR may develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes.

6.4 Design Responsibilities.

6.4.1 CONTRACTOR shall prepare preliminary design documents consisting of preliminary drawings, specifications and other documents to fix and describe the size, quality, quantity and characters of the Work, it's architectural, structural, mechanical and electrical systems and the materials and other elements of the Work.

6.4.1.1 CONTRACTOR shall submit the preliminary design documents to CITY for review and authorization to proceed with the final design preparation. The CONTRACTOR understands and agrees that the CITY, may at its sole discretion, require changes to the preliminary design. All such changes shall be made at the sole and exclusive cost of the CONTRACTOR and be deemed part of the Guaranteed Maximum Price, except for changes outside the scope of the Work. Upon authorization from the CITY to proceed with the commencement of the entire design, CONTRACTOR shall begin to prepare drawings, schedules, specifications, technical criteria, written descriptions, design data, construction documents and diagrams setting forth in detail the requirements for the complete construction of the Work. The preparation of this work shall be done in three phases: 30% thirty percent, 60% sixty percent and 90% ninety percent.

6.4.1.2 The design services shall be performed by qualified architects, engineers and other professionals duly licensed by the State of Florida and holding current certificates of registration under the laws of the State of Florida.

6.4.1.3 CONTRACTOR shall prepare and submit for review to the CITY a 30% design package consisting of drawings and specifications for the site work, foundations, utilities, irrigations systems and other related incidentals.

The CONTRACTOR understands and agrees that the CITY, may at its sole discretion, require changes to the 30% percent design. All such changes shall be made at the sole and exclusive cost of the CONTRACTOR and be deemed part of the Guaranteed Maximum Price, except for

changes outside the scope of the Work CONTRACTOR understands and agrees that any information provided to it by the CITY as to any aspect of the Project is not guaranteed. In particular, and without limiting the foregoing disclaimer, identifying the location of existing utilities shall be the CONTRACTOR'S responsibility including identifying the location, character and depth of the existing utilities. Extreme caution shall be exercised by the CONTRACTOR to eliminate any possibility of any damage to utilities resulting from the CONTRACTOR'S activities. Any and all such damage shall be the responsibility of the CONTRACTOR and all work associated with repairs related to such damage shall be completed to the CITY'S satisfaction and at the sole and exclusive cost of the CONTRACTOR and be deemed part of the Guaranteed Maximum Price. The location of all overhead utilities shall be verified. The CONTRACTOR shall be responsible for determining which poles will need shoring during excavation and shall provide such shoring and support as is required. The CITY'S review of the design plans shall not be deemed an acceptance of the plans nor be deemed a pre-approval related to the permitting process that the plans will be required to undergo with the Building Department.

6.4.1.4 CONTRACTOR shall prepare and submit for review to the CITY a 60% design package consisting of drawings and specifications for the structural, architectural and landscaping portion of the Project.

The CONTRACTOR understands and agrees that the CITY, may at its sole discretion, require changes to the 60% percent design. All such changes shall be made at the sole and exclusive cost of the CONTRACTOR and be deemed part of the Guaranteed Maximum Price, except for changes outside the scope of the Work. CONTRACTOR understands and agrees that any information provided to it by the CITY as to any aspect of the Project is not guaranteed. The CITY'S review of the design plans shall not be deemed an acceptance of the plans nor be deemed a pre-approval related to the permitting process that the plans will be required to undergo with the Building Department.

6.4.1.5 CONTRACTOR shall prepare and submit for review to the CITY a 90% design package consisting of drawings and specifications for the mechanical, plumbing, electrical, equipment, instrumentation and all other related work necessary to have a fully functional and completed Project.

The CONTRACTOR understands and agrees that the CITY, may at its sole discretion, require changes to the 90% percent design. All such changes shall be made at the sole and exclusive cost of the CONTRACTOR and be deemed part of the Guaranteed Maximum Price, except of changes outside the scope of the Work CONTRACTOR understands and agrees that any information provided to it by the CITY as to any aspect of the Project is not guaranteed. The CITY'S review of the design plans shall not be deemed an acceptance of the plans nor be deemed a pre-approval related to the permitting process that the plans will be required to undergo with the Building Department.

6.4.1.6 CONTRACTOR shall prepare and submit for review to the CITY an "Issued for Construction" design package, which necessarily includes Plans and Specifications, that the CONTRACTOR is obligated to produce to the complete satisfaction of the CITY which is deemed one hundred percent (100%) complete for the construction of the entire Project, which are signed and sealed by a Florida Licensed Engineer and which are sufficient to secure a permit for the construction of the entire Project. The CITY shall not make any changes to the Plans and Specifications at 100% percent design if CONTRACTOR satisfies all comments made by the CITY at 90% percent design. The CITY'S review of the design plans shall not be deemed an acceptance of the plans nor be deemed a pre-approval related to the permitting process that the plans will be required to undergo with the Building Division. The construction phase of the Project shall not commence until the Building Division has issued a permit based on the 100% "Issued for Construction" design package.

6.4.2 Once the 100% completed "Issued for Construction" design package has received a permit from the Building Division to commence construction, these Drawings and Specifications shall then be considered part of the Contract Documents.

6.4.3 The CONTRACTOR agrees that any and all revisions that the Building Division may require to the "Issued for Construction" Drawings and Specifications shall be the responsibility of the CONTRACTOR and be so revised at the sole and exclusive cost of the CONTRACTOR and be deemed part of the Guaranteed Maximum Price.

6.4.4 The CONTRACTOR shall provide to CITY three (3) record sets and three (3) working sets of full size prints of the Drawings and Specifications. CONTRACTOR shall signify, by affixing an endorsement (seal/signature, as appropriate) on every sheet of the record set, that the Work shown on the endorsed sheets was produced by CONTRACTOR. With the record set of prints, CONTRACTOR shall submit a final set of approved design computations to the CITY. The computations shall be bound in an 8 1/2" by 11" format and shall be endorsed (seal/signature as appropriate) by CONTRACTOR. All submitted hard copy documents shall be accompanied by its own electronic format.

6.4.5 All final design documents, plans, reports, studies and other data prepared by CONTRACTOR shall bear the endorsement of a person duly registered in the appropriate professional category. Notwithstanding the foregoing, CONTRACTOR agrees to provide at least ten (10) days' notice to the Project Manager prior to submittal of any plans, or drawings for review by the Building Division.

6.4.6 Prior to final payment, the CONTRACTOR shall furnish all final as-built drawings in electronic and hard copy as designated by the project Manager. All data submitted in electronic media shall utilize CAD Standards as designated by the Project Manager. In addition 3 sets of hard copies showing the exact locations of all structures and underground site utilities installed by

CONTRACTOR, including water, sewer, gas, fuel, telephone, security and electric lines where applicable. Easements location for the mentioned lines shall be shown on the documents. Such survey's shall be prepared by a Florida licensed surveyor who shall certified that the work is installed and erected entirely upon the project site and within the project restriction lines and does not overcharge or encroach upon any easement of right of way of others.

6.5 Liability for use of Work for Intended Purpose.

As an inducement for CITY to enter into this Agreement, CONTRACTOR represents that it has expertise in professional design services and the construction of public construction projects by qualified and licensed general construction contractors. The CONTRACTOR'S expertise includes estimating the total costs associated with the final completion of an entire design-build job. Such costs associated with the estimation and calculation, include, but are not limited to, consideration of material, equipment and labor and the escalation of the costs of each in association with the realistic estimated duration of the project, the time of year, the weather patterns associated with the location of the project, the labor market for the design and construction associated with the location of the project, the type of facility, and consideration of the time associated with the design and permitting (including all associated delays that accompany a review through a municipal building department) of a complete set of plans and specifications. In reliance upon the above referenced representations, the CITY hired the CONTRACTOR to provide professional design services and complete construction services. CONTRACTOR shall be liable for any defective or negligent design, whether patent or latent, and/or any negligence, strict liability or breach of other legal duty to the extent and in the manner as hereafter set forth.

6.6 Shop Drawings and Samples.

6.6.1 CONTRACTOR shall prepare and submit any submittals or shop drawings required for permitting to the authority having jurisdiction, and shall furnish a copy to the City Manager.

6.6.2 CONTRACTOR shall prepare and maintain shop drawings and submittals referenced in Paragraph 6.6.1 and make them available for review by CITY.

6.6.3 Review of the shop drawings by CITY shall be general and shall not be deemed an acceptance of the shop drawings and shall not relieve the CONTRACTOR of the responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the work, nor for the furnishing of material or work required by the Agreement and not indicated on the drawings.

6.7 Supervision and Superintendence.

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying CONTRACTOR'S best skill, attention and expertise.

CONTRACTOR shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall be responsible to see that the finished Work complies with the Contract Documents.

6.8 Project Management.

6.8.1 During the progress of on-site construction, CONTRACTOR shall provide full time (defined to be 8:00 a.m. through 5:00 p.m. Monday through Friday, legal holidays excluded) competent project supervision and any necessary assistants who shall not be replaced without written notice to CITY. The superintendent will be CONTRACTOR'S representative at the site.

6.8.2 The day to day management of the Project's subcontractors and vendors, contracts, schedules and requests for payment shall be by a competent project manager to whom the superintendent shall report. The project manager will conduct regularly scheduled project meetings for the purpose of project coordination and communication. The project manager shall be included in the cost of the Work.

6.9 Labor.

6.9.1 Construction services shall be performed only by qualified construction contractors licensed to do business in the State of Florida and suppliers, selected and paid by the CONTRACTOR.

6.9.2 CONTRACTOR shall provide and pay wages for competent, suitably qualified personnel to perform the work as required by the Contract Documents. CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. CONTRACTOR shall at all times maintain good discipline and order at the site.

6.10 Materials.

6.10.1 Unless otherwise specified herein, CONTRACTOR shall furnish, pay for and assume full responsibility for all materials, equipment, transportation, machinery, tools, appliances, water, heat, utilities and all other facilities and services necessary for the furnishing, performance, testing, start-up and proper completion of the Work.

6.10.2 CONTRACTOR warrants that all materials and equipment shall be new and of good quality and that the work will be free from defects in material and workmanship whether patent or latent in nature. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents.

6.11 Concerning Subcontractors, Suppliers, and Others.

6.11.1 Prior to the commencement of each phase of the Work hereunder, upon request, CONTRACTOR shall furnish, in writing to CITY, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the relevant phase of the work. CITY shall advise CONTRACTOR, in writing, of any proposed person or entity to which CITY has a reasonable objection. Failure of CITY to reply within seven (7) business days from the date of receipt of the written notice shall constitute notice of no reasonable objection. CONTRACTOR shall not contract with a proposed person or entity to whom CITY has made a reasonable and timely objection. If CITY has reasonable objection to a person or entity proposed by CONTRACTOR, CONTRACTOR shall propose another to whom CITY has no reasonable objection. CONTRACTOR shall not change a subcontractor, person or entity previously selected if CITY makes reasonable objection to such change.

6.11.2 CONTRACTOR shall be fully responsible to CITY and shall indemnify and hold the CITY harmless for all acts and omissions of the CONTRACTOR'S employees, Subcontractors, Suppliers and other persons directly or indirectly employed by his Subcontractors, suppliers and of persons for whose acts any of them may be liable and any other persons and organizations performing or furnishing of the Work under a direct or indirect Contract with CONTRACTOR.

6.11.3 Nothing in the Contract Documents shall create any Contractual relationship between CITY and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of CITY to pay or to see to the payment of any moneys due any such Subcontractor, supplier or other person or organization except as may otherwise be required by laws and regulations.

6.11.4 All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of CITY.

6.12 Patent Fees and Royalties.

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

6.13 Permits.

The CONTRACTOR agrees that it shall obtain and pay for all permits, approvals, licenses, government charges, impact fees, and inspection fees as reasonably inferable from the

Contract Documents that will be required to complete the Project, except permit fees or other fees charged by the CITY.

6.14 Laws and Regulations.

CONTRACTOR shall comply with and give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to the performance of the Work. CITY shall not be responsible for monitoring CONTRACTOR'S compliance with any laws and regulations. CONTRACTOR shall promptly notify CITY if the Contract Documents are observed by CONTRACTOR to be at variance therewith.

6.15 Risk of Loss; Title.

The risk of loss, injury or destruction shall be on CONTRACTOR until Final Completion and acceptance of the Project. Title to the Work shall pass to CITY upon Final Completion and acceptance of the Work by CITY.

6.16 Taxes.

CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the laws and regulations of the State of Florida and its political subdivisions. CONTRACTOR is responsible for reviewing the pertinent state statutes involving such taxes and complying with all requirements. CITY and CONTRACTOR shall jointly cooperate so that CITY may order and pay for goods and supplies which will be incorporated into the Work; the goods and supplies that may be purchased by CITY shall be approved in advance by the parties, and shall generally be only those that cost more than \$_____ for the quantity or amount being ordered under the particular purchase order. Even though the CITY may purchase such goods and materials, the same shall be stored at the site in the same manner as goods and materials purchased by the CONTRACTOR, and CONTRACTOR shall bear the risk of loss. As compensation to the CONTRACTOR for accounting services respecting the sales tax savings program, an amount equal to_____ of the tax savings shall be paid to the CONTRACTOR. CITY hereby agrees to promptly purchase any materials requested by CONTRACTORS pursuant to this Section. The CITY and CONTRACTOR shall develop a list of items or materials that can be purchased under section 6.16.

6.17 Use of Premises.

6.17.1 CONTRACTOR shall confine equipment, the storage of materials and equipment and the operations of workers to the Project site and areas identified in and permitted by the Contract Documents and shall not unreasonably encumber the premises with equipment or other materials. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against CITY by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim. The general indemnification provided elsewhere in this Contract specifically applies to claims arising out of CONTRACTOR'S use of the premises.

6.17.2 During the progress of the Work, CONTRACTOR shall at all times keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by CITY. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.17.3 CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.18 Access to Work.

CONTRACTOR shall provide CITY, CITY'S consultants, representatives and personnel, independent testing laboratories and governmental agencies with jurisdictional interests with access to the work at reasonable times for their observation, inspection and testing. CONTRACTOR shall provide them proper and safe conditions for such access; and shall advise them of CONTRACTOR'S site safety procedures and programs so that they may comply therewith.

6.19 Safety and Protection.

6.19.1 CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to prevent damage, injury or loss to all employees on the work site and other persons and organizations who may be affected thereby; all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and other property at the site or adjacent thereto.

6.19.2 CONTRACTOR shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

6.20 Indemnification.

6.20.1 GENERAL INDEMNIFICATION: The parties agree that one percent (1%) of the total compensation paid to CONTRACTOR for the Work under this Agreement shall constitute specific consideration to CONTRACTOR for the indemnification to be provided under this Agreement. CONTRACTOR shall indemnify, defend, save and hold harmless the CITY and the CITY's elected officials, public employees, consultants and separate contractors, any of their subcontractors, sub-subcontractors, agents and employees from and against any and all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or related to and/or resulting from performance of the Work. These indemnification obligations shall include claims, damages, losses or expenses (1) that are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, and/or (2) to the extent such claims, damages, losses or expenses are caused in whole or in part by negligent acts or omissions of the CONTRACTOR'S, anyone directly or indirectly employed by either or anyone for whose acts either may be liable, regardless of whether or not they are caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article.

6.20.2 In claims against the CITY or its consultants and its contractors, their subcontractors, sub-sub-contractors, agents or employees by an employee of the CONTRACTOR, its contractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article 19.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Cost, or a CONTRACTOR's contractor, under workers' or workmen's compensation acts, disability benefits acts or other employee benefit acts.

6.21 Patent and Copyright Indemnification.

CONTRACTOR agrees to indemnify, defend, save and hold harmless the CITY, its officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against CITY, its officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent and/or for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation. CONTRACTOR shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees and costs. CITY reserves the right to select its own

legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith including any costs or fees of an appeal shall be the responsibility of CONTRACTOR under the indemnification agreement. Nothing contained herein is intended nor shall it be construed to waive CITY'S rights and immunities under the common law or Florida Statute 768.28 as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party described in this Paragraph and its subparts.

6.22 Survival of Obligations.

All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the work and termination or completion of this Agreement.

6.23 Correction or Removal of Defective Work.

If required by CITY, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by CITY, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct and indirect costs of such correction or removal (including but not limited to fees and charges of engineers, architects and other professionals) made necessary thereby.

ARTICLE 7 - CITY'S RESPONSIBILITIES

7.1 CITY shall furnish data required of CITY under the Contract Documents promptly. The CONTRACTOR understands and agrees that any information provided to it by the CITY as to any aspect of the Project is not guaranteed.

7.2 CONTRACTOR shall secure all necessary easements, assessments, and charges required for construction, use, or occupancy of permanent structures or permanent changes in existing facilities.

7.3 If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of CONTRACTOR or any other party.

ARTICLE 8 – PROJECT MANAGER

8.1 The Project Manager will be CITY'S contact person during the construction period and until final payment is due to CONTRACTOR.

8.2 Visits to Site.

Project Manager may, at its sole discretion, make visits to the site to observe the progress and quality of the executed work.

8.3 Authorized Variations in Work.

Project Manager may authorize minor variations in the Work from the technical requirements of the Contract Documents which do not involve an adjustment in the Guaranteed Maximum Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on CITY and on CONTRACTOR who shall perform the work involved promptly.

8.4 Rejecting Defective Work.

If Project Manager becomes aware of any fault or default in the Work, he/she may give written notice thereof to CONTRACTOR. The failure to provide notice shall not waive the warranty of the CONTRACTOR that the work is to be free of defect whether latent or patent.

ARTICLE 9 - BUILDING DIVISION'S RESPONSIBILITIES

9.1 It is understood and agreed by the CONTRACTOR that the Building Division and its inspectors are professionals who are dedicated to providing efficient and courteous service to all residents, professionals, contractors and the public at large through plans processing, inspections and building maintenance, which ensures the protection of the citizens and enhances the quality of life within the CITY. For the purposes of this Project the Building Division is not a surrogate of the CITY. All decisions by the Building Division as to whether some aspect of the Project is or is not in compliance with the Florida Building Code, Florida Fire Prevention Code and/or any other applicable codes, regulations, laws and ordinances are independent of and not deemed to be an act or decision by the CITY. The CONTRACTOR agrees that it shall be the responsibility of the CONTRACTOR to ensure compliance with all applicable codes, regulations, law and ordinances. As noted in Article 3 of this Agreement the CONTRACTOR warrants and accepts that any and all work necessitated by inspections which is not prescribed in the Plans or Specifications, but necessitated to bring the project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures and/or considered inside the contemplation of the Contract Documents shall be deemed the responsibility of the CONTRACTOR and included in the Guaranteed Maximum Price.

ARTICLE 10 - BONDS AND INSURANCE

10.1 Payment and Performance Bonds.

10.1.1 Within fifteen (15) calendar days after Notice of Award and in any event prior to commencing work, the CONTRACTOR shall execute and furnish to CITY a performance bond and a payment bond in a form acceptable to the CITY, each written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety shall hold a current certificate of authority from the Secretary of Treasury of the United States as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular No. 570. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular and the excess risks must be protected by coinsurance, reinsurance, or other methods, in accordance with Treasury Circular 297, revised September 1, 1978 (31 DFR, Section 223.10, Section 223.11). Further, the surety company shall provide CITY with evidence satisfactory to CITY, that such excess risk has been protected in an acceptable manner. The surety company shall have at least the following minimum qualification in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858: A to A+.

10.1.2 Two (2) separate bonds are required and both must be approved by the CITY. The penal sum stated in each bond shall be the amount equal to the total amount payable under the terms of the contract. The performance bond shall be conditioned that the CONTRACTOR perform the contract in the time and manner prescribed in the contract. The payment bond shall be conditioned that the CONTRACTOR promptly make payments to all persons who supply the CONTRACTOR with labor, materials and supplies used directly or indirectly by the CONTRACTOR in the prosecution of the work provided for in the Contract and shall provide that the surety shall pay the same in the amount not exceeding the sum provided in such bonds, together with interest at the maximum rate allowed by law; and that they shall indemnify and save harmless the CITY to the extent of any and all payments in connection with the carrying out of said Contract which the CITY may be required to make under the law.

10.1.3 Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, it shall be the duty of the CONTRACTOR to record the aforesaid payment and performance bonds in the public records of Broward County, with the CONTRACTOR to pay all recording costs.

10.2 Bonds, Reduction After Final Payment.

Such bonds shall continue in effect for one (1) year after final payment becomes due except as otherwise provided by law or regulation or by the Contract Documents with the final sum of said bonds reduced after final payment to an amount equal to fifty percent (50%) of the Guaranteed Maximum Price, or an additional bond shall be conditioned that CONTRACTOR shall correct any defective or faulty Work or material which appears within one (1) year after final completion of the Contract, upon notification by the CITY. Notwithstanding the foregoing, after final payment, the CONTRACTOR may request reduction in the bond to 10% of all monies previously earned and all monies earned there after

10.3 Duty to Substitute Surety.

If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other applicable laws or regulations, CONTRACTOR shall within seven (7) days thereafter substitute another bond and surety, both of which must be acceptable to CITY.

10.4 Insurance.

10.4.1 **UPON EXECUTION OF THE CONTRACT, THE CONTRACTOR SHALL SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT THE CITY OF HALLANDALE BEACH IS AN ADDITIONAL NAMED INSURED RESPECT TO THE REQUIRED COVERAGE AND THE OPERATIONS OF THE CONTRACTOR UNDER THE CONTRACT.** The certificates of insurance shall not only name the types of policies provided, but shall also specifically refer to this Agreement and shall state that such insurance is as required by Article 10 and its subparts of this Agreement. CONTRACTOR shall not commence work under this Agreement until after CONTRACTOR has obtained all of the minimum insurance herein described and the policies of such insurance detailing the provisions of coverage have been received and approved by CITY. CONTRACTOR shall not permit any subcontractor to begin work until after similar minimum insurance to cover subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, then in that event, CONTRACTOR shall furnish, at least thirty (30) calendar days prior to expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage and extension thereunder is in effect. CONTRACTOR shall not continue to perform the services required by this Agreement unless all required insurance remains in full force and effect.

10.4.2 Insurance Companies selected must be acceptable the CITY. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to CITY by certified mail.

10.4.3 The CONTRACTOR shall procure and maintain at its own expense and keep in effect during the full term of the Contract a policy or policies of insurance which must include the following coverage and minimum limits of liability:

10.4.3.1 Professional Liability (Errors and Omissions) Insurance for architectural and engineering services and the services of any other professional used in the performance of the work of this Agreement in the amount of \$1,000,000.00 with a deductible (if applicable) not to exceed \$5,000.00 per claim. The certificate of insurance for professional liability shall reference any applicable deductible and the work of this Agreement.

10.4.3.2 Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremens and Harbor Worker's Act, the Federal Employers' Liability Act and the Homes Act. Employer's Liability Insurance shall be provided with a minimum of One Hundred Thousand and xx/100 dollars (\$100,000.00) per accident. CONTRACTOR agrees to be responsible for the

employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

10.4.3.3 Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by the CONTRACTOR in the performance of the work with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence

10.4.3.4 Comprehensive General Liability Insurance (occurrence form) with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence

Coverage must be offered in 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 shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:

10.4.3.4.1 Premises and Operations;

10.4.3.4.2 Independent Contractors;

10.4.3.4.3 Product and Completed Operations Liability;

10.4.3.4.4 Broad Form Property Damage;

10.4.3.4.5 Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in this Contract; and

10.4.3.4.6 Personal Injury coverage with employment contractual exclusions removed and deleted.

10.4.3.4.7 Explosion, collapse, underground coverage (XC-U)

10.4.3.5 Builder's Risk Insurance in an amount not less than THE REPLACEMENT COST for the construction of the work. Coverage shall be "All Risk" coverage for one

hundred percent (100%) of the completed value with a deductible of not more than five thousand and 00/100 dollars (\$5,000.00) per claim.

10.4.4 CONTRACTOR shall maintain the Products/Completed Operations Liability Insurance for a period of at least three (3) years after final payment for the Work and furnish CITY with evidence of continuation of such insurance at final payment.

10.4.5 The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the following minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide.

10.4.6 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.

10.4.7 The CONTRACTOR shall ensure that any company issuing insurance to cover the requirements contained in this Contract agrees that they shall have no recourse against CITY for payment or assessments in any form on any policy of insurance.

10.4.8 The clauses "Other Insurance Provisions" and "Insurers Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which CITY is named as an additional named insured shall not apply to CITY. CITY shall provide written notice of occurrence within fifteen (15) working days of CITY's actual notice of such an event.

10.4.9 The CONTRACTOR shall not commence performance of its obligations under this Agreement until after it has obtained all of the minimum insurance herein described and the same has been approved.

10.4.10 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the parties being that the required insurance coverages protect both parties as the primary coverages for any and all losses covered by the above described insurance.

10.4.11 The CONTRACTOR agrees to perform the work under the Contract as an independent CONTRACTOR, and not as a sub-contractor, agent or employee of CITY.

10.4.12 CONTRACTOR shall require each of its subcontractors of any tier to maintain the insurance required herein for each category, and CONTRACTOR shall provide verification thereof to CITY upon request of CITY. Notwithstanding the foregoing, the CONTRACTOR may provide insurance for subcontractors.

10.4.13 Violation of the terms of this Article and its subparts shall constitute a breach of the Contract and CITY, at its sole discretion, may cancel the Contract and all rights, title and interest of the CONTRACTOR shall thereupon cease and terminate. Notwithstanding the foregoing, the CONTRACTOR shall be given thirty (30) days to cure any breach.

10.5 CITY'S Liability and Insurance.

CITY shall not be responsible for purchasing and maintaining any insurance to protect the interests of CONTRACTOR, subcontractors or others on the Work. CITY specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Section 768.28, Florida Statutes and Section 95.11, Florida Statutes.

ARTICLE 11 - WARRANTIES; TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK

11.1 Warranty of Title.

The CONTRACTOR warrants to the CITY that it possesses good, clear and marketable title to all equipment and materials provided hereunder and there are no pending liens, claims or encumbrances whatsoever against said equipment and materials.

11.2 Warranty of Specifications.

The CONTRACTOR warrants that all equipment, materials and workmanship furnished, whether furnished by the CONTRACTOR or its sub-contractors and suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted and that all services will be performed in a workmanlike manner.

11.3 Warranty of Merchantability.

CONTRACTOR warrants that any and all equipment to be supplied pursuant to the Agreement is new, merchantable, free from defects, whether patent or latent in material or workmanship and fit for the ordinary purposes for which it is intended.

11.4 Correction Period.

CONTRACTOR warrants all material and workmanship for a minimum of one (1) year from the date that CITY accepts occupancy of the park plaza. If within one (1) year after the date of Final Completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents, any work is

found to be defective, whether observed before or after acceptance by CITY, CONTRACTOR shall promptly, without cost to CITY and in accordance with CITY'S written instructions, either correct such defective work, or, if it has been rejected by CITY, remove it from the site and replace it with work that is not defective and satisfactorily correct and remove and replace any damage to other work or the work of others resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, CITY may have the defective workmanship corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR.

11.4.1 Where defective Work (and damage to other work resulting therefrom) has been corrected, removed or replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.

11.4.2 Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations which CONTRACTOR might have under the Contract Documents. Establishment of the time period of one (1) year as described in Paragraph 10.4.1 relates only to the specific obligation of the CONTRACTOR to correct the work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish CONTRACTOR'S liability with respect to the CONTRACTOR'S obligation other than specifically to correct the work.

11.4.3 CONTRACTOR warrants to the CITY that it will comply with all applicable federal, state and local laws, regulations and orders in carrying out its obligations under the Contract.

11.4.4 CONTRACTOR warrants to the CITY that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the Contract.

11.4.5 CONTRACTOR warrants to the CITY that the consummation of the work provided for in the Contract Documents will not result in the breach of any term or provision of, or constitute a default under any indenture, mortgage, contract, or agreement to which the CONTRACTOR is a party.

11.4.6 CONTRACTOR warrants that there has been no violation or copyrights of patent rights either in the United States of America or in foreign countries in connection with the work of the Contract.

11.4.7 No warranty, either express or implied, may be modified, excluded or disclaimed in any way by CONTRACTOR. All warranties shall remain in full force and effect, notwithstanding acceptance and payment by CITY.

11.5 Tests and Inspections.

11.5.1 CONTRACTOR shall give the Project Manager and Building Division timely notice of readiness of the work for all required inspections, tests or approvals. CONTRACTOR shall assume full responsibility, pay all costs, except for permit fees or other fees imposed by the CITY, in connection therewith and furnish the Building Division, with courtesy copies to the CITY, the required certificates of inspection, testing or approval for all materials, equipment or the Work or any part thereof unless otherwise specified herein.

11.5.2 Inspectors do have the full authority to order the CONTRACTOR to comply with all applicable codes. The CONTRACTOR shall be responsible for complying with all inspections and all costs associated therewith shall be deemed the responsibility of the CONTRACTOR and included in the GMP.

11.5.3 The payment of any compensation whatever may be its character or form, or the giving of any gratuity or the granting of any favor by the CONTRACTOR to any inspectors, directly or indirectly is strictly prohibited and any such action on the part of the CONTRACTOR will constitute a breach of this Agreement.

ARTICLE 12 - CONTRACT TIME

12.1 Change of Contract Time.

ALL TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THE AGREEMENT. EXCEPT AS PROVIDED HEREIN, NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE CITY BY REASON OF ANY DELAYS. CONTRACTOR shall not be entitled to an increase in the construction cost or payment or compensation of any kind from CITY for direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by CONTRACTOR for hindrances or delays due solely to fraud, bad faith or active interference on the part of CITY or its agents. If CONTRACTOR is delayed at any time in the progress of the Work by labor disputes, fire, unusual delay in deliveries, adverse weather conditions not reasonably anticipated (including strong storms, tropical storms and/or hurricanes which are common between June 1 and November 30), unavoidable casualties or other causes beyond the

CONTRACTOR's control, or by other causes which the CITY and CONTRACTOR agree may justify delay, then the Contract Time shall be reasonably extended by Change Order. Otherwise, CONTRACTOR shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to that extent specifically provided above. No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area which necessarily excludes strong storms, tropical storms and/or hurricanes which are common between June 1 and November 30.

12.2 No Recovery for Early Completion. If the CONTRACTOR submits a schedule or expresses an intention to complete the Work earlier than any required milestone or completion date, the CITY shall not be liable to the CONTRACTOR for any costs incurred because of delay or hindrance should the CONTRACTOR be unable to complete the Work before such milestone or completion date. The duties, obligations and warranties of the CITY to the CONTRACTOR shall be consistent with and applicable only to the completion of the Work and completion dates set forth in this Agreement.

12.3 Liquidated Damages

12.3.1 The CONTRACTOR understands that if the Project or the Work is not substantially completed within _____ () days from the date of the Notice to Proceed, then the CITY will suffer damages which are difficult to determine and accurately specify. As such, Liquidated Damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by CITY as a consequence of such delay and both parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of CONTRACTOR to complete the Contract on time.

12.3.2 Upon failure of CONTRACTOR to complete the Work within the time specified for the substantial completion of the Project (plus approved extensions if any), CONTRACTOR shall pay to CITY the sum of four hundred _____ dollars (\$400.00) for each and every calendar day beyond the time specified in this Agreement for completion, as fixed and agreed liquidated damages and not as a penalty. After substantial completion, should CONTRACTOR fail complete the remaining work as stated in the punch list within the time specified in this agreement plus approved time extensions, CONTRACTOR shall pay the CITY the sum of two hundred and fifty dollars (\$250.00) for each and every calendar day beyond the time specified in this Agreement for completion, The Liquidated Damages shall apply regardless of whether or not a single Contract is involved and shall apply separately to each portion of the Work for which a time of completion is given. CITY shall have the right to deduct from and retain out of moneys which may be then due or which may become due and payable to CONTRACTOR, the amount of such liquidated damages and if the amount retained by CITY is insufficient to pay in full such liquidated damages, the CONTRACTOR shall pay in full such liquidated damages.

12.4 Delay.

Any delay caused by the CITY shall extend the date for substantial completion date by the number of days that resulted from the delay.

ARTICLE 13 - CHANGES IN THE WORK, RESTRICTIONS AND LIMITATIONS

13.1 After the Plans and Specifications have been approved for construction by the Building Division, the CITY, without invalidating this Agreement, may order additions, deletions or revisions to the Work. Such additions, deletions or revisions shall be authorized by a Written Amendment or Change Order.

13.2 All Change Orders which, individually or when cumulatively increase the cost of the work, or which extend the time for completion, must be formally authorized and approved by the City Commission prior to their issuance and before work may begin. No claim against CITY for Extra Work in furtherance of such Change Order shall be allowed unless prior approval has been obtained. The CONTRACTOR understands and agrees that any work, however characterized, performed by the CONTRACTOR without the CITY'S prior written approval shall not be compensable, without exception. The CONTRACTOR intentionally, knowingly and voluntarily waives any claim for unjust enrichment or quantum meruit with respect to any work performed in the absence of a written Change Order. Any waiver of this provision must be in writing and signed by both Parties and in no event shall such written waiver extend to any subsequent event.

13.3 The Guaranteed Maximum Price and Contract Time shall be changed only by Change Order or Written Amendment approved by the City Commission.

13.4 Proposed Change Orders shall be prepared by the CONTRACTOR.

13.5 The CONTRACTOR shall not be entitled to an increase in the Guaranteed Maximum Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents as amended, modified and supplemented.

13.6 If notice of any change affecting the general scope of the work or the provisions of the Contract Documents is required by the provisions of any bond to be given to a surety, the giving of any such notice will be CONTRACTOR'S responsibility and the amount of each applicable bond shall be adjusted accordingly.

13.7 Any claim for adjustment in the Guaranteed Maximum Price or time shall be based upon written notice delivered by the party making the claim to the other Parties not later than ten (10) days after the occurrence or event giving rise to the claims and stating the general nature of the

claim. No claim for an adjustment in the Guaranteed Maximum Price or an extension of the contract time will be valid if not submitted in accordance with this Paragraph.

13.8 CONTRACTOR understands and agrees that any information provided to it by the CITY, at any time, as to any aspect of the Project is not guaranteed. The CONTRACTOR is solely liable for all site conditions, including those that are subsurface or otherwise concealed physical conditions which may differ, materially or not, from those the CONTRACTOR encountered during its initial site inspection. Upon identifying subsurface physical conditions that do differ materially from those identified during the CONTRACTOR'S initial inspection, the CONTRACTOR shall notify CITY immediately. The CONTRACTOR shall promptly investigate such conditions and, if the CITY agrees that the concealed physical conditions could not have been detected through a reasonable inspection, then the CONTRACTOR shall be entitled to an extension of time for the completion of the Project as its sole remedy. The CONTRACTOR accepts that any costs or expense associated with any differing site conditions encountered shall be the responsibility of the CONTRACTOR and included in the Guaranteed Maximum Price.

ARTICLE 14 – NO CHANGES IN GUARANTEED MAXIMUM PRICE

14.1 The Guaranteed Maximum Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at its expense without change in the Guaranteed Maximum Price.

14.2 The Guaranteed Maximum Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Guaranteed Maximum Price shall be based on written notice delivered to the other Party (but in no event later than ten (10) days) after the occurrence of the event giving rise to the amount of the claim, along with supporting data which shall be delivered within twenty (20) days after the occurrence of the event giving rise to the amount of the claim and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. No resolution of a claim for adjustment in the Guaranteed Maximum Price shall be effective until approved by the City Commission. No claim for an adjustment in the Guaranteed Maximum Price will be valid if not submitted in accordance with this Paragraph. The CONTRACTOR understands and agrees that the CITY shall have the right and discretion to deny the approval of any Change Order, for any reason, despite the CONTRACTOR'S compliance with this Paragraph and/or the existence of an executed written Work Change Directive. If the CITY decides not to approve a Change Order for the work, then the CONTRACTOR will not be entitled to receive compensation under any theory of recovery whether at law or in equity.

14.3 The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Guaranteed Maximum Price shall be determined in one of the following ways:

14.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.

14.3.2 By mutual acceptance of a lump sum (which may include an allowance for overhead and profit including any subcontractor fees). If the negotiated lump sum change order exceeds the percentages set forth for "Cost of Work," it must be accompanied by a detailed explanation justifying the increase.

14.4 Cost Breakdown Required.

Whenever the cost of any Work is to be determined, CONTRACTOR will submit in form acceptable to Project Manager an itemized cost breakdown together with supporting data. Whenever a change in the work is to be based upon mutual acceptance of a lump sum, whether the amount is an addition, credit, or no-change-in-cost, the CONTRACTOR shall submit an estimate substantiated by a complete itemized breakdown. The breakdown shall list quantities and unit prices for materials, labor, equipment and other items of cost.

ARTICLE 15 - PAYMENTS TO CONTRACTOR AND COMPLETION OF WORK

15.1 Progress Payments during construction phase.

15.1.1 CONTRACTOR pay requisition payments for Work completed during the project at intervals of not more than once a month. The CONTRACTOR shall submit a proposed schedule of values in a form acceptable to the CITY and which will be required to be approved by the CITY before any design Work on this Project can commence. The proposed schedule of values shall be broken into two phases for design and for construction.

Once approved all applications for payment shall be submitted in a form that shows a complete breakdown of the project schedule of values, and actual cost incurred as of the date of the application for payment of the work completed, showing a breakdown of the General Conditions, Construction, included a percentage of the Profit as stated in the GMP breakdown. Each application shall be accompanied by supporting evidence as may reasonably be required by the City. All payments applications shall be accompanied by a certification by the CONTRACTOR that the CONTRACTOR has disbursed to all subcontractors and suppliers their pro-rata shares of the payment out of previous progress payments received by the CONTRACTOR for all work completed and materials furnished in the previous period or properly executed releases of liens by all subcontractors, suppliers and materialmen who were included in the CONTRACTOR'S previous applications for payment, and any other supporting documentation as may be required by the CITY. Each requisition shall be submitted in triplicate to the CITY for approval; CITY shall have fifteen (15) days to approve or disapprove the requisition. If the requisition is not approved, the reasons

therefore shall be stated with particularity. The CITY shall make payment to the CONTRACTOR within fifteen (15) calendar days after approval by the CITY of the CONTRACTOR'S requisition for payment.

15.1.2 Ten percent (10%) of all monies earned by the CONTRACTOR shall be retained by the CITY until the Work is completed in accordance with the requirements of the Contract Documents and accepted by the CITY as provided herein. After fifty percent (50%) of the Work has been completed, the CONTRACTOR may request reduction in the retainage to five percent (5%) of all monies previously earned and all monies earned thereafter.

15.2 Final Inspection.

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, CITY will make a final inspection and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is not in accordance with the Contract Documents. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

15.3 Final Application for Payment.

After CONTRACTOR has completed all such corrections to the satisfaction of Project Manager and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection and other documents required by the Contract Documents, and after Project Manager has indicated that the work is acceptable, CONTRACTOR may make application for final payment. The final application for payment shall be accompanied by (1) complete and legally effective final releases or waivers of all liens arising out of or filed in connection with the work; or (2) CONTRACTOR'S receipts in full covering all labor, materials and equipment for which a lien could be filed; or (3) a final affidavit stating that all laborers, materialmen, suppliers and subcontractors who worked for CONTRACTOR under this Contract have been paid in full or if the fact be otherwise, identifying the name of each lienor who has not been paid in full and the amount due or to become due each for labor, services or materials furnished. If any subcontractor or supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a bond satisfactory to CITY to indemnify CITY against any lien.

CONTRACTOR shall submit to CITY within forty-five days (45) of the date of issuance of the certificate of occupancy for the applicable portion of the Work the completed set of "As-Built" drawings relative to the park plaza for review and approval. The "As-Built" drawings shall be prepared, sealed and certified by the appropriate professional licensed by the State of Florida. Prior to approval, if necessary, the drawings may be returned to CONTRACTOR for changes or modifications if in the opinion of Project Manager they do not represent correct or accurate "As-built" drawings.

15.4 Final Payment and Acceptance.

15.4.1 If the Work is not acceptable to the CITY, then the CITY shall indicate the reasons for refusing to make final payment, in which case CONTRACTOR shall make the necessary corrections or compliance and resubmit the Application for payment. If the CITY is satisfied that the Work has been completed in accordance with the Contract Documents and the CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, the CITY will agree to make the final payment.

15.4.2 If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, CITY may consider making payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by CITY for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted may be submitted by CONTRACTOR for such payment. The CITY may consider making such payment under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

15.5 Final payment, constituting the entire unpaid balance of the Guaranteed Maximum Price, shall be paid by the CITY to the CONTRACTOR when the Work has been completed in accordance with the Contract Documents, and this Agreement fully performed. The making of final payment shall constitute a waiver of claims by CITY except those arising from:

15.5.1 Liens, claims, security interests or encumbrances arising out of this Agreement and unsettled.

15.5.2 Faulty or defective work and latent defects discovered after acceptance.

15.5.3 Failure of the work to comply with the requirements of the Contract Documents.

15.5.4 Terms of special warranties required by the Contract Documents.

15.5.5 Any of CONTRACTOR'S continuing obligations under this Agreement.

The acceptance of final payment by CONTRACTOR or the Subcontractor for materials and supplies shall constitute a waiver of claims by that payee except those previously made in writing and identified by payee as unsettled at the time of final application for payment.

15.6 CITY'S Right to Withhold Payment.

The CITY may withhold in whole or in part, final payment or any progress payment to such extent as may be necessary to protect itself from loss on account of:

15.6.1 Defective work not remedied.

15.6.2 Claims filed or reasonable evidence indicating the probable filing of claims by other parties against the CONTRACTOR.

15.6.3 Failure of the CONTRACTOR to make payment to Subcontractors or Suppliers for materials or labor.

15.6.4 Damage to another contractor not remedied.

15.6.5 Liability for liquidated damages has been incurred by the CONTRACTOR.

15.6.6 Reasonable evidence that the work cannot be completed for the unpaid balance of the contract sum.

15.6.7 Reasonable evidence that the work will not be completed within the Contract time.

15.6.8 Failure to carry out the work in accordance with the Contract Documents.

When the above grounds are removed or resolved or the CONTRACTOR provides a surety bond or consent of surety satisfactory to the CITY which will protect the CITY in the amount withheld, payment may be made in whole or in part.

ARTICLE 16 - TERMINATION OF THE CONTRACT

16.1 CITY'S Right to Terminate.

Upon the occurrence of any one or more of the following events:

16.1.1 If CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.

16.1.2 If a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency.

16.1.3 If CONTRACTOR makes a general assignment for the benefit of creditors.

16.1.4 If a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under Contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR'S creditors.

16.1.5 If CONTRACTOR admits in writing an inability to pay its debts generally as they become due.

16.1.6 If CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled Workers or suitable materials or equipment or failure to adhere to the progress schedule as same may be revised from time to time), provided that CONTRACTOR is provided thirty (30) days to cure any breach.

16.1.7 If CONTRACTOR disregards laws or regulations of any authority with jurisdiction.

16.1.8 If CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents.

CITY may, after giving CONTRACTOR seven (7) days written notice, terminate the services of CONTRACTOR without any liability, of any kind, accruing to the to the CITY and without prejudice to any right or remedy the CITY may have, and exclude the CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and use the same to full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which CITY has paid CONTRACTOR but which are stored elsewhere, and finish the Work as CITY may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. Notwithstanding the foregoing, the CONTRACTOR is provided with thirty (30) days to cure any breach.

16.2 Termination for Reasons Other Than Breach of the Agreement:

16.2.1.a Upon seven (7) days written notice to CONTRACTOR, CITY may, with cause, without liability of any kind and without prejudice to any other right or remedy, terminate this agreement for CITY'S reasons that are other than a breach of this Agreement. In such a case, the

reasons should be clearly stated and shall be capable of cure by CONTRACTOR. Said written notice shall provide CONTRACTOR with a reasonable time in which to cure the reason(s) for the termination. This provision is different from the right to terminate set out in other parts of this Agreement. Where the agreement is terminated for these reasons, the notice of termination to CONTRACTOR must state that the Agreement is being terminated for the stated reason(s) under the termination clause and the effective date of the termination if not cured by CONTRACTOR. Upon receipt of the notice of termination and a failure to cure by CONTRACTOR, CONTRACTOR shall promptly discontinue all Work at the time and to the extent indicated on the notice of termination, terminate all outstanding Subcontractors and purchase orders to the extent that they relate to the terminated portion of the Agreement, and refrain from placing further orders and Subcontracts. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination. In the event of a termination under this provision, the CITY shall pay to the CONTRACTOR only those direct costs associated with all Work actually completed. The CONTRACTOR shall be obligated to support its costs with back-up documentation to the CITY'S satisfaction. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE CITY SHALL NOT BE LIABLE TO THE CONTRACTOR FOR ANY DIRECT, INDIRECT, SPECIAL AND/OR CONSEQUENTIAL LOSSES OR DAMAGES WHETHER ARISING IN AGREEMENT, WARRANTY, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY OR ANY OTHER CAUSE OF ACTION AT LAW OR IN EQUITY, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

16.2.1.b. Upon thirty(30) days written notice to CONTRACTOR, CITY, may without further liability of any kind and without prejudice to any other right or remedy, terminate this agreement for the convenience of the CITY.

16.2.2 Once the Plans and Specifications for this Project receive a permit to commence construction, the ownership in the Plans and Specifications shall vest with the CITY. In the event CITY terminates the Agreement and proceeds to design and construct the Project through its employees, agents or other third parties, CONTRACTOR shall remain fully liable for the design of the Plans and Specifications and the CITY shall retain all its rights and remedies related thereto.

16.3 Termination by CONTRACTOR.

If CITY fails to make payment thereon for a period of sixty (60) calendar days from payment submittal, CONTRACTOR may, upon thirty (30) additional days written notice to CITY, terminate the Contract and recover from the Contract payment for work executed and for proven loss with respect to materials, equipment, tools and construction equipment and machinery.

16.4 Non-Binding Mediation.

16.4.1 Non-Binding Mediation. In the event a dispute arises, either Party may request that the other party attend non-binding mediation. Mutual written consent is required for the non-binding mediation to take place. To the extent that mediation does occur, the CONTRACTOR is obligated to continue to perform the Work and the CITY shall continue to satisfy its payment obligations pending the resolution of the mediation. Before requesting mediation, the parties shall first attempt to resolve the dispute amicably.

16.4.2 Scope of Dispute Review. Any controversy or claim arising out of or relating to this Agreement or any breach of it may be subject to review under these non-binding dispute resolution procedures.

16.4.3 Mediator. The Parties agree that any mediator shall be jointly selected.

16.4.4 Time of Claim. Claims must be brought within the applicable statute of limitations by notice of a claim to the other party or parties affected thereby. Failure to bring the claim within the specified time shall constitute a waiver of the party's right to assert the claim.

The notice of claim shall provide reasonably sufficient detail of the nature of the claim and the basis for it. The mediator shall be selected by the parties within twenty (20) days following the date that a party requests that the selection process commence. Each mediation hearing shall be held at a location mutually approved by the parties. Unless the parties otherwise agree in writing, mediation may be commenced on or after the thirtieth (30th) calendar day after the mediator is selected. Each party agrees that it will designate a representative, having authority to bind that party, who will attend all mediation hearings. Both parties shall endeavor, in good faith, to reach a resolution of the claim during the mediation. The mediator shall submit a sworn affidavit to both parties indicating that the mediator has no past or present affiliation with either the CONTRACTOR or the CITY.

16.4.5 If the parties cannot agree on the production of documents or information (including rules relating thereto), then the mediator shall make a determination as to the scope and nature of the exchange.

16.4.6 Proceeding Costs and Fees. All parties participating in the non-binding mediation shall be responsible for their own costs, expenses and attorney fees necessary to pursue or defend against claim(s) raised under these provisions; however, the parties shall equally share the costs of any meeting or hearing place and the fees of the mediator.

16.4.7 Enforceability and Form of Decision. The decision resulting from mediation is not binding on any party participating in the mediation unless and until the parties agree to it in writing.

In the absence of a written consent accepting the mediator's decision, the decision shall have no force or effect whatsoever.

16.4.8 Florida Law/Venue/Jurisdiction. This Agreement shall be governed by the laws of the State of Florida, without regard to its conflict of law provisions. The Parties hereto hereby submit to the exclusive jurisdiction of the state and federal courts located in Broward County, Florida for any action or proceeding arising out of or relating to this Agreement and the Parties hereto hereby agree that all claims in respect of such action or proceeding shall be heard and determined exclusively in any such state or federal court.

16.4.9 Attorneys' Fees. In the event of any dispute arising under or related to this Agreement, the prevailing party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal until such dispute is resolved with finality.

ARTICLE 17 - NOTICE, COMPUTATION OF TIME ARTICLE

17.1 Giving Notice.

All notices required by any of the Contract Documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested to the following:

CITY:

Renee C. Miller, City Manager
City of Hallandale Beach
400 S. Federal Highway
Hallandale Beach, Florida 33009

COPY TO:

Sarita Shamah
Capital Projects Manager
400 S. Federal Highway
Hallandale Beach, FL. 33009

AND:

V. Lynn Whitfield, City Attorney
City of Hallandale Beach
400 S. Federal Highway
Hallandale Beach, Florida 33009

CONTRACTOR:

17.2 Computation of Time.

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation. A calendar day of twenty four (24) hours measured from midnight to the next midnight shall constitute a day.

17.3 Force Majeure.

Should any party fail to perform its obligations under this Agreement due to a condition of force majeure, as that term is interpreted under Florida Law, and specifically including but not limited to Acts of God (including hurricanes, tropical storms and/or very strong storms which are anticipated by the Parties and taken into consideration when the CONTRACTOR agreed to the substantial completion date) fire, flood, earthquakes, then the time for performance of said obligation hereunder will be extended by a period reasonable commensurate with the cause of such failure to perform or cure. If the Contractor is delayed in performing any obligation under this agreement due to a force majeure condition, the CONTRACTOR shall request a time extension from the CITY within ten(10) working days of said force majeure occurrence. Any time extension shall be subject to mutual agreement and shall not be cause for any claim by the CONTRACTOR for extra compensation. Events of force majeure do not include acts or omissions of sub-contractors.

ARTICLE 18 – MISCELLANEOUS

18.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guaranties and obligations imposed upon CONTRACTOR and all of the rights and remedies available to CITY thereunder, are in addition to, and are not to be construed in any way as

a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents, and the provisions of this Paragraph will survive final payment and termination or completion of the Agreement.

18.2 CONTRACTOR shall not assign or transfer the Contract or its rights, title or interests therein without CITY'S prior written approval. The obligations undertaken by CONTRACTOR pursuant to the Contract shall not be delegated or assigned to any other person or firm unless CITY shall first consent in writing to the assignment. Violation of the terms of this Paragraph shall constitute a breach of Contract by CONTRACTOR and the CITY may, at its discretion, cancel the Contract and all rights, title and interest of CONTRACTOR shall thereupon cease and terminate.

18.3 CONTRACTOR and its employees, volunteers and agents shall be and remain an independent contractors and not agents or employees of CITY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties hereto.

18.4 The remedies expressly provided in this Agreement to CITY shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of CITY now or hereafter existing at law or in equity.

18.5 The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. In the event of a dispute arising under or related to this Agreement it shall be filed in the Eleventh Judicial Circuit in and for Broward County, Florida.

18.6 Should any part, term or provision of this Agreement be by the courts decided to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portion or provision shall not be affected thereby.

ARTICLE 19 - NONDISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYMENT

19.1 During the performance of this Agreement, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, creed, color or national origin. Such action must include, but not be limited to the following: employment, upgrading; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

19.2 CONTRACTOR shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor Regulations (41 CFR Part 60).

19.3 CONTRACTOR shall comply with the Copeland Anti-Kickback Act (18 USC 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).

19.4 CONTRACTOR shall comply with the Contract Work Hours and Safety Standards Act (40 US 327-330) as supplemented by Department of Labor Regulations (29 CFR Part 5).

19.5 CONTRACTOR shall comply with the Florida Trench Safety Act.

19.6 CONTRACTOR shall comply with the OSHA Safety Act.

IN WITNESS WHEREOF, CITY and CONTRACTOR have signed this Agreement in triplicate.

ATTEST:

CITY OF HALLANDALE BEACH, FLORIDA

City Clerk

Renee C. Miller, City Manager

APPROVED AS TO FORM:

V. Lynn Whitfield, City Attorney

CONTRACTOR

By:
Title:

State of Florida)
)ss:
County of Miami-Dade)

On this, the ___ day of _____, 20___, before me, the undersigned Notary Public of the State of Florida, the foregoing instrument was acknowledged by _____ (name of officer), _____(title), of, on behalf of the corporation, who is personally known to me or has produced _____ as identification.

Notary Public, State of Florida

My Commission Expires:

Printed, typed or stamped name
of Notary Public

ENUMERATION OF CONTRACT DOCUMENT

This page is attached to the Design Build Agreement respecting the Foster Park Plaza between the City of Hallandale Beach, Florida, and _____.

Article 2.1 lists certain contract documents which are attached to the Agreement, and this page constitutes the attachment as follows:

2.1.2 Construction Performance Bond – in a form acceptable to the CITY and to be supplied by CONTRACTOR prior to the commencement of construction.

2.1.3 Construction Payment Bond - in a form acceptable to the CITY and to be supplied by CONTRACTOR prior to the commencement of construction.

2.1.4 Drawings and Outlines Specifications - to be supplied by CONTRACTOR and reviewed by CITY in accordance with the provisions of the Agreement.

2.1.5 Insurance Certificate - to be supplied by CONTRACTOR before the Work commences.

2.1.6 Notice of Award and Notice to Proceed - to be supplied by the CITY.

2.1.7 Clarifications and Exclusions, if any.

2.1.8 All applicable provisions of Federal, State or Local law - omitted by the parties, and will not be attached, but the foregoing does not relieve CONTRACTOR from complying therewith as provided in this Agreement.

2.1.9 Any modification, including all Change Orders and Written Amendments - none in existence as of the date hereof, but will form part of the Contract Documents.