CITY OF HALLANDALLE BEACH, FLORIDA

CONSTRUCTION MANAGEMENT AT RISK AGREEMENT SERVICE AGREEMENT

PHASE II

CONSTRUCTION SERVICES

BF JAMES PARK AND JOSEPH SCAVO 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 Burkhardt Construction, Inc. 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;

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 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, 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 B.F. James and Scavo Parks as per the Construction Documents.

CONTRACTOR has reviewed the ninety percent (90%) Construction Documents for B.F. James and Scavo Parks 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 B.F. JAMES AND SCAVO PARK (Exhibit A)

a)	Direct Construction Cost	$ 5,155,952.61
b)	General Conditions Cost (includes Community Benefit Plan)	$ 659,775.76
c)	Construction Management Fee	$ 902,720.00
d)	Profit	$ 449,500.00
e)	Contingency	$ 500,000.00
f)	Community Benefit Plan (Burkhardt Construction Credit)	$ (60,632.00)
g)	Direct Purchase Tax Savings	$ (54,195.34)
h)	Preconstruction Services (Task V-GMP)	$ 139,296.75
	TOTAL GMP (ALL INCLUSIVE)	**$ 7,692,417.78**

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 B.F. James and Scavo Park Specifications and Addenda for the Project known as the RFP # FY 2011-2012-013 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 three hundred and sixty-five **<365> 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 the 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 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.

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.

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 <u>FIELD ORDERS AND SUPPLEMENTAL INSTRUCTIONS:</u>

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.

4.6 <u>CONTRACT PRICE ELEMENT ADJUSTMENT MEMORANDA:</u>

CONTRACT PRICE
FIXED FEE WITH A GUARANTEED MAXIMUM PRICE (GMP)
FOR B.F. JAMES AND SCAVO PARK (Exhibit A)

a)	Direct Construction Cost	$ 5,155,952.61
b)	General Conditions Cost (includes Community Benefit Plan)	$ 659,775.76
c)	Construction Management Fee	$ 902,720.00
d)	Profit	$ 449,500.00
e)	Contingency	$ 500,000.00
f)	Community Benefit Plan (Burkhardt Construction Credit)	$ (60,632.00)
g)	Direct Purchase Tax Savings	$ (54,195.34)
h)	Preconstruction Services (Task V-GMP)	$ 139,296.75
	TOTAL GMP (ALL INCLUSIVE)	**$ 7,692,417.78**

The Project Manager shall have the right to issue certain Contract Price Element Adjustment Memoranda (Memoranda), which Memoranda shall address the reallocation of sums between the Contract Price Elements within the Contract Price. In no event shall the Contract Price be modified except by following an appropriate Change Order. The following specific Memoranda are contemplated, but additional or different Memoranda may be required and issued, provided they do not result in a change to the Contract Price, and provided that amounts shall only be transferred from Elements a through e above by prior mutual agreement of the CONTRACTOR and the CITY.

a. At the Completion of the Work, a Memorandum will be issued in conjunction with a final Change Order to remove any remaining sums within the Cost of the Work and General Conditions and reduce the GMP in accordance with Articles 4.6.

b. At the Completion of the Work, the CITY and the Construction Manager shall share 60%/ 40% in any cost savings. Cost savings are defined as the difference between the GMP (including authorized amendments) and the final invoice amount. The Construction Manager(s)'s 40% share in the cost savings shall be capped at a maximum of 1.5% of the total GMP (including authorized amendments).

c. 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.

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.

(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 of 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.

(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.

(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.

5.4.3 Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and changes 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 filling 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 that 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

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. 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.. 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 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.

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 complied 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 an 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 Conversation 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 statues 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 Certificates(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.

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 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 Statues), 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 executive 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 subcontrators 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:

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

With Copy to:

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

AND:

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

For Contractor:

Marc Kleisley
Burkhardt Construction, Inc.
1400 Alabama Avenue, Suite 20
West Palm Beach, FL. 33401

And to Consultant:

Randy P. Hollingworth
Bermello Ajamil & Partners
2601 South Bayshore Drive 10th Floor
Miami FL. 33133

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 asset 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 ing. 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.

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.

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 19th, day of June, 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 Kleisley, duly authorized to execute same.

CITY

ATTEST:

CITY OF HALLANDALE BEACH

SHEENA D. JAMES
CITY CLERK

By
RENEE C. MILLER
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:

BURKHARDT CONSTRUCTION INC.

Sharon Burkhardt
(Secretary)

By: _____, VICE PRESIDENT
MARC KLEISLEY, VICE PRESIDENT

(Corporate Seal)

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

27 Day of June, 2013.

Exhibit A to the Agreement

Direct Construction Cost		$ 5,155,952.61
Direct Construction Cost BF James Park	$ 3,375,087.76	
Direct Construction Cost Scavo Park	$ 1,780,864.85	
General Conditions		$ 659,775.76
Construction Management Fee		$ 902,720.00
Profit		$ 449,500.00
Project Contingency (7%)		$ 500,000.00
Exceptions & Clarifications		
Plan Log		
Community Benefit Plan (Burkhardt Construction Credit)		$ (60,632.00)
Owner Direct Purchase Tax Savings		$ (54,195.34)
Preconstruction Services (Task V - GMP)		
BCI		$ 56,080.00
NUJAK		$ 50,575.00
PCAC		$ 32,641.75
Total Guaranteed Maximum Price		$ 7,692,417.78
Permit Fee (Allowance)		$ 103,119.05
Alternate I: Order of Magnitude		
BF James Park - Covered Basketball Structure		$ 541,420.00
Design Fees and Permitting		
Lighting/Electrical		
Basketball Shelter		
General Conditions	no charge if done during construction of the project	
CMAR Management	no charge if done during construction of the project	
CMAR profit		
Contingency		

BURKHARDT CONSTRUCTION, INC.

Exhibit B to the Agreement

NUJAK

Exhibit B to the Agreement

June 11, 2013

CITY OF HALLANDALE BEACH PARKS MASTER-PLAN PROJECT

COMMUNITY BENEFIT PLAN CONSTRUCTION FEE NARRATIVE REVISED

Pursuant to your contract with the City of Hallandale Beach (Owner) for the construction and renovation of Scavo, Bf James and South City Beach Parks (the work), we NuJak)do hereby propose to provide management assistance to Burkhardt Construction (CM) in the execution of its work. The work shall include, but shall not be limited to:

1. Management and coordination of the entire Community Benefit Plan, including coordination and communications with Palms Action Community Coalition (PCAC)
2. Coordination with the Owner's economic benefit consultant in the collection of data
3. Assist with the preparation of the monthly executive summaries
4. Assist with the project scheduling formulation and periodic updates in "real time"
5. Assist with the preparation of schedule narratives
6. Assist with the collection of shop drawings, product data and other submittals as may be required
7. Assist with maintenance and updating of submittal logs and review cycles: dates received dates forwarded, data returned, etc.,
8. Assist with the tracking of Requests for Information and other correspondence.
9. Assist with the project safety requirements through maintaining a log of all " tool box talks" with subcontractors, as well those covered under the CBP.
10. Assist with maintenance of the progress photo log.
11. Attend and prepare for all coordination meetings with the Owner.
12. Assist in the collection of closeout documents, warranties, certifications and other relevant project information as may be required.

The fee for the above referenced tasks is based on the following 12 months

1. Senior Principal: $30k
2. Senior Director: $50k
    a. Total Fee: $80k

Thank you again for the opportunity to assist you with the execution of the Work in fulfilling our commitment to the City of Hallandale Beach.

Sincerely,

Frank Kendrick
CEO, NuJak Construction

816 NW 1st Avenue, Suite 2A, Hallandale Beach, Fl. 33009 954-391-5686 office 954-505-4061. Fax

NUJAK

June 11, 2013

CITY OF HALLANDALE BEACH PARKS MASTER-PLAN PROJECT

COMMUNITY BENEFIT PLAN CONSTRUCTION FEE NARRATIVE REVISED

1. THIS IS WHAT THE CITY OF HALLANDALE BEACH SAID IT WANTED IN THE RFP:

- *City of Hallandale Beach placed great emphasis on this program allocating **25 of 100 possible points for this program**.*

REQUIREMENTS:

RFP # FY 2011-2012-013 CITY OF HALLANDALE BEACH Page 31 of 114
CONSTRUCTION MANAGER AT RISK

3. **Community Benefit Plan.** Proposers are required to submit with their Proposals a Community Benefit Plan. The Community Benefit Plan shall be inclusive of an Outreach Consultant with documented experience and track record in delivering Local/SBE Utilization and local resident workforce component in contracts. Proposers may receive up to fifteen (15) points for a Community Benefit Plan. Each Proposer shall be required to demonstrate and provide a proposed Community Benefit Plan which has identifiable and observable community benefits for the community surrounding this Project and the City. Proposers are encouraged to be creative in the development of a Community Benefit Plan and the types of benefits their plan is designed to provide. These benefits should include the approach for ensuring that both Prime and Subcontractors utilize local residents in every phase of the project of the City, community outreach, mentoring, training, apprenticeships, or any other types of identifiable ancillary benefits for the community. The Evaluation Committee shall evaluate each Proposer's Community Benefit Plan and shall be responsible for determination of award points. The Successful Proposer's Community Benefit Plan shall be incorporated into and shall become a part of the Agreement entered into between the City and the Proposer, as Exhibit "B".

Small Business Enterprise (SBE) Business Utilization Plan

Small Business Enterprise means Broward County's SBE program to encourage local small businesses to do business with Broward County. For more Information on the SBE Program or to apply in person, qualified small business owners should call the County's Office of Economic and Small Business Development at 954-357-6400 for an appointment.

A business that is currently certified under the Broward County Small Business Enterprise program, pursuant to Chapter 20, Article XIV, Code of Metropolitan Broward County.

The City encourages all who respond to this RFP to utilize or make good faith efforts to utilize SBE Firms that are certified under the Broward County SBE program.

NUJAK

June 11, 2013

CITY OF HALLANDALE BEACH PARKS MASTER-PLAN PROJECT

COMMUNITY BENEFIT PLAN CONSTRUCTION FEE NARRATIVE REVISED

COMPLIANCE:

10.4 CONTRACTOR and SUBCONTRACTORS shall submit to the CITY on a regular basis, but not less than monthly, payroll sheets, which has 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 its SUBCONTRACTORS for a period of at least three (3) years following completion of the work.

Unless waived in writing, for good cause, by the CITY, the CONTRACTOR must obtain competitive pricing and subcontract, 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. All subcontracts and purchase orders shall be awarded according to the following procedure:

2. THIS IS WHAT BURKHARDT-NUJAK-PCAC SAID THAT THEY WOULD DO:

I. Objectives

Consistent with the City of Hallandale Beach's community driven *"City Wide Parks Master Plan"*, which sets forth as one of their goals: *"maintain and enhance the tax base"*, we feel that it is imperative the following objectives be met in full compliance with the community's desired results.

1. MAINTAIN TAX BASE: ***Maximize the amount of dollars spent in the community by buying Local.***
2. ENHANCE TAX BASE: ***Leave the community better than it was before we came.***

MAINTAIN TAX BASE:

- **Community Benefit:** By ensuring the utilization of local residents and business enterprises on this project the Burkhardt NuJak team will provide the community the benefit of greater than 50% of the dollars spent on this project remains in the community. By maintaining our commitment to involve local suppliers and subcontractors, including Minority and SBE firms Burkardt NuJak will assist in enhancing community pride, increasing quality workmanship and providing for quick follow-up responses long after the project is complete.
- **Commitment:** The Burkhardt-NuJak team has a proven track record of identifying and utilizing LBE, SBE and M/WBE firms in the execution of its work, not because we have to but because it is the right thing to do. In fact, NuJak has provided leadership in this area by crafting and creating working and mentor-protégé relationships with qualified local, small and minority firms time and time again. The Burkhardt-NuJak team is committed to not only meeting but exceeding all of the small business enterprise (SBE) and local business enterprise (LBE) goals as set forth by the City of Hallandale Beach.

816 NW 1st Avenue, Suite 2A, Hallandale Beach, Fl. 33009 954-391-5686 office 954-505-4061. Fax

NUJAK

June 11, 2013

CITY OF HALLANDALE BEACH PARKS MASTER-PLAN PROJECT
COMMUNITY BENEFIT PLAN CONSTRUCTION FEE NARRATIVE REVISED

ENHANCE TAX BASE:

Community Benefit: By ensuring the development of human capital and the employment readiness of the existing workforce, the community will benefit directly from an increase in wages, sales tax revenue and a decrease in unemployment claims. Capacity building for existing and new business enterprises impacted by the project will result in a net increase in the number of new businesses and transactional tax revenues from such business..

Commitment: The Burkhardt-NuJak team is committed to the development of both the existing work force and the existing local business enterprises in the betterment of the City of Hallandale Beach community.

V. **Technical Training**
In addition to these steps Burkhardt-NuJak will offer a program coordinated through PCAC to provide one workshop each month to Minority, Women, Small and Developing Business Enterprises for issues relating to the construction business. These seminars led by NuJak's **Frank Kendrick**, will cover such topics as estimating, blue print reading, contracts and other construction related issues.

3. COMPLIANCE: CONSTRUCTION PHASES

1. **Utilization Monitoring: $15,320** This task will include jobsite visits to collect data regarding the actual utilization of SBE/LBEs subcontractors, suppliers and workforce during the term of the contract as compared with the anticipated use of the same at the time of bid submittal and GMP development. The data shall be used to develop the following reports to the COHB:
    a. **SBE Utilization Report:** Consistent with our commitment to utilize Local Business Enterprises in the performance of the work, we will provide SBE Utilization reports to the COHB on a monthly basis, which shall include, among other things, the names, addresses, phone number, Tax I.D. number, and certification numbers of all SBE/LBEs utilized on the project along with the corresponding value of the work performed. The report shall include the total value of subcontracts, suppliers and sub-subcontracts along with the corresponding percentage that this contract will be of the total project value in connection with the utilization goals of greater than 50%. The report shall also include a snapshot of current payments to SBE/LBEs and workforce in connection with the goal, along with any outstanding or delayed, rejected or denied payments and the corresponding reason for the same.
    b. **Good Faith Effort Report:** Consistent with our Outreach goals, we will submit a report indicating our good faith efforts in contracting with and/or identifying SBE/LBEs and Workforce to participate in the project. The report shall include any job informational meetings or job fairs, special provisions given to the SBE/LBE or Worker in integrating the entity into the project. Assistance with bonds, financing and insurance shall be included in the report. Any contracts

816 NW 1st Avenue, Suite 2A, Hallandale Beach, Fl. 33009 954-391-5686 office 954-505-4061. Fax

awarded to an LBE/SBE who was not the low bidder shall also be included. The report shall also include reasons for denial of any worker, SBE/LBE to participate in the project.

c. **Workforce Utilization Report:** Consistent with our commitment to utilize and train local skilled and unskilled residents. This report shall include the total number of hours worked by a local resident and their corresponding pay. Any worker who is enrolled in the PCAC, Sheridan Vocational or Urban Farmers apprenticeship programs will be documented as well, both singularly and by total aggregate. Reports shall include verification of residency and household income and size. These reports will be submitted monthly with the subs pay application

2. **SBE Technical Assistance: $14,320** Consistent with our commitment to provide one workshop each month to LBEs/SBEs covering various topics of contracting, we will conduct one seminar per month covering the following topics:
   a. Estimating
   b. Contracts
   c. Insurance
   d. Blueprint Reading
   e. Safety
   f. AIA Documents
3. **SBE Program Utilization Support: $25,020** Consistent with our commitment to utilize SBE/LBE in the performance of the work, NuJak will provide support to Burkhardt staff in optimizing the use of SBE/LBE in a manner to both alleviate integration issues with capacity, scoping and pre-packaging of work as well SBE/LBE performance support. NuJak will be available to assist SBEs in gaining access to other training and technical assistance in the areas of cost estimating and bonding. In addition, NuJak will provide some technical assistance to SBEs through the collection, organization, and dissemination of information regarding available capital or financing resources. NuJak will work in conjunction with the COHB to establish a "micro-loan" program through the assistance of Paragon Funding. NuJak will provide such other general assistance to SBEs to enhance their participation in the project. NuJak will assist PCAC in continuing to develop its website to provide general information on the project, the bid process, status reports, and the provision of downloadable forms and other appropriate information to assist SBE/LBEs. In addition, PCAC may post on the website project photos and other information marketing the success of the COHB's Community Benefit Plan.

4. **Workforce Development Support: $9,080** Consistent with our commitment to utilize local workforce, it is imperative that deliberate engagement take place to ensure that local workers are given the opportunity to receive employment from subcontractors and potentially Burkhardt. NuJak will work with PCAC and Burkhardt to align the project

workforce to comply with the City's Community Benefit Ordinance with a minimum workforce of at least 33% participation goals as a percentage of total project workforce and communicate to the COHB. A number of issues need to be addressed to ensure the success of this endeavor, including employment readiness, subcontractor agreement to participate and train local workforce. NuJak will work with PCAC and Burkhardt to ensure Subcontractor participation and workforce readiness.

5. **Coordination Meetings: $8,060** This item includes allocation of time for project and OAC meetings as may be required.
6. **Monthly Reporting: $6,160** This item is an allocation for the time and materials associated with the provision of monthly reporting to Burkhardt and the COHB.
7. **Grievance Assistance: $2,040 (ALLOWANCE ALLOCATED)** Burkhardt, NuJak and PCAC are committed to resolving disputes and complaints from SBE/LBEs and workforce concerning any allegations that may result from the implementation of the CBP. Each SBE/LBE will be required to participate with the CBP and shall agree to comply with the goals set forth herewith. NuJak will assist Burkhardt with resolving any of these issues, by providing a grievance type process that allows the SBE/LBEs/workers the ability to communicate allegations and a way to resolve outstanding issues.

Total: $80,000

Above fee covers CBP scope only for all three parks

*****BF James /Scavo = $64,000.00***

South City Beach Park =$16,000.00

TOTAL $80,000.00

******BF James and Scavo are scheduled to start in June 2013 and run concurrently. South City Beach Park is anticipated to start in November.***

June 11, 2013

CITY OF HALLANDALE BEACH PARKS MASTER-PLAN PROJECT

COMMUNITY BENEFIT PLAN CONSTRUCTION FEE NARRATIVE

1) **SBE Technical Support: $21,600.00**
   a) PCAC will assist Nujak in the development of a technical assistance program for the project to assist SBE/LBEs in the preparation of Applications for payment, certified payroll pursuant to project requirements, capacity development for bonding and access to capital.
   b) Assist SBE/LBEs through supportive services to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for their businesses;
   c) Assist SBE/LBEs in increasing their opportunities to participate in additional work in COHB and handle increasingly significant projects, with the ultimate goal of achieving self-sufficiency;
   d) Assist new, start-up, or emerging construction businesses; and,
   e) Assist them in developing their capability to utilize technology and conduct business through electronic media.

2) **Workforce Development/Education: $60,200**
   a) PCAC will provide workers access to a technical assistance program to prepare them for integration into the project as well develop their capacity for inclusion in future projects in COHB.
   b) Sponsor 60 workers in the 10 week Sheridan Vocational Training School's certificate program. *Estimated cost @ $1500.00 each. $90,000*
      i) Blueprint reading
      ii) Plumbing
      iii) Electrical
      iv) Air-conditioning and Refrigeration.

3) **Workforce Utilization/Integration $21,600**
   a) Each Subcontractor will certify that they will employ at least 33% local residents.
   b) PCAC will assist Subcontractors in hiring local trained workers and will become a resource for Burkhart in complying with the City workforce requirement.
   c) PCAC will assist workforce in transportation to and from the project.

June 11, 2013

CITY OF HALLANDALE BEACH PARKS MASTER-PLAN PROJECT
COMMUNITY BENEFIT PLAN CONSTRUCTION FEE NARRATIVE

4) **Utilization Monitoring $21,600**
   a) PCAC will maintain all records documenting that Local Residents are employed in performance of Work on the Project;
   b) PCAC will maintain copies of personnel documents establishing every Local Resident employee's record of residence and provide access, upon request, to the COHB for inspection and copying
   c) PCAC will designate an outreach coordinator to be responsible for administering the Local Resident requirements for the CBP pursuant to the requirements in the COHB Charter. This person shall meet regularly, or as may be required, with Burkhardt and Nujak staff to ensure compliance with the Local Resident requirements.
   d) Each Subcontractor will have primary responsibility for meeting established goals. Each month, the Subcontractor will submit certified payroll reports to the Burkhardt on the form required by the City. PCAC shall compare this certified payroll report to the outreach coordinator's field investigation. The hire date for an employee shall be included after the employee's name the first time an employee's name appears on a payroll. This information shall be furnished to Nujak for inclusion in their Utilization Reporting.

5) **Economic Impact Data Collection $21,600**
   a) PCAC will collect data from existing workers on-site to determine what their spending habits are for wages earned during the duration of the project.
   b) PCAC will collect data from existing subcontractors on the project to identify local spending activity as a result of the project.
   c) PCAC will track the flow of dollars earned from workers and SBE/LBEs and will conduct surveys with local businesses receiving those funds to determine economic benefit.
   d) Possible recipients of economic benefit can be fuel stations, convenience stores etc.

6) **Monthly Reporting $21,600**
   a) PCAC will provide monthly reporting summaries to Burkhardt of work performed and results achieved.
   b) PCAC will assist NuJak in the development of Workforce and SBE Utilization and Support Forms and monthly reporting.

June 11, 2013

CITY OF HALLANDALE BEACH PARKS MASTER-PLAN PROJECT
COMMUNITY BENEFIT PLAN CONSTRUCTION FEE NARRATIVE

7) **Grievance Assistance $5,400**
   a) Burkhardt, NuJak and PCAC are committed to resolving disputes and complaints from SBE/LBEs and workforce concerning any allegations that may result from the implementation of the CBP. Each SBE/LBE will be required to participate with the CBP and shall agree to comply with the goals set forth herewith. PCAC will assist Burkhardt with resolving any of these issues, by providing a grievance type process that allows the SBE/LBEs/workers the ability to communicate allegations and a way to resolve outstanding issues.
8) **Reimbursable $15,000**
   a) Allowance for job related expenses, directly incurred by PCAC in the performance of services provided to the COHB. Reimbursable expenses are mail and overnight delivery services, reproduction of reports, drawings, specifications, photographs and similar.

*** $188,600 Fee Covers Community Benefit Plan Scope Only for all three parks.**

**** BF James = $65,000.00**
Scavo = $58,600.00
South City Beach= $65,000.00
Total=$188,600.00

***** BF James and Scavo are scheduled to start in June 2013 and run concurrently. South City Beach Park is anticipated to start in November.**