



Hallandale Beach
PROGRESS. INNOVATION. OPPORTUNITY.

**REQUEST FOR PROPOSAL
(RFP) # FY 2015-2016-011**

**CONSULTANTS' COMPETITIVE NEGOTIATION ACT (CCNA)
CONSTRUCTION MANAGER AT RISK (CMAR)**

**GOLDEN ISLES TENNIS CENTER AND
GOLDEN ISLES PARK**

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

**PREPARED BY:
CITY OF HALLANDALE BEACH
CITY MANAGER'S OFFICE –
OFFICE OF CAPITAL IMPROVEMENT
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 his/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;

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- (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 his/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 his/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, must 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.

24. CONFLICT OF INTEREST

If you are an employee, board member, elected official(s) or an immediate family member of any such person, please indicate the relationship in the form provided in the Form's Section, Exhibit II. 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 City Commission prior to entering into a contract with the City of Hallandale Beach.

END OF SECTION

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 2015-2016-011 CCNA CMAR GOLDENS ISLES TENNIS CENTER AND GOLDEN ISLES PARK

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.

CITY'S PAYMENT METHOD

The City of Hallandale Beach requires the acceptance of the following e-payable method for all work/services rendered as a result of the award of this solicitation.

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 and approval.

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 _____, 2016

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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**CONSTRUCTION MANAGEMENT AT RISK
PHASE 1 PRE-CONSTRUCTION SERVICES AGREEMENT**

**BY AND BETWEEN THE CITY OF HALLANDALE BEACH
AND _____.
FOR
PROFESSIONAL CONSTRUCTION MANAGEMENT SERVICES
FOR CONSTRUCTION OF GOLDEN ISLES TENNIS CENTER
AND GOLDEN ISLES PARK**

This Agreement made this _____ day of _____ in the year _____, by and between the City of Hallandale Beach, Florida, a municipal corporation, hereinafter referred to as the "CITY" and _____, a Florida corporation, duly licensed to do business in the State of Florida, hereinafter referred to as the "Construction Manager".

WITNESSTH:

WHEREAS, the City of Hallandale Beach, Florida desires to construct and/or renovate Golden Isles Tennis Center and Golden Isles park within the City; and

WHEREAS, it is the best interest of the CITY to obtain professional construction management services from a pre-approved professional Construction Manager At Risk (CMAR) to insure quality, timely and valued construction; and

WHEREAS, the CITY, issued a Request for Proposals, (RFP # FY 2015-2016-011 Golden Isles Tennis Center and Golden Isles Park), for Construction Manager at Risk for the construction of _____ (the "Park Project"); and

WHEREAS, Construction Manager submitted the Response to the RFP (the "Response") that was deemed the most qualified for the performance of the services described in the RFP, which Responses and RFP are incorporated into and made a part of this Agreement; and

WHEREAS, Construction Manager represents that it possesses the requisite expertise and desires to enter into an agreement to act as Construction Manager at Risk to the City to provide the services as set forth herein; and

WHEREAS, the City Commission has authorized the City Manager to execute and enter into this Agreement by Resolution No.: _____ adopted _____; and

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and compensation set forth herein the City and Construction Manager agree as follows:

ARTICLE 1
GENERAL TERMS AND CONDITIONS

- 1. Overview/Recitals.** This agreement sets forth the terms and conditions pursuant to which Construction Manager will provide Construction Manager at Risk Services for the construction of Golden Isles Tennis Center and Golden Isles Park, as further detailed in this Agreement. The Recitals are incorporated into and made a part of this Agreement.

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- 2. Intention of City.** It is the intent of the City to describe in the Contract Documents a functionally complete Project to be constructed in accordance with the Contract Documents and in accordance with all codes and regulations governing construction of the Project. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied by Construction Manager whether or not specifically stated in this Agreement. Where 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 opening bids and Construction Manager shall comply therewith. City shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.
- 3. Construction of the Agreement.** This Agreement is comprised of three sections, which are applicable in the following manner:
- Section 1 – General Terms and Conditions: This Section applies to both the Pre-Construction and Construction Phase Services, if awarded, except where it is stated that the requirement applies only to a specific Phase.
 - Section 2 – Pre-Construction Phase: The provisions of this Section apply only to the Pre-Construction Phase Services.
 - Section 3 – Construction Phase: The provisions of this Section are only applicable to the Construction Phase Services and shall only become effective upon the City's execution of the GMP Amendment.
- 4. Agreement Term.** The Agreement shall commence upon issuance of the Notice of Award, which shall be issued subsequent to the execution of the Agreement by the City. The Agreement shall terminate upon notice by the City that the Agreement has been closed-out after Final Completion or otherwise terminated by the City pursuant to the terms and conditions herein set forth.
- 5. Definitions**

Acceptance means the formal written acceptance by the CITY of the completed Work. Acceptance shall mean that all of the Work required by the Contract or

individual work orders issued are fully executed and completed in accordance to the Construction Documents so that no Work remains to be completed. No further performance of Work shall be required except in regards to the correction of latent defects, gross mistakes and fraud. This shall require that all close-out documentation be fully completed, submitted, and approved.

Agreement means this Agreement, together with all documents incorporated herein by reference and the Contract Documents.

Agreement Time means the time period defined in this Agreement for the Construction Manager to complete the Pre-Construction Phase Services and submit the GMP Proposal, which shall be amended to reflect the Construction Phase should the City accept the GMP Proposal.

Basis of Design means a specific manufacturer's product that is named, including the make or model number or other designation, establishing the significant qualities related to type, function, dimension, in-service performance, physical properties, appearance, and other characteristics for purposes of evaluating comparable products of other manufacturers.

Change Order means a written document ordering a change in the Agreement Price or Agreement Time or a material change in the Work as determined by the Project Manager. A Change Order must comply with the Contract Documents.

City means the City of Hallandale Beach, Florida, a Florida municipal corporation. In all respects hereunder, City's performance is pursuant to the City's capacity as Owner of the Project. In the event the City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, authority as a governmental body and shall not be attributable in any manner to the City as a party to this Agreement. For the purposes of this Agreement, "City" without modification shall mean the City Manager or Director, as applicable.

City Commission means the legislative body of the City of Hallandale Beach.

City Manager means the duly appointed chief administrative officer of the City of Hallandale Beach.

Community Benefits Plan means the identifiable and observable community benefits for the community surrounding the Project or City which were proposed in the Construction Manager's response to RFP which include, but are not limited

to, employment opportunities for residents, community outreach, mentoring, training and apprenticeships.

Constructability means the creative, organized process of analyzing a project's drawings, specifications and other project documentation with a goal of minimizing design, detailing, and specification problems which might render the construction contract documents unbuildable or requiring addenda or change orders to make them buildable.

Construction Estimate means a cost estimate for the completion of the Work, which estimate shall include all components of the cost of the Work, as well as the Construction Manager's Fees for the Project.

Construction Change Directive means a written directive to effect changes to the Work, issued by the Consultant or the Project Manager that may affect the Agreement Price or Time.

Construction Manager means (name of Firm) selected to provide services including, but not limited to, preparation of cost estimates, constructability reviews, value engineering and assist in systems life cycle cost analysis, estimating, scheduling, bidding and submission of a GMP, as defined below, for construction, and construction management. Upon execution of the GMP Amendment, the Construction Manager shall serve, from that point forward, as the General Contractor under this Agreement.

Construction Manager's Fees means the Construction Phase fee to be negotiated with the Construction Manager for general conditions, overhead and profit compensation portion of the GMP, as defined below.

Construction Phase Services means the services to be performed through the Construction Manager during the construction phase of the Project, including without limitation, the Construction Work and such other services as required by this Agreement or reasonably inferred herein.

Construction Work means all Work required by this Agreement for the Construction Phase of Project.

Consultant means the individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects and/or engineers, which has entered into an agreement to provide professional services to the City for this Project.

Contingency means the dollar amount or percentage included in the Guaranteed Maximum Price (GMP) to be used by the CONTRACTOR, with the CITY's written approval, for changes requested by the City in the 90% Construction Documents or Specifications. Any unused amount of the Contingency at Final Completion shall vest to the CITY.

Contract Documents means the Proposal submitted by the CONTRACTOR in response thereto as negotiated and accepted by the CITY, this Agreement and its Exhibits, attachments and Forms, final, permitted Construction Documents and Specifications, any Addenda to the RFP, the Performance Bond, the Notice of Award, the Notice(s) to Proceed, the Purchase Order and all agreed upon modifications issued after execution of the Agreement are the documents which are collectively referred to as the Contractor Documents.

Contract Price means the amount established in the Contract as the Guaranteed Maximum Price (GMP), as may be amended by Change Order.

Cure means the action taken by the Construction Manager promptly after receipt of written notice from the City of a breach of the Agreement for the Work, which shall be performed at no cost to the City, to repair, replace, correct, or remedy all material, equipment, or other elements of the Work or the Agreement affected by such breach, or to otherwise make good and eliminate such breach, including, without limitation, repairing, replacing or correcting any portion of the Work or the Project site disturbed in performing such cure.

Cure Period means the period of time in which the Construction Manager is required to remedy deficiencies in the Work or compliance with the Contract Documents after receipt of written notice to Cure from the City identifying the deficiencies and the time to Cure.

Completion means the date certified by the CONSULTANT and PROJECT MANAGER in the Final Certificate of Payment in which all conditions and requirements of any permits and regulatory agencies have been satisfied; and the documents (if any) required to be provided by Construction Manager have been received by the PROJECT MANAGER; and to the best of Consultant's and PROJECT MANAGER's information and belief has been fully completed in accordance with the terms and conditions of the Contract Documents.

General Conditions means the provision of facilities or performance of work by the CONTRACTOR for items at cost and including:

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1. Wages of construction workers directly employed by Construction Manager to perform the construction of the Work at the Project site or at off-site workshops;
 2. Wages or salaries of the Construction Manager's supervisory, technical and administrative personnel who are stationed at the Project site;
 3. Wages and salaries of Construction Manager's supervisory and administrative personnel engaged at factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work;
 4. Wages and salaries of Construction Manager's supervisory, technical, and administrative personnel when assigned to the Project and specifically working on this Project in the Construction Manager's administrative or home offices;
 5. The parties hereby establish a Fringe Benefits rate of XXX% expressed as a percentage of Direct Salaries, provided such markup is to apply only upon those wages and salaries included in the Cost of the Work;
 6. Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities (including project field offices, furniture and fixtures), all temporary utilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Construction Manager;
 7. Rental charges, at standard industry rates for the area, for temporary facilities, machinery, vehicles, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site, whether rented from Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of all equipment rented, whether from Construction Manager or others;
 8. Cost of clean-up on the Project site(s), and removal and proper disposal of debris from the Project sites;

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9. Costs of long distance telephone calls, cellular telephone calls, Internet service, postage and parcel delivery charges and telephone service at the Project site and reasonable petty cash expenses of the Project site office;
 10. That portion of the reasonable travel and subsistence expenses of Construction Manager's personnel, assigned to the Project site, incurred while traveling outside of the Broward County area in discharge of duties connected with the Work;
 11. Temporary living and travel expenses of employees who are not relocated, but assigned to the Project;
 12. Cost of reproducing and printing;
 13. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Construction Manager is liable.
 14. Fees and assessments for the building permit and for other permits, licenses and inspections for which Construction Manager is required by the Contract Documents to pay;
 15. Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of this Contract;
 16. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents;
 17. Deposits lost for causes other than Construction Manager's fault or negligence;
 18. Legal, mediation and arbitration costs, other than those arising from disputes between Owner and Construction Manager, reasonably incurred by Construction Manager in performance of the Work and with Owner's prior written consent;
 19. Costs incurred in repairing or correcting damage or nonconforming Work executed by Construction Manager, or its subcontractors or suppliers, provided that such damage or nonconforming Work was not caused by the negligence of Construction Manager;
 20. Cost of Public Information/Community Benefit Programs or other neighborhood functions hosted by Construction Manager ;
 21. Cost of Partnering;

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22. Cost of site safety and security;
 23. Cost of documentation, inspection and testing as required by the Contract Documents or the Construction Documents and Specifications;
 24. Bonds and insurance premiums as required by Contract (except Builders Risk, General Liability and the Payment and Performance Bonds shall be invoiced separately as 'pass through costs');
 25. Cost to protect the Work and adjacent property from loss and damage.

Final Completion means the date when all punch list items are completed, including all closeout requirements, submittals and approval by the CONSULTANT, is given to the CITY in writing. Final Completion not accepted until approved by the CITY.

Guaranteed Maximum Price means the sum agreed to between the Construction Manager and the City and set forth in the GMP Amendment as the maximum total Project price that the Construction Manager guarantees not to exceed for the construction of the Project and for all services under this Agreement, excluding only the Pre-Construction Fee. The CITY reserves the rights to request the submission of the GMP proposal to reflect one or more stages of construction.

GMP Amendment means the GMP Proposal, as may be amended and accepted by the City, at its sole discretion, which amendment shall automatically become incorporated herein upon the City and the Construction Manager's execution of same, and shall establish, among other things, the GMP, the names of the Construction Manager's on-site management and supervisory personnel for the Project, and the Agreement Time for the Construction Work.

GMP Proposal means a proposal for completing the Construction Work, which will be submitted based on ninety percent (90%) Construction Documents and Specifications for the Project. Such proposal shall include the GMP for the construction of the Project once it has been accepted by the City based upon the Drawings and Specifications, the Contract Documents and Memorandum of Changes. However, the City has no obligation to accept the GMP Proposal.

Inspector means an employee of the CITY of Hallandale Beach, Florida, assigned by the Director to make observations of work performed by a Contractor.

Materials means Materials incorporated in this Project, or used or consumed in the performance of the Work.

Project Schedule means the Schedule prepared by the Construction Manager and approved by the City and a scheduling consultant retained by the City, using a critical path method, as updated monthly, that identifies, coordinates and integrates the design and construction schedules for the development of the Parks and the Project. The Preliminary Project Schedule is attached.

Memorandum of Changes means the notification provided to the City and the Consultant by the Construction Manager at the times specified in this Agreement that recommends changes based on the Value Engineering and Constructability reviews.

Notice to Proceed means written notice or directive issued by the Director or City's Project Manager acknowledging that all conditions precedent have been met and directing that the Construction Manager may commence work on the Project or a specific task of the Project.

Pre-Construction Fee means the fixed lump sum fee payable to the Construction Manager for the Work performed during the Pre-Construction Phase related to the Project, accepted by the City and the Construction Manager, which fee includes all direct and indirect costs incurred by the Construction Manager in the proper performance of the design, bid and award services.

Pre-Construction Phase Services means the services the Construction Manager shall perform for the design phase of the Agreement and culminates with the exercise by City of one of the City's options regarding the GMP proposal.

Pre-Construction Work means all work required by this Agreement during the Pre-Construction Phase of the Project.

Professional Services means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as applicable, as defined by the laws of the State of Florida, or those performed by any architect, professional engineer, landscape architect, or registered surveyor or mapper in connection with his or her professions employment or practice.

Progress Report means a monthly progress report to be prepared by Construction Manager and will contain the following: (a) listing of actual costs for completed

activities and estimates for uncompleted tasks; (b) identification of variances between actual and budgeted or estimated costs; (c) the updated Project Schedule; (d) progress photos; (e) executive summary; (f) a discussion of pending items and existing or anticipated problems

Project means the construction, alteration or repair, and all service and incidents thereto, of public facilities, as contemplated and budgeted by the City, including the work described herein.

Project Manager means an employee of the CITY of Hallandale Beach, expressly designated as PROJECT MANAGER in writing by the DIRECTOR, who is the representative of the City, concerning the Contract Documents.

Punch List means the list of items, prepared in connection with the inspection of the Project by the CITY'S Representative and the CONSULTANT in connection with Substantial Completion of the Work or a portion of the Work, which the City's Representative or CONSULTANT has designated as remaining to be performed, completed or corrected before the Work will be accepted by the CITY. The preparation of a complete Punch List for the area or building to be occupied as agreed upon between the CITY and CONTRACTOR by the CITY shall be an absolute condition precedent to the CITY'S occupancy of any portion of the Project.

RFP means the official documents setting forth information and requirements; contract forms, bonds, and certificates; general and supplementary conditions of the Contract Documents; the specifications; and the plans and drawings of the Project.

Resident Project Representative means an authorized representative of CONSULTANT on the Project.

Shop Drawings are drawings, diagrams, schedules and other product data specifically prepared for the Work by the CONTRACTOR or a Sub-Contractor, sub-Sub-Contractor, manufacturer, supplier or distributor to illustrate the specific requirements for some portion of the Work. The Construction Drawings shall not be used as Shop Drawings

Subcontractor means a person, firm or corporation having a direct contract with the CONTRACTOR including one who furnishes material worked to a special design according to the RFP for this work, but does not include a person, firm or corporation merely furnishing material not so worked.

Substantial Completion means that date on which, as certified in writing by CONSULTANT, the Work, or a portion thereof designated by the PROJECT MANAGER in his/her sole discretion, is at a level of completion in substantial compliance with the Contract Documents such that all conditions of permits and regulatory agencies have been satisfied and the City or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects for its intended purpose. A Certificate of Final Inspection must be issued for Substantial Completion to be achieved, however, the issuance of a Certificate of Occupancy or the date thereof is not to be determinative of the achievement or date of Substantial Completion.

Surety means the surety company or individual which is bound by the Performance bond and Payment bond with and for CONTRACTOR who is primarily liable, and which surety company or individual is responsible for CONTRACTOR's acceptable and timely performance of the work under the contract and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes, as amended from time to time.

Work means the totality of the obligations, including construction and other services required by the Contract Documents, whether completed or partially completed, including all labor, materials, equipment and service provided or to be provided by CONTRACTOR to fulfill CONTRACTOR's obligations. The work may constitute the whole or a part of the project.

Written Notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last known business address. Electronic, facsimile (FAX) or other telephonic transmission shall not be considered as written notice.

ARTICLE 2

SCOPE OF WORK

The Contractor shall furnish professional Construction Management at Risk Services (Pre Construction – Phase I) for the project described below and Scope of Services shown below and attached in Exhibit A, upon issuance of Contractor's Notice to Proceed by the Capital Projects Manager.

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- 2.1 CONTRACTOR hereby agrees to furnish all of the labor, materials, equipment services and incidentals necessary to perform all services described in Articles 1 through 26, including the proposal of a Guaranteed Maximum Price (GMP), for the Project for RFP # FY 2015-2016-011 Golden Isles Tennis Center and Golden Isles Park, based on ninety percent (90%) Construction Drawings and Specifications prepared by _____ (CONSULTANT).

The scope of work defining preconstruction services to be provided by the Construction Manager specifically shall be provided in the attached Exhibit A and the Proposed Approach submitted in response to RFP # FY 2015-2016-011 Golden Isles Tennis Center and Golden Isles Park.

- 2.2 CONTRACTOR shall provide and pay a livable wage 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.

ARTICLE 3

TERM AND TIME OF PERFORMANCE

- 3.1 The term of this Agreement shall coincide with the design development of the construction documents by the consultant and it shall begin on the date it is fully executed by both parties and shall end on the date of commencement of the term of the Agreement between the CITY and the CONTRACTOR for construction services for the RFP # FY 2015-2016-011 Golden Isles Tennis Center and Golden Isles Park no later than the issuance of all final permits or the City's Notice To Proceed on the Guaranteed Maximum Price (GMP) for the park, whichever is the later, unless terminated in accordance with Article 8. The Contractor shall deliver to the City a GMP within eight (8) weeks of completion of the 90% construction documents. The CITY have the authority to extend the term of this Agreement for a period of time not-to-exceed sixty (60) calendar days only when such extension of time is necessitated and approved by the CITY. Any such extension shall be accomplished by an amendment to this Agreement in accordance with the "AMENDMENTS" provisions stated in Article 25 herein.
- 3.2 All duties, obligations, and responsibilities of CONTRACTOR required by this Agreement shall be completed no later than time specified in section 3.1 above. Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Agreement.

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- 3.3 At or before the above referenced completion date for this Contract the CONTRACTOR, following completion of cost estimating, value engineering and other services set forth in Article 4 will tender to the CITY a written Guaranteed Maximum Price (GMP) for final completion of this Project. The CITY, by and through the Director, the Project Manager and/or other CITY personnel, will have the opportunity to negotiate the amount of the GMP with the CONTRACTOR. In the event a GMP which is satisfactory to CITY'S personnel in their reasonable discretion is not agreed upon in writing within 30 days of the tender of GMP, the CITY reserves the right to terminate this Contract for convenience and the CONTRACTOR will immediately tender all documents, in accordance with the applicable provisions of this Agreement. The CONTRACTOR shall have no recourse from this termination and the CITY may take such documents, as defined, and commence negotiations with the second and third ranked firm, respectively. Conditions precedent to a GMP Amendment for this Project are the satisfactory final completion of Phase I and an agreed upon GMP

ARTICLE 4 **COMPENSATION**

- 4.1 CITY agrees to pay CONTRACTOR, in the manner specified in Article 4.2, the total Sum Compensation in the amount of _____ (\$_____) for work actually performed and completed pursuant to this Agreement, which amount shall be accepted by CONTRACTOR as full compensation for all such work. It is acknowledged and agreed by CONTRACTOR that this amount is the maximum payable and constitutes a limitation upon CITY's obligation to compensate CONTRACTOR for its Pre-Construction services related to the Scope of Services set forth in the RFP, and in this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon CONTRACTOR's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.
- 4.2 The Compensation shall be paid out in accordance with the percentage amount set forth therein as follows in Attached Exhibit A, unless otherwise specified in the exhibit.
- 4.3 It is understood that the method of compensation is that of Lump Sum which means that CONTRACTOR shall perform all services set forth in the RFP, and in this Agreement, for the total compensation in the amount, including all reimbursable expenses.

4.4 METHOD OF BILLING AND PAYMENT

4.4.1 CONTRACTOR may submit invoices for compensation on a monthly basis, but only after the services for which the invoices are submitted have been completed. Such invoices shall include the phase of the services for which invoice is submitted along with a detail of the task or services performed for that phase. An original invoice, plus one copy are due within fifteen (15) days of the end of the month, except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the expenses incurred.

4.4.2 CITY shall pay CONTRACTOR within thirty (30) calendar days of receipt of CONTRACTOR's proper statement. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Project Manager. Payment may be withheld for failure of CONTRACTOR to comply with a term, condition, or requirement of this Agreement.

4.5 Notwithstanding any provision of this Agreement to the contrary, CITY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied, or resolved in a manner satisfactory to the Project Manager, and/or due to CONTRACTOR's failure to comply with Article 4.1 herein. The amount withheld shall not be subject to payment of interest by CITY.

4.6 Payment shall be made to CONTRACTOR at:

ARTICLE 5
CHANGES IN SCOPE OF SERVICES

5.1 Any change to the Scope of Services must be accomplished by a written amendment, executed by the parties in accordance with Article 25.

ARTICLE 6
INDEMNIFICATION

To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify and hold-harmless the City, its officers and employees from any claims, liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney fees to the extent caused, in whole or in part, by the professional negligence, error or omission of the CONTRACTOR or persons employed or utilized by the CONTRACTOR in performance of the Agreement.

To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify and hold-harmless the City, its officers and employees from any claims, liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney fees to the extent caused, in whole or in part, by the recklessness or intentionally wrongful conduct, of the CONTRACTOR or persons employed or utilized by the CONTRACTOR in performance of the Agreement.

CONTRACTOR agrees to indemnify, save harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend CITY, their officers, agents, servants and employees against any and all claims, losses, liabilities and expenditures of any kind, including attorney's fees, court costs, and other expenses, caused by negligent act or omission of CONTRACTOR, any sub-contractors, their employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature, whatsoever, resulting from injuries or damages sustained by any person or property. CONTRACTOR further agrees to indemnify and save harmless the CITY, their officers, agents and employees, for or on account of any injuries or damages received or sustained by any person or persons resulting from any construction defects, including latent defects. Neither the CONTRACTOR nor any of its sub-contractors will be liable under this section for damages arising out of intentional torts of CITY or their officers, agents or employees. In the event that any action or proceeding is brought against CITY by reason of any such claim or demand, CONTRACTOR, upon written notice from CITY, shall defend such action or proceeding.

ARTICLE 7
INSURANCE

Contractor agrees, at its sole expense, to maintain on a primary basis during the life of this Contract, or the performance of Work hereunder, insurance coverages, limits, and endorsements unless otherwise noted herein. Operator agrees to provide evidence of Commercial General Liability, Contractor's Professional Errors & Omissions Liability and Commercial Umbrella/Excess Liability coverages at execution of the Contract. The other coverages required herein for Business Auto Liability, Contractor's Pollution Legal Liability, Inland Marine Builder's Risk Insurance, and Worker's Compensation may be evidence at time of amending this Contract with an addendum awarding of the Guaranteed Maximum Price terms and conditions. In the event the Contractor performs any site work, other than testing, then all the insurance required herein will need to be evidenced prior to commencement of said site work. Evidence of flood insurance shall be additionally required once elevation certificates are available and coverage is applied for during the Work.

13.2 The Contractor agrees the insurance requirements herein as well as City's review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Operator under this Contract.

13.3 Commercial General Liability. Contractor agrees to maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence **\$2,000,000** Annual Aggregate. Contractor agrees it's coverage will not contain any restrictive endorsement(s) excluding or limiting Product/Completed Operations, Independent Contractors, Broad Form Property Damage, X-C-U Coverage, Contractual Liability or Cross Liability. The Operator agrees any Self-Insured-Retention or deductible shall not exceed \$25,000.

13.4 Business Automobile Liability. Contractor agrees to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Operator does not own automobiles, Operator agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

13.5 Contractor's Pollution Legal Liability. Contractor agrees to maintain Contractor's Pollution Legal Liability at a limit of liability not less than \$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate.. The CONTRACTOR agrees the policy shall include a minimum three (3) year Discovery (tail) reporting period, and a Retroactive Date that equals or precedes the effective date of the Contract, or the performance of Work hereunder. The Contractor agrees the Self-Insured-Retention shall not exceed \$25,000. This coverage may be provided on a Per-Project Basis.

13.6 Professional Errors & Omissions Liability. Contractor agrees to maintain Professional Error's & Omissions Liability at a limit of liability not less than **\$1,000,000** Each Occurrence **\$2,000,000** Annual Aggregate... The Contractor agrees the policy shall include a minimum three (3) year Discovery (tail) reporting period, and a Retroactive Date that equals or precedes the effective of the Contract, or the performance of services hereunder. The Contractor agrees the Self-Insured-Retention shall not exceed \$25,000. This coverage may be provided on a Per-Project Basis.

13.7 Inland Marine Builder's Risk Insurance. The Contractor, prior to notice to proceed or commencement of Work, whichever occurs first, agrees to maintain an Inland Marine Builder's Risk insurance coverage form with an amended policy period of no less than 22 months, if available, providing coverage to protect the interests of the City, Contractor, sub-contractors, including property acquired under a sales tax incentive program, property in transit, and property on or off-premises, which shall become part of the Work.

13.7.1 Coverage shall be written on an All-Risk, Replacement Cost, and Completed Value Form basis in an amount at least equal to one-hundred 100% of the projected completed value of the Work, as well as subsequent modifications of that sum due to Change Orders. This policy shall also include Delay Cost coverage for soft costs, which shall at a minimum include additional expenses for interest, legal, consulting, insurance, architectural and engineering, contractor's overhead and general Conditions, and equipment rental. The period of indemnity shall not be less than 12 months and the limit of Delay Cost coverage not be less than ten percent (10%) of the projected completed value of the Work and shall be a scheduled limit on the policy in addition to a scheduled limit for the hard cost coverage. The waiting period for Delay Cost coverage may not exceed 30 days. Collectively, the scheduled soft cost limit and hard cost limit may equal one-hundred percent (100%) of the projected value of the Work, unless the builder's risk carrier requires the Delay Cost coverage to be in addition to the 100% projected value of the Work. Contractor agrees to be responsible for reporting increases in the projected completed value of the Work due to Change Orders to its insurance carrier.

13.7.2 The Contractor further agrees that any flat deductible(s) shall not exceed \$100,000, any wind percentage deductible (when applicable) shall not exceed ten-percent (10%); and any flood sublimit shall not be less than 25% of the projected completed value of the Work for this policy.

13.7.3 The Contractor agrees to endorse the Inland Marine Builder's Risk insurance with a manuscript endorsement eliminating the automatic termination of coverage in the event the building is occupied in whole or in part, or put to its intended use, or partially accepted by City. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the City's interest in the building ceases, or the building is accepted under a Certificate of Substantial Completion or insured by the City.

13.7.4 The Contractor agrees to endorse the City as "Additional Insured" on the Inland Marine Builder's Risk Insurance coverage form.

13.8 Flood Insurance. Once an elevation certificate is available for each building, as defined by the National Flood Insurance Program (NFIP), under the Work the Contractor agrees to maintain a NFIP General Flood Policy on each building under construction in the amount of \$500,000 for building coverage or the replacement cost of the building, which ever is less. The flood deductible for the building coverage may not exceed the standard deductible offered by the NFIP. Operator agrees to endorse the City as a "Loss Payee on each flood policy required herein.

13.9 Worker's Compensation & Employer's Liability. The Contractor agrees to maintain its own Worker's Compensation & Employers Liability Insurance. (NOTE: Elective exemptions or coverage through an employee leasing arrangement will NOT satisfy this requirement).

13.10 Commercial Umbrella/Excess Liability. Contractor agrees to maintain either a Commercial Umbrella or Excess Liability at a limit of liability not less than **\$5,000,000** Each Occurrence **\$5,000,000** Aggregate. The Contractor agrees to endorse the City as an "Additional Insured" on the Commercial Umbrella/Excess Liability, unless the Commercial Umbrella/Excess Liability provides coverage on a pure/true follow-form basis, or the City is automatically defined as an Additional Protected Person. The Contractor agrees any Self-Insured-Retention or deductible shall not exceed \$25,000.

13.11 Additional Insured Endorsements. The Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability with a CG 2010 10 01 Additional Insured - Owners, Lessees, or Contractors, or similar endorsement providing equal or broader Additional Insured coverage. If a CG2010 07 04 Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization endorsement is provided by the Operator's Commercial General Liability, then the additional endorsement of GC2037 10 01 Additional Insured – Owners, Lessees, or Contractors – Completed Operations shall be required to provide back coverage for the contractor's "your work" as defined in the policy and liability arising out of the products-completed operations hazard.. **(Attach an actual copy of the endorsement(s)...contact your insurance agent).**

13.11.1 Additionally, Contractor agrees to endorse the City as an "Additional Insured" under the Commercial Umbrella/Excess Liability and the Inland Marine Builders Risk Insurance as also provided herein.

13.11.2 The name of the organization endorsed as Additional Insured for all endorsement shall read "City of Hallandale Beach".

13.12 Deductibles, Coinsurance Penalties & Self-Insured Retention. Contractor agrees to be fully and solely responsible for any costs or expenses as a result of a coverage deductible,

coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, self-insured retention, or coverage exclusion or limitation. For deductible amounts that exceed the amounts stated herein that are acceptable to City, the Contractor agrees, when requested by City, to maintain a Commercial Surety Bond in an amount equal to said deductible amount.

13.13 Waiver of Subrogation. Contractor agrees by entering into this written Contract to a Waiver of Subrogation in favor of the City, Contractor, sub-Contractor, architects, or engineers for each required policy providing coverage during the life of this Contract. When required by the insurer, or should a policy condition not permit the Operator to enter into a pre-loss agreement to waive subrogation without an endorsement, the Operator agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition that specifically prohibits such an endorsement, or voids coverage should the Operator enter into such an agreement on a pre-loss basis.

13.14 Right to Revise or Reject. Contractor agrees the City reserves the right, but not the obligation, to review or revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, the City reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein, or any insurer(s) providing coverage due of its poor financial condition or failure to operating legally in the State of Florida. In such events, City shall provide Operator written notice of such revisions or rejections.

13.15 No Representation of Coverage Adequacy. The coverages, limits or endorsements required herein protect the primary interests of the City, and the Contractor agrees in no way should these coverages, limits or endorsements required be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposures, whether as a result of the Project or otherwise.

13.16 Certificate of Insurance. Contractor agrees to provide City a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available by Contractor's insurer. If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City by fax within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by City, the Contractor agrees not continue work pursuant to this Contract, unless all required insurance remains in effect.

13.16.1 The City shall have the right, but not the obligation, of prohibiting Contractor from entering the Work site until a new Certificate of Insurance is provided to the City evidencing the replacement coverage. The Contractor agrees the City reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to the City. If the Contractor fails to maintain the insurance as set forth herein, the Contractor agrees the City shall have the right, but not the obligation, to purchase replacement insurance, which the Contractor agrees to reimburse any premiums or expenses incurred by the City.

13.16.2 The Contractor agrees the Certificate(s) of Insurance shall:

1. Clearly indicate the City has been endorsed on the Commercial General Liability with a CG 2010 10 01 Additional Insured - Owners, Lessees, or Contractors – Schedule Person or Organization, or similar endorsement providing equal or greater Additional Insured coverage, or collectively the CG2010 07 04 Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization and GC2037 10 01 Additional Insured – Owners, Lessees, or Contractors – Completed Operations, if applicable. **(Attach an actual copy of the endorsement...contact your insurance agent).**
2. Clearly indicate the City is endorsed as an Additional Insured on the Commercial Umbrella/Excess Liability and Inland Marine Builder's Risk Insurance
3. Clearly indicate the project name and project number.
4. Clearly identify each policy's limits, flat & percentage deductibles, sub-limits, or self-insured retentions, which exceed the amounts or percentages set forth herein.
5. Clearly indicated Certificate Holder(s) as follows:

City of Hallandale Beach
400 South Federal Highway
Hallandale Beach, Florida 33009
6. Clearly indicate the City is endorsed as an Additional Insured on the Commercial Umbrella/Excess Liability.
7. Clearly indicate the project name and project number.

ARTICLE 8
TERMINATION

- 8.1 This Agreement may be terminated for cause by action of the CITY or by CONTRACTOR if the party in breach has not corrected the breach within thirty (30) days after written notice from the aggrieved party identifying the breach, or for convenience by action of the CITY, without any cause, upon not less than thirty (30) days' written notice by PROJECT MANAGER. This Agreement may also be terminated by Project Manager upon such notice as Project Manager deems appropriate under the circumstances in the event Project Manager determines that termination is necessary to protect the public health, safety, or welfare.
- 8.2 Termination of this Agreement for cause shall include, but not be limited to, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of CITY as set forth in this Agreement notwithstanding whether any such breach was previously waived or cured.
- 8.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement, except that notice of termination by Project Manager, which Project Manager deems necessary, to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 8.4 In the event this Agreement is terminated for convenience, CONTRACTOR shall be paid for any services performed to the date the Agreement is terminated; however, upon being notified of CITY's election to terminate, CONTRACTOR shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. CONTRACTOR acknowledges and agrees that ten dollars (\$10.00) of the compensation to be paid by CITY, the adequacy of which is hereby acknowledged by CONTRACTOR, is given as specific consideration to CONTRACTOR for CITY's right to terminate this Agreement for convenience.
- 8.5 In the event this Agreement is terminated, any compensation payable by CITY shall be withheld until all documents are provided to CITY pursuant to Article 9 herein.

ARTICLE 9
RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the CITY. In the event of termination of this Agreement, any reports, photographs, surveys, estimates, schedules, drawings, and other data and documents prepared by CONTRACTOR, whether finished or unfinished, shall become the property of the CITY and shall be delivered by CONTRACTOR to the PROJECT MANAGER within seven (7) days of termination of this Agreement by either party. Any compensation due to CONTRACTOR shall be withheld until all documents are received as provided herein. This shall apply to all documents produced in any phase of the work, regardless of whether a subsequent phase is undertaken with CONTRACTOR.

ARTICLE 10
SUBCONTRACTORS AND PURCHASE ORDERS

Unless waived in writing, for good cause, by the CITY, the CONTRACTOR must obtain competitive pricing, in compliance with the requirements of this Article 11, for One Hundred Percent (100%) of the CONTRACTOR's Direct Construction Cost required under this Contract.

ARTICLE 11
AUDIT RIGHT AND RETENTION OF RECORDS

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

CONTRACTOR and its subcontractors shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the

books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CONTRACTOR's and its subcontractors' records, CONTRACTOR and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR or its subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

CONTRACTOR shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section.

ARTICLE 12
PUBLIC ENTITY CRIME ACT

CONTRACTOR represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a CONTRACTOR, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a CONTRACTOR, supplier, subcontractor, or consultant under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by CITY pursuant to this Agreement, and may result in debarment from CITY's competitive procurement activities.

In addition to the foregoing, CONTRACTOR further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONTRACTOR has been placed on the convicted vendor list.

ARTICLE 13
INDEPENDENT CONTRACTOR

CONTRACTOR is an independent CONTRACTOR under this Agreement. In providing services, neither CONTRACTOR nor its agents shall act as officers, employees, or agents of CITY. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to

CONTRACTOR or CONTRACTOR's agents any authority of any kind to bind CITY in any respect whatsoever.

ARTICLE 14
THIRD PARTY BENEFICIARIES

Neither CONTRACTOR nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

ARTICLE 15
ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. CITY may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by CONTRACTOR of this Agreement or any right or interest herein without CITY's written consent.

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

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

ARTICLE 16
CONFLICTS

Neither CONTRACTOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONTRACTOR's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

In the event CONTRACTOR is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, CONTRACTOR agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as CONTRACTOR.

ARTICLE 17
CONTINGENCY FEE

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement. For a breach or violation of this provision, CITY shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 18
MATERIALITY AND WAIVER OF BREACH

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

CITY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 19
COMPLIANCE WITH LAWS

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

ARTICLE 20
SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or CONTRACTOR elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

ARTICLE 21
JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

ARTICLE 22
PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 26 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 26 shall prevail and be given effect.

ARTICLE 23
JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AND

CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, or of any other immunity, defense, or privilege enjoyed by the City pursuant to Section 768.28 Florida Statutes.

ARTICLE 24
AMENDMENTS

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

ARTICLE 25
PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

ARTICLE 26

NOTICES

Notices: All notices to be given hereunder shall be in writing, and may be given by depositing the same in the United States Mail addressed to the party to be notified, postpaid, return receipt requested or by delivering the same in person to such party with written receipt of acknowledgement of delivery by a person at the address (s) set forth below. All notices to be given to the parties hereto shall be sent to or made to the addresses shown below. The place for giving notice shall remain the same as set forth herein unless changed in the manner provided in this Article.

For City:

City Manager
400 S. Federal Highway
Hallandale Beach, FL 33009

With Copy to:

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

AND:

City Attorney
400 S. Federal Highway
Hallandale Beach, FL 33009

For Contractor:

And to Consultant:

[EXECUTION ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: CITY OF HALLANDALE BEACH through its authorization to execute same by Commission action on ____, day of ____, 20__, signing by and through its City Manager, duly authorized to execute same, and ____ [insert name of company] ____, signing by and through its ____ [title] ____, ____ [name of signatory] ____, duly authorized to execute same.

CITY

ATTEST:

CITY OF HALLANDALE BEACH

Mario Bataille, CITY CLERK

By _____
Daniel Rosemond, CITY MANAGER

Approved as to legal sufficiency and form by

V. Lynn Whitfield, CITY ATTORNEY

If the Company President does not sign the Contract, there must be a Secretary's Certificate Form provided to the CITY of Hallandale Beach, Florida indicating designee signing, has the authority to sign.

CONTRACTOR

ATTEST:

(Name of Company)

(Secretary)

By _____
(name), (Title)

(Corporate Seal)

(Type Name and Title Signed Above)

____ Day of _____, 20____.

EXHIBIT A
Scope of Services

Add Exhibit B
Community Benefit Plan

CITY OF HALLANDALE BEACH, FLORIDA

CONSTRUCTION MANAGEMENT AT RISK AGREEMENT SERVICE AGREEMENT

PHASE II

CONSTRUCTION SERVICES

**RFP # FY 2015-2016-011
CMAR GOLDEN ISLES TENNIS CENTER
AND GOLDEN ISLES PARK**

DEFINITIONS

Acceptance means the formal written acceptance by the CITY of the completed Work. Acceptance shall mean that all of the Work required by the Contract or individual work orders issued are fully executed and completed in accordance to the Construction Documents so that no Work remains to be completed. No further performance of Work shall be required except in regards to the correction of latent defects, gross mistakes and fraud. This shall require that all close-out documentation be fully completed, submitted, and approved.

Agreement means this Agreement, together with all documents incorporated herein by reference and the Contract Documents.

Agreement Time means the time period defined in this Agreement for the Construction Manager to complete the Pre-Construction Phase Services and submit the GMP Proposal, which shall be amended to reflect the Construction Phase should the City accept the GMP Proposal.

Basis of Design means a specific manufacturer's product that is named, including the make or model number or other designation, establishing the significant qualities related to type, function, dimension, in-service performance, physical properties, appearance, and other characteristics for purposes of evaluating comparable products of other manufacturers.

Change Order means a written document ordering a change in the Guaranteed Maximum Price or Agreement Time or a material change in the Work as determined by the Project Manager. A Change Order must comply with the Contract Documents.

City means the City of Hallandale Beach, Florida, a Florida municipal corporation. In all respects hereunder, City's performance is pursuant to the City's capacity as Owner of the Project. In the event the City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, authority as a governmental body and shall not be attributable in any manner to the City as a party to this Agreement. For the purposes of this Agreement, "City" without modification shall mean the City Manager or Director, as applicable.

City Commission means the legislative body of the City of Hallandale Beach.

City Manager means the duly appointed chief administrative officer of the City of Hallandale Beach.

Community Benefit Plan means the identifiable and observable community benefits for the community surrounding the Project or City which were proposed in the Construction Manager's

response to RFP which include, but are not limited to, employment opportunities for residents, community outreach, mentoring, training and apprenticeships.

Constructability means the creative, organized process of analyzing a project's drawings, specifications and other project documentation with a goal of minimizing design, detailing, and specification problems which might render the construction contract documents unbuildable or requiring addenda or change orders to make them buildable.

Construction Estimate means a cost estimate for the completion of the Work, which estimate shall include all components of the cost of the Work, as well as the Construction Manager's Fees for the Project.

Construction Change Directive means a written directive to effect changes to the Work, issued by the Consultant or the Project Manager that may affect the Agreement Price or Time.

Construction Manager means (name of company) selected to provide services including, but not limited to, preparation of cost estimates, constructability reviews, value engineering and assist in systems life cycle cost analysis, estimating, scheduling, bidding and submission of a GMP, as defined below, for construction, and construction management. Upon execution of the GMP Amendment, the Construction Manager shall serve, from that point forward, as the General Contractor under this Agreement.

Construction Manager's Fees means the Construction Phase fees to be negotiated with the Construction Manager for General Conditions, Construction Management Fee, Overhead and Profit compensation portion of the GMP, as defined below.

Construction Phase Services means the services to be performed through the Construction Manager during the construction phase of the Project, including without limitation, the Construction Work and such other services as required by this Agreement or reasonably inferred herein.

Construction Work means all Work required by this Agreement for the Construction Phase of Project.

Consultant means the individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects and/or engineers, which has entered into an agreement to provide professional services to the City for this Project.

Contingency means the dollar amount or percentage included in the Guaranteed Maximum Price (GMP) to be used by the CITY, for changes requested by the CITY in the 90 percent Construction Documents or Specifications or the CONTRACTOR, with the CITY's written approval for

unforeseen conditions during construction. Any unused amount of the Contingency at Final Completion shall vest to the CITY.

Contract Documents means the Proposal submitted by the CONTRACTOR in response thereto as negotiated and accepted by the CITY, this Agreement and its Exhibits, attachments and Forms, final, permitted Construction Documents and Specifications, any Addenda to the RFP, the Performance Bond, the Notice of Award, the Notice(s) to Proceed, the Purchase Order and all agreed upon modifications issued after execution of the Agreement are the documents which are collectively referred to as the Contractor Documents.

Contract Price means the amount established in the Contract as the Guaranteed Maximum Price (GMP), as may be amended by a Change Order.

Cure means the action taken by the Construction Manager promptly after receipt of written notice from the City of a breach of the Agreement for the Work, which shall be performed at no cost to the City, to repair, replace, correct, or remedy all material, equipment, or other elements of the Work or the Agreement affected by such breach, or to otherwise make good and eliminate such breach, including, without limitation, repairing, replacing or correcting any portion of the Work or the Project site disturbed in performing such cure.

Cure Period means the period of time in which the Construction Manager is required to remedy deficiencies in the Work or compliance with the Contract Documents after receipt of written notice to Cure from the City identifying the deficiencies and the time to Cure.

Completion means the date certified by the CONSULTANT and PROJECT MANAGER in the Final Certificate of Payment in which all conditions and requirements of any permits and regulatory agencies have been satisfied; and the documents (if any) required to be provided by Construction Manager have been received by the PROJECT MANAGER; and to the best of Consultant's and PROJECT MANAGER's information and belief has been fully completed in accordance with the terms and conditions of the Contract Documents.

General Conditions means the provision of facilities or performance of work by the CONTRACTOR for items at cost and including:

- a. Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities (including project field offices, furniture and fixtures), all temporary utilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Construction Manager;

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- b. Rental charges, at standard industry rates for the area, for temporary facilities, machinery, vehicles, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site, whether rented from Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of all equipment rented, whether from Construction Manager or others;
 - c. Cost of clean-up on the Project site(s), and removal and proper disposal of debris from the Project sites;
 - d. Costs of long distance telephone calls, cellular telephone calls, Internet service, postage and parcel delivery charges and telephone service at the Project site and reasonable petty cash expenses of the Project site office;
 - e. That portion of the reasonable travel and subsistence expenses of Construction Manager's personnel, assigned to the Project site, incurred while traveling outside of the Broward County area in discharge of duties connected with the Work;
 - f. Temporary living and travel expenses of employees who are not relocated, but assigned to the Project;
 - g. Cost of reproducing and printing;
 - h. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Construction Manager is liable.
 - i. Fees and assessments for the building permit and for other permits, licenses and inspections for which Construction Manager is required by the Contract Documents to pay;
 - j. Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of this Contract;
 - k. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents;
 - l. Deposits lost for causes other than Construction Manager's fault or negligence;
 - m. Legal, mediation and arbitration costs, other than those arising from disputes between Owner and Construction Manager, reasonably incurred by Construction Manager in performance of the Work and with Owner's prior written consent;
 - n. Costs incurred in repairing or correcting damage or nonconforming Work executed by Construction Manager, or its subcontractors or suppliers, provided that such damage or nonconforming Work was not caused by the negligence of Construction Manager;
 - o. Cost of Public Information/Community Benefit Programs (Community Benefit Plan see Exhibit B) or other neighborhood functions hosted by Construction Manager;
 - p. Cost of Partnering;

-
- q. Cost of site safety and security, with the exception of traffic safety for the Project sites as may be required
 - r. Cost of documentation, inspection and testing as required by the Contract Documents or the Construction Documents and Specifications;
 - s. Bonds and insurance premiums as required by Contract (except the Payment and Performance Bonds shall be invoiced separately as 'pass through costs');
 - t. Cost to protect the Work and adjacent property from loss and damage.

Final Completion means the date when all punch list items are completed, including all closeout requirements, submittals and approval by the CONSULTANT, is given to the CITY in writing. Final Completion not accepted until approved by the CITY.

Guaranteed Maximum Price means the sum agreed to between the Construction Manager and the City and set forth in the GMP Amendment as the maximum total Project price that the Construction Manager guarantees not to exceed for the construction of the Project and for all services under this Agreement, excluding only unpaid portion of the Pre-Construction Fee. The CITY reserves the rights to request the submission of the GMP proposal to reflect one or more stages of construction.

GMP Amendment means the GMP Proposal, as may be amended and accepted by the City, at its sole discretion, which amendment shall automatically become incorporated herein upon the City and the Construction Manager's execution of same, and shall establish, among other things, the GMP, the names of the Construction Manager's on-site management and supervisory personnel for the Project, and the Agreement Time for the Construction Work.

GMP Proposal means a proposal for completing the Construction Work, which will be submitted based ninety percent (90%) Construction Documents and Specifications for the Project. Such proposal shall include the GMP for the construction of the Project once it has been accepted by the City based upon the Drawings and Specifications, the Contract Documents and Memorandum of Changes. However, the City has no obligation to accept the GMP Proposal.

Inspector means an employee of the CITY of Hallandale Beach, Florida, assigned by the Director to make observations of work performed by a Contractor.

Materials means Materials incorporated in this Project, or used or consumed in the performance of the Work.

Project Schedule means the Schedule prepared by the Construction Manager and approved by the City and a scheduling consultant retained by the City, using a critical path method, as updated

monthly, that identifies, coordinates and integrates the design and construction schedules for the development of the Parks and the Project. The Preliminary Project Schedule is attached.

Memorandum of Changes means the notification provided to the City and the Consultant by the Construction Manager at the times specified in this Agreement that recommends changes based on the Value Engineering and Constructability reviews.

Notice to Proceed means written notice or directive issued by the Director or City's Project Manager acknowledging that all conditions precedent have been met and directing that the Construction Manager may commence work on the Project or a specific task of the Project.

Pre-Construction Fee means the fixed lump sum fee payable to the Construction Manager for the Work performed during the Pre-Construction Phase related to the Project, accepted by the City and the Construction Manager, which fee includes all direct and indirect costs incurred by the Construction Manager in the proper performance of the design, bid and award services.

Pre-Construction Phase Services means the services the Construction Manager shall perform for the design phase of the Agreement and culminates with the exercise by City of one of the City's options regarding the GMP proposal.

Pre-Construction Work means all work required by this Agreement during the Pre-Construction Phase of the Project.

Professional Services means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as applicable, as defined by the laws of the State of Florida, or those performed by any architect, professional engineer, landscape architect, or registered surveyor or mapper in connection with his or her professions employment or practice.

Progress Report means a monthly progress report to be prepared by Construction Manager and will contain the following: (a) listing of actual costs for completed activities and estimates for uncompleted tasks; (b) identification of variances between actual and budgeted or estimated costs; (c) the updated Project Schedule; (d) progress photos; (e) executive summary; (f) a discussion of pending items and existing or anticipated problems

Project means the construction, alteration or repair, and all service and incidents thereto, of public facilities, as contemplated and budgeted by the City, including the work described herein.

Project Manager means an employee of the CITY of Hallandale Beach, expressly designated as PROJECT MANAGER in writing by the DIRECTOR, who is the representative of the City, concerning the Contract Documents.

Punch List means the list of items, prepared in connection with the inspection of the Project by the CITY'S Representative and the CONSULTANT in connection with Substantial Completion of the Work or a portion of the Work, which the City's Representative or CONSULTANT has designated as remaining to be performed, completed or corrected before the Work will be accepted by the CITY. The preparation of a complete Punch List for the area or building to be occupied as agreed upon between the CITY and CONTRACTOR by the CITY shall be an absolute condition precedent to the CITY'S occupancy of any portion of the Project.

RFP means the official documents setting forth information and requirements; contract forms, bonds, and certificates; general and supplementary conditions of the Contract Documents; the specifications; and the plans and drawings of the Project.

Shop Drawings are drawings, diagrams, schedules and other product data specifically prepared for the Work by the CONTRACTOR or a Sub-Contractor, sub-Sub-Contractor, manufacturer, supplier or distributor to illustrate the specific requirements for some portion of the Work. The Construction Drawings shall not be used as Shop Drawings

Subcontractor means a person, firm or corporation having a direct contract with the CONTRACTOR including one who furnishes material worked to a special design according to the RFP for this work, but does not include a person, firm or corporation merely furnishing material not so worked.

Substantial Completion means that date on which, as certified in writing by CONSULTANT, the Work, or a portion thereof designated by the PROJECT MANAGER in his/her sole discretion, is at a level of completion in substantial compliance with the Contract Documents such that all conditions of permits and regulatory agencies have been satisfied and the City or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects for its intended purpose. A Certificate of Final Inspection must be issued for Substantial Completion to be achieved, however, the issuance of a Certificate of Occupancy or the date thereof is not to be determinative of the achievement or date of Substantial Completion.

Surety means the surety company or individual which is bound by the Performance bond and Payment bond with and for CONTRACTOR who is primarily liable, and which surety company or individual is responsible for CONTRACTOR'S acceptable and timely performance of the work under the contract and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes, as amended from time to time.

Work means the totality of the obligations, including construction and other services required by the Contract Documents, whether completed or partially completed, including all labor,

materials, equipment and service provided or to be provided by CONTRACTOR to fulfill CONTRACTOR's obligations. The work may constitute the whole or a part of the project.

Written Notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last known business address. Electronic, facsimile (FAX) or other telephonic transmission shall not be considered as written notice.

ARTICLE 1

SCOPE OF WORK

The Contractor shall furnish professional Construction Management at Risk Services for the Project described in RFP # FY 2015-2016-011 CMAR Golden Isles Tennis Center and Golden Isles Park, and as per Construction Documents, upon issuance of Contractor's Notice to Proceed by the City's Project Manager.

This Agreement, along with any exhibits, appendices, addendums, schedules, and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written. The parties hereby acknowledge that this agreement is limited to Phase II for the construction of Golden Isles Tennis Center and Golden Isles Park as per the Construction Documents.

CONTRACTOR has reviewed the ninety percent (90%) Construction Documents for Golden Isles Tennis Center and Golden Isles Park and accepts them as complete. The Contractor shall furnish the following Services as specifically authorized by Contractor's Notice to Proceed issued by the Project Manager.

1.0 The contract price elements are as follows:

CONTRACT PRICE
FIXED FEE WITH A GUARANTEED MAXIMUM PRICE (GMP)
FOR (project name) (Exhibit A)

- | | |
|--|----|
| a) Direct Construction Cost | \$ |
| b) General Conditions Cost (includes Community Benefit Plan) | \$ |
| c) Construction Management Fee | \$ |
| d) Profit | \$ |
| e) Contingency | \$ |

-
- f) Direct Purchase Tax Savings \$ ()
 - g) Community Benefit Plan \$ _____

TOTAL GMP (ALL INCLUSIVE) \$

- 1.1 CONTRACTOR hereby agrees to furnish all of the labor, materials, equipment services and incidentals necessary to perform all of the work described in the Contract Documents Including Drawings, for Golden Isles Tennis Center and Golden Isles Park Specifications and Addenda for the Project known as the RFP # FY 2015-2016-011 CMAR Golden Isles Tennis Center and Golden Isles Park and all plans by the CONSULTANT.
- 1.2 The drawings shall have the same effect as if shown or mentioned respectively in both. In the event of a conflict among the Contract Documents, the most stringent requirements applicable to the CONTRACTOR shall control.
- 1.3 The organization of the Specifications into divisions and sections and the arrangement of drawings shall not control CONTRACTOR in dividing the Work among subcontractors or in establishing the extent of the work to be performed by any trade. The organization of the Specifications and the arrangement of the Drawings is for the convenience of the CONTRACTOR and is not intended to relieve the CONTRACTOR from its obligation to conduct a complete study of the Drawings, Specifications and Addenda for the purpose of directing and coordinating the various subcontractors and suppliers as to their respective responsibilities.

ARTICLE 2

CONSULTANT'S AUTHORITY

- 2.1 CONSULTANT may provide as requested by the CITY selected technical and management services to assist the CITY in maintaining schedules, establishing budgets, controlling costs, and achieving quality.

ARTICLE 3

TIME FOR PERFORMANCE

- 3.1 CONTRACT TIME:

CONTRACTOR shall be instructed to commence the work by written Notice to Proceed issued by the PROJECT MANAGER. The Notice to Proceed will not be issued until CONTRACTOR's submission to CITY of all required documents, after execution of the CONTRACT by both parties. Receipt of all permits by CONTRACTOR is a condition

precedent to the issuance of the Notice to Proceed. The Work to be performed pursuant to the Notice to Proceed including the submission of a Project Schedule, Schedule of Values, Submittals, Submittal Schedule shall be completed within ten (10) calendar days of the Project Initiation Date specified in the Notice to Proceed.

- 3.1.2 Time is of the essence throughout this contract. The Project shall be Substantially Completed within _____ **< > calendar days** from the date of the Notice to Proceed. The total Project shall be completed and ready for final payment in accordance with Article 5 within **60 calendar days** from the date certified by the PROJECT MANAGER as the date of Substantial Completion.
- 3.1.3 Upon failure of CONTRACTOR to Substantially Complete the Project within the specified period of time, plus approved time extensions, CONTRACTOR shall pay to CITY the sum of **Five Hundred Dollars (\$500.00)** for each calendar day after the time specified in Article 3.1.2, plus any approved extensions for Substantial Completion. After Substantial Completion should CONTRACTOR fail to complete the remaining work within the time specified in Article 3.1.2, plus approved time extensions thereof, for completion and **Two Hundred Fifty Dollars (\$250.00)** for each calendar day after the time specified in Article 3.1.2, plus any approved extensions, for completion and readiness for final payment. These amounts are not penalties but are liquidated damages to CITY for its inability to obtain full beneficial occupancy of the project.

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 questions of dispute concerning the amount of said damages and the cost and effect of the failure of CONTRACTOR to complete the Contract on time. The above-stated liquidated damages shall apply separately to each phase of the Project for which a time for completion is given.

- 3.1.4 PROJECT MANAGER is authorized to deduct liquidated damages from monies due to CONTRACTOR for the work under this contract or as much thereof as PROJECT MANAGER may, at its option, deem just and reasonable.
- 3.1.5 CONTRACTOR shall be responsible for reimbursing CITY, in addition to liquidated damages, for all costs incurred by the CITY in administering the construction of the Project beyond the completion dates specified above

or beyond an approved extension of time granted to CONTRACTOR, whichever date is later. Such costs shall be deducted from the monies due CONTRACTOR for performance of work under this contract by means of unilateral credit change orders issued periodically to CITY as costs are incurred.

- 3.1.6 Extensions to the Contract Time for delays caused by the effects of inclement weather shall be submitted as a request for change in Contract Time pursuant to Article 3.3. These time extensions are justified only when rains or other inclement weather conditions or related adverse soil conditions prevent CONTRACTOR from productively performing controlling items of work identified on the accepted schedule or updates resulting in CONTRACTOR being unable to work at least fifty (50%) of the normal workday on controlling items of work identified on the accepted schedule or updates due to adverse weather conditions.

3.2 SUBSTANTIAL COMPLETION DATE:

When CONTRACTOR considers that the Work, or portion thereof designated by PROJECT MANAGER pursuant to Article 3.4 hereof, has reached Substantial Completion, CONTRACTOR shall so notify PROJECT MANAGER in writing. PROJECT MANAGER shall then promptly inspect the work.

When PROJECT MANAGER, on the basis of such an inspection, determines that the work or designated portion thereof is Substantially Complete, PROJECT MANAGER will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion; shall state the responsibilities of CITY and CONTRACTOR for security, operation, safety, maintenance, utilities, damage to the work, insurance, and warranties; shall list all work yet to be completed (Punch List) to satisfy the requirements of the Contract Documents for Final Completion. The failure to include any items of corrective work on such list does not alter the responsibility of CONTRACTOR to complete all of the work in accordance with the Contract Documents. The Certificate of Substantial Completion shall be submitted to the PROJECT MANAGER, after execution by CONTRACTOR, and the CITY, indicating their written acceptance of such certificate.

3.3 NOTIFICATION OF CHANGE OF CONTRACT TIME OR CONTRACT PRICE:

- 3.3.1 Any claim for a change in the Contract Time or Contract Price shall be made by written notice and delivered by CONTRACTOR to the PROJECT MANAGER within five (5) calendar days of the commencement of the event giving rise to

the claim and stating the general nature of the claim. Notice of the nature and elements of the claim shall be delivered within twenty (20) calendar days after the date of such written notice. Thereafter, within ten (10) calendar days of the termination of the event giving rise to the claim, notice of the extent of the claim with supporting data shall be delivered unless the CITY allows an additional period of time to ascertain more accurate data in support of the claim and shall be accompanied by CONTRACTOR's written statement that the adjustment claimed is justified as a result of the occurrence of said event. All claims for adjustment in the Contract Time or contract price shall be determined by the CITY in accordance with Article 4 hereof, if the CITY and CONTRACTOR cannot otherwise agree. NO CLAIM FOR AN ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT PRICE WILL BE VALID IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.

- 3.3.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of and through no fault or negligence of CONTRACTOR if a claim is made therefore as provided in Article 3.3 Such delays shall include, but not be limited to, acts or neglect by any separate independent contractors employed by CITY, fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

3.4 USE OF COMPLETED PORTIONS:

- 3.4.1 CITY shall have the right, at its sole option, to take possession of and use of any completed or partially completed portions of the Project. Such possession and use shall not be deemed an acceptance of any of the Work not completed in accordance with the Contract Documents. If such possession and use increases the cost of or delays of the work, CONTRACTOR shall be entitled to reasonable extra compensation, or reasonable extension of time or both, by appropriate adjustment pursuant to Article 4.
- 3.4.2 In the event CITY takes possession of any completed or partially completed portions of the project, the following shall occur:
- 3.4.3 CITY shall give notice to CONTRACTOR in writing at least fifteen (15) calendar days prior to CITY's intended occupancy of a designated area.
- 3.4.4 CONTRACTOR shall complete to the point of Substantial Completion the designated area and request inspection and issuance of a Certificate of Substantial Completion in the form provided by the CITY.

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- 3.4.4.1 Upon the PROJECT MANAGER'S issuance of a Certificate of Substantial Completion, CITY will assume full responsibility for maintenance, utilities, subsequent damages of or by the CITY and the public, adjustment of insurance coverage and start of warranty for the occupied area.
- 3.4.4.2 CONTRACTOR shall complete all items noted on the Certificate of Substantial Completion within the time specified in article 3.2 and request final acceptance of the portion of the Work occupied. Upon completion of final inspection and receipt of an application for final payment, the PROJECT MANAGER shall issue a Final Certificate of Payment relative to the occupied area.
- 3.4.4.3 If the CITY finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by CITY and CONTRACTOR and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. Insurance on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. Consent of CONTRACTOR and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

ARTICLE 4

CHANGES IN THE WORK OR TERMS OF CONTRACT DOCUMENTS

- 4.1 Without invalidating the Contract and without notice to the surety, CITY reserves and shall have the right, from time to time, to make such increases, decreases or other changes in the character or quantity of the work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any extra or additional work within the scope of this project must be accomplished by means of an appropriate Change Order in accordance with the requirements of the Contract Documents.
- 4.2 Any changes to the terms of the Contract Documents must be contained in a written document, executed by the parties hereto, with the same formality and of equal dignity prior to the initiation of any work reflecting such change. This section shall not prohibit the issuance of Change Orders executed only by CITY as hereinafter provided.

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- 4.3 The PROJECT MANAGER may direct the CONTRACTOR to expedite the work by whatever means the CONTRACTOR may use, including, without limitation, increasing staffing or working overtime to bring the work back within the progress schedule. If the expediting of Work is required due to reasons outside the control or responsibility of the CONTRACTOR, then the additional costs incurred shall be the subject of an appropriate adjustment issued pursuant to Article 4, as applicable.
- 4.4 CHANGE ORDERS:
- 4.4.1 Changes in the quantity or character of the work within the scope of the Project which are not properly executed, or the subject of Field Orders or Supplemental Instructions, including all changes resulting in changes in the contract price, or the Contract Time, shall be authorized only by written Change Orders approved and issued in accordance with the provisions of the Contract Documents and the applicable of the CITY's Purchasing Policies.
- 4.4.2 Without invalidating the Contract and without notice to any surety, CITY reserves and shall have the right, from time to time to make such increases, decreases or other changes in the character or quantity of the work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any changes, increases or decreases to the work within the scope of this project must be accomplished by means of appropriate Change Orders.
- 4.4.3 The CONTRACTOR's fee on such changes which exceeds GMP shall be determined as follows:
- (a) A mutually acceptable fixed fee, or if none can be agreed upon,
 - (b) A fee based upon a percentage of the net change to the Cost of the Work resulting from the Change Order, in accordance with this Article, not to exceed five percent (5%).
- 4.4.4 Pursuant to the CITY Purchasing Policies, all changes to construction contracts which exceeds the GMP must be approved in advance in accordance with the value of the Change Order or the calculated value of the time extension. CONTRACTOR shall not start work on any changes requiring an increase in the contract price or the Contract Time until a Change Order setting forth adjustments is approved and issued by the CITY. If the CONTRACTOR commences work pertaining to a Change Order prior to receiving written authorization

through the Project Manager then they do so at their own risk and assume all associated responsibility and costs. Upon receipt of a Change Order, CONTRACTOR shall promptly proceed with the work set forth within the document.

4.4.5 In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, CITY reserves the right at its sole option to either terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed work; or submit the matter in dispute to CONSULTANT as set forth in Article 27 hereof. During the pendency of the dispute, and upon receipt of a Change Order, CONTRACTOR shall promptly proceed with the change in the work involved and advise the CONSULTANT and PROJECT MANAGER in writing within seven (7) calendar days of CONTRACTOR's agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Price or Contract Time.

4.4.6 On approval of any Contract change increasing the contract price, CONTRACTOR shall ensure that the Performance Bond and Payment Bond are increased so that each reflects the total contract price as increased.

4.5 FIELD ORDERS AND SUPPLEMENTAL INSTRUCTIONS:

4.5.1 The Project Manager shall have the right to approve and issue changes setting forth written interpretations of the intent of the Contract Documents and ordering minor changes in work execution, providing the Field Order involves no change in the Contract Price or Contract Time.

4.5.2 Project Manager shall have the right to approve and issue Supplemental Instructions setting forth written orders, instruction, or interpretations concerning the Contract Documents, provided such supplemental instructions involve no change in the contract price or Contract Time.

4.7 NO DAMAGES FOR DELAY:

No claim for damages or any claim other than for an extension of time, shall be made or asserted against CITY by reason of any delays. CONTRACTOR shall not be entitled to an increase in the Contract Price 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, Eichleay Formula Costs, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance 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 hindrance or delays due solely to fraud, bad faith or active interference on the part of CITY or its agents. 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 the extent specifically provided above.

4.8 EXCUSABLE DELAY: COMPENSABLE & NON-COMPENSABLE

4.8.1 Excusable Delay: Delay which extends the completion of the work which is caused by circumstances beyond the control of CONTRACTOR or its subcontractors, materials persons, suppliers, or vendors is Excusable Delay. CONTRACTOR is entitled to a time extension of the Contract Time for each day the work is delayed due to excusable delay. CONTRACTOR shall document its claim for any time extensions.

Failure of CONTRACTOR to comply with Article 3.3 hereof as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.

4.8.2 Excusable Delay may be compensable or non-compensable.

- (a) Compensable Excusable Delay. Excusable Delay is only compensable when: (i) the delay extends the Contract Time, and (ii) is due solely to fraud, bad faith or active interference on the part of CITY or its agents. In no event shall CONTRACTOR be compensated for interim or non-critical delays, which do not extend the Contract Time.

CONTRACTOR shall be entitled to direct and indirect costs for Compensable Excusable Delay. Direct costs recoverable by CONTRACTOR

shall be limited to the actual additional costs allowed pursuant to Article 5.0 hereof.

CITY and CONTRACTOR recognize and agree that the amount of CONTRACTOR's precise actual indirect costs for delay in the performance and completion of the work is impossible to determine as of the date of execution of the Contract Documents, and that proof of the precise amount will be difficult. Therefore, indirect costs recoverable by the CONTRACTOR shall be determined on a daily basis for each day the Contract Time is delayed due to a Compensable Excusable Delay. These indirect costs shall be paid to compensate CONTRACTOR or for all indirect costs caused by a Compensable Excusable Delay and shall include, but not be limited to, all profit on indirect costs, home office overhead, acceleration, loss of earnings, loss of productivity, loss of bonding capacity, loss of opportunity and all other indirect costs recoverable shall be for each day the Contract is delayed due to a Compensable Excusable Delay.

- (b) Non-Compensable Excusable Delay. When Excusable Delay is not due solely to fraud, bad faith or active interference on the part of CITY or its agents, then CONTRACTOR shall be entitled only to a time extension and no further compensation for the delay.

ARTICLE 5

PAYMENTS AND COST OF THE WORK

- 5.1 In full consideration of the full and complete performance of the Work and all other obligations of the CONTRACTOR hereunder, the CITY shall pay to the CONTRACTOR a sum of money not to exceed the contract price which is defined to be the total of: (i) the CONTRACTOR's Cost of the Work, (ii) so much of the CONTRACTOR's General Conditions as may have been expended, (iii) so much of the approved amount of the Contingency as may have been expended, (iv) the CONTRACTORS's Construction Management Fee, and (v) Profit/Overhead . The contract price shall not exceed the sum shown in Article 1.0 as the Guaranteed Maximum Price, adjusted to take into account any approved Change Orders, and shall mean those costs necessarily incurred and paid by the CONTRACTOR in connection with the performance of all the work.
- 5.2 After completion and acceptance of the work, in the event that the Cost of the Work plus the CONTRACTOR's fee are less than the Guaranteed Maximum Price after giving effect to adjustments to the GMP made in accordance with this Contract then the difference between the Cost of the Work plus the CONTRACTOR's Fee on the one hand and the GMP

on the other hand is the “savings”. Prior to making this calculation and for the purpose of this calculation only, the remaining balance of the CITY’s money shall be deducted from the GMP. In the event that the CONTRACTOR’s total approved expenditures for the Project shall exceed the Guaranteed Maximum Price, the CONTRACTOR shall pay such excess from its own funds, and the CITY shall not be required to pay any amount that exceeds the GMP; and the CONTRACTOR shall have no claim against the CITY on account thereof.

- 5.3 The term ‘Cost of the Work’ shall mean the sum of all direct costs necessarily and reasonably incurred and paid by the CONTRACTOR in the performance of the Work. Such costs shall be at rates not higher than those customarily paid in the locality of the Project except with the prior written consent of CITY. The Cost of the Work shall include only those items set forth in this Article 4.6 Cost of the Work shall be determined as follows:

5.3.1 SUBCONTRACTOR COSTS:

- (1) Where the work is covered by unit prices contained in the Contract documents or an applicable subcontract, the Cost of the Work shall be determined by application of unit prices to the quantities of items involved.
- (2) By mutual acceptance of a lump sum which subcontractor, CONTRACTOR and CITY acknowledge contains a component for overhead and profit, which shall be subject to the limitation of subcontractor fees set forth in Article 4.4.3. Whenever a change in subcontractor work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, CONTRACTOR shall submit an initial cost estimate obtained from the subcontractor and acceptable to the CITY. The breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost. Whenever a change involves more than one subcontractor and the change is an increase in the GMP, overhead and profit percentage of each subcontractor and CONTRACTOR, if applicable, shall be itemized separately.
- (3) If the subcontract provides that the subcontractor is to be paid on the basis of Cost of the Work plus a fee, the subcontractor’s Cost of the Work shall be determined in the same manner as CONTRACTOR’s Cost of the Work, subject to the limitation on subcontractor’s fees set forth in Article 4.4.3.

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- (4) If changes to subcontracted work affected the GMP, such changes shall be accomplished in accordance with Article 4.4, Change Orders. The amount of decrease in the GMP for any change that results in a net decrease in cost, will be the amount of the actual net decrease. When both additions and decreases are involved in any one change, the combined effect shall be figured on the basis of the net change in the GMP, if any.

5.3.2 MATERIALS AND EQUIPMENT:

Cost of all materials and equipment furnished and incorporated in the work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith, adjusted in accordance with Article 7.1, pertaining to Discounts, Rebates and Refunds; rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the work.

5.3.3 MISCELLANEOUS COSTS:

- (1) The cost, as documented by the CONTRACTOR's detailed receipts, of telephone, telegrams, postage, photographs, blueprints, office supplies, first aid supplies and related miscellaneous costs reasonably incurred in direct support of the work at the project location.
- (2) Premiums (Net) on bonds and insurance, including subcontractor bonds, if any that the CONTRACTOR is obligated to secure and maintain under the terms of the CONTRACT DOCUMENTS and such other insurance and bonds as may be required, subject to the written approval of the CITY. Premiums paid, as part of CONTRACTOR's Cost, shall be net of trade discounts, volume discounts, dividends and other adjustments. All insurance and bonds shall be provided by companies acceptable to the CITY.

Self-insurance by the CONTRACTOR or insurance through any affiliates of CONTRACTOR shall not be permitted without the CITY's prior written approval. CITY's approval shall not be required on a subcontractor bond, and premiums thereof shall be considered a Cost of the Work.

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- (3) The cost of obtaining and using any utility services required for the Work that are not paid directly by CITY, including fuel and sanitary services at the Project sites.
 - (4) The cost of removal of debris from the sites. The Project sites, lay-down locations, and staging sites will be kept clear of all debris on a daily basis. All subcontracts shall require subcontractors to remove all debris daily created by their activities, and the CONTRACTOR shall exercise its best efforts to enforce such requirements or effect the removal of the debris of the subcontractors who fail in this regard. Provided, however, the CONTRACTOR shall not be required to remove debris created by the CITY's separate contractors except pursuant to Change Order procedures set forth herein.
 - (5) The cost and expenses, actually sustained by the CONTRACTOR in connection with the work, of protecting and repairing adjoining property, if required, except to the extent that any such cost or expense is:
 - (a) the responsibility of the CONTRACTOR under Article 1, reimbursable by insurance or otherwise;
 - (b) Due to the failure of the CONTRACTOR to comply with the requirements of the Contract Documents with respect to insurance; or
 - (c) Due to the failure of any officer of the CONTRACTOR or any of its representatives having supervision or direction of the Work to exercise good faith or the standard of care normally exercised in the conduct of the business of a general contractor experienced in the performance of work of the magnitude, complexity and type encompassed by the Contract Documents, in any of which events any such expenses shall not be included in CONTRACTOR's costs.
 - (6) Federal, state, municipal, sales, use and other taxes required by law, as applicable to the Project, all with respect to service performed or materials furnished for the work, it being understood that none of the foregoing includes, federal, state or local income or franchise taxes.
 - (7) All reasonable costs and expenditures necessary for the operation of the project job site office(s), including cost of field computer equipment and software.

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- (8) The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees, excluding travel time, incurred in discharge of duties connected with the work except for local travel to and from the site of the Work.
 - (9) Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.
 - (10) Deposits lost for causes other than CONTRACTOR's negligence, royalty payments and fees for permits and licenses.
 - (11) Cost of premiums for additional bonds and insurance required because of changes in the Work.
 - (12) Cost of special consultants, including, but not limited to, engineers, architects, testing laboratories, surveyors employed for services specifically related to the Work.
 - (13) Any other expenses or changes incurred, with the prior written approval of the CONSULTANT, in the performance of the Work.

5.4 EXCLUSIONS TO COST OF THE WORK:

Overhead is defined as any and all other costs, not referenced in Article 5, of the CONTRACTOR and its operation which are not in direct support of the Project. The CONTRACTOR agrees to furnish and perform, as a part of the CONTRACTOR'S Management Fee and Overhead/Profit without reimbursement, said overhead items. The term "Cost of the Work" shall not include any of the following:

5.4.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorship), general managers, estimators, purchasing and contracting agents, clerks and other personnel employed by CONTRACTOR whether at the Project sites or in its principal or a branch office for general administration that are not specifically included in the General Conditions are to be considered administrative costs covered by CONTRACTOR's fees.

5.4.2 Other than those expenses authorized expenses of CONTRACTOR's principal and branch offices.

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- 5.4.3 Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.
 - 5.4.4 Other overhead, general expense costs or charges of any kind and the cost of any item not specifically and expressly included in Article 5.
 - 5.4.5 Costs in excess of the Guaranteed Maximum Price.
 - 5.4.6 Entertainment and meal expenses, car allowances and charges of a personal nature.
 - 5.4.7 Bonuses, pensions, profit sharing or other special labor charges not included in Article 5.3.2, above.
 - 5.4.8 Any outside legal or CITY accounting fees incurred without prior written approval from the City Counsel, which approval is at the sole discretion of the City Counsel.

5.5 PROGRESS PAYMENTS:

- 5.5.1 CONTRACTOR may make Application for Payment for Work completed during the Project at intervals of not more than once a month unless agreed by the Project Manager. CONTRACTOR's application shall show a complete breakdown of the Project Schedule of Values, and actual cost incurred as of the date of the Application for Payment for the Work completed or, as to General Conditions, at cost, plus applicable Construction Management Fee incurred and percentage of Profit/Overhead due. Each application shall be accompanied by such supporting evidence as may be reasonably required by the CITY, as more particularly described in Article 3.5.3 below. CONTRACTOR shall submit with each Application for Payment, an updated progress schedule acceptable to the CITY and its Schedule Consultant, either release of liens relative to the Work which is the subject of the Application or consent of the surety as to such payment. Each Application for Payment shall be submitted to the CITY for approval. CITY shall make payment to CONTRACTOR within thirty (30) days after approval of CONTRACTOR's Application for Payment and submission of an acceptable updated progress schedule.
- 5.5.2 Ten percent (10%) of all monies earned by CONTRACTOR shall be retained by CITY until fifty percent (50%) completion of the Project and acceptance by CITY in

accordance with Article 5.9 hereof, except for the following item: Self-performed Work performed on a cost reimbursement basis, if any. After 50% completion of the Project and prior to Final Payment, City shall retain five percent (5%) of monies earned by CONTRACTOR. The CITY may retain amounts greater than those set forth above that are the subject of a good faith dispute pursuant to Florida Statute 255.078 (6), the subject of a claim brought pursuant to Section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the CITY or CONTRACTOR.

Upon the written request of any subcontractor that is a participant in the Project Community Benefit Plan and has performed, completed and had their work approved and accepted by the CONTRACTOR, the CONTRACTOR may submit a request in the monthly Application for Payment for the full release of that subcontractor's allocable retainage then held by the CITY. This provision for early release of the retainage shall only apply to subcontractors that have been certified as participants in the Community Benefit Plan.

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

5.5.3.1 Defective CONTRACTOR or subcontractor Work not remedied.

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

5.5.3.3 Failure of CONTRACTOR to make payments properly to subcontractors or for material or labor.

5.5.3.4 Damage to another contractor not remedied.

5.5.3.5 Liquidated damages

5.5.4 The Schedule of Values, shall list the cost of materials, the cost of labor, the cost of equipment and the cost of subcontractor Work separately for all the portions of the Work delineated. Each monthly Application for Payment shall be for a sum equal to (i) that portion of the CONTRACTOR's Direct Construction Cost equal to the percentage of the Work completed; plus (ii) an appropriate amount of the CONTRACTOR 's Fee as related to the percentage of the Work completed. The calculation of the percentage of the Work completed shall be in accordance with the approved Progress Schedule; provided, however, prior to the date of the Final

Request, and unless subject to reduction under Article 5.5.2, the aggregate of the CONTRACTOR's Fee payments shall not exceed Ninety (90%) percent of the Contractor's Fee as stated in Article 5.3.

The CONTRACTOR's Cost of the Work shall be segregated and detailed in a manner satisfactory to the PROJECT MANAGER to evaluate the charges. The Request for Payment shall indicate the percentage of completion of each portion of the Work, and the total Work, as of the end of the period covered by the Application for Payment. The Schedule of Values shall be used as one basis for reviewing the Request for Payment when such amounts are approved.

- 5.5.5 If the CITY, in its good faith judgment, determines that the portion of the GMP then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, no additional payments will be due to the CONTRACTOR hereunder unless and until the CONTRACTOR, at its sole cost, performs a sufficient portion of the Work so that such portion of the Guaranteed Maximum Price then remaining unpaid is determined by the CITY to be sufficient to complete the Work.
- 5.6 The Project Manager shall review each such Request for Payment and may make such exceptions, as the PROJECT MANAGER reasonably deem necessary or appropriate.
- 5.7 CONTRACTOR shall remain solely liable for subcontractor's Work and for any unpaid laborers, material suppliers or subcontractors or subcontractor in the event it is later discovered that said Work is deficient or that any of said laborers, material suppliers or subcontractors did not receive payments due them on the Project.
- 5.8 Within thirty (30) days after Final Completion of the Work and acceptance thereof by the CITY, the CONTRACTOR shall submit a Final Request For Payment (Final Request) which shall set forth all amounts due and remaining unpaid to the CONTRACTOR (including the unpaid portion of the Contractor's Fee).
- 5.9 Except for the CONTRACTOR'S Management Fee and Profit/Overhead, the CONTRACTOR shall use the sums paid to it pursuant to this article solely for the purpose of performance of the Work and the construction, furnishing and equipping of the Work in accordance with the Contract Documents and payments of bills incurred by the CONTRACTOR in performance of the Work.
- 5.10 The CONTRACTOR shall promptly pay all bills for labor and material performed and furnished by its subcontractors, suppliers and materials providers, in connection with the construction, furnishing and equipping of the Work and the performance of the Work.

5.11 PROJECT CLOSEOUT:

At the Final Completion of the Project, after calculation of any savings in accordance with Article 4.6, a Memorandum will be issued in conjunction with a Final Change Order to remove any remaining sums within the General Conditions and reduce the GMP accordingly.

ARTICLE 6

CONTINGENCIES AND ALLOWANCES:

6.0 THE CONSTRUCTION CONTINGENCY:

An agreed upon sum included in the GMP for the purpose of defraying the CONTRACTOR's actual approved expenditures for changes requested by the CITY in the 90 percent Construction Documents or Specifications.

Any costs to be applied against the contingency must first be approved by the CITY in writing. The CONTRACTOR will be required to furnish documentation evidencing the expenditures charged to this Contingency prior to release of funds by the CITY. At Final Completion of the Project, any remaining monies in the Construction Contingency shall vest in the CITY. The Guaranteed Maximum Price shall be reduced in the amount of the Construction Contingency remaining monies, if any.

ARTICLE 7

DISCOUNTS, REBATES AND REFUNDS

7.1 All cash discounts obtained on payments made by the CONTRACTOR shall accrue to the CITY unless the CONTRACTOR actually advanced its own funds, prior to receipt of funds from CITY, to make the payment giving rise to the discount. When CONTRACTOR becomes aware that a cash discount may be available to CITY, CONTRACTOR shall, prior to advancing its own funds, notify PROJECT MANAGER of such opportunity so CITY can make the required payment to achieve the discount for the CITY. CONTRACTOR shall only advance its own funds if PROJECT MANAGER declines to make the early payment. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to CITY, and CONTRACTOR shall make provisions so that they may be obtained.

ARTICLE 8
SUBCONTRACTS AND PURCHASE ORDERS

- 8.1 Unless waived in writing for good cause, by the CITY or its PROJECT MANAGER, the CONTRACTOR must obtain competitive pricing and subcontracts, in compliance with the requirements of this Article, for One Hundred Percent (100%) of the Contractor's Direct Construction Cost required under this Contract. All subcontracts and purchase orders shall be awarded according to the following procedure:

The CONTRACTOR shall prepare for the PROJECT MANAGER's review and approval a list of subcontractors and suppliers for each bid who meet the CONTRACTOR'S schedule of minimum requirements. The CONTRACTOR shall obtain bids from a minimum of three (3) such subcontractors for each subcontract, when available. After receiving such bids, the CONTRACTOR shall analyze them and make recommendations to the PROJECT MANAGER's for awards. When the PROJECT MANAGER has approved the award of any such subcontract or purchase order, the CONTRACTOR shall contract solely in its own name and behalf, and not in the name or behalf of the CITY, with the specified subcontractor or supplier. The subcontract shall provide that the subcontractor shall perform its portion of the Work in accordance with all applicable provisions of this Contract and the other Contract Documents; that the subcontractor shall be bound to the CONTRACTOR, to the same extent as the CONTRACTOR is bound to the CITY, to name the CITY as an additional insured on its comprehensive general liability insurance; that the subcontractor shall provide an insurance certificate evidencing the same; that the CONTRACTOR shall have the right to terminate the subcontract in the same manner and by the same method as provided for termination of this Contract by the CITY, or as otherwise provided in the subcontract, whichever is more protective of the CITY's interest; and that, in the event this Contract is terminated for any reason, the subcontractor shall, at the CITY's option, perform its subcontract for the CITY, or for a CONTRACTOR designated by the CITY, without additional or increased cost, provided the subcontractor is paid in accordance with its subcontract. The CONTRACTOR shall sign and cause each subcontractor to sign an Assignment of Rights under Construction Subcontract. Nothing contained herein shall impose on the CITY an obligation to assume any subcontract or make any payments to any subcontractor to perform, and nothing contained herein shall create any contractual relationship between the CITY and any subcontractor. If the PROJECT MANAGER r's shall approve as the selected subcontractor or supplier a bidder whose bid exceeds that of the bidder recommended by the CONTRACTOR, whose bid complies with the Contract Documents (the amount by which the bid of the selected subcontractor exceeds the bid of the bidder recommended by the CONTRACTOR is referred to herein as the "preferred subcontractor cost differential"), then the PROJECT MANAGER may designate that the Guaranteed Maximum Price shall be increased by the amount of the preferred subcontractor cost differential or utilize the

Contingency Allowance to fund the cost differential. All subcontracts shall, so far as applicable, contain unit prices and any other feasible formula for use in determination of the cost of changes in the Work.

- 8.2 If the CITY shall designate as the selected subcontractor or supplier a bidder whose bid exceeds that of the bidder recommended by the CONTRACTOR, whose bid complies with the Contract Documents (the amount by which the bid of the selected subcontractor exceeds the bid of the bidder recommended by the CONTRACTOR is referred to herein as the preferred subcontractor cost differential), then the PROJECT MANAGER may designate the Guaranteed Maximum Price shall be increased by the amount of the preferred subcontractor cost differential.
- 8.3 All subcontracts shall, so far as practicable, contain unit prices and any other feasible formula for use in determination of the cost of changes in the Work.

ARTICLE 9

INSURANCE

CONTRACTOR shall procure and maintain for the duration of and in full compliance with the contract insurance against claims for injuries to persons and damage to property which may arise from or in connection with their performance hereunder by the CONTRACTOR, his agents, representatives, employees and subcontractors. The cost of such insurance shall be included in the CONTRACTOR'S bid.

I. Minimum Scope of Insurance

- A. Commercial General Liability, including:
 - 1. Premises and Operations.
 - 2. Explosion, Collapse and Underground
 - 3. Products and Completed Operations
 - 4. Blanket Contractual Liability
 - 5. Independent Contractors
 - 6. Broad Form Property Damage

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7. Personal Injury Liability
 8. Owner's and CONTRACTOR'S Protective Policy, issued by the same insurance company as that issuing liability insurance above (I.A.). The policy must be submitted to the CITY's Risk Manager and be issued in the name of the City of Hallandale Beach.
 9. Fire Legal Liability
 10. Incidental Medical Malpractice
 - B. Automobile Liability Insurance, including:
 1. Owned Automobiles.
 2. Nonowned Automobiles.
 3. Hired Automobiles.
 - C. Workers' Compensation Insurance.
 - D. Employer's Liability Insurance.
 - E. Builder's Risk Insurance.
 - F. Professional Liability Insurance

II. Minimum Limits of Insurance

- A. Commercial General Liability:

\$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
- B. Auto Liability:

\$1,000,000 combined single limit per occurrence for bodily injury and property damage arising from the operations of all Owned Automobiles, Nonowned Automobiles and Hired Automobiles.
- C. Workers' Compensation:

Workers' Compensation Insurance as required by the State of Florida. If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremens & Harbor Workers Act and Jones Act.

D. Employer's Liability:

\$100,000 limit per occurrence,

\$500,000 annual aggregate for disease,

\$100,000 limit for disease of an individual employee.

E. Inland Marine Builder's Risk Insurance:

The CONTRACTOR, prior to notice to proceed or commencement of Work, whichever occurs first, agrees to maintain an Inland Marine Builder's Risk insurance coverage form with an amended policy period of no less than 22 months, if available, providing coverage to protect the interests of the CITY, CONTRACTOR, sub-contractors, including property acquired under a sales tax incentive program, property in transit, and property on or off premises, which shall become part of the Work.

Coverage shall be written on an All-Risk, Replacement Cost, and Completed Value Form basis in an amount at least equal to one-hundred 100% of the projected completed value of the Work, as well as subsequent modifications of that sum due to Change Orders. This policy shall also include Delay Cost coverage for soft costs, which shall at a minimum include additional expenses for interest, legal, consulting, insurance, architectural and engineering, Contractor's Overhead and General Conditions. The period of indemnity shall not be less than 12 months and the limit of Delay Cost coverage not be less than ten percent (10%) of the projected completed value of the Work and shall be a scheduled limit on the policy in addition to a scheduled limit for the hard cost coverage. The waiting period for Delay cost coverage may not exceed 30 days. Collectively, the scheduled soft cost limit and hard cost limit may equal one hundred percent (100%) of the projected value of the Work, unless the builder's risk carrier requires the Delay Cost coverage to be in addition to the 100% projected value of the Work. Contractor agrees to be responsible for reporting increases in the projected completed value of the Work due to Change Orders to its insurance carrier.

The CONTRACTOR further agrees that any flat deductible (s) shall not exceed \$100,000, any wind percentage deductible (when applicable) shall not exceed ten-percent (10%); and any flood sublimit shall not be less than 20% of the projected completed value of the Work for this policy.

The CONTRACTOR agrees to endorse the Inland Marine Builder's Risk insurance with a manuscript endorsement eliminating the automatic termination of coverage in the event the building is occupied in whole or in part, or put to its intended use, or partially accepted by CITY. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the CITY's interest in the building ceases, or the building is accepted or insured by the City.

The CONTRACTOR agrees to endorse the CITY as "Additional Insured" on the Inland Marine Builder's Risk Insurance coverage form.

- F. Professional (Errors & Omissions) Liability of not less than \$1,000,000 per claim, \$1,000,000 Annual Aggregate, or a Combined Single limit. The CONTRACTOR agrees the policy shall include a minimum three (3) year Discovery (tail) reporting period, and a Retroactive Date that equals or precedes the effective date of the Contract, or the performance of services hereunder. The CONTRACTOR agrees the Self-Insured-Retention shall not exceed \$25,000. This coverage may be provided on a Per-Project Basis.

III. Deductibles and Self-Insured Retentions

- A. Deductibles/Self-Insurance Retentions Defined:

All deductibles and self-insured retentions must be shown clearly on the Certificates of Insurance and approved by the CITY.

- B. Retention Levels:

The CITY has the option to reduce or eliminate any deductible or self-insured retention maintained by the contractor.

IV. Other Insurance Provisions

The policies shall contain the following provisions:

A. Additional Insured, Certificate Holder and Breach of Warranty Clause:

All insurances shall include as Additional Insured and Certificate Holder the City of Hallandale Beach. There are not to be any special limitations on the protection being provided to the CITY, its officials, officers, employees or volunteers.

B. Contractor's Insurance is Primary:

The contractor's insurance coverages shall be primary insurance with respect to the CITY's, its officials', officers', employees', and volunteers' insurances. Any insurance and self-insurance maintained by the CITY, its officials, officers, employees, or volunteers shall be excess of the contractor's insurances and shall not contribute with it.

C. Coverage Guaranteed:

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.

D. Occurrence Basis:

The contractor's insurances shall be on an occurrence basis as opposed to a claims-made basis. In other words, claims which occur during the policy period can be reported months or years later and still be paid, if they occur during the policy period. Claims-made policies cover only claims which occur and are made during the policy period. In the event occurrence based insurance is not available, use of claims-made insurance may be considered acceptable in limited circumstances, subject to written approval by the CITY's Risk Manager.

E. 30 Days Notice:

The following clause shall be included in all policies:

This policy shall not be suspended, voided, or cancelled by either party, or a reduction or revision in coverage or limits of coverage except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the

CITY.

F. Separation of Insureds:

The definition of insured shall read as follows: "The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability". The company, in this context, being the CONTRACTOR's insurance company.

1. If no such definition of the insured is quoted in the insurance, the contractor must provide "Cross Liability Clause" or "Severability of Interests Clause" endorsements for all liability insurances.

G. Bonds:

The following bonds are required:

1. Performance Bond.
2. Labor and Materials Payment Bond

V. Acceptability of Insurance Company

A. Florida State Licensed:

All insurance policies and bonds herein required of the contractor shall be written by a company authorized and licensed to do insurance business in the State of Florida with an A.M. Best rating of AA or better and be executed by agents licensed as agents by the State of Florida.

VI. Verification of Coverage

A. Certificates and Endorsements Provided:

The CONTRACTOR shall furnish the CITY with a certificate of insurance specifically stating the bid number and title and with original endorsements affecting coverage. The certificates and endorsements must be received and approved before any work commences.

B. Authorized Signatures:

The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

C. Coverage Continuation:

Insurance coverage required in these specifications shall be in force throughout the contract. Should the contractor fail to provide acceptable evidence of current insurance within seven (7) days of receipt of written notice at any time during the contract, the CITY shall have the right to consider the contract breached and justifying termination thereof.

Compliance by the CONTRACTOR and its subcontractors with the foregoing requirements as to carrying insurance and furnishing copies of the insurance policies shall not relieve the contractor and all subcontractors of their liabilities and obligations under this contract.

If coverage on the certificates of insurance is shown to expire prior to completion of all terms of the contract with the CITY, the contractor shall furnish certificates of insurance evidencing renewal of such coverage to the CITY.

VII. Limited Contractual Relationship

Nothing contained in these contract specifications shall be construed as creating any contractual relationship between any of the CONTRACTOR'S subcontractors or suppliers and the CITY.

The CONTRACTOR shall be as fully responsible to the CITY for acts and omissions of all subcontractors and suppliers and of all persons employed by the subcontractors and suppliers, as the CONTRACTOR is for acts and omissions of persons directly employed by the CONTRACTOR.

A. Joint Venture:

The parties agree that this agreement shall be the whole and total agreement between the parties, and the CONTRACTOR is undertaking its activities as for its sole use and benefit and this agreement or the activities resulting therefrom shall in no way be construed to be a joint undertaking with the CITY, nor is the CITY in any way assuming responsibility or benefits

of the contractor's activity. The CONTRACTOR acts independently and in its own right, risk and responsibilities. The CITY assumes no direction, control, responsibility or liability for the activities of the CONTRACTOR and, by the execution of this agreement, does not endorse or undertake any activity heretofore conducted by the CONTRACTOR.

VIII. Other Requirements

A. Subcontractors' Insurance Requirements:

CONTRACTOR shall include all subcontractors as its insured under its policies or shall furnish separate certificates and all endorsements for each subcontractor's coverages. All coverages for subcontractors shall be subject to all the requirements stated herein.

ARTICLE 10

INDEMNIFICATION

10.1 The CONTRACTOR shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful is conduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Contract. Contractor has the duty to defend the City for any claim brought against the City for actions of the Contractor with the City having choice of counsel. Contractor shall not allow any mechanic lien to be filed against any city property for failure of Contractor to pay its subcontractor, in the event lien is filed Contractor is responsible for defending City to have lien removed. These provisions shall survive the expiration or earlier termination of this Contract. Nothing in this contract shall be construed in any way to affect the sovereign immunity of the CITY or the rights of the CITY as set forth in Florida Statutes 768.28, as amended from time to time.

ARTICLE 11

PERFORMANCE AND PAYMENT BOND AND QUALIFICATIONS OF SURETY

11.1 Bonds:

The following bonds are required:

1. Performance Bond.
2. Labor and Materials Payment Bond.

Acceptability of Insurance Company

A. Florida State Licensed:

All insurance policies and bonds herein required of the CONTRACTOR shall be written by a company authorized and licensed to do insurance business in the State of Florida and be executed by agents licensed as agents by the State of Florida.

ARTICLE 12

INDEPENDENT CONTRACTOR

- 12.1 In performing, the CONTRACTOR shall be deemed an independent contractor and not an agent or employee of the CITY. The CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract, unless the Contract Documents give other specific instructions concerning these matters.

ARTICLE 13

PROJECT RECORDS

- 13.1 CITY or its designee shall have the right to inspect and copy the books and records and accounts of CONTRACTOR and all major subcontractors including but not limited to books, records, correspondence, instructions, drawings, receipts, payment records, vouchers, and memoranda which relate in any way to the Project, and to any claim for additional compensation made by CONTRACTOR which relate to the Project and to any claim for

additional compensation made by CONTRACTOR. CONTRACTOR shall preserve and make available to CITY all financial records, supporting documents, statistical records and any other documents which relate to the Project and to any claim for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Statute), if applicable, and, if the Public Records Act is not applicable, for a period of three (3) years following final completion of the Project. During the Project and for the appropriate record retention period, CONTRACTOR shall provide CITY access to its books and records at CONTRACTOR's usual place of business upon seventy-two (72) hours written notice. If any audit has been initiated and audit findings have not been resolved at the end of the retention period of three (3) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act (Chapter 119, FL Statute) is determined by CITY to be applicable to CONTRACTOR's records, CONTRACTOR shall comply with all requirements thereof. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

- 13.1.1 CONTRACTOR's records shall include, but not be limited to accounting records (hard copy, as well as computer readable data), written policies and procedures; subcontractor files (including proposals of successful and unsuccessful bidders and bid recaps), surety files and bond company files, original estimates, estimating work sheets, correspondence, change order files (including, but not limited to, documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends and any other supporting evidence deemed necessary by the CITY to substantiate charges related to this Contract (all of the foregoing hereinafter referred to as records).
- 13.1.2 CONTRACTOR shall require all subcontractors, insurance agents and material suppliers (payees) to keep and maintain comparable records for the same time period and to permit the CITY to review, inspect and audit such records. CONTRACTOR shall include such requirements in all written subcontracts and purchase orders issued.
- 13.1.3 If an audit inspection or other examination by the CITY or the CITY's representatives in accordance with this Article, disclose overcharges (of any nature) by the CONTRACTOR to the CITY in excess of one (1%) percent of the total billings, the cost of the CITY's audit (whether performed by the CITY or outside auditors) shall be reimbursed or paid to the CITY by the CONTRACTOR. Any adjustments and/or records shall be made within a reasonable amount of time (not to exceed thirty (30) days) from presentation of the CITY findings to the CONTRACTOR.

ARTICLE 14

SURVEY AND AS-BUILT DRAWINGS

- 14.1 Prior to final payment and as required by the technical specifications (or, in absence of technical specification requirements concurrent with the Final Request for Payment), the CONTRACTOR shall furnish final as-built drawings (in electronic and hard copy as designated by the PROJECT MANAGER) and surveys and in electronic media utilizing CAD Standards as designated by the PROJECT MANAGER, in addition to three (3) sets of hard copy, showing the exact locations of all structures and underground site utilities installed by CONTRACTOR, including all water, sewer, gas, fuel, telephone, security and electric lines and main, and locations of all easements for such utilities. Such surveys shall be prepared by a licensed Florida surveyor who shall certify that the Work is installed and erected entirely upon the Project Site and within the building restriction lines, if any, and does not overcharge or encroach upon any easement or right-of-way of others.

ARTICLE 15

CONTRACTOR'S RESPONSIBILITY FOR THE WORK

- 15.1 CONTRACTOR shall accept full responsibility for the Work against all loss or damage of whatsoever nature sustained until final acceptance by CITY, and shall promptly repair any damage done from any cause whatsoever.
- 15.2 CONTRACTOR shall be responsible for all materials, equipment and supplies pertaining to the Project. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by CITY; CONTRACTOR shall replace it without cost to CITY. CONTRACTOR shall be responsible to protect all materials, equipment and supplies, keeping them free from deterioration, weathering, rusting or other action detrimental to the materials.
- 15.3 CITY reserves the right to award other contracts in connection with this Project. CONTRACTOR shall afford other persons or contractors reasonable opportunity for the introduction and storage of materials and the execution of Work under such separate contracts. CONTRACTOR shall properly connect and coordinate this Work with the Work of any other persons or contractors that might contract separately with CITY.
- 15.4 If any part of CONTRACTOR's Work depends on proper execution or results upon the Work of any other persons, CONTRACTOR shall inspect and promptly report to CONSULTANT any defects in such Work that render it unsuitable for such proper

execution and results. CONTRACTOR's failure to so inspect and report shall constitute an acceptance of the other person's Work as fit and proper for the reception of CONTRACTOR's Work, except as to defects which may develop in other CONTRACTOR'S Work after the execution of CONTRACTOR's Work.

- 15.5 CONTRACTOR shall conduct its operations and take all reasonable steps to coordinate the prosecution of the Work so as to create no interference or impact on any other contractor on the site. Should such interference or impact occur, and the CONTRACTOR did not take reasonable steps, the CONTRACTOR shall be liable to the affected contractor for the cost of such interference or impact.
- 15.6 To ensure the proper execution of subsequent Work, CONTRACTOR shall inspect the Work already in place and shall at once report to CONSULTANT any discrepancy between the executed Work and the requirements of the Contract Documents.

ARTICLE 16

OCCUPATIONAL HEALTH AND SAFETY

- 16.1 In compliance with Chapter 442, Florida Statutes, any toxic substance listed in Section 38F-41.03, Florida Administrative Code, delivered as a result of this Project must be accompanied by a Material Safety Data Sheet (MSDS) which may be obtained from the manufacturer. The MSDS must include the following information:
- 16.1.1 The chemical name and the common name of the toxic substance.
- 16.1.2 The hazards or other risks in the use of the toxic substance, including:
- (1) The potential for fire, explosion, corrosion, and reaction;
 - (2) The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and
 - (3) The primary routes of entry and symptoms of overexposure.
- 16.1.3 The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of overexposure.

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- 16.1.4 The emergency procedure for spills, fire, disposal, and first aid.
- 16.1.5 A description in lay terms of the known specific potential health risks posed by the toxic substance intended to alert any person reading this information.
- 16.1.6 The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.
- 16.2 The CONTRACTOR agrees that it shall not knowingly transport to, use, generate, dispose of, or install at the project site any Hazardous Substance, (as defined in Section 16.2.3, except in accordance with applicable Environmental Laws. Further, in performing the Work, the CONTRACTOR shall not knowingly cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws.
- 16.2.1 In the event the CONTRACTOR encounters on the Project sites any Hazardous Substance, or what the CONTRACTOR reasonably believes to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project Location, in violation of any applicable Environmental Laws, the CONTRACTOR shall immediately stop Work in the area affected and report the condition to the CONSULTANT and PROJECT MANAGER if in fact a Hazardous Substance has been encountered and has not been rendered harmless.
- 16.2.2 The PROJECT MANAGER may direct the CONTRACTOR by utilization of the GMP Contingency allowance funds to remediate and/or render harmless the Hazardous Substance in accordance with applicable permits then in existence, but the CONTRACTOR shall not be required to remediate and/or render harmless the Hazardous Substance absent such direction. If the CONTRACTOR is not so directed, CONTRACTOR shall not be required to resume Work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless.
- 16.2.3 For purposes of this Contract, the term "Hazardous Substance" shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound or mixture, which are defined in or included under or regulated by any local, state, or federal law, rule, ordinance, by-law, or regulation pertaining to environmental Response, Compensation and Liability Act of 1980 (CERCLA), The Resource Conservation and Recovery Act (RCRA), The Toxic Substances Control Act (TSCA), The Clean Water Act (CWA), the Clean Air Act (CAA), and The Marine Protection Research and Sanctuaries Act (MPRSA), The Occupational Safety and

Health Act (OSHA), The Superfund Amendments and Reauthorization Act of 1986 (SARA), or other state super lien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as Environmental Laws). It is the CONTRACTOR's responsibility to comply with Article 20 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

ARTICLE 17

PERMITS, LICENSES AND IMPACT FEES

- 17.1 The parties agree that the Public Bid Disclosure Act does not apply to this agreement because the CITY is reimbursing the CONTRACTOR the actual amount or direct cost of permits, licenses and impact fees required by law for this Project. Accordingly, CITY permits, licenses and impact fees are not listed. The CONTRACTOR shall obtain all required permits and licenses as required for commencement and completion of this Project. Such permits and licenses, along with any corresponding general and specific conditions and requirements, shall become a part of the contract documents. The CONTRACTOR shall comply with all conditions and requirements of said permits and licenses.

Payment of all such permits and licenses, and impact fees shall be made by the CONTRACTOR and shall include all Federal, State, and Municipal application, permit, and surcharge fees. The CONTRACTOR shall be directly reimbursed by the CITY for all such permits and licenses, and impact fees via an Application for Payment; all such permits and licenses, and impact fees are a 'pass through' to the CITY and are excluded from the GMP. The CONTRACTOR shall also be responsible for paying any and all fees, penalties, and fines imposed as a result of the CONTRACTOR's failure to obtain such permits and licenses prior to the commencement of the work and shall pay such costs by deducting them from their fee.

- 17.2 Business Tax Receipts must be in effect as required by Florida Statutes 205.065, and must be submitted within ten (10) days of execution of this Contract.
- 17.3 It is CONTRACTOR's responsibility to have and maintain appropriate Certificate(s) of Competency, valid for the Work to be performed and valid for the jurisdiction in which the Work is to be performed for all persons working on the Project for whom a Certificate of Competency is required.

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- 17.4 Impact fees levied by any municipality shall be paid by CONTRACTOR. CONTRACTOR shall be reimbursed only for the actual amount of the impact fee levied by the municipality as evidenced by an invoice or other acceptable documentation issued by the municipality. Reimbursement to CONTRACTOR in no event shall include profit or overhead of CONTRACTOR.

ARTICLE 18

PERSONNEL

- 18.1 All personnel used or employed by the CONTRACTOR in the performance of the Work shall be qualified by training and experience to perform their assigned tasks. At the request of the CITY the CONTRACTOR shall not use in the performance of the Work any personnel deemed by the CITY to be incompetent, careless, or unqualified to perform the work assigned to that person him, or otherwise unsatisfactory to the CITY.
- 18.2 The CONTRACTOR agrees that in the performance of the Work called for by this Contract, it will employ only such labor, and engage subcontractors that employ only such labor, as will not delay or interfere with the speedy and lawful progress of the Project, and as will be acceptable to and work in harmony with all other workers employed on the Project site or on any other building, structure, or other improvement which the CONTRACTOR or any other contractor may then be erecting or altering on behalf of the CITY.
- 18.3 CONTRACTOR shall provide and pay a livable wage 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. The CONTRACTOR agrees that it shall not employ any labor that will interfere with labor harmony at the Project site or with the introduction and storage of materials and the execution of Work by other contractors or by subcontractors.
- 18.4 CONTRACTOR shall furnish the PROJECT MANAGER on request, resumes of CONTRACTOR's key personnel involved in the day-to-day Work on the Project.
- 18.5 **CERTIFIED PAYROLL:**
- 18.5.1 CONTRACTOR and SUBCONTRACTORS shall submit to the CITY on a monthly basis, payroll sheets which have been certified under oath, by CONTRACTOR and/or SUBCONTRACTORS as to their accuracy and compliance with the provisions of this Section. The certified payroll sheets shall contain the

following: name and address of each employee; his/her current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid. Such records shall be maintained by the CONTRACTOR and his/her SUBCONTRACTORS for a period of at least (3) years following completion of the Work.

- 18.5.2 The CONTRACTOR shall insert in any subcontracts such language as is necessary to require all of his/her SUBCONTRACTORS to comply with the requirements of this section. The CONTRACTOR shall be responsible for noncompliance by any of his/her SUBCONTRACTORS. This section shall be deemed part of any contract entered into between the CONTRACTOR and any of his/her SUBCONTRACTORS

ARTICLE 19

CONTRACTOR'S WARRANTIES

- 19.1 CONTRACTOR warrants to CITY that all materials and equipment under this Contract will be new unless otherwise specified and that all of the Work will be of good quality free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized by the Project Manager may be considered defective. If required by the Project Manager, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 23 herein. Warranties shall be a minimum of one year, with the option to have extended warranties of identified equipment/installation. Warranty period shall commence at Substantial Completion,

- 19.2 The CONTRACTOR further represents and warrants:

That it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to perform this Contract; that is able to furnish the Materials, and Services; that is experienced in and competent to perform the Work contemplated by this Contract; and it is qualified to do the Work herein and is authorized to do business in the State of Florida.

That the CONTRACTOR holds a license, permit or other special license to perform the services included in this Contract, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license.

The CONTRACTOR agrees that the Work shall be performed in a good and professional manner, free from defects in materials and execution, and that all Materials shall be new and approved by or acceptable to the CITY, except as otherwise expressly provided for in the Contract Documents.

ARTICLE 20

DEFECTIVE WORK

- 20.1 The PROJECT MANAGER shall have the authority to reject or disapprove work which the Project Manager finds to be defective. If required by the PROJECT MANAGER, CONTRACTOR shall promptly either correct all defective work or remove such defective work and replace it with proper, conforming work. CONTRACTOR shall pay all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel. Such costs shall be included in the GMP.
- 20.2 Should CONTRACTOR fail or refuse to remove or correct any defective work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by the PROJECT MANAGER, CITY shall have the authority to cause the defective work to be removed or corrected, or make such repairs as may be necessary at CONTRACTOR's expense. Any expense incurred by CITY in making such removals, corrections or repairs shall be paid for out of any monies due or which may become due to CONTRACTOR and deducted from the GMP, or may be charged against the Performance Bond. In the event of failure of CONTRACTOR to make all necessary repairs promptly and fully, CITY may declare a default.
- 20.3 If, within one (1) year after the date of final completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, any of the work is found to be defective or not in accordance with the Contract Documents, CONTRACTOR, after receipt of written notice from CITY, shall promptly correct such defective or nonconforming work within the specified by CITY without cost to CITY, to do so. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation, which CONTRACTOR might have under the Contract Documents.
- 20.4 Failure to reject any defective work or material shall not in any way prevent later rejection when such defect is discovered, or obligate CITY to final acceptance.
- 20.5 The CONTRACTOR shall (I) replace any part of the work that fails to conform with the requirements of this Contract that appear during progress of the work on the Project; (II)

remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from the time of Final Completion of the Work or portions thereof hereunder or within such longer period of time as may be set forth in the Contract Documents or as may be required by law; and (III) replace, repair or restore any parts of the Project or furniture, fixtures, equipment or other items placed therein (whether by the CITY or any other part) that are injured or damaged by any such parts of the Work that do not conform to the requirements of this Contract or are due to defects in the Work. The provisions of this Article shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor or subcontractor of the CITY unless the CONTRACTOR is acting in such capacity or capacities. The cost of the CONTRACTOR of performing any of its obligations under Article 5 shall be within the Guaranteed Maximum Price. The CONTRACTOR's responsibility to make repairs and redo work under this Article 20 is in addition to the CONTRACTOR's responsibility to the CITY for any other damages of any kind for which the CONTRACTOR would be legally responsible.

- 20.6 If the CITY and the CONTRACTOR deem it inexpedient to require the correction of work damaged or not performed in accordance with the Contract Documents, an equitable deduction from the Contract Price and the Guaranteed Maximum Price shall be made by agreement between the CONTRACTOR and the CITY. Until such settlement, the CITY may withhold such sums as the CITY deems just and reasonable from monies, if any, due the CONTRACTOR. If no monies are held by the CITY, reimbursement shall be made to the CITY within thirty (30) days by the CONTRACTOR.
- 20.7 The CONTRACTOR's express warranty herein shall be in addition to, and not in lieu of, any other warranties or remedies the CITY may have under this Contract, at law, or in equity for defective Work.

ARTICLE 21

SIGNAGE

- 21.1 All construction signage located at the project location(s) shall be subject to the prior written approval of the PROJECT MANAGER. The CONTRACTOR recognizes that all signage may be disallowed, in the PROJECT MANAGER's sole discretion, and that existing signage or advertising on construction field offices, trailers, construction fences, and other construction elements or aids, may be required to be masked or deleted at no cost or expense to the CITY. Such signage will be considered an overhead expense pursuant to Article 5.4 and if allowed shall not be included within the Cost of the Work.

ARTICLE 22

PUBLIC ENTITY CRIMES ACT

- 22.1 CONTRACTOR represents that the execution of this Contract will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Contract and recovery of all monies paid hereto, and may result in debarment from CITY's competitive procurement activities.
- 22.2 In addition, to the foregoing, CONTRACTOR further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a public entity crime and that it has not been formally charged with committing an act defined as a public entity crime regardless of the amount of money involved and regardless of whether CONTRACTOR has been placed on the convicted vendor list.

ARTICLE 23

OWNERSHIP OF CONTRACT DOCUMENTS

- 23.1 Drawing, specifications, designs, models, photographs, reports, surveys, and other data submitted by the CONTRACTOR provided in connection with this Agreement are and shall remain the property of the CITY whether the Project for which they are made is completed or not. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by CONTRACTOR shall become the property of CITY and shall be delivered by CONTRACTOR to CITY within seven (7) days of termination of the Contract Documents by either party. Any compensation due to Contractor shall be withheld until all documents are received as provided herein.

ARTICLE 24

CONTRACTOR'S REPRESENTATIVE

- 24.1 CONTRACTOR shall advise, the CITY, in writing of any limitations on the authority of CONTRACTOR's representative; otherwise, CONTRACTOR's representative shall be considered to have full authority to execute any and all instruments requiring the CONTRACTOR's signature and to act on behalf of the CONTRACTOR with respect to all matters arising out of this Agreement.

ARTICLE 25

RIGHT TO TERMINATE CONTRACT

- 25.1 If CONTRACTOR fails to begin the Work within the (10) calendar days after the Project initiation Date, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Work, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the Work pursuant to the accepted schedule or it's CONTRACTOR shall fail to perform any material term set forth in the Contract Documents or if CONTRACTOR shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, PROJECT MANAGER may give notice in writing to CONTRACTOR and its Surety of such delay, neglect or default, specifying the same.

If CONTRACTOR, within a period of ten (10) calendar days after such notice, shall not proceed in accordance therewith, then CITY may upon written certificate from PROJECT MANAGER of the fact of such delay, neglect or default and CONTRACTOR's failure to comply with such notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Project site and take the prosecution of the Work out of the hands of CONTRACTOR, and appropriate or use any or all materials and equipment that are an integral part of the Work on the Project site as may be suitable and acceptable. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Project is completed.

In addition CITY, may enter into an agreement for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in CITY's sole opinion shall be required for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in CITY's

sole opinion shall be required for the completion of the Project in an acceptable manner. All damages, costs and charges incurred by CITY, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to CONTRACTOR. In case the damages and expenses so incurred by CITY shall exceed the unpaid balance, then CONTRACTOR shall be liable and shall pay to CITY the amount of said excess.

- 25.2 If after notice of termination of CONTRACTOR's right to proceed, it is determined for any reason that CONTRACTOR was not in default, the rights and obligations of CITY and CONTRACTOR shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause as set forth in Section 28.1 below.
- 25.3 This Contract may be terminated for convenience in writing by CITY upon ten (10) days written notice to CONTRACTOR (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, CONTRACTOR shall be paid for all work executed and expenses incurred prior to termination in addition to termination settlement costs reasonably incurred by CONTRACTOR relating to commitments which had become firm prior to the termination. Payment shall include reasonable profit for work and/or services performed. No payment shall be made for profit for work and/or services that have not been performed.
- 25.4 Upon receipt of Notice of Termination pursuant to Section 25 or 25.1 above, CONTRACTOR shall promptly discontinue all affected work unless the Notice of Termination directs otherwise and deliver or otherwise make available the CITY all data, drawings, specifications, reports, estimates, summaries and such other information as may have been required by the Contract Documents whether completed or in process.

ARTICLE 26

CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

- 26.1 If PROJECT MANAGER fails to review and approve or state in writing reasons for rejection of any Application for Payment within twenty (20) days after it is properly presented, or if CITY fails either to pay CONTRACTOR within thirty (30) days after presentation by PROJECT MANAGER of any sum certified by PROJECT MANAGER, or to notify CONTRACTOR in writing of any objection to the Application for Payment, then CONTRACTOR may give written notice to CITY of such delay, neglect or default, specifying the same. If CITY (where applicable), within a period of ten (10) calendar days after such notice shall not remedy the delay, neglect, or default upon which the notice is based, then CONTRACTOR may stop work or terminate this Contract and recover from CITY payment

for all work executed and reasonable expenses sustained therein plus reasonable termination expenses. Any objection made by CITY to an Application for Payment shall be submitted to CONSULTANT in accordance with the provisions of Article 27 hereof.

ARTICLE 27

RESOLUTION OF DISPUTES

- 27.1 To prevent all disputes and litigation, it is agreed by the parties hereto that CONSULTANT shall decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Contract as to the character, quality amount value of any work done and materials furnished, or proposed to be done or furnished under or by reason of, the Contract Documents and CONSULTANT's estimates and decisions upon all claims, questions, difficulties and disputes shall be final and binding to the extent provided in Article 30. Any claim, question, difficulty or dispute which cannot be resolved by mutual agreement of PROJECT MANAGER and CONTRACTOR shall be submitted to CONSULTANT in writing within ten (10) calendar days. CONSULTANT shall notify PROJECT MANAGER and CONTRACTOR in writing of CONSULTANT's decision within ten (10) calendar days from the date of the submission of the claim, question, difficulty or dispute, unless CONSULTANT requires additional time to gather information or allow the parties to provide additional information. All nontechnical administrative disputes shall be determined by the PROJECT MANAGER pursuant to the time periods provided herein. During the pendency of any dispute and after a determination thereof, CONTRACTOR, CONSULTANT, and PROJECT MANAGER shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction.
- 27.2 In the event the determination of a dispute under this Article is unacceptable to any of the parties hereto, the party objecting to the determination must notify the other party in writing within ten (10) days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract Price adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) days after Final Completion of the Work, the parties shall participate in mediation to address all objections to any mediator mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. If a party objecting to a determination, fails to comply in strict accordance with the requirements of this Article, said party specifically

waives all of its rights provided hereunder, including its rights and remedies under State law.

- 27.3 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue sites, and shall be governed by the laws of the State of Florida. By entering into this Contract, CONTRACTOR and CITY hereby expressly waive any rights either party may have to trial by jury of any civil litigation related to, or arising out of the Project. CONTRACTOR, pursuant to Article 11 of this Agreement, shall specifically bind all subcontractors to the provisions of this Contract.

Pending resolution of any dispute arising under this Contract, other than termination hereof, the CONTRACTOR shall proceed diligently with performance of this Contract and the CITY shall continue to make payments in accordance with the Contract Documents.

ARTICLE 28

NOTICES

- 28.1 Notices: All notices to be given hereunder shall be in writing, and may be given by depositing the same in the United States Mail addressed to the party to be notified, postpaid, return receipt requested or by delivering the same in person to such party with written receipt of acknowledgement of delivery by a person at the address (s) set forth below. All notices to be given to the parties hereto shall be sent to or made to the addresses shown below. The place for giving notice shall remain the same as set forth herein unless changed in the manner provided in this Article.

For City:

City Manager
400 S. Federal Highway
Hallandale Beach, FL 33009

With Copy to:

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

AND:

City Attorney
400 S. Federal Highway
Hallandale Beach, FL 33009

For Contractor:

And to Consultant:

ARTICLE 29

HURRICANE PRECAUTIONS

- 29.1 During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning or alert, the CONTRACTOR shall take all precautions necessary to secure the project site in response to all threatened storm events, regardless of whether the CITY or CONSULTANT has given notice of same.

Compliance with any specific hurricane warning or alert precautions which are within the normal scope of work of the CONTRACTOR, i.e. normal construction clean-up of debris and securing all loose items at the site, will not constitute additional work and will be performed at no additional costs to the CITY.

Additional work (which is over and beyond removal of debris and securing of loose items) relating to hurricane warning or alert at the project site will be addressed by a Change Order in accordance with Article 4.

Suspension of the work caused by a threatened or actual storm event, regardless of whether the CITY has directed such suspension, will entitle the CONTRACTOR to additional Contract Time as non-compensable, excusable delay, and shall not give rise to a claim of compensable delay.

ARTICLE 30

OTHER TERMS & CONDITIONS

- 30.1 Third Party Beneficiaries: Neither CONTRACTOR nor CITY intend to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third party beneficiaries to this Contract and that no third party shall be entitled to assert a claim against either of them based upon this Contract.
- 30.2 Conflicts: Neither CONTRACTOR nor its employees shall have to hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONTRACTOR's loyal and conscientious exercise of judgment related to its performance under this Contract. CONTRACTOR agrees that none of its employees shall, during the term of this Contract, serve as an adverse or hostile witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her opinion, which is adverse or prejudicial to the interests of CITY in any such pending or threatened legal or administrative proceeding. The limitations of this Article shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding regarding this Contract. CONTRACTOR agrees to prohibit its subcontractors, by written contract, from having any conflicts as within the meaning of this Article.
- 30.3 Joint Preparation: Preparation of this Contract has been a joint effort of CITY and CONTRACTOR and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.
- 30.4 Drug Free Workplace: It is a requirement of CITY that it enter into contracts only with firms that certify the establishment of a drug-free workplace. Execution of this Contract by CONTRACTOR shall also serve, as CONTRACTOR's required certification that it either has or that it will establish a drug-free workplace.

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- 30.5 Assignment: The CONTRACTOR shall not assign this Contract or subcontract it as a whole without the written consent of the CITY; nor shall the CONTRACTOR assign any monies due or to become due to it hereunder, without the previous written consent of the CITY.
- 30.6 Waiver: No consent or waiver, express or implied, by either party to this Contract to or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other of future breach or default by such party hereunder, nor deemed to be a modification of this Contract. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder, provided however this section shall not alter or amend the notice provisions set forth in the Construction Documents including but not limited to, in Article 6. Inspection by, payment by or tentative approval or acceptance by the CITY, or the failure of the CITY to perform any inspection hereunder shall not constitute a final acceptance of the Work or any part thereof and shall not release the CONTRACTOR from any of its obligations hereunder.
- 30.7 Construction of Terms: Unless the context clearly intends to the contrary, words singular or plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other. The term "person" shall be deemed to include an individual, corporation, unincorporated organization, partnership, trust, government and governmental agency or subdivision, as the context shall require.
- 30.8 Captions: The captions used for the Articles of this Contract are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the intent of this Contract or any Article hereof.
- 30.9 Entire Agreement; Severability; Amendments: These Contract Documents incorporate and include all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understanding concerning the subject matter of this Contract that are not contained in the Contract Documents. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with Article 4. In the event any provision of the Contract Documents shall be found by a court of competent jurisdiction to be invalid or otherwise unenforceable, the remainder of this Contract shall

not be affected thereby and each remaining provision, term, covenant or condition of the Contract Documents shall continue to be effective.

- 30.10 Counterparts: This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 30.11 Local Conditions and Project Site: Execution of the Contract by the Contractor is a representation that the Contractor has visited the Project sites, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Contractor represents that it has performed its own investigation and examination of the Project Work sites and their surroundings and satisfied itself before entering into this Contract as to:
- 30.11.1 conditions bearing upon transportation, disposal, handling, and storage of materials;
 - 30.11.2 the availability of labor, materials, equipment, water, electrical power, utilities and roads;
 - 30.11.3 uncertainties of weather, flooding and similar characteristics of the site;
 - 30.11.4 conditions bearing upon security and protection of material, equipment, and Work in progress;
 - 30.11.5 the form and nature of the Work site, including the surface and sub-surface conditions;
 - 30.11.6 the extent and nature of Work and materials necessary for the execution of the Work and the remedying of any defects therein; and
 - 30.11.7 the means of access to the site and the accommodations it may require and, in general, shall be deemed to have obtained all information as to risks, contingencies and other circumstances.
- 30.12 CONTRACTOR shall provide and pay a livable wage for competent, suitably qualified personnel to perform the work as required by the Contract Documents.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: CITY OF HALLANDALE BEACH through its authorization to execute same by Commission action on _____, day of _____, 20____, signing by and through its City Manager, duly authorized to execute same, and _____, signing by and through its _____, _____, duly authorized to execute same.

CITY

ATTEST:

CITY OF HALLANDALE BEACH

Mario Bataille, CITY CLERK

By _____
Daniel Rosemond
CITY MANAGER

Approved as to legal sufficiency and form by

V. LYNN WHITFIELD
CITY ATTORNEY

[EXECUTION CONTINUED ON NEXT PAGE]

If the Company President does not sign the Contract, there must be a Secretary's Certificate Form provided to the CITY of Hallandale Beach, Florida indicating designee signing, has the authority to sign.

CONTRACTOR

ATTEST:

(Company Name)

_____ By: _____
(Secretary)

(Corporate Seal)

(Type Name and Title Signed Above)

___ Day of _____, 20__.

Exhibit A

Guaranteed Maximum Price

EXHIBIT B
Community Benefit Plan

EXHIBIT C
Schedule