

DOCUMENT ROUTING FORM

NAME OF DOCUMENT: Annual Utilities Restoration – Project 11857 -
CONTRACTOR: MOLLOY BROS

RUSH 3
③ ✓ 9/4/13 (L)

Approved Comm. Mtg. on 08-20-13 CAR# 13-0722 ITEM:

Item: M-17 PH- O- CR- R-

Routing Origin: **PUBLIC WORKS DEPARTMENT/ENGINEERING**

RUSH

ATTACHED: Copy of CAR ACM Form 3 originals

1.) Approved as to Content: Harvey Brand
(Public Works Director)

Capital Improvements defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, fixtures) that add value and/or extend useful life, inc. major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, real.

Please Check the proper box: CIP FUNDED YES NO

2.) Approved as to Procurement: by [Signature] Date: _____
(Deputy Finance Director or designee)

Approved as to Funds Available: by [Signature] Date: 8-29-13
(Finance Director or designee)

Funding Source:
Amount Required by Contract/Agreement \$749,830.00 Dept./Div: PW/ENG

Index/Sub-object \$724,830 P11857-454 Project # 11857
25,000 P11857-470

3.) City Attorney's Office: Approved as to Form:# 3 Originals to City Mgr. By: CARRIE SARVER

Harry A. Stewart _____ Paul G. Bangel _____ Robert B. Dunkel _____
Ginger Wald _____ D'Wayne Spence _____ Cole J. Copertino _____
Carrie Sarver v DJ Williams-Persad _____

FILED
CITY ATTORNEY'S OFFICE
2013 AUG 29 PM 3:32

4.) Approved as to content: Assistant City Manager:

By: _____ By: _____
Stanley Hawthorne, Assistant City Manager Susanne Torriente, Assistant City Manager

5.) City Manager: Please sign as indicated and forward : 3 originals to City Clerk

6.) To City Clerk for attestation and City seal. 3 originals to Clerk.

INSTRUCTIONS TO CLERK'S OFFICE

RUSH

7.) City Clerk: Date first page with last date signed, and forward 3 original documents with routing form to **Rafeela, Ext. 7810**

8.) Copy of executed signature page to CAO

C: Project File

9/4

PUBLIC WORKS DEPARTMENT

CONTRACT

Project 11857

IMPROVEMENT OR PROJECT NO.

2013 – 2014 ANNUAL UTILITIES RESTORATION

DESCRIPTION

Molloy Bros. Inc.

CONTRACTOR

\$749,830.00

AMOUNT

August 20, 2013

COMMISSION APPROVAL DATE

CITY OF FORT LAUDERDALE
SECOND AND FINAL EXTENSION AND AMENDMENT TO
UTILITIES RESTORATION AGREEMENT

THIS IS A SECOND AND FINAL EXTENSION AND AMENDMENT TO AGREEMENT made and entered into this 20th day of August, 2013, by and between the City of Fort Lauderdale, a Florida municipal corporation (City) and Molloy Bros, Inc., (Contractor), (parties);

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida at its meeting of May 17, 2011, authorized the proper officials to execute an annual Agreement, with two (2) one (1) year extensions, between City and Contractor for the performance of services in connection with Utilities Restoration; and

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida at its meeting of Jun 5, 2012, authorized the proper officials by motion to execute a First Extension and Amendment to Agreement between Molly Bros., Inc., (Contractor) and CITY authorizing the performance of services until May 17, 2013; and

WHEREAS, the City wishes to retain Contractor to provide, and Contractor desires to provide, contracted Utilities Restoration Services to City for an additional one year (1) period until May 17, 2014, utilizing the contract prices of the original agreement; and

WHEREAS, the terms of the original Agreement are hereby replaced and amended as provided below;

NOW, THEREFORE, the City and the Contractor, in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, agree that the terms of the original Agreement are hereby replaced and amended to read as follows:

ARTICLE 1 – DEFINITIONS

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

- 1.1 Agreement – This written agreement between the City and the Contractor covering the work to be performed including other Contract Documents that are attached to or incorporated in the Agreement.
- 1.2 Application for Payment – The form accepted by the City which is to be used by the Contractor in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents
- 1.3 Approve – The word approve is defined to mean review of the material, equipment or methods for general compliance with design concepts and with the design concepts and with the information given in the Contract Documents. It does not imply a

responsibility on the part of the City to verify in every detail conformance with plans and specifications.

- 1.4 Bid – The offer or Bid of the Contractor submitted on the prescribed form setting forth the total prices for the Work to be performed.
- 1.5 Bid Documents – This Agreement, advertisement for Invitation to Bids, the Instructions to Bidders, the Bid Form (with supplemental affidavits and agreements), the Contract Forms, General Conditions, the Supplementary Conditions, the Specifications, and the Plans, which documents all become an integral part of the Contract Documents.
- 1.6 Certificate of Substantial Completion - Certificate provided by the City certifying that all Work, excluding the punch list items, has been completed, inspected, and accepted by the City.
- 1.7 Change Order - A written order to the Contractor signed by the City authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract time issued on or after the Effective Date of the Agreement.
- 1.8 City – The City of Fort Lauderdale, Florida including but not limited to its employees, agents, officials, representative, contractors, subcontractors, volunteers, successors and assigns, with whom the Contractor has entered into the Agreement and for whom the Work is to be provided. The Project Manager, or designee, shall be the authorized agent for the City unless otherwise specified.
- 1.9 Contract Documents – The Contract Documents shall consist of this Agreement, the Drawings, Plans and Specifications, Notice to Proceed, Certificate(s) of Insurance, Payment and Performance Bonds and any additional documents that are required to be submitted under the Agreement, and all amendments, modifications and supplements, change orders and work directive changes issued on or after the Effective Date of the Agreement.
- 1.10 Contract Price – The monies payable to the Contractor by the City under the Contract Documents and in accordance with the line item unit prices listed in the Bid.
- 1.11 Contract Time – The number of calendar days stated in the Agreement for the completion of the Work. The dates on which the work shall be started and shall be completed as stated in the Notice to Proceed.
- 1.12 Contractor – The person, firm, company, or corporation with whom the City has entered into the Agreement, including but not limited to its employees, agents, representatives, contractors, subcontractors, their subcontractors and their other successors and assigns.
- 1.13 Day – A calendar day of twenty-four (24) hours ending at midnight.
- 1.14 Defective – An adjective which when modifying the work “Work” refers to work that is unsatisfactory, faulty, or deficient, or does not conform to the Contract Documents or

does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to the Project Manager's recommendation of final payment.

- 1.15 Effective Date of the Agreement – The date specified in the Notice to Proceed given by the City to the Contractor indicating when the Contract Time will commence to run and on which the Agreement becomes effective, but if no such date is indicated, it means the date on which the Agreement is approved by the City Commission or if City Commission approval is not required, it is the date on which the Agreement is fully executed by the City.
- 1.16 Final Completion Date – The date the Work is completed, including completion of the final punch list, and delivered along with those items specified in the Contract Documents and is accepted by the City.
- 1.17 Hazardous Materials (HAZMAT) - Any solid, liquid, or gaseous material that is toxic, flammable, radioactive, corrosive, chemically reactive, or unstable upon prolonged storage in quantities that could pose a threat to life, property, or the environment defined in Section 101(14) of Comprehensive Environmental Response, Compensation and Liability Act of 1980 and in 40 CFR 300.6). Also defined by 49 CFR 171.8 as a substance or material designated by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce and which has been so designated.
- 1.18 Hazardous Substance - As defined by Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act; any substance designated pursuant to Section 311(b) (2) (A) of the Clean Water Act; any element, compound, mixture, solution or substance designated pursuant to Section 102 identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act {but not including any waste listed under Section 307[a] of the Clean Water Act}; any hazardous air pollutant listed under Section 112 of the Clean Air Act; and any imminently hazardous chemical substance or mixture pursuant to Section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof, which is not otherwise specifically listed or designated as a hazardous substance in the first sentence of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).
- 1.19 Hazardous Waste - Those solid wastes designated by OSHA in accordance with 40 CFR 261 due to the properties of ignitability, corrosivity, reactivity, or toxicity. Any material that is subject to the Hazardous Waste Manifest requirements of the EPA specified in 40 CFR Part 262.
- 1.20 Holidays - Those designated non-work days as established by the City Commission of the City of Fort Lauderdale.
- 1.21 Inspection – The term “inspection” and the act of inspecting as used in this Agreement is defined to mean the examination of construction to ensure that it conforms to the

design concept expressed in the plans and specifications. This term shall not be construed to mean supervision, superintending and/or overseeing.

- 1.22 Notice of Award - The written notice by City to the Contractor stating that upon compliance by the Contractor with the conditions precedent enumerated therein, within the time specified that the City will sign and deliver this Agreement.
- 1.23 Notice to Proceed – A written notice given by the City to the Contractor fixing the date on which the Contract Time will commence to run and on which the Contract Time will end.
- 1.24 Plans - The drawings which show the character and scope of the work to be performed and which have been prepared or approved by the City and are referred to in the Contract Documents.
- 1.25 Premises (otherwise known as Site or Work Site) – means the land, buildings, facilities, etc. upon which the Work is to be performed.
- 1.26 Project – The total construction of the Work to be provided as defined in the Contract Documents.
- 1.27 Project Manager - The employee of the City, or other designated individual who is herein referred to as the Project Manager, will assume all duties and responsibilities and will have the rights and authorities assigned to the Project Manager in the contract Documents in connection with completion of the Work in accordance with this Agreement.
- 1.28 Punch List - The City's list of Work yet to be done or be corrected by the Contractor, before the Final Completion date can be determined by the City.
- 1.29 Record Documents - A complete set of all specifications, drawings, addenda, modifications, shop drawings, submittals and samples annotated to show all changes made during the construction process.
- 1.30 Record Drawings or "As-Builts" - A set of drawings which show significant changes in the work made during construction and which are usually based on drawings marked up in the field and other data furnished by the contractor. These documents will be signed and sealed by the Engineer of Record or a Professional Land Surveyor licensed in the State of Florida.
- 1.31 Substantially Completed Date – A date when the Contractor has requested in writing, stating that the Work is substantially completed and is ready for an inspection and issuance of a final punch list for the Project.
- 1.32 Work – The entire completed delivered product or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating material and equipment into the product, all as required by the Contract Documents.

ARTICLE 2 – SCOPE OF WORK

- 2.1 The Contractor shall complete all work as specified or indicated in the Contract Documents. The Project for which the Work under the Contract Documents may be the whole or only part is generally described as follows:

PROJECT NAME
ANNUAL CONTRACT 2013-2014 UTILITIES RESTORATION
PROJECT # 11857

- 2.2 All Work for the Project shall be constructed in accordance with the Drawings and Specifications. The Work generally involves:

PROJECT DESCRIPTION

The work includes repairing gravity sewer mains, as well as other sanitary sewer repairs and construction, limited storm sewer, pressure pipe repairs and construction and related work, as needed at various locations throughout the City and the City's utility service area.

- 2.3 Within ten (10) days of the execution of this Agreement, the Contractor shall submit a Construction Schedule, Schedule of Values and a listing of those subcontractors that will be utilized by the Contractor. The general sequence of the work shall be submitted by the Contractor and approved by the City before any work commences. The City reserves the right to issue construction directives necessary to facilitate the Work or to minimize any conflict with operations.

ARTICLE 3 – PROJECT MANAGER

- 3.1 The Project Manager is hereby designated by the City as Hardeep Anand, Public Works Director whose address is 100 N Andrews Ave, Fort Lauderdale, FL 33301. The Project Manager will assume all duties and responsibilities and will have the rights and authorities assigned to the Project Manager in the Contract Documents in connection with completion of the Work in accordance with this Agreement.

ARTICLE 4 – CONTRACT DOCUMENTS

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

- 4.1 This Agreement.
- 4.2 N/A
- 4.3 Public Construction Bond, Performance Bond, Payment Bond and Certificates of Insurance.
- 4.4 Notice of Award and Notice to Proceed.

- 4.5 General Conditions as amended by the Special Conditions.
- 4.6 Technical Specifications.
- 4.7 N/A
- 4.8 N/A
- 4.9 Bid Form and supplement Affidavits and Agreements.
- 4.10 All applicable provisions of State and Federal Law and any modification, including Change Orders or written amendments duly delivered after execution of Agreement.
- 4.11 N/A
- 4.12 N/A
- 4.13 Schedule of Completion and Schedule of Values.
- 4.14 Permits on file with the City and or those permits to be obtained shall be considered directive in nature and will be considered a part of this Agreement. A copy of all permits shall be given to the City for inclusion in the Contract Documents. Terms of permits shall be met prior to acceptance of the Work and release of the final payment.

There are not Contract Documents other than those listed in this Article 4. The Contract Documents may only be altered, amended, or repealed in accordance with the provisions of the terms of this Agreement.

In the event of any conflict between the documents or any ambiguity or missing specification or instruction, the following priority is established:

- a. Specific direction from the City Manager (or designee)
- b. This Agreement dated August 20, 2013 and any attachments.
- c. N/A
- d. N/A
- e. Schedule of Values.
- f. Schedule of Completion.

If during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, Contractor shall so report to the Project Manager, in writing, at once and before proceeding with the Work affected shall obtain a written interpretation or clarification from the City.

It is the intent of the specifications and plans to describe a complete Project to be constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the specifications or plans as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials, or equipment, such works shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or associations, or to the code of any governmental authority whether such reference be specific or implied, shall mean the latest standard specification, manual or code in effect as of the Effective Date of this Agreement, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of the City, the Contractor, or any of their agents or employees from those set forth in the Contract Documents.

ARTICLE 5 – CONTRACT TIME

- 5.1 The Contractor recognizes that **TIME IS OF THE ESSENCE**.
- 5.2 N/A
- 5.3 N/A

ARTICLE 6 – CONTRACT PRICE

- 6.1 City shall pay Contractor for performance of the Work in accordance with Article 7, subject to additions and deletions by Change Order, as provided for in this Agreement.
- 6.2 The parties expressly agree that the Contract Price in the not to exceed amount of \$749,830.00 constitutes the total maximum compensation payable to Contractor for performing the Work, plus any Work done pursuant to a Change Order. The Contract Price is in accordance with the line item unit prices listed in the Bid. Line items are based on a unit price cost multiplied by a defined quantity. Any additional duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at Contractor's expense without change to the Contract Price.
- 6.3 The Contract Price constitutes the compensation payable to Contractor for performing the Work plus any Work done pursuant to a Change Order. All duties responsibilities and obligations assigned to or undertaken by Contractor shall be at Contractor's expense without change in the Contract price.

ARTICLE 7 – PAYMENT PROCEDURES

- 7.1 Contractor shall submit Applications for Payment in accordance with the Contract Documents. Applications for Payment will be processed by City as provided in the General Conditions.

- 7.2 Progress Payments. City shall make progress payments on account of the Contract Price on the basis of Contractor's monthly Applications for Payment, which shall be submitted by the Contractor between the first (1st) and the tenth (10th) day after the end of each calendar month for which payment is requested. All progress payments will be made on the basis of the progress of the Work completed.
- 7.3 Prior to Final Completion, progress payments will be made in an amount equal to ninety percent (90%) of the value of Work completed less in each case the aggregate of payments previously made.
- 7.4 Final Payment. Upon final completion of the Work in accordance with the General Conditions, as may be supplemented, the City shall pay Contractor an amount sufficient to increase total payments to one-hundred percent (100%) of the Contract Price. However, not less than ten percent (10%) of the Contract Price shall be retained until Record Drawings (as-builts), specifications, addenda, modifications and shop drawings. Including all manufacturers' instructional and parts manuals are delivered to and accepted by the City.
- 7.5 The City shall make payment to the Contractor in accordance with the Florida Prompt Payment Act, Section 218.70, Florida Statutes.
- 7.6 The City shall make payment to the Contractor through utilization of the City's P-Card Program.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

In order to induce the City to enter into this Agreement, Contractor makes the following representations upon which the City has relied:

- 8.1 Contractor is qualified on the field of public construction and in particular to perform the Work and services set forth in this Agreement.
- 8.2 Contractor has visited the Work Site. Contractor warrants and confirms that he is totally familiar with, understands and obligates Contractor to comply with all federal, state and local laws, ordinances, rules, regulations and all market conditions that affect or may affect the cost and price of materials and labor needed to fulfill all provisions of this Agreement or that in any manner may affect cost, progress or performance of the Work.
- 8.3 The Contractor has satisfied itself as to the nature of the Work under the Contract Documents, the general and local conditions of the Project.
- 8.4 N/A
- 8.5 NA
- 8.6 N/A

8.7 Contractor has given City written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution by City is acceptable to the Contractor.

8.8 Labor

8.8.1 The Contractor shall provide competent, suitable qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The Contractor shall at all times maintain good discipline and order at the site.

8.8.2 The Contractor shall, at all times, have a competent superintendent, capable of reading and thoroughly understanding the drawings and specifications, as the Contractor's agent on the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work.

8.8.3 The Contractor shall designate the superintendent on the job to the City, in writing, immediately after receipt of the Notice to Proceed. The Contractor understands and agrees that the superintendent's physical presence on the job site is indispensable to the successful completion of the Work. If the superintendent is frequently absent from the job site, the Project Manager may deliver written notice to the Contractor to stop work or terminate the Contract in accordance with Article 17.

8.8.4 The Contractor shall assign personnel to the job site that have successfully completed training programs related to trench safety, confined space and maintenance of traffic. A certified "competent person" shall be assigned to the job site. Personnel certified by the International Municipal Signal Associations with Florida Department of Transportation qualifications are required relative to maintenance of traffic. Failure to pursue the Work with the properly certified supervisory staff may result in notice to stop work or terminate the Contract in accordance with Article 17.

8.9 Materials:

8.9.1 The Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of Work.

8.9.2 All material and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. Suppliers shall be selected and paid by the Contractor; the City reserves the right to approve all suppliers and materials.

- 8.10 Work Hours: Except in connection with the safety or protection of persons, or the Work, or property at the site or adjacent thereto, and except as otherwise indicated in the Supplementary Conditions, all work at the site shall be performed during regular working hours between 7 a.m. and 6:00 p.m., Monday through Friday. The Contractor will not permit overtime work or the performance of work on Saturday, Sunday or any legal holiday (designated by the City of Fort Lauderdale) without the Project Manager's written consent at least seventy two (72) hours in advance of starting such work. If the Project Manager permits overtime work, the Contractor shall pay for the additional charges to the City with respect to such overtime work. Such additional charges shall be a subsidiary obligation of the Contractor and no extra payment shall be made to the Contractor for overtime work. The cost to the Contractor to reimburse the City for overtime inspection is established at direct-labor and overtime costs for each person or inspector required. Incidental overtime costs for engineering, testing and other related services will also be charged to the Contractor at the actual rate accrued.
- 8.11 Patent Fee and Royalties: The Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work, or any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. The Contractor hereby expressly binds himself or itself to indemnify and save harmless the City from all such claims and fees and from any and all suits and action of every name and description that may be brought against City on account of any such claims, fees, royalties, or costs for any such invention or patent, and from any and all suits or actions that may be brought against said City for the infringement of any and all patents or patent rights claimed by any person, firm corporation or other entity.
- 8.12 Permits: The Contractor shall obtain and pay for all permits and licenses. There shall be no allowance for Contractor markup, overhead or profit for permits and licenses. The Contractor shall pay all government charges which are applicable at the time of opening of proposals. It shall be the responsibility of the Contractor to secure and pay for all necessary licenses and permits of a temporary nature necessary for the prosecution of Work.
- 8.13 Law and Regulations: The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If the Contractor observes that the specifications or plans are at variance therewith, the Contractor shall give the Project Manager prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate modifications. If the Contractor performs any work knowing or having reason to know that it is contrary to such laws, ordinance, rules and regulations, and without such notice to the Project Manager, the Contractor shall bear all costs arising therefrom; however, it shall not be the Contractor's primary responsibility to make certain that the specifications and plans are in accordance with such laws, ordinances, rules and regulations.
- 8.14 Taxes: The Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by him in accordance with the laws of the City of Fort Lauderdale, County of Broward, State of Florida.

8.15 Contractor Use of Premises: The Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits and/or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.

The Contractor shall not enter upon private property for any purpose without first securing the permission of the property owner in writing and furnishing the Project Manager with a copy of said permission. This requirement will be strictly enforced, particularly with regard to such vacant properties as may be utilized for storage or staging by the Contractor.

The Contractor shall conduct his work in such a manner as to avoid damage to adjacent private or public property. Any damage to existing structures of work of any kind, including permanent reference markers or property corner markers, or the interruption of a utility service, shall be repaired or restored promptly at no expense to the City.

The Contractor will preserve and protect all existing vegetation such as trees, shrubs and grass on or adjacent to the site which do not reasonably interfere with the construction, as determined by the Project Manager. The Contractor will be responsible for repairing or replacing any trees, shrubs, lawns and landscaping that may be damaged due to careless operation of equipment, stockpiling of materials, tracking of grass by equipment or other construction activity. The Contractor will be liable for, or will be required to replace or restore at no expense to the City all vegetation not protected or preserved as required herein that may be destroyed or damaged.

During the progress of the work, the Contractor shall keep the premises free from accumulations of waste materials, rubbish and debris resulting from the Work. At the completion of the Work, the Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials and shall leave the site clean and ready for occupancy by the City. The Contractor shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents at no cost to the City.

8.16 Project Coordination: The Contractor shall provide for the complete coordination of the construction effort. This shall include, but not necessarily be limited to, coordination of the following:

8.16.1 Flow of material and equipment from suppliers.

8.16.2 The interrelated work with affected utility companies.

8.16.3 The interrelated work with the City where tie-ins to existing facilities are required.

8.16.4 The effort of independent testing agencies.

8.16.5 Notice to affected property owners as may be directed by the Project Manager.

8.17 Project Record Documents and As-Builts (Record Drawings): The Contractor shall keep one record copy of all specifications, plans addenda, modifications, shop drawings and samples at the site, in good order and annotated to show all changes made during the construction process. These shall be available to the Project Manager for examination and shall be delivered to the Project Manager upon completion of the Work. Upon completion of the project and prior to final payment, an as-built (record drawings) of the Project shall be submitted to the Project Manager. The as-built drawings shall be signed and sealed by a Florida Registered Professional Surveyor and Mapper, Engineer, Architect or Landscape Architect depending on the type drawing.

8.18 Safety and Protection:

8.18.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

8.18.1.1 All employees working on the project and other persons who may be affected thereby.

8.18.1.2 All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site.

8.18.1.3 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

8.18.2 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them at least seventy two (72) hours in advance (unless otherwise required). All damage, injury or loss to any property caused, directly or indirectly, in whole or in part by the Contractor, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by the Contractor. The Contractor's duties and responsibilities for safety and protection of the Work shall continue until such time as all the Work is completed and accepted by the City.

8.19 Emergencies: In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the City is obligated to act to prevent threatened damage, injury or loss. The Contractor shall give the Project Manager prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.

8.20 Risk of Loss: The risk of loss, injury or destruction shall be on the Contractor until acceptance of the Work by the City. Title to the Work shall pass to the City upon acceptance of the Work by the City.

8.21 Environmental: The Contractor has fully inspected the Premises and agrees, except as to the presence of any asbestos, to accept the Premises in an "as is" physical condition, without representation or warranty by the City of any kind, including, without limitation, any and all existing environmental claims or obligations that may arise from the presence of any "contamination" on, in or about the Premises. Further, Contractor and all entities claiming by, through or under the Contractor, releases and discharges the City, from any claim, demand, or cause of action arising out of or relating to the Contractor's use, handling, storage, release, discharge, treatment, removal, transport, decontamination, cleanup, disposal and/or presence of any hazardous substances including asbestos on, under, from or about the Premises. The Contractor shall have no liability for any pre-existing claims or "contamination" on the Premises.

The Contractor shall not use, handle, store, discharge, treat, remove, transport, or dispose of Hazardous Substances including asbestos at, in, upon, under, to or from the Premises until receipt of instructions from the City. As such time, a City approved Change Order, which shall not include any profit, shall authorize the Contractor to perform such services.

The Contractor shall immediately deliver to the Project Manager complete copies of all notices, demands, or other communications received by the Contractor from any governmental or quasi-governmental authority or any insurance company or board of fire underwriters or like or similar entities regarding in any way alleged violations or potential violations of any Environmental Law or otherwise asserting the existence or potential existence of any condition or activity on the Premises which is or could be dangerous to life, limb, property, or the environment.

For other and additional consideration, the Contractor hereby agrees, at its sole cost and expense, to indemnify and protect, defend, and hold harmless the City and its respective employees, agents, officials, officers, representatives, contractors and subcontractors, successors, and assigns (hereafter the "City") from and against any and all claims, demands, losses, damages, costs, expenses, including but not limited to mitigation, restoration, and natural restoration expenses, liabilities, assessments, fines, penalties charges, administrative and judicial proceedings and orders, judgments, causes of action, in law or in equity, remedial action requirements and/or enforcement actions of any kind (including, without limitation, attorneys' fees and costs) directly or indirectly arising out of or attributable to, in whole or in part, the Contractor's use, handling, storage, release, threatened release, discharge, treatment, removal, transport, decontamination, cleanup, disposal and/or presence of a Hazardous Substance (excluding asbestos) on, under, from, to or about the Premises or any other activity carried on or undertaken on or off the Premises by the Contractor or its employees, agents or subcontractors, in connection with the use, handling, storage, release, threatened release, discharge, treatment, mitigation, natural resource restoration, removal, transport, decontamination, cleanup, disposal and/or presence or any Hazardous Substance including asbestos located, transported, or present on,

undue, from, to, or about the Premises. This indemnity is intended to be operable under 42 U.S.C. sections 9607, as amended, and any successor section.

The scope of the indemnity obligations includes, but is not limited to: (a) all consequential damages; (b) the cost of any required or necessary repair, cleanup, or detoxification of the applicable real estate and the preparation and implementation of any closure, remedial or other required plan, including without limitation; (i) the costs of removal or remedial action incurred by the United States government or the State of Florida or response costs incurred by any other person, or damages from injury to destruction of, or loss of, natural resources, including the cost of assessing such injury, destruction, or loss, incurred pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended; (ii) the clean-up costs, fines, damages, or penalties incurred pursuant to any applicable provisions of Florida law; and (iii) the cost and expenses of abatement, correction or cleanup, fines, damages, responses costs, or penalties which arise from the provisions of any other statute, law, regulation, code ordinance, or legal requirement state or federal; and (c) liability for personal injury or property damage arising under any statutory or common law tort theory, including damages assessed for the maintenance of a public private nuisance, response costs, or for the carrying on of an abnormally dangerous activity.

8.22 No Extended Damages: For other and additional good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Contractor covenants and agrees that in the event of any delay of construction or for any other reason or allegation or claim, and notwithstanding the reason of the delay, reason, claim or allegation or who caused them or the construction delay or whether they were caused by the City, that there will be no entitlement to Contractor to or for any direct or indirect financial damages or losses for extended corporate overhead impact, extended project overhead impacts, project support services, mobilization or demobilization or by whatever other label or legal concept or theory and types of names or labels or basis such claims may have, or any business damages or losses of whatever type or nature, and Contractor hereby waives any right to make any such claim or claims. This provision will have application and effect when construction delays are anticipated and agreed upon by both the City and the Contractor.

8.23 No Liens: If any Subcontractor, supplier, laborer, or materialmen of Contractor or any other person directly or indirectly acting for or through Contractor files or attempts to file a mechanic's or construction lien against the real property on which the work is performed or any part or against any personal property or improvements or claim against any monies due or to become due from the City to Contractor or from Contractor to a Subcontractor, for or on account of any work, labor, services, material, equipment, or other items furnished in connection with the Work or any Change Order, Contractor agrees to satisfy, remove, or discharge such lien or claim at its own expense by bond, payment, or otherwise within twenty (20) days of the filing or from receipt of written notice from the City.

Additionally, until such time as such lien or claim is satisfied, removed or discharged by Contractor, all monies due to Contractor, or that become due to Contractor before the lien or claim is satisfied, removed or otherwise discharged, shall be held by City as

security for the satisfaction, removal and discharge of such lien and any expense that may be incurred while obtaining such. If Contractor shall fail to do so, City shall have the right, in addition to all other rights and remedies provided by this Agreement or by law, to satisfy, remove, or discharge such lien or claim by whatever means City chooses at the entire and sole cost and expense of Contractor which costs and expenses shall, without limitation, include attorney's fees, litigation costs, fees and expenses and all court costs and assessments.

- 8.24 Weather Emergencies: Upon issuance of a Hurricane Watch by the National Weather Service, the Contractor shall submit to the City a plan to secure the work area in the event a Hurricane Warning is issued. The plan shall detail how the Contractor will secure the Premises, equipment and materials in a manner as to prevent damage to the Work and prevent materials and equipment from becoming a hazard to persons and property on and around the Premises. The plan shall include a time schedule required to accomplish the hurricane preparations and a list of emergency contacts that will be available and in the City before, during and immediately after the storm.

Upon issuance of a Hurricane Warning by the National Weather Service, if the Contractor has not already done so, the Contractor shall implement its hurricane preparedness plan. Cost of development and implementation of the hurricane preparedness plan shall be considered as incidental to construction. Cost of any clean up and rework required after the storm will be considered normal construction risk within Florida and shall not entitle the Contractor to any additional compensation. Contractor shall be entitled to request an extension in time for completion of the Work, in accordance with the provisions of Article 15 of this Agreement, equal to the time he is shut down for implementation of the preparedness plan, the duration of the storm and a reasonable period to restore the Premises.

- 8.25 Force Majeure: No Party shall hold the other responsible for damages or for delays in performance caused by force majeure, acts of God, or other acts or circumstances beyond the control of the other party or that could not have been reasonably foreseen and prevented. For this purposes, such acts or circumstances shall include, but not be limited to weather conditions affecting performance, floods, epidemics, war, riots, strikes, lockouts, or other industrial disturbances, or protect demonstrations. Should such acts or circumstances occur, the parties shall use their best efforts to overcome the difficulties arising therefrom and to resume the Work as soon as reasonably possible with the normal pursuit of the Work.

Inclement weather, continuous rain for less than three (3) days or the acts or omissions of subcontractors, third-party contractors, materialmen, suppliers, or their subcontractors, shall not be considered acts of force majeure.

No Party shall be liable for its failure to carry out its obligations under the Agreement during a period when such Party is rendered unable by force majeure to carry out its obligation, but the obligation of the Party or Parties relying on such force majeure shall be suspended only during the continuance of the inability and for no longer period than the unexpected or uncontrollable event.

The Contractor further agrees and stipulates, that its right to excuse its failure to perform by reason of force majeure shall be conditioned upon giving written notice of its assertion that a Force Majeure delay has commenced within 96 hours after such an occurrence. The CONTRACTOR shall use its reasonable efforts to minimize such delays. The CONTRACTOR shall promptly provide an estimate of the anticipated additional time required to complete the Project.

- 8.26 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTED CONTRACTS: The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Additionally, the contractor assures that they, the sub recipient or the subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate. (This additional language must be included in each subcontract the prime contractor signs with a subcontractor.)

ARTICLE 9 – CITY’S RESPONSIBILITES

- 9.1 The City shall furnish the data required of the City under the Contract Documents promptly and shall make payments to the Contractor promptly after they are due as provided in Article 7.
- 9.2 The City’s duties in respect of providing lands and easements and providing engineering surreys to establish reference points are set forth in the Contract Documents.
- 9.3 Technical Clarifications and Interpretations:
- 9.3.1 The City shall issue, with reasonable promptness, such written clarifications or interpretations of the Contract Documents as it may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Should the Contractor fail to request interpretation of

questionable items in the Contract Documents, the City shall not entertain any excuse for failure to execute the Work in a satisfactory manner.

9.3.2 The City shall interpret and decide matters concerning performance under the requirements of the Contract Documents, and shall make decisions on all claims, disputes or other matters in question. Written notice of each claim, dispute or other matter will be delivered by claimant to the other Party but in no event later than five (5) days after the occurrence of event, and written supporting data will be submitted to the other Party within five (5) days after such occurrence. All written decisions of the City on any claim or dispute will be final and binding.

9.4 The Contractor shall perform all Work to the reasonable satisfaction of the City in accordance with the Contract Documents. In cases of disagreement or ambiguity, the City shall decide all questions, difficulties, and disputes of whatever nature, which may arise under or by reason of this Agreement or the quality, amount and value of the Work, and the City's decisions on all claims, questions and determination are final.

ARTICLE 10 – BONDS AND INSURANCE

10.1 Public Construction and Other Bonds: The Contractor shall furnish Public Construction or Performance and Payment Bonds ("Bond"), each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all the Contractor's obligations under the Contract Documents. These Bonds shall remain in effect until at least one (1) year after the date of final payment, except as otherwise provided by law. All Bonds shall be furnished and provided by the surety and shall be in substantially the same form as prescribed by the Contract Documents and be executed by such sureties as (i) are licensed to conduct business in the State of Florida, and (ii) are named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department and (iii) otherwise meet the requirements set forth herein that apply to sureties. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

10.1.1 Performance Bond: A Corporate Surety Bond legally issued, meeting the approval of, and running to the City in an amount not less than the Contract Price of such improvements, conditioned that the Contractor shall maintain and make all repairs to the improvements constructed by the Contractor at their own expense and free of charge to the City, for the period of one (1) year after the date of acceptance of the Work within such period by reason of any imperfection of the material used or by reason of any defective workmanship, or any improper, imperfect or defective preparation of the base upon which any such improvement shall be laid.

10.2 Disqualification of Surety: If the Surety on any Bond furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of clauses (i) and (ii) of

Paragraph 10.1, the Contractor shall within five (5) days thereafter substitute another Bond and Surety, both of which shall be acceptable to the City.

10.3 Insurance

10.3.1 Contractor shall provide and shall require all of its sub-contractors to provide, pay for, and maintain in force at all times during the term of the Agreement, such insurance, including Property Insurance (Builder's Risk), Commercial General Liability Insurance, Business Automobile Liability Insurance, Workers' Compensation Insurance, Employer's Liability Insurance, and Umbrella / Excess Liability, as stated below. Such policy or policies shall be issued by companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida.

- A. The City is required to be named as additional insured on the Commercial General Liability insurance policy. BINDERS ARE UNACCEPTABLE. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Contractor. Any exclusions or provisions in the insurance maintained by the Contractor that precludes coverage for the work contemplated in this Agreement shall be deemed unacceptable, and shall be considered a breach of contract.
- B. The Contractor shall provide the City an original Certificate of Insurance for policies required by Article 10. All certificates shall state that the City shall be given ten (10) days notice prior to expiration or cancellation of the policy. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Finance Department. Such policies shall: (1) name the insurance company or companies affording coverage acceptable to the City, (2) state the effective and expiration dates of the policies, (3) include special endorsements where necessary. Such policies provided under Article 10 shall not be affected by any other policy of insurance, which the City may carry in its own name.
- C. Contractor shall as a condition precedent of this Agreement, furnish to the City of Fort Lauderdale, c/o Project Manager, 100 N. Andrews Avenue, Fort Lauderdale, FL 33301, Certificate(s) of Insurance upon execution of this Agreement, which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

10.3.2 Property Insurance (Builder's Risk): The Contractor shall purchase and maintain property insurance upon the Work at or off the site of 100% of the contract completed value. These policies shall insure the interest of the owner, contractor and subcontractors in the Work, and shall insure against

“all risks” of physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage. All such insurance required by this paragraph shall remain in effect until the Work is completed and accepted by the City.

10.3.3 Commercial General Liability

- A. Limits of Liability:
 - Bodily Injury and Property Damage - Combined Single Limit
 - Each Occurrence \$1,000,000
 - Project Aggregate \$1,000,000
 - General Aggregate \$2,000,000
 - Personal Injury \$1,000,000
 - Products/Completed Operations \$1,000,000
- B. Endorsements Required:
 - City of Fort Lauderdale included as an Additional Insured
 - Broad Form Contractual Liability
 - Waiver of Subrogation
 - Premises/Operations
 - Products/Completed Operations
 - Independent Contractors
 - Owners and Contractors Protective Liability
 - Contractors Pollution Liability

10.3.4 Business Automobile Liability

- A. Limits of Liability:
 - Bodily Injury and Property Damage - Combined Single Limit
 - All Autos used in completing the contract
 - Including Hired, Borrowed or Non-Owned Autos
 - Any One Accident \$1,000,000
- B. Endorsements Required:
 - Waiver of Subrogation

10.3.5 Workers' Compensation and Employer's Liability Insurance

Limits: Workers' Compensation – Per Florida Statute 440
Employers' Liability - \$500,000

Any firm performing work on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions can only be made if they are in accordance with Florida Law.

Contractor must be in compliance with all applicable State and Federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act or Jones Act.

10.3.6 Umbrella / Excess Liability: The Contractor shall provide umbrella / excess coverage with limits of no less than \$2,000,000 excess of Commercial General Liability, Automobile Liability and Employer's Liability.

10.3.7 All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The Contractor's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the insurance maintained by the Contractor that precludes coverage for work contemplated in this project shall be deemed unacceptable, and shall be considered breach of contract.

NOTE: CITY PROJECT NUMBER MUST APPEAR ON EACH CERTIFICATE.

Compliance with the foregoing requirements shall not relieve the Contractor of their liability and obligation under this section or under any other section of this Agreement.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the Project. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the City at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates that cover the contractual period, the City shall:

- A. Suspend the Agreement until such time as the new or renewed certificates are received by the City.
- B. The City may, at its sole discretion, terminate the Agreement for cause and seek damages from the Contractor in conjunction with the violation of the terms and conditions of the Agreement.

ARTICLE 11- WARRANTY AND GUARANTEE, TESTS AND INSPECTIONS, CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

11.1 Warranty: The Contractor warrants and guarantees to the City that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to the Contractor. All defective work, whether or not in place, may be rejected, corrected or accepted as provided in this Article.

11.1.1 Warranty of Title: The Contractor warrants to the City that it possesses good, clear and marketable title to all equipment and materials provided and that there are no pending liens, claims or encumbrances against the equipment and materials.

- 11.1.2 Warranty of Specifications: The Contractor warrants that all equipment, materials and workmanship furnished, whether furnished by the Contractor, its subcontractors or suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted and that all services will be performed in a workmanlike manner.
- 11.1.3 Warranty of Merchantability: The Contractor warrants that any and all equipment to be supplied pursuant to this Agreement is merchantable, free from defects, whether patent or latent in material or workmanship, and fit for the ordinary purposes for which it is intended.
- 11.2 Tests and Inspections: The Contractor shall give the Project Manager timely (minimum of thirty six (36) hours) notice of readiness of the Work for all required inspections, tests, or approvals.
- 11.2.1 If any law, ordinance, rule, regulation, code or order of any public body having jurisdiction requires any Work (or part thereof) to specifically be inspected, tested or approved, the Contractor shall assume full responsibility, pay all costs in connection therewith and furnish the Project Manager the required certificates of inspection, testing or approval. The Contractor shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the City's acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment submitted for approval prior to the Contractor's purchase thereof for incorporation of the Work.
- 11.2.2 All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction shall be performed by the City or by a professional testing firm designated by the City. The City will pay for sampling and testing if the test results are passing. The Contractor will reimburse the City for sampling, testing, and retesting costs associated with failing tests.
- 11.2.3 Neither observations by the Project Manager nor inspections, tests or approvals by others shall relieve the Contractor from his obligations to perform the Work in accordance with Contract Documents.
- 11.3 Uncovering Work: If any work that is to be inspected, tested or approved is covered without approval or consent of the Project Manager, it must, if requested by the Project Manager, be uncovered for observation and/or testing. Such uncovering and replacement shall be at the Contractor's sole expense unless the Contractor has given the Project Manager timely notice of the Contractor's intention to cover such Work and the Project Manager has not acted with reasonable promptness in response to such notice.
- 11.3.1 If the Project Manager considers it necessary or advisable that Work covered in accordance with Paragraph 11.2.1, 11.2.2 and 11.2.3 be observed by the City or inspected or tested by others, the Contractor at the City's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the Project Manager may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found

that such Work is defective, the Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services, and an appropriate deductive Change Order shall be issued. If, however, such work is not found to be defective, the Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection testing and reconstruction if he makes a claim therefor as provided in Articles 14 and 15.

- 11.4 City May Stop the Work: If the Work is defective, or the Contractor fails to supply sufficient skilled supervisory personnel or workmen or suitable materials or equipment or the work area is deemed unsafe, the City may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the City to stop the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Contractor or any other party. The City will not award any increase in Contract Price or Contract Time if the Work is stopped due to the circumstances described herein.
- 11.5 Correction or Removal of Defective Work Before Final Payment: If required by the Project Manager, the Contractor shall promptly, without cost to the City and as Specified by the Project Manager, either correct any defective Work, whether or not fabricated, installed or completed, or if the Work has been rejected by the City remove it from the site and replace it with non-defective Work.
- 11.6 One Year Correction Period After Final Payment: If within one (1) year after the date of final acceptance, or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any work is found to be defective, the Contractor shall promptly, without cost to the City and in accordance with the City's written instructions, either correct such defective Work, or, if it has been rejected by the City, remove it from the site and replace it with non-defective Work.
- If The Contractor does not promptly comply with the terms of such instructions or in an emergency where delay would cause serious risk of loss or damage, the City may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs for such removal and replacement, including compensation for additional professional services, shall be paid by the Contractor.
- 11.7 Acceptance of Defective Work, Deductions: If, instead of requiring correction or removal and replacement of defective Work, the City, at the city's sole option, prefers to accept it, the City may do so. In such a case, if acceptance occurs prior to the Project Manager's recommendation of final payments, a Change Order shall be issued incorporating the necessary revisions in the Contracts Documents, including appropriate reduction in the Contract Price; or if the acceptance occurs after such recommendation, an appropriate amount shall be paid by the Contractor to the City.
- 11.8 City May Correct Defective Work: If the Contractor fails within a reasonable time after written notice of the Project Manager to proceed to correct defective Work or to remove and replace rejected Work as required by the Project Manager in accordance with Paragraph 11.5, or if the Contractor fails to perform the Work in accordance with

the Contract Documents, the City may, after seven (7) days written notice to the Contractor, correct and remedy any such deficiency. In exercising its rights under this paragraph, the City shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the City may exclude the Contractor from all or part of the site, take possession of all or part of the Work, suspend the Contractor's services related thereto and take possession of the Contractor's tools, construction equipment and materials stored at the site or elsewhere. The Contractor shall allow the City's representative agents and employees such access to the site as may be necessary to enable the City to exercise its rights under this paragraph. All direct and indirect costs of the City in exercising such rights shall be charged against the Contractor in an amount verified by the Project Manager, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Contract Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of the Contractor's defective Work. The Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by the City of the City's right hereunder.

ARTICLE 12 – INDEMNIFICATION

- 12.1 Disclaimer of Liability: The City shall not at any time, be liable for injury or damage occurring to any person or property from any cause, whatsoever, arising out of Contractor's construction and fulfillment of this agreement.
- 12.1 Indemnification: For other, additional good valuable consideration, the receipt and sufficiency of which is hereby acknowledged:
- 12.2.1 Contractor shall, at its sole cost and expense, indemnify and hold harmless the City, its representatives, employees and elected and appointed officials from or on account of all claims, damages, losses, liabilities and expenses, direct, indirect or consequential including but not limited to fees and charges of engineers, architects, attorneys, consultants and other professionals and court costs arising out of or in consequence of the performance of this Agreement at all trial and appellate levels. Indemnification shall specifically include but not be limited to claims, damages, losses, liabilities and expenses arising out of or from (a) the negligent or defective design of the project and Work of this Agreement; (b) any act, omission or default of the Contractor, its Subcontractors, agents, servants or employees; (c) any and all bodily injuries, sickness, disease or death; (d) injury to or destruction of tangible property, including any resulting loss of use; (e) other such damages, liabilities, or losses received or sustained by any person or persons during or on account of any operations connected with the construction of this Project including the warranty period; (f) the use of any improper materials; (g) any construction defect including both patent and latent defects; (h) failure to timely complete the work; (i) the violation of any federal, state, county or city laws, ordinances or regulations by Contractor, its subcontractors, agents, servants, independent contractors or employees; (j) the breach or alleged breach by Contractor of any term of the Agreement, including the breach or alleged breach of any warranty or guarantee.

12.2.2 Contractor agrees to indemnify, defend, save and hold harmless the City, its officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against City, its officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent and/or for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.

12.2.3 Contractor shall pay all claims, losses, liens, settlements or judgments of any nature in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees and costs for trails and appeals.

12.2.4 If any Subcontractor, supplier, laborer, or materialmen of Contractor or any other person directly or indirectly acting for or through Contractor files or attempts to file a mechanic's or construction lien against the real property on which the work is performed or any part or against any personal property or improvements thereon or make a claim against any monies due or to become due from the City to Contractor or from Contractor to a Subcontractor, for or on account of any work, labor, services, material, equipment, or other items furnished in connection with the Work or any change order, Contractor agrees to satisfy, remove, or discharge such lien or claim at its own expense by bond, payment, or otherwise within five (5) days of the filing or from receipt of written notice from the City.

Additionally, unit such time as such lien or claim is satisfied, removed or discharged by Contractor, all monies due to Contractor, or that become due to Contractor before the lien or claim is satisfied, removed or otherwise discharged, shall be held by City as security for the satisfaction, removal and discharge of such lien and any expense that may be incurred while obtaining the discharge. If Contractor shall fail to do so, City shall have the right, in addition to all other rights and remedies provided by this Agreement or by law, to satisfy, remove, or discharge such lien or claim by whatever means City chooses at the entire and sole cost and expense of Contractor which costs and expenses shall, without limitation, include attorney's fees, litigation costs, fees and expenses and all court costs and assessments, and which shall be deducted from any amount owing to Contractor. In the event the amount due Contractor is less than the amount required to satisfy Contractor's obligation under this, or any other article, paragraph or section of this Agreement, the Contractor shall be liable for the deficiency due the City.

12.2.5 The Contractor and the City agree that Section 725.06(2), Florida Statutes controls the extent and limits of the indemnification and hold harmless provisions of this Agreement, if any, and that the parties waive any defects in the wording of this Article that runs afoul of said statutory section.

ARTICLE 13 – CHANGES IN THE WORK

13.1 Without invalidating this Agreement, the City may, at any time or from time to time order additions, deletions or revisions in the Work through the issuance of Change Orders. Upon receipt of a Change Order, the Contractor shall proceed with the Work

involved. All Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Article 14 or Article 15 on the basis of a claim made by either Party.

- 13.2 The Project Manager may authorize minor changes in the work not involving an adjustment in the Contract Price or the Contract Time, which are consistent with the overall intent of the Contract Documents. Such changes must be in writing and signed by the City and the Contractor.
- 13.3 If notice of any change affecting the general scope of the Work or change in the Contract Price is required by the provisions of any Bond to be given to the Surety, it will be the Contractor's responsibility to so notify the Surety, and the amount of each applicable Bond shall be adjusted accordingly. The Contractor shall furnish proof of such adjustment to the City.

ARTICLE 14 – CHANGE OF CONTRACT PRICE

Change of Contract Price, approved by CITY, shall be computed as follows:

- 14.1 Cost of the Work: The term "Cost of the Work" means the sum of all direct costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by the City, these costs shall be in amounts no higher than those prevailing in the City and shall include only the following items and shall not include any of the costs itemized in Paragraph 14.2:
- 14.1.1 Payroll costs for employees in the direct employ of the Contractor in the performance of the Work under schedules of job classifications agreed upon by the City and the Contractor. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus and cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and applicable holiday pay.
- 14.1.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage, and required suppliers and field services. All cash discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to the City, and the Contractor shall make provisions so that they may be obtained.
- 14.1.3 Supplemental costs including the following:
- 14.1.3.1 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.

- 14.1.3.2 Rentals of all construction equipment and machinery and the parts whether rented from the Contractor or others in accordance with rental agreements approved by the City, and the costs of transporting, loading, unloading, installation, dismantling and removal. The rental of any such equipment, machinery or parts shall cease when the use is no longer necessary for the Work.
- 14.1.3.3 Sales, consumer, use or similar taxes related to the Work and for which the Contractor is liable, imposed by laws and regulations.
- 14.1.3.4 Royalty payments and fees for permits and licenses.
- 14.1.3.5 The cost of utilities, fuel and sanitary facilities at the Work site.
- 14.1.3.6 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
- 14.1.3.7 Cost of premiums for additional bonds and insurance required because of changes in the Work.

14.2 The Contract Price may only be increased by a Change Order when Work is modified in accordance with Article 13 and approved by the CITY in writing. Any claim for an increase in the Contract Price resulting from a Change Order shall be based on written notice delivered to the Project Manager within ten (10) days of the occurrence of the Change Order giving rise to the claim. Notice of the amount of the claim with supporting data shall be included in the Change Order and delivered within twenty (20) days of such occurrence unless Project Manager allows an additional period of time to ascertain accurate cost data. Any change in the Contract Price resulting from any such claim shall be incorporated in the Change Order.

14.3 Not Included in the Cost of the Work: The term "cost of the Work" shall not include any of the following:

14.3.1 Payroll costs and other compensation of the Contractor's officers executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditor, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by the Contractor whether at the site or in the Contractor's principal or branch office for general administration of the work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 14.1.1, all of which are to be considered administrative costs covered by the Contractor's fee.

14.3.2 Expenses of the Contractor's principal and branch offices other than the Contractor's office at the site.

14.3.3 Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work and charges against the Contractor for delinquent payments.

14.3.4 Cost of premiums for all bonds and for all insurance whether or not the Contractor is required by the Contract Documents to purchase and maintain the same.

14.3.5 Costs due to the negligence of the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

14.3.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 14.1

14.4 Basis of Compensation: The Contractor's compensation, allowed to the Contractor for overhead and profit, shall be determined as follows:

14.4.1 A mutually acceptable negotiated fee:

14.4.1.1 For costs incurred under Paragraphs 14.1.1 and 14.1.2, the Contractor's fee shall not exceed five percent (5%).

14.3.1.2 No fee shall be payable on the basis of costs itemized under Paragraphs 14.1.3.1, 14.1.3.2, 14.1.3.3, 14.1.3.4, 14.1.3.5, 14.1.3.6, 14.1.3.7, 14.3.1, 14.3.2, 14.3.3, 14.3.4, 14.3.5 and 14.3.6.

14.3.1.3 The amount of credit to be allowed by the Contractor to the City for any such change which results in a net decrease plus a deduction in the Contractor's fee by an amount equal to five percent (5%) for the net decrease.

14.3.1.4 When both additions and credits are involved in any one change the combined overhead and profit shall be figured on the basis of net increase if any, however, not to exceed five percent (5%) of the agreed compensation. Profit will not be paid on any Work not performed.

14.5 Cost Breakdown Required: Whenever the cost of any Work is to be determined pursuant to this Article, the Contractor will submit in form acceptable to the City an itemized cost breakdown together with supporting documentation. Whenever a change in the Work is to be based upon mutual acceptance of a lump sum, whether the amount is an addition, credit, or no-charge-in-cost, the Contractor shall submit an estimate substantiated by a complete itemized breakdown:

14.5.1 The breakdown shall list quantities and unit prices for materials, labor, equipment and other items of cost.

14.5.2 Whenever a change involves the Contractor and one (1) or more subcontractors and the change is an increase in the agreed compensation, the overhead and profit percentage for the Contractor and each subcontractor shall be itemized separately.

14.6 Time for the City to Approve Extra Work: Any Extra Work in an amount up to and not exceeding a cumulative amount of \$25,000 for a specific project can be approved by

the City Manager and shall require a written Change Order proposal to be submitted to the Public Works Director for submittal and approval by the City Manager. Extra Work exceeding the cumulative amount of \$25,000 for a specific project must be approved by the City Commission and a written Change Order proposal must be submitted to the Public Works Director for submittal and approval by the City Manager and City Commission. No financial or time claim for delay to the project resulting from the Change Order approval process outlined above under Section 14.6 will be allowed.

ARTICLE 15 – CHANGE OF THE CONTRACT TIME

- 15.1 The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to the Project Manager within five (5) days of the occurrence of the event giving rise to the claim. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.
- 15.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of the Contractor if a claim is made there for as provided in Paragraph 15.1. Such delays shall include but not be limited to, acts or neglect by the City, or to fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God.
- 15.3 All time limits stated in the Contract Documents are of the essence. The provisions of this Article 15 shall not exclude recovery for damages for delay by the Contractor.
- 15.4 Delays caused by or resulting from entities, contractors or subcontractors who are not affiliated with the CONTRACTOR (non-affiliated Contractors) shall not give rise to a claim by the CONTRACTOR for damages for increases in material and/or labor costs. Such entities, contractors and subcontractors include, but are not limited to, the CITY's contractors and subcontractors, Florida Power and Light Company, AT&T and Florida East Coast Railway, LLC.

ARTICLE 16 – LIQUIDATED DAMAGES

- 16.1 Upon failure of the Contractor to complete the Work within the time specified for completion, the Contractor shall pay to the City the sum of \$800 Hundred Dollars (\$800.00) for each and every calendar day that the completion of the Work is delayed beyond the time specified in this Agreement for completion, as fixed and agreed liquidated damages and not as a penalty, so long as the delay is caused by the Contractor. Should an act of God or the acts or omissions of the City, its agents or representatives, in derogation to the terms of this Agreement cause the delay, the Contractor shall not be responsible for the delay nor liquidated damages. Liquidated damages are fixed and agreed upon between the Parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by the City as a consequence of such delay and both parties desiring to obviate any question of dispute concerning the amount of damages and the cost and effect of the failure of the Contractor to complete the Work on time. Liquidated damages shall apply separately to each portion of the Work for which a time of completion is given. The City shall have the right to deduct from or retain any compensation which may be due or which may become due and payable to the Contractor the amount of liquidated damages,

and if the amount retained by the City is insufficient to pay in full such liquidated damages, the Contractor shall pay all liquidated damages in full. The Contractor shall be responsible for reimbursing the City, in addition to liquidated damages or other damages for delay, for all costs of engineering, architectural fees, and inspection and other costs incurred in administering the construction of the Project beyond the completion date specified or beyond an approved extension of time granted to the Contractor whichever is later. Delays caused by or resulting from entities, contractors or subcontractors who are not affiliated with the Contractor shall not give rise to a claim by Contractor for damages for increase in material and/or labor costs. Such entities, contractors and subcontractors include, but are not limited to, the CITY's contractors and subcontractors, Florida Power and Light Company, AT&T, and Florida East Coast Railway, LLC.

- 16.2 No Extended Damages: For other and additional good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Contractor covenants and agrees that in the event of any delay of construction or for any reason, allegation or claim, and notwithstanding the reason of the delay, reason, claim or allegation or who caused them or the construction delay or whether they were caused by the City, that there will be no entitlement to Contractor to or for any direct or indirect financial damages or losses for extended corporate overhead impact, extended project overhead impacts, project support services, mobilization or demobilization or by whatever other label or legal concept or theory and types of names or labels or basis such claims may have, or any business damages or losses of whatever type or nature, and Contractor hereby waives any right to make any such claim or claims. This provision will have application and effect when construction delays are anticipated and agreed upon by both the City and the Contractor.

ARTICLE 17 – SUSPENSION OF WORK AND TERMINATION

- 17.1 City May Suspend Work: The City may, at any time and without cause, suspend the Work or any portion of the Work for a period of not more than ninety (90) days by notice in writing to the Contractor which shall fix the date on which Work shall be resumed. The Contractor shall resume the Work on the date fixed. The Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension, if the Contractor makes a claim as provided in Articles 14 and 15.

- 17.2 City May Terminate Work: The City retains the right to terminate this Agreement, with thirty (30) days prior written notice. Additionally, the City may also terminate this Agreement upon 15 days notice upon the occurrence of any one or more of the following events:

17.2.1 If the Contractor commences a voluntary case or a petition is filed against the Contractor, under any chapter of the Bankruptcy Code, or if the Contractor takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.

17.2.2 If the Contractor makes a general assignment for the benefit of creditors.

- 17.2.3 If a trustee, receiver, custodian or agent of the Contractor is appointed under applicable law or under Contract, whose appointment or authority to take charge of property of the Contractor is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of the Contractor's creditors.
- 17.2.4 If the Contractor persistently fails to perform the Work in accordance with the Contract Documents, including but not limited to, failure to supply sufficient skilled Workers or suitable materials or equipment or failure to adhere to the progress schedule as same may be revised from time to time.
- 17.2.5 If the Contractor repeatedly fails to make prompt payments to subcontractors or for labor, material or equipment.
- 17.2.6 If the Contractor repeatedly disregards proper safety procedures.
- 17.2.7 If the Contractor disregards any local, state or federal laws or regulations.
- 17.2.8 If the Contractor otherwise violates any provisions of this Agreement.
- 17.3 Further, the Contractor may be excluded from the Work site and the City take possession of the Work and of all the Contractor's tools, appliances, construction equipment and machinery at the site and use them without liability to the City for trespass or conversion, incorporate in the Work all materials and equipment stored at the site or for which the City has paid the Contractor but which are stored elsewhere, and finish the Work as the City may deem expedient. In this instance, the Contractor shall not be entitled to receive any further compensation until the Work is finished. No Extended Damages: For other and additional good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Contractor covenants and agrees that in the event of any delay of construction or for any reason, allegation or claim, and notwithstanding the reason of the delay, reason, claim or allegation or who caused them or the construction delay or whether they were caused by the City, that there will be no entitlement to Contractor to or for any direct or indirect financial damages or losses for extended corporate overhead impact, extended project overhead impacts, project support services, mobilization or demobilization or by whatever other label or legal concept or theory and types of names or labels or basis such claims may have, or any business damages or losses of whatever type or nature, and Contractor hereby waives any right to make any such claim or claims. This provision will have application and effect when construction delays are anticipated and agreed upon by both the City and the Contractor.
- 17.4 If the Contractor commits a default due to its insolvency or bankruptcy, the following shall apply:
- 17.4.1 Should this Agreement be entered into and fully executed by the parties, funds released and the Contractor (Debtor) files for bankruptcy, the following shall occur:
- 17.4.1.1 In the event the Contractor files a voluntary petition under 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Contractor shall acknowledge the extent, validity, and priority of the

lien recorded in favor of the City. The Contractor further agrees that in the event of this default, the City shall, at its option, be entitled to seek relief from the automatic stay pursuant to 11 U.S.C. 362. The City shall be entitled to relief from the automatic stay pursuant to 11 U.S.C. 362(d) (1) or (d) (2), and the Contractor agrees to waive the notice provisions in effect pursuant to 11 U.S.C. 362 and any applicable Local Rules of the United States Bankruptcy Court. The Contractor acknowledges that such waiver is done knowingly and voluntarily.

17.4.1.2 Alternatively, in the event the City does not seek stay relief, or if stay relief is denied, the City shall be entitled to monthly adequate protection payments within the meaning of 11 U.S.C. 361. The monthly adequate protection payments shall each be in an amount determined in accordance with the Note and Mortgage executed by the Contractor in favor of the City.

17.4.1.3 In the event the Contractor files for bankruptcy under Chapter 13 of Title 11, United States Code in addition to the foregoing provisions, the Contractor agrees to cure any amounts in arrears over a period not to exceed twenty-four (24) months from the date of the confirmation order, and such payments shall be made in addition to the regular monthly payments required by the Note and mortgage. Additionally, the Contractor shall agree that the City is over secured and, therefore, entitled to interest and attorney's fees pursuant to 11 U.S.C. 506(b). Such fees shall be allowed and payable as an administrative expense. Further, in the event the Contractor has less than five (5) years of payments remaining on the Note, the Contractor agrees that the treatment afforded to the claim of the City under any confirmed plan of reorganization shall provide that the remaining payments shall be satisfied in accordance with the Note, and that the remaining payments or claim shall not be extended or amortized over a longer period than the time remaining under the Note.

17.4.2 Should this Agreement be entered into and fully executed by the parties, and the funds have not been forwarded to Contractor, the following shall occur:

17.4.2.1 In the event the Contractor files a voluntary petition pursuant to 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303., the Contractor acknowledges that the commencement of a bankruptcy proceeding constitutes an event of default under the terms of this Agreement. Further, the Contractor acknowledges that this Agreement constitutes an executor contract within the meaning of 11 U.S.C. 365. The Contractor acknowledges that this Agreement is not capable of being assumed pursuant to 11 U.S.C. 365(c)(2), unless the City expressly consents in writing to the assumption. In the event the City consents to the assumption, the Contractor agrees to file a motion to assume this Agreement within ten (10) days after receipt of written consent from the City, regardless of whether the bankruptcy

proceeding is pending under Chapter 7, 11, or 13 of Title 11 of the United States Code. The Contractor further acknowledges that this Agreement is not capable of being assigned pursuant to 11 U.S.C. 365(b)(1).

- 17.5 Where the Contractor's service have been so terminated by the City, the termination shall not affect any rights of the City against the Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the Contractor by the City will not release the Contractor from liability.
- 17.6 The Contractor has no right, authority or ability to terminate the Work except for the wrongful withholding of any payments due the Contractor from the City.

ARTICLE 18 – NOTICES

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

To the City:

City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

with copy to the Project Manager

To the Contractor:

Molloy Bros., Inc.
800 NW 27th Avenue,
Fort Lauderdale, Florida 33311

ARTICLE 19 – LIMITATION OF LIABILITY

- 19.1 The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action arising out of this Agreement, so that the City's liability for any breach never exceeds the sum of \$1,000. For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor expresses its willingness to enter into this Agreement with the knowledge that the Contractor's recovery from the City to any action or claim arising from the Agreement is limited to a maximum amount of \$1,000 which amount shall be reduced by the amount actually paid by the City to the Contractor pursuant to this Agreement, for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended either to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Florida Statutes, or to extend the City's liability beyond the limits established in said

Section 768.28; and no claim or award against the City shall include attorney's fees, investigative costs, expert fees, suit costs or pre-judgment interest.

- 19.2 No Extended Damages: For other and additional good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Contractor covenants and agrees that in the event of any delay of construction or for any reason, allegation or claim, and notwithstanding the reason of the delay, reason, claim or allegation or who caused them or the construction delay or whether they were caused by the City, that there will be no entitlement to Contractor to or for any direct or indirect financial damages or losses for extended corporate overhead impact, extended project overhead impacts, project support services, mobilization or demobilization or by whatever other label or legal concept or theory and types of names or labels or basis such claims may have, or any business damages or losses of whatever type or nature, and Contractor hereby waives any right to make any such claim or claims. This provision will have application and effect when construction delays are anticipated and agreed upon by both the City and the Contractor.

ARTICLE 20 – GOVERNING LAW

- 20.1 This Agreement shall be governed by the laws of the State of Florida. Both Parties agree that the courts of the State of Florida shall have jurisdiction of any claim arising in connection with this Agreement. Venue for any claim, objection or dispute arising out of this Agreement shall be in Broward County, Florida.

ARTICLE 21 – MISCELLANEOUS

- 21.1 The duties and obligations imposed by this Agreement and the rights and remedies available to the parties and, in particular but without limitation, the warranties, guaranties and obligations imposed upon the Contractor and all of the rights and remedies available to the City, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents, and the provisions of this Paragraph will survive final payment and termination or completion of this Agreement.
- 21.2 The Contractor shall not assign or transfer this Agreement or its rights, title or interests. The obligations undertaken by the Contractor pursuant to this Agreement shall not be delegated or assigned to any other person or firm. Violation of the terms of this Paragraph shall constitute a material breach of Agreement by the Contractor and the City any, at its discretion, cancel this Agreement and all rights, title and interest of the Contractor which shall immediately cease and terminate.
- 21.3 The Contractor and its employees, volunteers and agents shall be and remain an independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This

Agreement shall not in any way be constructed to create a partnership, association or any other kind of joint undertaking or venture between the Parties.

- 21.4 The City reserves the right to audit the records of the Contractor relating in any way to the Work to be performed pursuant to this Agreement at any time during the performance and term of this Agreement and for a period of three (3) years after completion and acceptance by the City. If required by the City, the Contractor agrees to submit to an audit by an independent certified public accountant selected by the City. The Contractor shall allow the City to inspect, examine and review the records of the Contractor at any and all times during normal business hours during the term of this Agreement.
- 21.5 The remedies expressly provided in this Agreement to the City shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of the City now or later existing at law or in equity.
- 21.6 Should any part, term or provisions of this Agreement be decided by the courts to be invalid, illegal or in conflict with any state or federal law, the validity of the remaining portion or provision shall not be affected.

PROJECT 11857
"ANNUAL CONTRACT 2013-2014 UTILITIES RESTORATION"(RENEWAL)

TO THE COMMISSION OF THE CITY OF
FORT LAUDERDALE, FLORIDA

Gentlemen:

The undersigned bidder agrees to furnish all labor, tools, material and supplies, and to sustain all the expense incurred in doing the work set forth below that may be awarded the undersigned by the City of Fort Lauderdale, Florida, through its proper officers, and to do the same strictly in accordance with the plans and contract documents on file in the Office of the City Engineer of Fort Lauderdale, which are referred to below and made a part hereof, at the following unit prices, to-wit:

SECTION I - GENERAL

ITEM 1A: Mobilization and demobilization.

Approximately 25 Locations

@ \$1,900.00 /Location \$ 47,500.00

ITEM 1B: Emergency condition mobilization and demobilization.

Approximately 5 Locations

@ \$1,900.00 /Location \$ 9,500.00

ITEM 2A: Well Point System complete (pump header and points) for up to 40-feet excavation

Approximately 20 Locations.

@ \$1,350.00 /Location \$ 27,000.00

ITEM 2B: Additional cost for header pipe and points beyond 40-feet in basic system under Item 2A, (10' increase).

Approximately 3 Locations

@ \$ 65.00 /Location \$ 195.00

SECTION II - SANITARY SEWER REPAIR

ITEM 3: By-pass pump between manholes where work is being done on gravity sewer. Work includes placing plugs in each affected manhole.

Approximately 10 Locations

@ \$ 450.00 /Location \$ 4,500.00

ITEM 4A: Repair or replace: existing gravity sanitary sewer 8 or 10-inch diameter; or, existing lateral stack or lateral line including all fittings; or install new 6-inch lateral, and lateral wye or tee, including excavation; up to 40-feet (maximum length of pipe) length per location, approximately:

Assumed ground elevation to be elevation 6.5:

i) Invert elevation +2 to 0

6 Locations

@ \$ 4,500.00 /Location \$ 27,000.00

ii) Invert elevation (-)0.01 to (-)2

7 Locations

@ \$ 9,350.00 /Location \$ 65,450.00

iii) Invert elevation (-)2.01 to (-)4

7 Locations

@ \$ 11,700.00 /Location \$ 81,900.00

iv) Invert elevation (-)4.01 to (-)6

3 Locations

@ \$ 13,850.00 /Location \$ 41,550.00

v) Invert elevation (-)6.01 to (-)8

1 Locations

@ \$ 14,850.00 /Location \$ 14,850.00

vi) Invert elevation (-)8.01 to (-)10

1 Location

@ \$15,450.00 /Location

\$ 15,450.00

ITEM 4B: Additional cost for gravity sanitary sewer 8 to 10-inch pipe main line (i.e., not laterals) beyond 40-feet of pipe, approximately:

Assumed ground elevation to be elevation 6.5:

i) Invert elevation +2 to 0

10 Linear Feet

@ \$ 40.00 /L.F.

\$ 400.00

ii) Invert elevation (-)0.01 to (-) 2

10 Linear Feet

@ \$ 60.00 /L.F.

\$ 600.00

iii) Invert elevation (-)2.01 to (-)4

10 Linear Feet

@ \$ 80.00 /L.F.

\$ 800.00

iv) Invert elevation (-)4.01 to (-)6

10 Linear Feet

@ \$100.00 /L.F.

\$ 1,000.00

v) Invert elevation (-)6.01 to (-)8

10 Linear Feet

@ \$ 120.00 /L.F.

\$ 1,200.00

vi) Invert elevation (-)8.01 to (-)10

10 Linear Feet

@ \$ 140.00 /L.F.

\$ 1,400.00

TEM 4C: Additional cost for ground elevation above elevation 6.5' per linear foot of sanitary sewer main line pipe replaced, approximately:

i) Ground elevation 6.5 to 8'

25 Linear Feet

@ \$ 10.00 /L.F.

\$ 250.00

ii) Ground elevation 8.01 to 10'

15 Linear Feet

@ \$ 20.00 /L.F.

\$ 300.00

iii) Ground elevation over 10.01'

15 Linear Feet

@ \$ 30.00 /L.F.

\$ 450.00

ITEM 4D: Additional cost for replacing 12-inch, 15-inch or 18-inch diameter gravity sewer, approximately:

i) 12-inch, all depths

30 Linear Feet

@ \$ 5.00 /L.F.

\$ 150.00

ii) 15-inch, all depths

30 Linear Feet

@ \$ 7.00 /L.F.

\$ 210.00

iii) 18-inch, all depths

30 Linear Feet

@ \$10.00 /L.F.

\$ 300.00

ITEM 5A: Additional cost to furnish and install Type 2 foundation, approximately:

- i) Invert elevation +2 to 0
10 Linear Feet
@ \$ 2.00 /L.F. \$ 20.00

- ii) Invert elevation (-)0.01 to (-)2.
10 Linear Feet
@ \$ 2.00 /L.F. \$ 20.00

- iii) Invert elevation (-)2.01 to (-)4
10 Linear Feet
@ \$ 2.00 /L.F. \$ 20.00

- iv) Invert elevation (-)4.01 to (-)6
10 Linear Feet
@ \$ 2.00 /L.F. \$ 20.00

- v) Invert elevation (-)6.01 to (-)8
10 Linear Feet
@ \$ 2.00 /L.F. \$ 20.00

ITEM 5B: Additional cost to furnish and install Type 2A foundation, approximately:

- i) Invert elevation +2 to 0
10 Linear Feet
@ \$ 2.00 /L.F. \$ 20.00

- ii) Invert elevation (-)0.01 to (-)2
10 Linear Feet
@ \$ 2.00 /L.F. \$ 20.00

(ITEM 5B Continued)

iii) Invert elevation (-)2.01 to (-)4 10 Linear Feet @ \$ 2.00 /L.F.	\$ 20.00
iv) Invert elevation (-)4.01 to (-)6 10 Linear Feet @ \$ 2.00 /L.F.	\$ 20.00
v) Invert elevation (-)6.01 to (-)8 10 Linear Feet @ \$ 2.00 /L.F.	\$ 20.00

ITEM 6: Additional cost to remove existing pipe and install new pipe into existing sanitary manhole, all depths.
Approximately 5 Connections
@ \$ 450.00 /Connection \$ 2,250.00

ITEM 7A: Additional cost to repair or replace additional lateral or single or double lateral stack including new wyes or tees, bends, and 50-foot of 6-inch lateral line and coupling, in locations already excavated for other repairs under item 4A.
Approximately 7 Stacks/Laterals
@ \$ 500.00 /Each \$ 3,500.00

ITEM 7B: Replace/install additional new 6-inch lateral line beyond 40-feet from centerline of main.
Approximately 200 Linear Feet
@ \$ 8.00 /L.F. \$ 1,600.00

(CONTINUED)

PROJECT 11857

ITEM 7C: Additional lateral repair or installation cost for all ground elevations above elevation 6.5.

Approximately 4 Locations

@ \$ 100.00 /Lump Sum Per Location

\$ 400.00

ITEM 8A: Furnish and install precast 4-ft. diameter standard sanitary sewer manhole, including excavation, cast-iron frame and cover, two (2) pipe tie-ins, in accordance with standard manhole Detail no. 203 and specifications section 2533 (Manholes) attached.

Approximately:

i) Invert elevation +2 to 0

1 Manhole

@ \$ 5,500.00 /Manhole

\$ 5,500.00

ii) Invert elevation (-)0.01 to (-)2

1 Manhole

@ \$ 10,700.00 /Manhole

\$ 10,700.00

iii) Invert elevation (-)2.01 to (-)4

1 Manhole

@ \$ 13,650.00 /Manhole

\$ 13,650.00

iv) Invert elevation (-)4.01 to (-)6

1 Manhole

@ \$ 15,850.00 /Manhole

\$ 15,850.00

v) Invert elevation (-)6.01 to (-)8

1 Manhole

@ \$ 16,850.00 /Manhole

\$ 16,850.00

(CONTINUED)

PROJECT 11857

(ITEM 8A Continued)

vi) Invert elevation (-)8.01 to (-)10

1 Manhole

@ \$17,450.00 /Manhole

\$ 17,450.00

ITEM 8B: Additional manhole installation cost for ground elevation above elevation 6.5, lump sum per manhole.

i) Ground elevation 6.5 to 8

1 Manhole

@ \$ 200.00 /Lump Sum Per Manhole

\$ 200.00

ii) Ground elevation 8.01 to 10

1 Manhole

@ \$ 400.00 /Lump Sum Per Manhole

\$ 400.00

iii) Ground elevation over 10

1 Manhole

@ \$ 600.00 /Lump Sum Per Manhole

\$ 600.00

ITEM 8C: Additional manhole installation cost for more than two (2) pipe tie-ins, approximately two (2) connections

@ \$ 500.00 /LUMP SUM PER ADDITIONAL CONNECTION

\$ 1,000.00

SECTION IV – MISCELLANEOUS AND RESTORATION ITEMS

ITEM 9: Furnish all materials, labor and equipment to:

- i) Excavate, haul away and dispose of muck and unsuitable material;
- ii) Supply, haul-in, install and compact clean fill to replace the muck and unsuitable material;

Basis of payment for this item shall be the quantity of clean fill hailed-in and installed only.

Approximately 200 Cubic Yards of Fill

@ \$ 15.00 /C.Y. \$ 3,000.00

ITEM 10: Furnish and install ductile iron pipe fittings, 350 rating, sizes 4" to 24" diameter.

Approximately, 500 Pounds

@ \$ 2.25 /LB. \$ 1,125.00

ITEM 11: Furnish and install 12" thick limerock base road replacement.

Approximately 2,000 Square Yards

@ \$ 21.00 /S.Y. \$ 42,000.00

ITEM 12: Furnish and install up to 2" thick asphaltic concrete between saw-cut or milled repair area.

Approximately 2,000 Square Yards

@ \$ 23.00 /S.Y. \$ 46,000.00

ITEM 13: Furnish all materials, labor and equipment to mill and dispose of materials of existing asphalt pavement to a depth of up to two inches (2").

Approximately 300 Square Yards

@ \$ 20.00 /S.Y. \$ 6,000.00

ITEM 14: Provide traffic control and detour barricades on local, residential roads; plan to be certified by ATSSA certified technician.

Approximately 22 Locations

@ \$ 675.00 /Location \$ 14,850.00

(CONTINUED)

PROJECT 11857

- ITEM 15:** Furnish and install St. Augustine "Floritam" sod.
Approximately 5,000 Square Feet
@ \$ 0.45 /S.F. \$ 2,250.00
- ITEM 16:** Furnish and install Bahia sod
Approximately 2,000 Square Feet
@ \$ 0.45 /S.F. \$ 900.00
- ITEM 17:** Furnish all materials, labor and equipment to properly install, and later extract, steel sheet-piling (Z piles), including mobilization and demobilization, shoring and bracing, and all work incidental to, and necessary for a complete installation and later removal.
Approximately 100 Square Feet
@ \$ 30.00 /S.F. \$ 3,000.00
- ITEM 18:** Additional cost for leaving sheet-piling in place.
Approximately 50 Square Feet
@ \$ 25.00 /S.F. \$ 1,250.00
- ITEM 19:** Furnish and install flowable fill material.
Approximately 50 Cubic Yards
@ \$ 85.00 /C.Y. \$ 4,250.00
- ITEM 20:** Furnish and install temporary traffic bearing steel plate, 1" x 10' x 20' when called for and remove and haul away upon completion.
Approximately 8 Days
@ \$ 75.00 /Day \$ 600.00

(CONTINUED)

PROJECT 11857

<u>ITEM 21:</u> Labor and equipment charges for miscellaneous work not covered by other contract items, requiring the utilization of a five (5) men pipe repair crew, including one foreman, two (2) pipe fitters, one (1) operator and one (1) laborer, plus equipment such as an excavator, loader, plate compactor, tandem dump truck, cut off saw, pump (up to and including 6"), trailers, and hand tools.	
Approximately 5 Days	
@ \$6,700.00 /Day	\$ <u>33,500.00</u>
<u>*ITEM 22:</u> Restoration Allowance	\$ <u>30,000.00</u>
<u>**ITEM 23:</u> Permit Allowance	\$ <u>4,000.00</u>
<u>**ITEM 24:</u> Maintenance of Traffic Allowance for collector streets, and County or State roads.	\$ <u>25,000.00</u>
<u>*ITEM 25:</u> Time and Material Allowance.	\$ <u>75,000.00</u>
<u>*ITEM 26:</u> Storm Drainage Allowance.	\$ <u>25,000.00</u>
TOTAL ITEMS 1 THRU 26:	\$ <u>749,830.00</u> (FIGURES)

Seven Hundred Forty Nine Thousand Eight Hundred Thirty Dollars and No Cents

(TOTAL WRITTEN DOLLAR AMOUNT)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as follows:

CONTRACTOR:

WITNESSES:

Molly Bros. Inc.



(Signature)

Leila Bailus

(Witness print/type name)

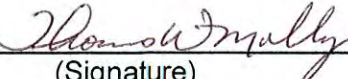


(Signature)

William Miller

(Witness print/type name)

(Corporate Seal)

By: 

(Signature)

Thomas W. Molloy - Pres.

(Print Name and Title)

Attest:

By: 

(Signature)

Crystal Molloy

(Print/type name)

CITY:

City of Fort Lauderdale, a municipal corporation of the State of Florida

By: 

LEE R. FELDMAN, City Manager


(Corporate Seal)

ATTEST:

By: 

JONDA K. JOSEPH, City Clerk

APPROVED AS TO FORM:

By: 

CARRIE L. SARVER

Assistant City Attorney

ACKNOWLEDGEMENT OF CONTRACTOR

STATE OF: FLORIDA

COUNTY OF: BROWARD

The foregoing instrument was acknowledged before me this 28 day of August,
20 13, by Thomas W. Molloy and _____,
as _____ and _____, respectively,
of Molloy Bros Inc, a _____
corporation, on behalf of the corporation, who is personally known to me or has produced
_____ as identification.

(SEAL)

Leila Bailus
Notary Public, State of Florida
(Signature of Notary taking Acknowledgement)

Leila Bailus
Name of Notary Typed, Printed or Stamped

My Commission Expires:

 **LEILA BAILUS**
MY COMMISSION # EE 849128
EXPIRES: November 5, 2016
Bonded Thru Budget Notary Services

Commission Number

SURETY BOND

IN COMPLIANCE WITH AND INCORPORATING THE PROVISIONS OF SECTION 255.05, FLORIDA STATUTES

THIS IS A SURETY BOND given by Molloy Bros., Inc. the "Contractor" as principal, referred to in this Bond as "Contractor" and Western Surety Company as "Surety," and they represent by this instrument that they are bound to the CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida ("City"), in the sum of \$ 100,000.00 One Hundred Thousand Dollars and No Cents

for the payment of which, to be made to the City of Fort Lauderdale, Florida, they jointly and severally, bind themselves and each of their heirs, executors, administrators, successors and assigns.

Owner Name: CITY OF FORT LAUDERDALE
a municipal corporation of the State of Florida

Owner Address and Telephone: City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, Florida 33301
(954) 828-5772

Bond No.: 929579087

Contractor Name, Address, Telephone: Molloy Bros., Inc.
800 NW 27th Avenue
Fort Lauderdale, Florida 33311
(954)792-9380

Surety Company, Address, Telephone Western Surety Company
333 S. Wabash Avenue, Floor 33
Chicago, Illinois 60604
(800) 331-3379

City Project No.: 11857

Name of Project: 2013-2014 Annual Utilities Restoration

Project Location: Various locations throughout the City of Fort Lauderdale and the City's Utility Service Areas.

Legal Description and Street Address
Description of Work

The work includes repairing gravity sewer mains, as well as other sanitary sewer repairs and construction, limited storm sewer, pressure pipe repairs and construction and related work, as needed at various locations throughout the City and the City's utility services areas.

"Contractor" is bound by an instrument in writing dated the 20th day of August, 2013, by which Contractor has contracted with the City of Fort Lauderdale, Florida, to furnish labor, tools, and materials for the Project referenced and described above, together with all work incidental thereto, as fully set out in the plans, specifications and details on file in the Office of the City Engineer of the City.

Notice required by Section 255.05(6), Florida Statutes: "This bond is given to comply with Section 255.05 Florida Statutes, and any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes."


The condition of the above obligation is such that if the above bound "Contractor," or its successor or assigns shall in good faith and in good, sufficient, substantial and workmanlike manner, perform the work and comply with the conditions of the contract, including payment of penalties, in strict accordance with the terms and provisions stipulated in it and shall indemnify and hold harmless the City against and for payments of any and all damages that may happen to persons or property by reason of excavations, embankments, obstructions and all other work in streets, alleys or places in connection with the work, or arising out of any act, neglect or omission of the "Contractor" or its agents, servants, or employees with relation to the work, and shall indemnify and hold harmless the City against and from all suits and acts of every nature and description arising out of any claims by patentees of any process connected with the work agreed to be performed under the contract, or of any materials used upon the work, and pay all costs accruing if the contract is cancelled and a new contract for finishing the work is let, and all other expenses lawfully chargeable to the "Contractor," then this agreement shall be null and void; otherwise it is to remain in full force and effect, but it is expressly provided, understood and agreed that if the "Contractor" or its subcontractors fail to duly and promptly pay for any labor, material, or other supplies used by "Contractor" or any of its subcontractors in the performance of the work to be done, or the Contractor defaults in its Contract with the City, the "Surety" will promptly pay to all claimants, as defined in Section 255.05(1), Florida Statutes, the same in an amount not exceeding the sum specified in this bond, together with interest at the rate of fifteen percent (15%) per annum, and the Surety hereby stipulates and agrees that no change, extension, reduction, alteration or addition to the terms of the contract or the plans, details and specifications shall in any way affect the obligations of this bond.

Whenever Contractor shall be, and is declared by the City to be in default under the contract, the City may proceed to cancel the contract and award a new contract for finishing the work or order the Surety to promptly remedy the default by obtaining a bid or bids for completing the contract in accordance with the original contract terms and conditions. Upon the determination by the City of the lowest responsible bidder, the Surety shall complete all work and pay the full cost of completion, less previous payments.


This Bond is effective for one (1) year after completion and acceptance of the work, with liability equal to 25% of the contract price, and is so conditioned that the "Contractor" will, at its own expense, correct any defective or faulty work or material which appears within one (1) year after completion of the work and final payment, upon notification by the City.

IN WITNESS WHEREOF, the above "Contractor" has signed this Agreement, and the "Surety" has caused this Agreement to be signed in its name by its Attorney-in-Fact, and its corporate seal affixed, this 27th day of August, 2013

Signed, sealed and delivered
in the presence of:



(Witness)



(Witness)

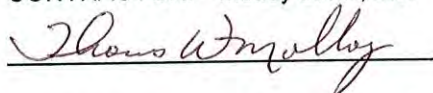


(Witness)



(Witness)

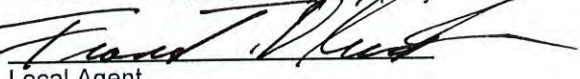
CONTRACTOR: Molloy Bros., Inc.



(SEAL)

Thomas W. Molloy - Pres.
Print Name and Title (SEAL)

SURETY: Western Surety Company



Local Agent (SEAL)

Francis T. O'Reardon, Attorney-in-Fact
Florida Resident Agent (SEAL)
Print Name and Title

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Todd L Johnson, Deidre Ann Sullivan, Joseph D Johnson Jr, Francis T O Reardon, Brett A Ragland, Joseph D Johnson III, Individually

of Orlando, FL, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 14th day of June, 2013.

WESTERN SURETY COMPANY

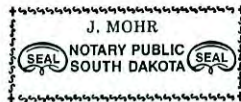


Paul T. Bruflat
Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 14th day of June, 2013, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
June 23, 2015



J. Mohr
J. Mohr, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 27th day of August, 2013.



WESTERN SURETY COMPANY

L. Nelson
L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

GENERAL CONDITIONS

Unless otherwise modified in the projects special conditions, the following General Conditions shall be part of the Contract:

GC - 01 - DEFINITIONS - The following words and expressions, or pronouns used in their stead, shall wherever they appear in the Contract and the Contract Documents, be construed as follows:

"Addendum" or "Addenda" - shall mean the additional Contract provisions issued in writing, by the Engineer, prior to the receipt of bids.

"Bid" - shall mean the offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

"Bidder" - shall mean any person, firm, company, corporation or entity submitting a Bid for the Work.

"Bonds" - shall mean Bid, performance and payment bonds and other instruments of security, furnished by Contractor and his surety in accordance with the Contract Documents.

"City" - shall mean the City of Fort Lauderdale, Florida, a Florida municipal corporation. In the event the City exercises its regulatory authority as a government body, the exercise of such regulatory authority and the enforcement of any rules, regulations, codes, laws and ordinances shall be deemed to have occurred pursuant to City's authority as a governmental body and shall not be attributable in any manner to the City as a party to this Contract. For the purpose of this Contract, "City" without modification shall mean the City Commission, and/or City Manager or his/her designees(s) as applicable.

"Public Works Director" - shall mean the Public Works Director of the City of Fort Lauderdale, Florida or his/her designee(s).

"Consultant" - shall mean a person, firm, company, corporation or other entity employed by the City to perform the professional services for the project.

"Contract Work" - shall mean everything expressed or implied to be required to be furnished and furnished by the Contractor by any one or more of the parts of the Contract Documents referred to in the Contract hereof except Extra Work as hereinafter defined, it being understood that, in case of any inconsistency in or between any part or parts of this Contract, the Public Works Director shall determine which shall prevail.

"Design Documents" - shall mean the construction plans and specifications included as part of a Bid/Proposal Solicitation prepared either by the City or by the Consultant under a separate Agreement with the City.

"Extra Work" - shall mean work other than that required by the Contract.

"Inspector" - shall mean an authorized representative of the City assigned to make necessary inspections of materials furnished by Contractor and of the Work performed by Contractor.

"Notice" - shall mean written notice sent by certified United States Mail, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or via fax or email, or by

GC - 03 - SUBSTITUTIONS - If the Contractor desires to use materials and/or products of manufacturer's names different from those specified in the Contract Documents, the Bidder requesting the substitution shall make written application as described herein. The burden of proving the equality of the proposed substitution rests on the Bidder making the request. To be acceptable, the proposed substitution shall meet or exceed all expressed requirements of the Contract Documents and shall be submitted upon the Contractor's letterhead, in addition to the "Contractor's Request for Substitution" form provided by the Public Works Director. The following requirements shall be met in order for the substitution to be considered:

1. Requests for substitution shall reach the Public Works Director no less than ten (10) Working Days prior to the date set for opening of Bids; and
2. Requests for substitution shall be accompanied by such technical data, as the party making the request desires to submit. The Public Works Director will consider reports from reputable independent testing laboratories, verified experience records from previous users and other written information valid in the circumstances; and
3. Requests for substitution shall completely and clearly indicate in what respects the materials and/or products differ from those indicated in the Contract Documents; and
4. Requests for substitution shall be accompanied by the manufacturer's printed recommendations clearly describing the installation, use and care, as applicable, of the proposed substitutions; and
5. Requests for substitution shall be accompanied by a complete schedule of changes in the Contract Documents, if any, which must be made to permit the use of the proposed substitution; and
6. Provide the "Contractor's Request for Substitution" form, completely executed. Failure to provide all pertinent data will result in immediate rejection of such a request.

If a proposed substitution is approved by the Public Works Director, an Addendum will be issued to prospective bidders not less than three (3) working days prior to the date set for opening of Bids. Unless substitutions are received and approved as described above, the successful Bidder shall be responsible for furnishing materials and products in strict accordance with the Contract Documents.

GC - 04 - CONTROL OF THE WORK - The Public Works Director shall have full control and direction of the Work in all respects. The Public Works Director and/or his authorized designee(s) shall, at all times, have the right to inspect the Work and materials. The Contractor shall furnish all reasonable facilities for obtaining such information, as the Public Works Director may desire respecting the quality of the Work and materials and the manner of conducting the Work. Should the Contractor be directed or permitted to perform night Work, or to vary the period which work is ordinarily carried on in the daytime, he shall give ample notice to the Public Works Director so that proper and adequate inspection may be provided. Such Work shall be done only under such regulations as are furnished in writing by the Public Works Director, and no extra compensation shall be allowed to the Contractor therefore. In the event of night work, the Contractor shall furnish such light, satisfactory to the Public Works Director, as will insure proper inspection. Nothing herein contained shall relieve the Contractor from compliance with any and all City ordinances relating to noise or Work during prohibited hours.

The City shall, in all cases of dispute, determine the amount or quantity of the several kinds of Work which are to be paid for under this Contract, and shall decide all questions relative to the execution of the same, and such estimates and decisions shall be final and binding.

Any Work not herein specified, which might be fairly implied as included in the Contract, of which the City shall judge, shall be done by the Contractor without extra charge. However, such cost increases shall be authorized by either the City Manager and/or designee or the City Commission based upon the authorized purchasing threshold amounts provided for in Chapter 2 of the City of Fort Lauderdale's Code of Ordinances.

GC-07 - NO ORAL CHANGES - Except to the extent expressly set forth in the Contract, no change in or modification, termination or discharge of the Contract in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the parties charged, therewith or their duly authorized representative.

GC - 09 - PERMITS AND PROTECTION OF PUBLIC - Permits on file with the City and or those permits to be obtained shall be considered directive in nature and will be considered a part of this Contract. A copy of all permits shall be given to the City and become part of the Contract Documents. Terms of permits shall be met prior to acceptance of the Work and release of the final payment.

The Contractor shall be required to observe all the ordinances in relation to obtaining permits for occupying, excavating, or in any way obstructing the streets and alleys. He shall erect and maintain barricades and sufficient safeguards around all excavations, embankments or obstructions; he shall place sufficient warning lights at or near the Work; keep the same burning from sunset to sunrise, employ watchmen, and strictly obey all laws and ordinances controlling or limiting those engaged in similar work.

Where there are telephones, light or power poles, water mains, conduits, pipes or drains or other construction, either public or private, in or on the streets or alleys, the Work shall be so conducted that no interruption or delay will be caused in the operation or use of the same. Proper written notice shall be given, and all the facilities, afforded the owners of such construction encountered or likely to be encountered, as will enable them to preserve the same from injury.

The Contractor shall not be permitted to interfere with public travel and convenience by grading or tearing up streets indiscriminately, but the Work of constructing the various items in this contract shall proceed in an orderly, systematic and progressive manner.

Contractor shall not load nor permit any part of any structure to be loaded with weights that will endanger the structure, nor shall he subject any part of the Work to stresses or pressures that will endanger it.

Where lifting operations involving the use of specialized cranes are required as part of construction, Contractor must make undertake the following investigation and submit the results and documentation to the Engineer prior to commencing any lifting operations: marking a very specific area in the field for the placement of the crane; a drawing showing the limitations of the job operation (i.e. not over adjacent properties or pedestrian and high vehicular traffic areas); underground utility exploration in the vicinity of the crane location, which may include ground penetrating radar to identify voids or old pipe or other subsurface features that could lead to sudden failure; assessment of the underlying soil and roadway materials and a worst case analysis based on entire load being distributed on just one or two outriggers; provision of properly

GC - 15 - EXISTING UTILITY SERVICE - All existing utility service shall be maintained with a minimum of interruption at the expense of the Contractor.

GC - 16 - JOB DESCRIPTION SIGNS - Contractor shall furnish, erect, and maintain suitable weatherproof signs on jobs over \$100,000 containing the following information:

1. City Seal (in colors)
2. Project or Improvement Number
3. Job Description
4. Estimated Cost
5. Completion Date

Minimum size of sign shall be four feet high, six feet wide and shall be suitably anchored. The entire sign shall be painted and present a pleasing appearance. Exact location of signs will be determined in the field. Two (2) signs will be required, one at each end of the job. All costs of this work shall be included in other parts of the work.

GC - 17 - FLORIDA EAST COAST RIGHT-OF-WAY - Whenever a City contractor is constructing within the Florida East Coast Railway Company's Right-of-Way, it will be mandatory that the contractor carry separate bodily injury and property damage insurance in the amounts as stated below. This insurance shall be taken out and maintained during the life of the Contract.

Bodily injury insurance in an amount not less than \$500,000.00 for injuries, including wrongful death to any one person, and subject to the same limit for each person, in an amount not less than \$1,000,000.00 on account of any one occurrence, and

Property damage insurance in an amount not less than \$500,000.00 for damages on account of any one occurrence and in an amount not less than \$1,000,000.00 for damages on account of all occurrences.

GC - 18 - ACCIDENTS - The Contractor shall provide such equipment and facilities as are necessary and/or required, in the case of accidents, for first aid services to be provided to a person who may be injured during the project duration. The Contractor shall also comply with the OSHA requirements as defined in the United States Labor Code 29 CFR 1926.50.

In addition, the Contractor must report immediately to the Public Works Director every accident to persons or damage to property, and shall furnish in writing full information, including testimony of witnesses regarding any and all accidents.

GC - 19 - SAFETY PRECAUTIONS - Contractor must adhere to the applicable environmental protection guidelines for the duration of a project. If hazardous waste materials are used, detected or generated at any time, the Project Manager must be immediately notified of each and every occurrence. The Contractor shall comply with all codes, ordinances, rules, orders and other legal requirements of public authorities (including OSHA, EPA, DERM, the City, Broward County, State of Florida, and Florida Building Code), which bear on the performance of the Work.

The Contractor shall take the responsibility to ensure that all Work is performed using adequate safeguards, including but not limited to: proper safe rigging, safety nets, fencing, scaffolding, barricades, chain link fencing, railings, barricades, steel plates, safety lights, and ladders that are

Each Contractor shall be responsible for any damage done by him or his agents to the work performed by another Contractor.

The Contractor shall contact the Broward County Transportation Department and the Florida Department of Transportation, as applicable, to verify and obtain location of any and all traffic conduits, loops, and street light underground services.

GC - 24 - WATER - Bulk water used for construction, flushing pipelines, and testing shall be obtained from fire hydrants. Contractor shall make payment for hydrant meter at Treasury Billing Office 1st Floor, City Hall, 100 N. Andrews Avenue. With the paid receipt, contractor can pick up hydrant meter at the utility location office. No connection shall be made to a fire hydrant without a meter connected.

GC - 24 - PROHIBITION AGAINST CONTRACTING WITH SCRUTINIZED COMPANIES - As provided for in Fla. Stat. §287.135 (3)(a)&(b), it is mutually agreed that if the Agreement is for goods or services in excess of \$1 million or more entered into or renewed on or after July 1, 2011, through June 30, 2012, the City has the authority to terminate the Agreement with Contractor if Contractor is found to have submitted a false certification as provided for in subsection (5) of Fla. Stat. 287.135 or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

As provided for in Fla. Stat. §287.135(3)(a)&(b), it is mutually agreed that if the Agreement is for goods or services in excess of \$1 million or more entered into or renewed on or after July 1, 2012, the City has the authority to terminate the Agreement with Contractor if Contractor is found to have submitted a false certification as provided under Fla. Stat. §287.135(5), been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria.

GC - 25 - LOCATION OF UNDERGROUND FACILITIES - If the Proposer, for the purpose of responding to this solicitation, requests the location of underground facilities through the Sunshine State One-Call of Florida, Inc. notification system or through any person or entity providing a facility locating service, and underground facilities are marked with paint, stakes or other markings within the City pursuant to such a request, then the Proposer shall be deemed non-responsive to this solicitation in accordance with Section 2-184(5) of the City of Fort Lauderdale's Code of Ordinances.

GC - 26 - USE OF FLORIDA LUMBER TIMBER AND OTHER FOREST PRODUCTS - In accordance with Florida Statute 255.20 (3), The City specifies that lumber, timber, and other forest products used for this project shall be produced and manufactured in the state of Florida if such products are available and their price, fitness, and quality are equal. This requirement does not apply to plywood specified for monolithic concrete forms, if the structural or service requirements for timber for a particular job cannot be supplied by native species, or if the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.

The Bidder affirms by submitting a bid response to this solicitation that they will comply with section 255.20 (3) Florida Statutes.

Each individual will be responsible for a portion of the total amount of the project.

The amount of the project will be determined by the amount of the project and the amount of the project.

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DETAILED SPECIFICATIONS
PROJECT 11857
"ANNUAL CONTRACT 2013-2014 UTILITIES RESTORATION"(RENEWAL)

GENERAL: The work consists of furnishing all labor, material, equipment and incidentals necessary for the construction of the contract items indicated by the Proposal on streets, rights-of-way and City-owned property **and other emergency utility restoration services that may be identified. Also under emergency circumstances work orders may not be as defined, specific scope may only be identified afterwards.** All work shall be in accordance with the City's CONSTRUCTION STANDARDS AND SPECIFICATIONS, except where stated otherwise herein.

All work shall be scheduled through the Office of the City Engineer. An official Engineering Division notification form will be given to the Contractor containing the date, time, location sketch, and amount of work to be done. This form or a verbal request, (with the form to follow) will be the authorization to start work. The Contractor shall commence each authorized portion of work within ten (10) working days of notification. Upon notification and prior to commencing work, the Contractor shall indicate to the Engineer the number of working days that will be required for the specific amount of work ordered (unless the notification form states the number of working days to be allowed.) The work shall be completed within the number of working days agreed upon between the Engineer and Contractor, subject to extensions allowed by the Engineer due to unfavorable weather or other allowable causes substantiated by the Contractor. Failure to complete the work of any one work order notification shall subject the Contractor to the liquidated damages provision of the General Conditions.

The quantities of work in the Proposal are a rough approximation only. The total quantities of work to be included in this contract and actually performed may vary widely depending upon the work that will be authorized by the City during the period of this contract.

CONTRACT DATE: This contract shall run for one (1) year, commencing on May 17, 2013 to May 17, 2014. All work orders issued before the actual termination date must be completed under this contract.

CONTRACTOR EXTENSION: This is the final of two one-year contract extension.

CONTRACTOR EXPERIENCE: Contractor shall have been doing underground pipeline (Engineering Contractor Class 1A License) for a minimum of five (5) years. The qualifier for the Contractor's firm must be an officer or principal of that firm. In addition, Contractor shall have three (3) years experience working on public agency projects.

The work anticipated under this contract occasionally involves working in difficult ground conditions, involving deep excavations, high water table, well-pointing etc. The successful contractor must be able to show experience with pressure pipe and gravity sewer work in similar type conditions. Contractor must also have successfully completed permitted work not only in roads under local jurisdictions but also in county and state jurisdictions.

SPECIFICATIONS: All work shall be done in accordance with GENERAL CONDITIONS, except where noted otherwise in these detailed specifications.

REMOVAL OF PIPE: Contractor shall excavate down to the existing pipe with a backhoe; however, sections of pipe shall be removed by hand excavation around the pipe. Special care shall be used to prevent damage to existing sections of pipe.

MOBILIZATION AND DEMOBILIZATION: Work under Item 1A shall include moving of equipment on and off job, providing sanitary facilities, barricades, insurance and bonds. A mobilization and demobilization will be allowed for each repair location except for any adjacent repairs. (Adjacent repairs shall be defined as those repairs within 500-feet of each other). Contractor shall start work within ten (10) working days after notification of repair through issuance of a work order.

EMERGENCY MOBILIZATION: Work under Item 1B shall include all work identified in the above section; however, Contractor shall start work within 24-hours of notification of emergency repair.

WELL POINT SYSTEM: Work under Item 2A shall include well point pump, header pipe and points installed on both sides of pipe ditch, and discharge pipe to drainage structure.

When header pipe and points are required for a distance greater than 40-feet of excavation, Contractor shall be paid under Item 2B. Extension shall mean on both sides; i.e., 10-foot header pipe and points each side paid for as 1-10 foot increase. **NOTE: Additional header lengths must be 5-foot or greater beyond the 10-foot increment to count as an additional 10-foot increase.**

BY-PASS PUMP: Contractor shall provide all required pipe or hose, plugs and pump to re-route wastewater or storm water around repair location during construction.

On sewer lines with minimum flow, as determined by the City, the upstream manhole may be plugged and wastewater pumped out by the Public Services Department's vacuum truck.

CONNECTION TO EXISTING PIPE: Contractor and Inspector shall visually check the existing pipeline (minimum 20') to determine physical condition. The Contractor shall provide a lamp for this inspection. No pipe shall be connected to which has a crack or any damage. The existing pipe shall be cut with saw or pipe cutter. After the existing pipe is cut and cleaned off, Contractor and Inspector shall check condition of pipe and adjacent pipe for any damage prior to making connection.

Elevation of existing pipe shall be checked before making connection.

The new pipe (C-900 plastic 150 psi for gravity sanitary sewers and laterals) and existing pipe shall be connected by use of a Fernco or Atlas coupling with stainless steel shear band.

The upstream existing pipe to be checked for damage prior to connection (as per downstream end). Upstream connection shall be made so that gap between pipe ends is less than 1/2-inch.

REPLACE EXISTING SANITARY SEWER MAIN: **Item 4A** Shall be used for the repair and replacement of existing sanitary sewer 8" or 10" diameter. Contractor shall remove (carefully) existing vitrified clay or other pipe and replace with 8-inch or 10-inch diameter C-900 150 psi rated PVC. New pipe shall be laid on Type 1 bedding unless soil conditions require Type 2 or 2A foundation (see Items 5A and 5B).

The ends of the new pipe shall be connected to existing pipe with Atlas or Fernco couplings with stainless steel shear band. Where pipe connects into manhole, Item 6 will be paid.

Pipe repair under Item 4A may include replacement of up to 30-feet of pipe, PLUS up to 5-feet on either end, or both ends, to enable connection to good pipe (i.e., a total length of 40-feet of pipe may need to be removed and replaced under a single repair under Item 4A). Item 4B will be paid for main line pipe replacement beyond 40-feet (i.e., 30-feet plus 5-feet on each end).

Pipe replacement shall be paid for under Items 4A, 4B, 4C and 4D based on the requirements and depth of the repair.

When ground elevation is higher than +6.5 elevation, then Item 4C will be added in addition to Items 4A and 4B for gravity sewer mains (i.e., not laterals).

Should the gravity sewer main be 12-inch or 15-inch in diameter, then Item 4D (i) or (ii) shall be paid in addition to Items 4A, 4B and 4C.

LATERALS: Item 4A shall be used for the installation of new laterals. It shall include all materials, wye (or tee), bends, and 6-inch lateral pipe. Item 7B shall be paid for extra distance of lateral line beyond 40-feet. Well point system, if required, shall be paid under Item 2A.

Items 4A will be used for the repair or replacement or relocation of an existing lateral stack or lateral line not otherwise associated with a sanitary sewer repair. Repairs under 4A could require excavation to the main, and removal of a section of the main to re-establish the connection of the lateral. Cost of this item shall include excavation of lateral stack/lateral line, replacing damaged pipe and fittings with new C-900, Class 150 pipe, fittings, Atlas couplings (or equal) and compacted backfill. If removal of section of the main is required, invert elevation of the main will be used as a basis of payment. Otherwise, invert of lateral at tie-in point will be used as a basis of payment.

Where existing laterals are located within a repair location, they shall be replaced. **Item 7A shall be used for payment for replacement of laterals within an existing repair area (i.e., excavation due to other repairs).** A new wye or tee shall be installed in the main gravity sewer. The lateral line shall be installed so that it makes a maximum angle of 45° with the horizontal plane. Where existing lateral is a stack connection, the lateral shall be removed or re-laid to less than 45° angle. Items 7A shall include all materials, wye (or tee), bends, 6-inch lateral pipe and coupling to reconnect to existing lateral line. Normal lateral connection shall be up to 40-feet from centerline of gravity main as measured horizontally. Item 7B will be paid for extra distance of lateral line where required to extend repair to get proper slope.

Existing lateral lines damaged by the Contractor will not be paid for under Item 4 or 7. The Contractor shall use care in removing existing lateral line when repairing main line.

TYPE 2 AND 2A FOUNDATION: See Section 28 of CONSTRUCTION STANDARDS AND SPECIFICATIONS where field conditions require Type 2 or 2A foundation shall be installed under new pipeline. Cost for Type 2 or 2A foundation shall be paid for under Items 5A and 5B.

UNSUITABLE MATERIAL REPLACEMENT: Item 9 is to compensate the Contractor for removal and disposal of muck and other unsuitable material (at City's determination) and also for the supply and installation of clean fill. The Contractor may utilize select on-site excavated material as fill, if determined suitable by the City.

The Contractor shall be aware that the basis of payment for the work in Item 9 will be the volume of fill hauled-in and installed by the Contractor and the unit price bid in the proposal.

The Contractor and the project inspector shall, in advance, agree upon the capacity of each truck delivering fill. The Contractor shall provide the inspector with tickets to substantiate the quantities submitted for payment.

12-INCH LIMEROCK: Contractor shall square off existing limerock base and stabilized sub-base and install 12-inch thickness of limerock. Said limerock to be installed in 6-inch compacted lifts. Limerock base to be paid for as measured in-place.

ASPHALTIC CONCRETE: Contractor shall saw-cut existing asphalt 1-foot behind new lime rock base. A minimum 1-1/2-inch-thick (or up to 2" if in Collector, County or State road, or if required to match existing pavement) asphaltic concrete surface shall be installed over the trench area between saw-cut existing asphalt. See Detail P-4.3 in City Construction Standards and Specifications. Item 12 shall also include application of prime coat or tack coat as appropriate.

SHEET PILING: Payment for sheet piling (Z piles) shall be based on square foot of contact area within the supported trench/excavation. Contractor will not be paid for un-driven sheet-piling above the top level of the excavation.

FLOWABLE FILL: Flowable fill is an alternative for general backfill or compacted granular fill, to be used dependent on site conditions, as directed by the Engineer. Fill shall be excavatable type, maximum 100 PSI, 28 day compressive strength and shall conform to FDOT Standard Specifications for Road and Bridge Construction, Section 121. Payment shall be based on measured in-place volume.

SOD: On one-way or dead-end roadways, Contractor shall be paid under Item 15 or Item 16 for sod damaged and replaced at the direction of the City due to necessary routing of traffic over sodded swale areas. Swale areas damaged by the Contractor's operations shall not be paid for under Item 15 or Item 16. St. Augustine "Floritam" shall be used in irrigated areas or when required to match existing turf; Bahia sod shall be used in non irrigated areas.

ITEM 21 is to reimburse the contractor for work done by a five (5) men crew utilizing typical trench excavation and pipe repair equipment to perform miscellaneous repair and/or replacement of pipe conditions not otherwise specified in contract items, when conditions are beyond the capacity of the City crews.

Schedule of work performance and manpower assigned under this item shall be agreed in advance of work performance. It shall be the contractor's responsibility to notify the City's Engineering Inspector prior to the performance of any facet of work under this item. Separate mobilization time will not be paid under this item – rather, any costs associated with mobilization of forces to any work site, as well as overhead, profit, cost for tools and any other incidentals associated with completion of the task shall be included in the rate bid per **day** under this item. **A “day” is herein defined as seven (7) to nine (9) hours; if work takes less than seven (7) hours, pay shall be prorated hourly using eight (8) hours to calculate hourly rate.** When available pipe and other materials required for this item may be furnished by the City. When not available from the City, special materials and other extraordinary costs will be reimbursed to the contractor in accordance with section 5-48 through 5-51, of the City Construction Standards and Specifications.

Minimum time period for calculation of payment for work at any one location shall be half day, unless otherwise negotiated.

It is up to the contractor to determine specific means and methods and crew skills to perform the task at hand and it is also the contractor's responsibility to decide exact equipment requirements in general conformance with the parameters described in Item 21 for the same task.

This item shall be used only at the discretion of and when authorized in advance by the City.

RESTORATION ALLOWANCE: There are locations where sewer mains have been installed along easements between private properties, and the Contractor must access across private property to perform repairs in the easement. Item 22 is to compensate the Contractor for restoration and work directly associated to repairs in easements, or similar locations requiring specialty restoration not otherwise provided for in other contract items.

This item includes compensation to the Contractor for restoration directly associated to repairs being performed and is not included in other items.

All work and costs must be agreed upon, between the Contractor and the Engineer or the Project Inspector, prior to starting.

PERMIT ALLOWANCE: Item 23 is to reimburse the Contractor for permit fees paid to each governing agency by the Contractor. Only actual permit fees, not administrative or personnel costs are eligible for reimbursement under this item.

The Contractor shall be responsible to obtain all permits required to perform the work.

The Contractor shall be responsible to provide the cost estimate which is currently used to determine the permit fees.

The Contractor must submit original receipts in order to obtain reimbursement.

MAINTENANCE OF TRAFFIC: Contractor shall provide required barricades and detour signs around project location. Suitable barricades and lights shall be placed by the Contractor to protect the public based on a Maintenance of Traffic plan certified by an ATSSA technician for all repairs. For repairs on roadways classified as local, residential roads, payment for maintenance of traffic shall be made under Item 14 on a lump sum basis. For all other repairs on roadways classified as collector or above, considered major roads, maintenance of traffic shall be in accordance with a Maintenance of Traffic Plan certified by an ATSSA technician and approved by the appropriate jurisdictional authority – City, County, State – with a payment made under Item 24.

Item 24 is to reimburse the Contractor for costs associated with maintenance of traffic on major roadways – considered to be roadways of collector or higher classification. In such cases, the Contractor shall propose a Maintenance of Traffic Plan certified by an ATSSA technician, for review and approval by the Engineer and the authority having jurisdiction over that roadway (i.e., the City, County, or State). Reimbursement will be based on the actual cost of the MOT implementation as substantiated by written receipts, times a factor of 1.15.

Item 25 is to reimburse the contractor when the work is not covered under the proposal line-items portion of this contract. Time and material shall include:

- (a) Direct labor costs, including fringe benefits such as workers compensation, social security, vacation pay;
- (b) The actual cost of materials incorporated into the works, including contractor paid transportation charges, and actual cost of supplies reasonably needed for performing the work;
- (c) Equipment costs (other than small tools). Costs shall be the actual time on the job. Rates shall be per the latest edition of the "Rental Rate Blue Book for Construction Equipment";
- (d) Indirect costs, expenses and profit. A mark-up of 15% on the above cost centers.

The same limitations apply to subcontractor work. The contractor will be allowed a markup of 10% on the first \$50,000 and a markup of 5% on any amount over \$50,000, on any subcontract work directly related to the work.

Work performance, manpower, usage of subcontractors, and estimated costs assigned under this item shall be agreed upon in advance. It shall be the contractor's responsibility to notify the City's Engineering Inspector prior to the performance of any facet of work under this item.

The contractor shall provide documentation in support of claims for reimbursement, including receipts, invoices, employee logs, payroll information, etc.

This item shall be used only at the discretion of and when authorized in advance by the City.

Item 26 is to reimburse the contractor for storm drainage restoration work which is incidental to other utilities restoration work under this contract. It includes replacing and repair of existing RCP, CMP and HDEP pipe, temporary plugs, restoration or replacement of catch basins or storm water manholes. Payment shall be on time and material basis as described under item 25.