

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

**BY AND BETWEEN THE CITY OF HALLANDALE BEACH
AND BURKHARDT CONSTRUCTION, INC.
FOR
PROFESSIONAL CONSTRUCTION MANAGEMENT SERVICES
FOR CONSTRUCTION OF BF JAMES PARK, SCAVO PARK
AND SOUTH BEACH PARK**

This Agreement made this 12 day of March in the year 2013, by and between the City of Hallandale Beach, Florida, a municipal corporation, hereinafter referred to as the "CITY" and BURKHARDT CONSTRUCTION, INC., 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 B.F. James Park; Scavo Park; and South Beach 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, on September 28, 2012, the CITY, issued a Request for Proposals, (RFP # FY 2011-2012-013), for Construction Manager at Risk for the construction of BF James Park, Scavo Park and South Beach Park (the "Parks 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.: (2013-20) adopted February 6, 2013.

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 three (3) City parks, BF James, Scavo and South Beach, as further detailed in this Agreement. The Recitals are incorporated into and made a part of this Agreement.
- 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 100 percent 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:

- a. 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;
- b. Wages or salaries of the Construction Manager's supervisory, technical and administrative personnel who are stationed at the Project site;
- c. 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;
- d. 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;
- e. The parties hereby establish a Fringe Benefits rate of 0.00% 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;
- f. 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;
- g. 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;

- h. Cost of clean-up on the Project site(s), and removal and proper disposal of debris from the Project sites;
- i. 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;
- j. 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;
- k. Temporary living and travel expenses of employees who are not relocated, but assigned to the Project;
- l. Cost of reproducing and printing;
- m. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Construction Manager is liable.
- n. 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;
- o. 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;
- p. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents;
- q. Deposits lost for causes other than Construction Manager's fault or negligence;
- r. 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;
- s. 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;

- t. Cost of Public Information/Community Benefit Programs or other neighborhood functions hosted by Construction Manager ;
- u. Cost of Partnering;
- v. Cost of site safety and security;
- w. Cost of documentation, inspection and testing as required by the Contract Documents or the Construction Documents and Specifications;
- x. 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');
- y. 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 ninety (90%) percent 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 Director of Utilities & Engineering.

- 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 2011-2012-013, based on ninety percent (90%) Construction Drawings and Specifications prepared by Bermello, Ajamil & Partners, Inc. (CONSULTANT).

The scope of work defining preconstruction services to be provided by the Construction Manager (CONTRACTOR) specifically shall be the Proposed Approach submitted in response to RFP# FY 2011-2012-013 and accepted by the City for this Project (incorporate herein by reference), and attached in Exhibit A.

ARTICLE 3

TERM AND TIME OF PERFORMANCE

- 3.1 The term of this Agreement 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 2011-2012-013 no later the issuance of all final permits or the City's Notice To Proceed on the Guaranteed Maximum Price (GMP) for each park, which ever is the later, unless terminated in accordance with Article 8. 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.
- 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 Lump Sum Compensation in the amount of One Hundred and Eighty-Five Thousand Six Hundred and Twenty-Three Dollars (\$185,623.00) 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 Lump Sum Compensation in the amount One Hundred and Eighty-Five Thousand Six Hundred and Twenty-Three Dollars (\$185,623.00) shall be paid out in accordance with the percentage amount set forth therein as follows in Attached Exhibit A.

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 Lump Sum amount, including all reimbursable expenses.

4.4 METHOD OF BILLING AND PAYMENT

4.4.1 CONTRACTOR may submit invoices for compensation no more often than 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:

BURKHARDT CONSTRUCTION, INC.
1400 Alabama Avenue, Suite 20
West Palm Beach, FL 33401

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 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 Lump Sum Fee for Pre-Construction services and General Conditions for the GMP.

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
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 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. Longshoremen & 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 expensed 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.

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.

Flood Insurance: Once an elevation certificate is available for each building, as defined by the National Flood Insurance (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, whichever is less. The flood deductible for the building coverage may not exceed the standard deductible offered by the NFIP. Contractor agrees to endorse the City as a "Loss Payee on each flood policy required herein.

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 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.

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 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 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 10, 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:

BURKHARDT CONSTRUCTION, INC.
1400 Alabama Avenue, Suite 20
West Palm Beach, FL 33401

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 6th, day of February, 2013, signing by and through its City Manager, duly authorized to execute same, and Burkhardt Construction Inc., signing by and through its Vice President, Marc R. Kleisley, duly authorized to execute same.

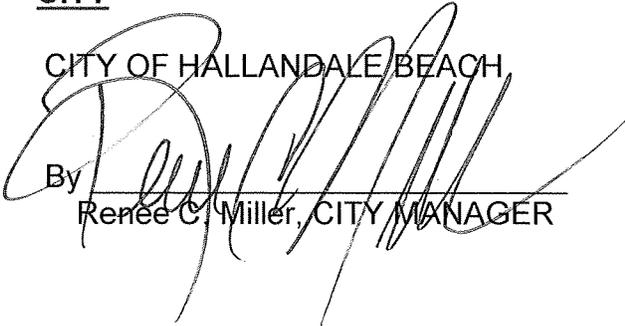
ATTEST:



CITY CLERK

CITY

CITY OF HALLANDALE BEACH

By 

Renee C. Miller, CITY MANAGER

Approved as to legal sufficiency and form by



V. Lynn Whitfield, CITY ATTORNEY

CONTRACTOR MUST EXECUTE THIS CONTRACT AS INDICATED BELOW. USE CORPORATION OR NONCORPORATION FORMAT, AS APPLICABLE.

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.

(If incorporated sign below).

CONTRACTOR

ATTEST:

BURKHARDT CONSTRUCTION INC.

Sharon Burkhardt
(Secretary)

By Marc R. Kleisley
Vice President, Marc R. Kleisley

(Corporate Seal)

Sharon Burkhardt, Secretary
(Type Name and Title Signed Above)

28 Day of February, 2013.

(If not incorporated sign below).

CONTRACTOR

WITNESSES:

(PRINT NAME)

(PRESIDENT OR VICE-PRESIDENT)

(PRINT NAME)

NOTARY SEAL

EXHIBIT A



Vincent G. Burkhardt
President

January 29, 2013

**City of Hallandale Beach
400 South Federal Highway
Hallandale Beach, FL 33009
Att: Robert Santarsiero, Capital Projects Manager**

RE: Scope and fee proposal for pre-construction services RFP #FY2011-2012-013
Construction Manager at Risk (CMAR) for the construction of B.F.James Park, Scavo
Park, and South Beach Park

Dear Mr. Santarsiero:

Burkhardt Construction, Inc., acting as Construction Manager At Risk (CMAR), is pleased to provide the attached scope and fee proposals to the City of Hallandale Beach (Owner) for Pre-Construction Services for the construction of B.F.James Park, Scavo Park, and South Beach Park described in RFP#FY2011-2012-013.

Burkhardt Construction, Inc. preconstruction services are composed of the following;

1. Burkhardt Construction, Inc. scope and fee proposal	\$65,000.00
2. NuJak scope and fee proposal	\$25,000.00
3. PCAC scope and fee proposal	\$60,622.25
4. Permitting Consultant allowance	\$25,000.00
5. Underground investigation allowance	<u>\$10,000.00</u>
	Total \$185,622.25

Please feel free to contact me directly should you have any questions regarding any of the information included in this letter or the attached schedule of pre-construction fees and services. All costs of developing the GMP will be carried as a line item in the final Gauranteed Maximum Price proposal (GMP).

Respectfully,

James E.Auld

Project Manager
Burkhardt Construction Inc.
(561) 659-1400
(561) 307-6790
Jim@burkhardtconstructioninc.com



Vincent G. Burkhardt
President

SCOPE OF SERVICES

Task I

I. PRE-CONSTRUCTION PROGRESS MEETINGS and MONTHLY REPORTING

This scope includes the CMAR conducting team progress meetings attended by CMAR, Design professionals, Owner and others as requested. The CMAR shall provide agendas and produce meeting notes from each meeting that will be distributed to all attendees. The monthly report will be generated and prepared by the CMAR and will be submitted to the Owner at the end of every month. These meetings and reports will include but will not be limited to the following items:

- A. **Plan Design Status:** The statuses of the drawings for each project will be tracked in these meetings and recorded in the meeting notes. The CMAR will make sure that the Designer is achieving their milestones.
- B. **Permit Tracking and Coordination:** The CMAR will coordinate with the Designer, Owner, and other applicable authorities to be sure the permits are on track. The CMAR will also note permit progress, plan next steps, and direct the permitting consultant as needed through to permit issuance. The permit status will be tracked using an excel spreadsheet that will be available to all attendees and will accompany the meeting notes that will be distributed.
- C. **Cost Budgeting:** The CMAR will develop budget tracking categories, utilizing Construction Specification Institute applicable scopes of work. CMAR will conduct a budget variance evaluation and produce a list of recommendations. The CMAR will track and identify scope changes, review with team, and schedule critical decisions as it relates to the budget.
- D. **Time Sequencing:** The CMAR will produce a pre-construction project schedule that includes deliverables to the owner in conjunction with the Owner and the Designer. Owner Direct Purchase Items, long lead items and potential early start items will be identified as well and included in this schedule. The progress of this schedule will be tracked at every meeting and statuses recorded and distributed with the meeting notes.
- E. **Issue Tracking and Resolution:** As questions arise or as more information is needed from the Designer or the Owner, the CMAR will track who's responsible for each item and record the status of each item at every meeting.
- F. **LEED Design Meeting Attendance:** The CMAR will participate in the LEED design meetings and offer input and suggestions in areas that are familiar to them. The CMAR will not be responsible for these meeting agendas and notes, but will actively participate in each meeting and will complete all roles and responsibilities assigned to them by the LEED consultant. A LEED status update will be incorporated into the

regularly scheduled progress meetings and will also be included in the Monthly Executive Summary.

- G. **Monthly Report:** Monthly executive narratives will be prepared for the owner and included in the report. The report will also include that month's billing, all meeting notes for that month, pre-construction schedule status, cost estimate and a summary of how the project is progressing.

The CMAR plans on meeting every 2-3 weeks up to award of GMP contract, with the total estimated meetings being 9. The CMAR anticipates producing 5 executive summaries.

Task II

II. PUBLIC PRESENTATIONS/PUBLIC OUTREACH

This scope includes CMAR participation in public presentations, in support of Owner's staff and Design team, as directed by the Owner. The public presentations may include discussion of construction methods, construction sequences, and construction timelines. Under this task the Owner will be invoiced only for the number of public meetings which they request the CMAR to attend. The CMAR anticipates having two meetings per project for a total of six meetings.

- A. **Public Meetings and Presentations:** These meetings shall be as directed by the Owner and may be requested at 30% document completion, 60% document completion and final budget/90% document completion.
- B. **Public Outreach:** The public outreach portion of this scope shall consist of the CMAR facilitating a meeting with the adjacent residents/HOA's and public to discuss the projects. The presentation shall include introduction of the project team, who & how to contact team individuals, discussion of the project sequences, project schedule, pedestrian/park access during construction and additional details as requested by the Owner. Estimated 6 meetings required.

Task III

III. INITIAL Opinion of Probable Construction Cost (I.O.P.C.C.) for all three park projects based on 30% Plans.

This scope includes the preparation and presentation of the initial Opinion of Probable Construction Cost based on Owner/Design Team provided 30% plans. At the end of this exercise, an I.O.P.C.C. will be presented to the owner as a budget number. The following activities will take place, but will not be limited to:

- A. **Quantity Surveys:** The CMAR will conduct quantity surveys on the 30% plans to obtain numbers like square footage of concrete, number of trees proposed on site, and other quantities that will be used in the I.O.P.C.C.

- B. **Project Estimating:** Upon completion of the quantity surveys, the CMAR will use their extensive in-house cost history to produce an I.O.P.C.C. The I.O.P.C.C. will be on an excel worksheet and will be broken out into different categories that are specific to the work that is going to be performed under each category. (Example: Sitework, Clearing and Grubbing).
- C. **Value Engineering:** After the quantity surveys and project estimating are complete, the CMAR will then look at the designed and specified construction materials, methods, and systems being used and use Burkhardt Construction Inc.'s established lessons learned to develop a potential value engineering list of alternatives to be made available for a decision by the team. The CMAR will not suggest any products that will reduce quality and does not view this exercise as a cost cutting measure. Value Engineering will continue to take place throughout the design and construction process.
- D. **Constructability Analysis:** The CMAR will examine the construction documents, specifications, and site conditions to evaluate and proactively determine any conflicts, errors, misrepresentations, or potential difficulties designed or present in the site conditions. The items discovered in this process will be included in the next meeting agenda which will act as a clearinghouse for discussion and resolution.
- E. **I.O.P.C.C. Preparation:** At the end of these activities, the CMAR will produce a report and present it to the Owner that will include the I.O.P.C.C., value engineering findings, and constructability analysis. This will be similar to a monthly Executive Summary in that it will also include any discussions and information regarding items covered in the I.O.P.C.C. The I.O.P.C.C. will include a contingency line item as agreed upon by the Owner for future design changes and scope modifications.

Task IV

IV. 60% PLAN REVIEW/CONSTRUCTABILITY REVIEW/COST ESTIMATE

This scope includes review of the 60% Construction Documents as provided by the Owner/Design Team and will include an update/refinement of the Initial Opinion of Probable Construction Cost. The following activities will take place, but will not be limited to:

- A. **60% Quantity Surveys:** The CMAR will examine the 60% Construction Documents and conduct quantity surveys again to determine if there are any substantive changes that may materially affect budget or time.
- B. **60% Cost Estimate:** The CMAR will conduct a 60% cost estimate that is based on the quantity surveys from the 60% plans. This 60% cost estimate will include all materials and information that has been discussed and outlined in the job meetings up to that point. The 60% cost estimate will follow the same categories as the I.O.P.C.C.

- C. Constructability Review and Value Engineering: The CMAR will inspect the 60% Construction Documents to make sure that all prior constructability comments and recommendations have been incorporated into them. The review process will be prepared until all comments and best practices have been incorporated. Value Engineering will also continue to take place using the same methods as in the I.O.P.C.C.
- D. 60% Cost Estimate Report: At the end of these activities, the CMAR will provide a report to the Owner that will include the 60% Cost Estimate, Value Engineering items, and the Constructability Review.

Task V

V. GUARANTEED MAXIMUM PRICE (GMP) 90% Plans

This scope consists of the CMAR preparing the guaranteed maximum price and the final construction budget based on the 90% construction documents provided by the Owner/Design Team. The GMP shall consist of detailed line items for all major work to be performed. The GMP will follow the same format as the I.O.P.C.C. and the 60% Cost Estimate. The following activities will take place, but will not be limited to:

- A. Public Advertisement: The CMAR will place an ad in a south Florida newspaper. Each ad will run for ten days over two consecutive weekends as a public notice to subcontractors to pre-qualify with the CMAR. Ads can be run in additional newspapers at the owner's request as well.
- B. Subcontractor Pre-Qualification: The CMAR will use a pre-qualification questionnaire to qualify subcontractors who wish to bid on the projects. The questionnaire has subcontractors address items like bonding capacity, insurance requirements, current schedule of work on hand, how many full time employees the firm has working for it, and other items that the CMAR feels are necessary to have a good subcontracting pool with which to issue bid packages. The CMAR will also respond to any questions the subcontractors have about prequalifying. The CMAR will then create a list of prequalified bidders and review them with the team to determine if a larger pool is required.
- C. Bid Package Preparation: The CMAR will conduct quantity surveys on the 90% construction plans using the same procedures used in the I.O.P.C.C. and the 60% Cost Estimate to form scopes of work for each trade. These quantities are an in-house product used as an independent verification for use in analyzing subcontractor bids. These quantities will be put in an excel sheet and distributed to the qualified subcontractors as the bid form with the Invitation to Bid, and Instructions to Bidders. The bid packages that will be developed will be tailored to the market of prospective bidders.

- D. Issuance of Bid Packages: The CMAR will conduct pre-bid meetings with prequalified subcontractors and conduct pre-bid tours of the three separate project sites. The CMAR will then issue bid packages to all qualified subcontractors that will include the Invitation to Bid, Instructions to Bidders, and the bid form. Any questions that arise during the bidding phase will be answered in an addendum that will be sent to all bidding subcontractors. A date will be set to receive bids from all subs. This date will be firm and any subcontractor who submits after this date will be disqualified.
- E. Analyzing of Subcontractor Bids: After the CMAR receives all qualified bids (ie. The bidding subcontractor responds on time with a complete bid) they will then begin analyzing and comparing the subcontractor bids. The CMAR will first be sure that all bids received are complete and that they acknowledge any and all addenda. Then the CMAR will set up a bid comparison spreadsheet to compare which subcontractors are low in their scope of work. The CMAR will conduct post bid meetings with individual subcontractors to confirm scope coverage and where necessary, create a scope coordination matrix to avoid any overlap of scope. After preparing and analyzing the comparison spreadsheets, the CMAR will prepare a recommendation for the apparent low bidder in each scope of work.
- F. Preliminary Schedule Generation: The CMAR will review the construction documents and come up with a construction schedule for all three projects based on the design. The schedule will be in a bar chart format and will point out specific milestones in construction for each project as well as anticipated project duration.
- G. Identifying Owner Direct Purchase (ODP) Items for Tax Savings: The CMAR will calculate the amount of savings the city can expect from direct purchase and will help establish a sales tax savings program in conjunction with the Owner's purchasing department.
- H. Preparation of the Guaranteed Maximum Price (GMP): After going through all these steps, the CMAR will compile the GMP for the owner. The format will follow that of the I.O.P.C.C. and the 60% Cost Estimate. Included in this GMP will be the CMAR's general conditions and construction phase fee. The GMP will be presented to the owner in a book and will include all of the information listed above in Task V, Items A-G.

We have attached our current hourly rates for your use should additional pre-construction services be requested. Additional pre-construction services scope and fee proposals for other services shall be prepared and submitted by the CMAR as requested by the owner.

Thank you for the opportunity to submit this pre-construction services proposal for the City of Hallandale Construction Manager At Risk (CMAR) for the Construction of B.F. James Park, Scavo Park, and South Beach Park. If you have any questions on this proposal, please contact us at (561) 659-1400.



City of Hallandale Beach
RFP # FY2011-2012-013
Construction Manager AT Risk (CMAR)
for the construction of
B.F.James Park, Scavo Park, and South Beach Park

Hourly Rates For Additional Requested
Pre-Construction Services

<u>Name</u>	<u>Position</u>	<u>Rate</u>
Vincent G. Burkhardt	President	\$300.00
Sharon H. Burkhardt	Secretary/C.P.A.	\$175.00
Dennis E. Haynes	Vice President/Proj. Principal	\$175.00
Marc R. Kleisley	V.P.Operations/Sr. P.M.	\$150.00
Anthony Sabatino	Senior Project Manager	\$150.00
James E. Auld	P.M. Precon Services Mgr.	\$120.00
Bill Zammit	Vertical Project Manager	\$120.00
Vincent L. Burkhardt	Project Manager/Estimator	\$100.00
Karl T. Kaminski	Const. Field Mgr./Estimator	\$100.00
Brandon Rhodes	Assistant Project Manager	\$75.00
Hemant Tank	Estimator/Cost Engineer	\$75.00
Adam Rossmell	Estimator/Cost Engineer	\$75.00
Wayne King	Merchant Outreach	\$75.00
Sarah B. Hoadley	Accounting Manager/M.B.A.	\$90.00
Katy Pantaleon	Accounting	\$75.00
Tara L. Haynes	Admin. Ass't/Secretarial	\$50.00
Melissa McGraw	Marketing/Graphics	\$55.00

Hourly rates include all necessary supplies, transportation, communication overhead and profit.



FEE SCHEDULE

Burkhardt Construction, Inc. (BCI), acting as Construction Manager At Risk (CMAR), is pleased to provide this fee schedule for preconstruction services to the City of Hallandale Beach (Owner) for the construction of B.F. James Park, Scavo Park, and South Beach Park described in RFP#FY2011-2012-013. As the CMAR, BCI shall function as an agent of the Owner and shall be paid a fixed fee for services performed. Pre-Construction services tasks I thru IV will be invoiced according to the attached scope and fee schedule as services are rendered. Cost of Task V will be included within the GMP of the project. All fees include supplies, presentation materials, equipment, personnel, travel, and related costs associated with performing the described Scope of Services.

TASK – I	Pre-Construction Progress Meetings and Monthly Reporting	\$37,790.00
TASK – II	Public Presentations/Public Outreach	\$5,960.00
TASK – III	Initial Opinion of Probable Construction Costs 30% Plans	\$9,450.00
TASK – IV	60% Plan Review/Constructability Review/Cost Estimate	<u>\$11,800.00</u>
Tasks I-IV	Total For Tasks I-IV	\$65,000.00
	PERMITTING CONSULTANT ALLOWANCE	\$25,000.00
	SUBSURFACE EXPLORATION ALLOWANCE	\$10,000.00

1. Cost of Task V – Preparation of GMP to be included in GMP.



City of Hallandale Beach
RFP # FY2011-2012-013
Construction Manager AT Risk (CMAR)
for the construction of
B.F.James Park, Scavo Park, and South Beach Park
Scope & Fee Schedule
Submitted: January 29, 2013

Burkhardt Construction, Inc.

James E. Auld Title: Project Manager

Accepted by:
City of Hallandale Beach

By: _____
Printed Name

Title: _____

Date: _____

Upon your acceptance of this letter of agreement, Burkhardt Construction, Inc. shall begin work immediately. Please return one original for our files.

Date: January 30, 2013

PRECONSTRUCTION PHASE SERVICES OFFER

Proposal Submitted To:

Name: **Burkhardt Construction, Inc.**
Title: **Preconstruction Services Agreement**
Address: **1400 Alabama Avenue**
City: **West Palm Beach** State: **FL 33401**
Job Name: **Hallandale Beach Parks Master Plan**
ATTENTION: **Jim Auld**

It is with pleasure that we submit this proposal for Preconstruction Phase Services regarding the proposed City of Hallandale Beach Parks Master Plan.

SERVICES

We do hereby propose to perform the following Preconstruction Services:

TASK 1: OUTREACH

- 1) Assist PCAC, Outreach Consultant, in the formulation of advertising and marketing materials to generate interest in the project.
- 2) Facilitate and assist in the formulation of a strategic plan to maximize LBE and SBE participation in the execution of the Community Benefit Plan (CBP)
- 3) Attend any and all community informational meetings to respond to questions relative to the project.
- 4) Attend monthly update meetings with the Burkhardt Construction Management team.
- 5) Provide written meeting minutes to Burkhardt for all meetings with Outreach Consultant and other consultants and City Staff.

TASK 2: SBE IDENTIFICATION

- 1) Review the County and the City's list of SBE/LBE firms and assist with the solicitation of these firms for inclusion in the project.
- 2) Provide a list of recommended SBE/LBE subcontractors to Burkhardt for inclusion on the prequalified list of invitees, along with any special conditions required i.e. "*flexible pay provisions*"
- 3) Recommend potential SBE/LBEs for involvement on the project as well a strategy to maximize SBE participation through strategic packaging.

TASK 3: CAPACITY ASSESSMENT

- 1) Conduct capacity analysis of potential SBE/LBEs for inclusion in the project.
- 2) Conduct capacity building seminar to include *bonding, microloans and lines of credit* establishment in conjunction with Wells Fargo for potential SBE/LBEs.
- 3) Identify local resources to assist SBEs with capacity relative to the need.

TASK 4: COMPLIANCE

- 1) Meet with City of Hallandale officials and Outreach Consultant to determine the appropriate compliance reporting structure and reporting frequency.
- 2) Negotiate subsequent agreements and arrangements with subconsultants (Adams Consulting) for possible inclusion into the compliance component.
- 3) Develop or cause to develop standard format of compliance report.
- 4) Develop or cause to develop procedural manual or flow chart to establish the processes for data collection and reporting flow for the use by Construction Management team, City officials,

TASK 5: PREQUALIFICATION & PACKAGING

- 1) Assist Burkardt staff in the process of prequalification and preparation of packages for SBEs
- 2) Assist Burkardt with formulation of strategic alliances to accomplish overall project goals. .

PRECON ASSUMPTIONS & CLARIFICATIONS:

- 1. It is assumed that Burkhardt will pay the Outreach Consultant directly.
- 2. No retainage will be held on billings.
- 3. Burkhardt will reimburse NuJak for reimbursables associated with the execution of this work.
- 4. NuJak will be included in any discussions that affect the proper execution of its work.
- 5. This fee structure is being provided for Preconstruction services only and a subsequent agreement will be formulated for the construction phase.

Any alteration or deviation from the above assumptions, may involve additional time, which has not been anticipated in this fixed fee proposal. All agreements are contingent upon strikes, accidents, or delays beyond our control.

Thank you for the opportunity to provide this proposal, we look forward to working with you in meeting the construction needs of the City of Hallandale Beach. .

Authorized Signature _____



Frank Kendrick Jr.
CEO/ President

Acceptance of Proposal

The above prices, specifications and conditions are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above:

Accepted:

Date:

Signature _____

Signature _____



January 28, 2013

Burkhardt Construction, Inc.
1400 Alabama Ave.
West Palm Beach, FL 33401
Attn: James Auld, Project Manager

RE: Fee Schedule & Scope Of Services
RFP #Y2011-2012-013
Construction Manager at Risk (CMAR) for the construction of B.F. James Park, Scavo Park and South Beach Park

Dear Mr. Auld

Palms Community Action Coalition(PCAC) acting as Community Outreach Organization is pleased to present you with Scope of Services for preconstruction services to the City Of Hallandale Beach (Owner) for the construction of B.F. James Park, Scavo Park, and South Beach Park described in RFP# FY2011-2012-013.

Task- 1 Provide Outreach and Assist Small Business (SBE) participate in Hallandale Beach Parks Projects and Monthly Reporting	\$37,800.00
Task- 2 SBE Identification	\$5,940.00
Task- 3 Capacity Assessment	\$6,885.00
Task- 4 Prequalification, Prepackaging Bid Phase & Strategic Alliances	\$42,639.00
65% CBP Outreach Cost Estimate (work prior to GMP development)	\$60,622.25
NuJak Pre-construction phase fee	\$25,000.00

35% Cost of CBP plan during GMP development deferred to a GMP line item.



Task 1

1. SBE Outreach Monthly Reporting

This scope will provide outreach and assist small business (SBE) participate in Hallandale Beach Parks Projects. Meet with the CMAR to identify services and commodities that may be compatible with Local/SBE vendors and subcontractors with emphasis on business in and around Hallandale Beach. The monthly report will be generated and prepared by Palms Community Action Coalition (PCAC). This report will be submitted to the CMAR.

- A. Coordinate: At least two construction symposiums create and distribute materials advertising B.F James Park, Scavo Park and South Beach Park construction. Emphasizing the City's commitment to utilize local/SBE's in the Pre- Construction Phase.
- B. Advertise: The time and place of symposiums.
- C. Request: All attendees to bring licenses bonding information and SBE certification if they have it.
- D. Questionnaire: Have all vendors attending complete questionnaire.
- E. Overview: Contractor will present overview of the project and all the type of services and commodities to be purchased.
- F. Training: Provide one on one training focusing on the projects.

Task 2

2. SBE Identification

This scope will include Community participation in public presentation, in support of Parks Master Plan.

- A. Create Database: Identify at least three SBE for each phase of the project at Pre-Construction
- B. Register: Proactively contact local business encouraging them to register as a vendor of the City of Hallandale Beach.

Task 3

3. Capacity Assessment

This scope will determine each vendor's capacity to provide services for all three projects simultaneously.

- A. Assist vendors in hiring local labor from PCAC local labor force.
- B. Help identify local SBE that might need bonding and or certification collaborate with vendor's.



Task 4

4. Prequalification & Pre- Packaging

This scope PCAC will collaborate with CMAR to assist in coordinating bid notification.

- A. Coordinate bid notification in cooperation with the Project Manager
- B. Targeting local/SBE vendors and subcontractors
- C. Ensure that vendors have completed all forms and provided all documentation required for bid package submission and signature
- D. Attend bid meetings.



City of Hallandale Beach
RFP #FY2011-2012-013
Palms Community Action Coalition
for the Pre-Construction of
B.F. James Park, Scavo Park, and South Beach Park
Scope and Fee Proposal
Submitted: January 29, 2013

Palms Community Action Coalition

Murvin B. Wright

PCAC Board Chair

Accepted by:
Burkhardt Construction, Inc.

By: _____
Printed Name

Title: _____

Date: _____

Upon your acceptance of this letter of agreement, Palms Community Action Coalition, Inc shall begin work immediately. Please return one original for our files.



City of Hallandale Beach
RFP #FY2011-2012-013
Palms Community Action Coalition
for the Pre-Construction of
B.F. James Park, Scavo Park, and South Beach Park

Hourly Rates for Additional Requested
Pre-Construction Services

<u>NAME</u>	<u>POSITION</u>	<u>RATE</u>
Joy Brown	Office Manager	\$70.00
Nellie Bacon	Assistant Office Manager	\$40.00
Anthony Lewis	Outreach Coordinator	\$25.00

Multiplier of (2) is Included in Hourly Rates.