

AGREEMENT

Between

City of Fort Lauderdale

and

Burkhardt Construction, Inc.

For

Construction Management at Risk Phase I Preconstruction Services

for Breakers Ave. Streetscape Improvements Project

THIS IS AN AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_,  
by and between:

City of Fort Lauderdale, a Florida municipality, (hereinafter  
referred to as "CITY")

and

Burkhardt Construction, Inc., a Florida Corporation referred  
to as "CONSTRUCTION MANAGER."

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida at its  
meeting of \_\_\_\_\_, 20\_\_ authorized by motion the execution of this  
Agreement between CONSTRUCTION MANAGER and CITY authorizing the  
performance of Construction Management at Risk Phase I Preconstruction Services for  
Breakers Avenue Streetscape Improvements Project, RFQ No.12309-296 (the  
"Agreement"); and

WHEREAS, the CONSTRUCTION MANAGER is willing and able to render  
professional services for such project for the compensation and on the terms hereinafter  
set forth;

NOW, THEREFORE, in consideration of the mutual covenants, agreements,  
terms, and conditions contained herein, the parties hereto, do agree as follows:

#### ARTICLE 1 DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and  
provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are  
assumed to be true and correct and are therefore agreed upon by the parties.

- 1.1 AGREEMENT: Means this document between the CITY and CONSTRUCTION  
MANAGER dated \_\_\_\_\_, 20\_\_ and any duly authorized and executed  
Amendments to Agreement.
- 1.2 BASIC SERVICES: Services performed by CONSTRUCTION MANAGER for  
authorized scope of work for the Project phase described in this Agreement and  
listed in Exhibit "A", Scope of Services.
- 1.3 CHANGE ORDER: A written order to the CONSTRUCTION MANAGER approved  
by the CITY authorizing a revision to this agreement between the CITY and the  
CONSTRUCTION MANAGER that is directly related to the original scope of work  
or an adjustment in the original contract price or the contract time directly related  
to the original scope of work, issued on or after the effective date of this Agreement.  
The CONSTRUCTION MANAGER may review and make recommendations to the

CITY on any proposed Change Orders, for approval or other appropriate action by the CITY.

- 1.4 CITY: The City of Fort Lauderdale, a Florida municipality.
- 1.5 CITY MANAGER: The City Manager of the City of Fort Lauderdale, Florida.
- 1.6 COMMISSION: The City Commission of the City of Fort Lauderdale, Florida, which is the governing body of the CITY government.
- 1.7 CONSTRUCTION COST: The total construction cost to CITY of all elements of the Project proposed by the CONSTRUCTION MANAGER.
- 1.8 CONSTRUCTION COST LIMIT: A maximum construction cost limit established by the CITY defining the maximum budget amount to which the final construction documents should be designed so as not to exceed. CONSTRUCTION MANAGER will attempt to submit a GMP Proposal within this limit and may suggest lower cost options to achieve this goal.
- 1.9 CONSTRUCTION DOCUMENTS: Those working drawings and specifications and other writings setting forth in detail and prescribing the work to be done, the materials, workmanship and other requirements for construction of the entire Project, including any bidding information.
- 1.10 CONSTRUCTION STANDARDS: Generally, the construction standards shall be as defined in the CONSTRUCTION STANDARDS AND SPECIFICATIONS, Office of the City Engineer, City of Fort Lauderdale, January 1982, including any revisions. City's Public Works Director or designee may modify or establish new standards to suit the requirements of a specific project.
- 1.11 CONSTRUCTION MANAGER Burkhardt Construction, Inc. which has been selected by the CITY to perform pre-construction services pursuant to this Agreement.
- 1.12 CONSULTANT: The Architect(s) or engineer(s) who has/have contracted with the CITY to provide professional services to prepare the Plans and Specifications for this Project.
- 1.13 CONTRACT ADMINISTRATOR: The Public Works Director of the CITY, or his designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.
- 1.14 DEPARTMENT DIRECTOR: The Director of the Public Works Department for the City of Fort Lauderdale.
- 1.15 GUARANTEED MAXIMUM PRICE (GMP) CONSTRUCTION CONTRACT: The maximum amount CITY is obligated to pay Contractor for the complete performance of the Work and construction of the Project, which amount shall

include, but is not limited to, all profit, overhead, on-site and off-site conditions (known and unknown), and administrative costs. The GMP is made up of the sum of the following Contract Price Elements:

- A. Pre-Construction Services Cost
- B. Direct Construction Cost
- C. General Conditions Cost
- D. Fixed Fee
- E. Owner's Allowance Account
- F. Construction Contingency

- 1.16 GUARANTEED MAXIMUM PRICE PROPOSAL: A final guaranteed GMP proposed prepared by the CONSTRUCTION MANAGER during the Pre-Construction Phase of the Project, based upon the final detailed Construction Documents of the Project, as a proposal to perform the work as a Construction Manager at Risk during the construction phase.
- 1.17 PLANS AND SPECIFICATIONS: The documents setting forth the final design plans and specifications of the Project, including architectural, civil, structural, mechanical, electrical, communications and security systems, materials, lighting equipment, site and landscape design, and other essentials as may be appropriate, all as approved by CITY.
- 1.18 PRE-CONSTRUCTION PHASE: The phase of the Project where CONSTRUCTION MANAGER provides the pre-construction services described in Exhibit "A" while the CONSULTANT completes the Plans and Specifications.
- 1.19 PROJECT: An agreed scope of work for accomplishing the specific plan and development of the Project. The services to be provided by the CONSTRUCTION MANAGER shall be as defined in this Agreement for the Pre- Construction Phase. After the submission of CONSTRUCTION MANAGER's GMP Proposal, the CITY may accept the GMP Proposal and award a contract for the Construction Phase in the form of a Construction Management Agreement.
- 1.20 PROJECT MANAGER: The designee of the Contract Administrator having day- to-day administrative and managerial responsibility for the Project
- 1.21 RESIDENT PROJECT REPRESENTATIVE: Individuals or entities selected, employed, compensated by and directed to perform services on behalf of CITY, in monitoring the Pre-Construction and Construction Phases of the Project to completion.
- 1.22 TIME OF COMPLETION: Time in which the entire scope of work shall be completed.

## ARTICLE 2

### PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties hereto, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions of this Agreement which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 Pursuant to Section 287.055, Florida Statutes, CITY has formed a Committee to evaluate the CONSTRUCTION MANAGER's statement of qualifications and performance data to ensure that the CONSTRUCTION MANAGER has met the requirements of the Consultants' Competitive Negotiation Act, as set forth in Section 287.055, Florida Statutes, and has selected CONSTRUCTION MANAGER to perform services hereunder.

## ARTICLE 3

### THE WORK

- 3.1 The CONSTRUCTION MANAGER shall perform Pre-Construction Management Services as described in Exhibit "A", Scope of Services, attached hereto and incorporated herein. CONSTRUCTION MANAGER shall provide all services set forth in Exhibit A. CONSTRUCTION MANAGER shall provide all services set forth in Exhibit "A" including all necessary, incidental and related activities and services required by the Scope of Services and contemplated in CONSTRUCTION MANAGER's level of effort. CONSTRUCTION MANAGER will perform the Services in accordance with standard industry practices, with the care, knowledge and skill expected of similar CONSTRUCTION MANAGER's. No other warranties, express or implied are made or intended.
- 3.2 CITY and CONSTRUCTION MANAGER acknowledge that the Scope of Services does not delineate every detail and minor work tasks required to be performed by CONSTRUCTION MANAGER to complete the Project. If, during the course of the performance of the services included in this Agreement, CONSTRUCTION MANAGER determines that work should be performed to complete the Project which is in the CONSTRUCTION MANAGER's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONSTRUCTION MANAGER shall notify Contract Administrator and obtain written approval by the CITY in a timely manner before proceeding with the work. If CONSTRUCTION MANAGER proceeds with said work without notifying the Contract Administrator, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by CITY to perform the work. Performance of work by CONSTRUCTION MANAGER outside the originally anticipated level of effort without prior written CITY approval is at CONSTRUCTION MANAGER's sole risk.

- 3.3 CITY and CONSTRUCTION MANAGER acknowledge that Basic Services described in Exhibit "A" are included in the fee agreed upon. The CITY and CONSTRUCTION MANAGER may negotiate additional scopes of services, compensation, time of performance and other related matters for future phases of Project. If CITY and CONSTRUCTION MANAGER cannot contractually agree, CITY shall have the right to immediately terminate negotiations at no cost to CITY and procure services for future Project phases from another source.

#### ARTICLE 4 GENERAL PROVISIONS

- 4.1 Generally. CONSTRUCTION MANAGER shall perform and provide the Services and the Work required by, or reasonably implied by or inferable from, the Contract Documents, and shall pay for all labor, supervision, materials, supplies, furnishings, equipment and things required by the Contract Documents. In performing its duties hereunder, CONSTRUCTION MANAGER shall owe a duty of care consistent with its role as a CONSTRUCTION MANAGER while performing preconstruction services.
- 4.2 Standard of Care. CONSTRUCTION MANAGER shall perform the Work at a level, and be judged by a standard of care that is consistent with the standards and quality prevailing among first-rate, nationally recognized construction management and general contracting firms of superior knowledge, skill and experience engaged in projects of similar size and complexity. CONSTRUCTION MANAGER shall carry out and complete the Work in an efficient, economical and timely manner, as expeditiously as is consistent with the level of skill and care required hereby and the interests of CITY, and in strict accordance with the Contract Documents.
- 4.3 CONSTRUCTION MANAGER shall include CITY's specific project number as part of the heading on all correspondence, invoices and the GMP Proposal. All correspondence shall be directed specifically to the Contract Administrator.
- 4.4 Communications in Writing. All communications relating to the Project between CONSTRUCTION MANAGER and the CITY shall be in writing, or as applicable, shall be confirmed in writing.
- 4.5 Duty to Correct. CONSTRUCTION MANAGER shall promptly correct any errors, omissions, deficiencies or conflicts in its Work, as defined in Article 3, at its own cost and without additional compensation or reimbursement, and CONSTRUCTION MANAGER shall not be compensated or reimbursed for performing any services necessitated by its failure to perform in strict accordance with the Contract Documents.
- 4.6 Standards and Codes. Wherever references are made in the Contract to standards or codes in accordance with which Work is to be performed or tested, the edition or revision of the standards or codes current on the effective date of this Contract shall apply, unless otherwise expressly set forth. Unless otherwise specified, reference to such standards or codes is solely for implementation of the technical portions of such standards and codes. In case of conflict among any

referenced standards and codes, or between any referenced standards and codes, which are later revised during the course of construction, the Owner will determine which shall govern. Construction Manager acknowledges that compliance with code requirements represents minimum standards for construction, and is not evidence that the Work has been completed in accordance with the Contract Documents.

## ARTICLE 5 PRIORITY OF PROVISIONS

- 5.1 The Contract Documents are intended to include all items necessary for the proper execution and completion of the work by CONSTRUCTION MANAGER. Any labor, services, materials, supplies, equipment or documentation that may reasonably be inferred from the Contract Documents or trade usage from prevailing custom as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to CITY. The Contract Documents are complementary, and wherever possible the provisions of the Contract Documents shall be construed in such manner as to avoid conflicts between provisions of the various Contract Documents. In the event of any inconsistency in the Contract Documents, where such inconsistency is not clarified by change order, addendum or amendment, the Contract Documents shall be construed according to the following priorities:

**First priority:** Specific written direction from the City Manager (or designee)

**Second priority:** Approved Change Orders, Addendums or Amendments to all related documents.

**Third priority:** Specifications (quality) and Drawings (location and quantity) of CONSTRUCTION MANAGER.

**Fourth priority:** This AGREEMENT

**Fifth priority:** City of Fort Lauderdale Request for Qualifications 12309-296, incorporated herein by reference.

**Sixth priority:** CONSTRUCTION MANAGER'S response to City of Fort Lauderdale Request for Qualifications 12309-296, incorporated herein by reference.

- 5.2 Anything shown on the drawings and not mentioned in the specifications, or mentioned in the specifications and now shown on the drawings, shall have the same effect as if shown or mentioned respectively in both. In the event of a conflict among the Contract Documents, the latest, most stringent, and more technical requirement(s), including, but not limited to, issues of quantities or cost of the Work shall control.

Reference to standard specifications, manuals, rules, regulations, ordinances, laws or codes of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, rule, regulation, ordinance, law or code in effect at the time of permit submittal.

ARTICLE 6  
TERM OF AGREEMENT; TIME FOR PERFORMANCE

- 6.1 CONSTRUCTION MANAGER shall perform the basic services described in Exhibit “A” within the time periods specified in a mutually agreed upon Project schedule, developed before commencement of work and made a part of this Agreement. The Project schedule, once complete, shall be automatically incorporated into this Agreement; said time periods shall commence from the date of the Notice to Proceed for such services.
- 6.2 Prior to beginning the performance of any services under this Agreement, CONSTRUCTION MANAGER must receive a Notice to Proceed and a purchase order. CONSTRUCTION MANAGER must receive written approval from the Contract Administrator prior to beginning the performance of services in any subsequent phases of the Agreement. Prior to granting approval for CONSTRUCTION MANAGER to proceed to a subsequent phase, the Contract Administrator may, at his or her sole option, require CONSTRUCTION MANAGER to submit itemized deliverables for the Contract Administrator’s review.
- 6.3 In the event CONSTRUCTION MANAGER is unable to complete the above services because of delays resulting from untimely review by CITY or other governmental authorities having jurisdiction over the Project, or for the untimely delivery of updated preliminary or final Plans and Specifications by CONSULTANT, and such delays are not the fault of CONSTRUCTION MANAGER, or because of delays which were caused by factors outside the control of CONSTRUCTION MANAGER, CITY shall grant a reasonable extension of time for completion of the services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of the CONSTRUCTION MANAGER to notify CITY promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform CITY of all facts and details related to the delay.
- 6.4 The time for the performance of services described in Exhibit “A,” Scope of Services and supplemental Change Orders shall be negotiated by the CITY and the CONSTRUCTION MANAGER as the services are requested and authorized by the CITY.
- 6.5 The Term of this Agreement shall be limited to the time required to complete the Basic Services of the Project and any approved Change Orders for additional services.
- 6.6 At or before the completion date for this contract, CONSTRUCTION MANAGER, following completion of cost estimating, value engineering, and other services (as set forth in subsequent sections of this Agreement and Exhibit “A” – Scope of Services) will tender to the CITY a written Guaranteed Maximum Price (GMP) for final completion of this Project. Construction Manager represents that the GMP embodies the total cost for a complete and functioning Project.



The CITY, by and through the Contract Administrator, Project Manager, and/or other CITY personnel, will have the opportunity to negotiate the amount of the GMP with the CONSTRUCTION MANAGER. In the event a GMP, which is satisfactory to CITY personnel, in their reasonable discretion, is not agreed upon in writing, the CITY reserves the right to terminate this Contract for convenience and the CONSTRUCTION MANAGER will immediately tender all documents, in accordance with applicable provisions of this agreement. The CONSTRUCTION MANAGER shall have no recourse from this termination and the CITY shall take such documents, as defined, in 11.1 herein. Conditions precedent to a Phase II contract for this Project are the satisfactory completion of Phase I and an agreed upon GMP. If a GMP is agreed to by the CONSTRUCTION MANAGER and CITY, a separate (Construction) agreement will be submitted to City Commission for approval.

## ARTICLE 7 COMPENSATION AND METHOD OF PAYMENT

### 7.1 AMOUNT AND METHOD OF COMPENSATION

#### 7.1.1 Not To Exceed Amount Compensation

CITY agrees to pay CONSTRUCTION MANAGER as compensation for performance of basic services as related to Exhibit "A" required under the terms of this Agreement up to a Not to Exceed Amount of **Seventy-Six Thousand, Seven Hundred and Ninety Dollars** (\$76,790.00). It is agreed that the method of compensation is that of "Not to Exceed Amount" which means that CONSTRUCTION MANAGER shall perform all services set forth in Exhibit "A" for total compensation in the amount of or less than that stated above. The total hourly rates payable by CITY for each of CONSTRUCTION MANAGER's employee categories are shown on Exhibit "B."

Except as required and provided for by the Florida Local Government Prompt Payment Act, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Contractor waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

A not to exceed proposal shall be accompanied by the CONSTRUCTION MANAGER's estimate. The estimate shall detail the direct labor costs by categories of employees, work hours, and hourly rate; overhead; direct non-salary expenses including Reimbursables; and profit, or as required by individual Task Order.

## 7.2 METHOD OF BILLING

### 7.2.1 Not To Exceed Amount Compensation

CONSTRUCTION MANAGER shall submit billings, which are identified by the specific project number on a monthly basis in a timely manner for all salary costs and Reimbursables attributable to the Project. These billings shall identify the nature of the work performed for each phase, subtask, deliverable and item identified in the Exhibit "A" Scope of Services or Task Order, the total hours of work performed and the employee category of the individuals performing same. Billings shall itemize and summarize Reimbursables by category and identify same as to the personnel incurring the expense and the nature of the work with which such expense was associated. Where prior written approval by Contract Administrator is required for Reimbursables, a copy of said approval shall accompany the billing for such Reimbursables. The statement shall show a summary of salary costs with accrual of the total and credits for portions paid previously. CONSTRUCTION MANAGER's Subconsultant and Subcontractor fees must be documented by copies of invoices or receipts, which describe the nature of the expenses and contain a project number or other identifier, which clearly indicates the expense, as identifiable to the Project. Except for meals and travel expenses, it shall be deemed unacceptable for the CONSTRUCTION MANAGER to modify the invoice or receipt by adding a project number or other identifier. Internal expenses must be documented by appropriate CONSTRUCTION MANAGER's cost accounting forms with a summary of charges by category. When requested, CONSTRUCTION MANAGER shall provide backup for past and current invoices that records hours and salary costs by employee category and CONSTRUCTION MANAGER's Subconsultant and Subcontractor fees on a task basis, so that total hours and costs by task may be determined.

## 7.3 METHOD OF PAYMENT

- 7.3.1 CITY shall pay CONSTRUCTION MANAGER in accordance with the Florida Prompt Payment Act. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Contract Administrator.
- 7.3.2 CITY will review CONSTRUCTION MANAGER's invoices and, if inaccuracies or errors are discovered in said invoice, CITY will inform CONSTRUCTION MANAGER within ten (10) working days by fax and/or by email of such inaccuracies or errors and request that revised copies of all such documents be re-submitted by CONSTRUCTION MANAGER to CITY.
- 7.3.3 Payments shall be made by CITY to CONSTRUCTION MANAGER using a CITY P-Card (MasterCard or Visa credit card).

ARTICLE 8  
AMENDMENTS AND CHANGES IN SCOPE OF SERVICES

- 8.1 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written Amendment prepared with the same formality as this Agreement and executed by the CITY and CONSTRUCTION MANAGER.
- 8.2 CITY or CONSTRUCTION MANAGER may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under a Change Order. Such changes must be contained in a written amendment, executed by the parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of the Change Order including the initiation of any additional services. CITY shall compensate CONSTRUCTION MANAGER for such additional services as provided in Article 7.
- 8.3 In the event a dispute between the Contract Administrator and CONSTRUCTION MANAGER arises over whether requested services constitute additional services and such dispute cannot be resolved by the Contract Administrator and CONSTRUCTION MANAGER, such dispute shall be promptly presented to the City Manager for resolution. The City Manager's decision shall be final and binding on the parties for amounts in the aggregate under \$100,000 per project. In the event of a dispute in an amount over \$100,000, the parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then upon notice to the other, either party may commence litigation to resolve the dispute in Broward County, Florida. Any resolution in favor of CONSTRUCTION MANAGER shall be set forth in a written document in accordance with Section 8.2 above. During the pendency of any dispute, CONSTRUCTION MANAGER shall promptly perform the disputed services.

ARTICLE 9  
CONSTRUCTION MANAGER'S RESPONSIBILITIES

- 9.1 The CONSTRUCTION MANAGER, following the CITY's approval of the GMP Proposal, shall, when so directed and authorized by the CITY, through the completion of a Construction Agreement, obtain bids and award subcontracts for the construction of the Project, as specified in more detail in a separate Construction Agreement. CONSTRUCTION MANAGER shall review and analyze the bids and shall make a recommendation for any award based on CITY's Purchasing Ordinance.
- 9.2 Should the GMP Proposal exceed the Final Statement of Probable Construction the CITY, shall meet with the CITY's representatives and work to discuss additional options to reduce costs to bring the GMP Proposal price within the Final Statement of Probable Construction Costs. Should the GMP Proposal exceed the Final Statement of Probable Construction Costs by 10% or more, CONSTRUCTION

MANAGER shall, at the CITY's direction, meet with CITY and its CONSULTANTS to redesign said Project and/or work with the CITY to reduce the costs of the Work to be included within the GMP Proposal to be within the Final Statement of Probable Construction Costs at no additional expense to the CITY. If negotiations between the CITY and the CONSTRUCTION MANAGER have not commenced within three months after completion of the final design phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost Limit may be adjusted in accordance with the applicable change in the Construction Cost Index for Twenty Cities from the date of completion of the final design phase and the date on which proposals are sought, as published monthly in "Engineering News Record". If each Project scope and design is expanded by the CITY after the CONSTRUCTION MANAGER provides its GMP Proposal based upon the final Plans and Specifications, the CONSTRUCTION MANAGER shall not be responsible for any redesign without compensation.

- 9.3 The CONSTRUCTION MANAGER shall provide the CITY with a list of recommended, prospective bidders as discussed more in a Construction Agreement.
- 9.4 The CONSTRUCTION MANAGER shall attend all pre-bid conferences.
- 9.5 The CONSTRUCTION MANAGER shall recommend any addenda, through the Contract Administrator, as appropriate to clarify, correct, or change bid documents.
- 9.6 If pre-qualification of bidders is required as set forth in the request for proposal, CONSTRUCTION MANAGER shall develop qualification criteria, review qualifications and recommend acceptance or rejection of the bidders. CONSTRUCTION MANAGER shall evaluate proposals and proposers, and make recommendations regarding any award, and awards shall be subject to approval by the CITY.
- 9.7 Construction Manager shall not establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on lands owned or controlled by Owner. Construction Manager shall not allow its employees to engage in any commercial activities on the site.
- 9.8 Construction Manager has the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, staging, parking, disposal, handling and storage of materials; availability, quantity and quality of labor, water and electric power; availability and condition of roads; climatic conditions, location of underground utilities as depicted on Contract documents, and through verification with local utility companies and the Owner, physical conditions of existing construction, topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials to be encountered; the nature of the ground water conditions; equipment and facilities needed preliminary to and during

performance of the Contract; and all other matters which would be reasonably known to a licensed general contractor with expertise in streetscape and related infrastructure construction as in any way affecting performance of the Contract, or the cost associated with such performance. The failure of Construction Manager to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully and timely performing the Contract.

- 9.9 The Construction Manager shall, at its expense, as requested by Owner, attend any and all meetings called by Owner to discuss the Work under the Contract. Such meetings shall be conducted and recorded by the Owner with typed minutes of each meeting distributed to all attendees.

#### ARTICLE 10 CITY'S RESPONSIBILITIES

- 10.1 CITY shall assist CONSTRUCTION MANAGER by placing at CONSTRUCTION MANAGER's disposal all information CITY has available pertinent to the Project including all updated Plans and Specifications prepared by the CONSULTANTS, test reports obtained by the CITY related to the Project, and previous reports and any other data relative to design or construction of the Project in CITY's possession.
- 10.2 CITY shall arrange for access to, and make all provisions for, CONSTRUCTION MANAGER to enter upon public and private property as required for CONSTRUCTION MANAGER to perform its services.
- 10.3 CITY shall review the itemized deliverables/documents identified per Agreement, Scope of Services, and any approved Change Orders.
- 10.4 CITY shall give prompt written notice to CONSTRUCTION MANAGER whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of CONSTRUCTION MANAGER's services or any defect in the work of the Contractor.
- 10.5 The CITY shall make decisions on all claims regarding interpretation of the Construction Documents, and on all other matters relating to the execution and progress of the work.
- 10.6 The CITY shall maintain a record of all Change Orders which shall be categorized according to the various types, causes, etc. that it may be determined are useful or necessary for its purpose.

ARTICLE 11  
MISCELLANEOUS

11.1 OWNERSHIP OF DOCUMENTS

Drawings, specifications, designs, models, photographs, reports, surveys and other data prepared in connection with this Agreement related to the Project are and shall remain the property of the CITY whether the Project for which they are made is executed or not, and are subject to reuse by the CITY in accordance with Section 287.055(10) of the Florida Statutes. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of this Project or on any other project without appropriate verification or adaptation. This does not, however, relieve the CONSTRUCTION MANAGER of liability or legal exposure for errors or negligent acts made on the part of the CONSTRUCTION MANAGER in connection with the proper use of documents prepared under this Agreement. This shall not limit the CITY's reuse of preliminary or developmental plans or ideas incorporated therein, should the Project be suspended or terminated prior to completion.

11.2 SUSPENSION

Owner may, at its sole option, suspend, at any time, the performance of all or any portion of Work to be performed under the Contract. Owner will notify Construction Manager of such decision, in writing. Such notice of suspension of work may designate the amount and type of plant, labor and equipment to be committed to the Work site. During the period of suspension, Construction Manager shall use its best efforts to utilize its plant, labor and equipment in such a manner as to minimize costs associated with suspension.

11.2.1 Upon receipt of any such written notice, Construction Manager shall, unless the notice requires otherwise:

1. immediately discontinue work on the date and to the extent specified in the notice;
2. place no further orders or subcontracts for material, services, or facilities with respect to suspended work other than to the extent required in the notice;
3. promptly make every reasonable effort to obtain suspension, upon terms satisfactory to Owner, of all orders, subcontracts and rental agreements to the extent they relate to performance of work suspended;
4. continue to protect and maintain the Work including those portions on which work has been suspended, and
5. take any other reasonable steps to minimize costs associated with such suspension.

11.2.2 In addition to all amounts that would otherwise be due for Work performed prior to the suspension, as compensation for such suspension, Construction Manager will be reimbursed for the following verifiable costs (without profit) and without duplication of any item, to the extent that such costs directly result from such suspension of work:

1. A standby charge to be paid to Construction Manager during the period of suspension of work which standby charge shall be sufficient to compensate Construction Manager for keeping, to the extent required in the notice, its organization and equipment committed to the Work in a standby status;
2. All reasonable costs associated with mobilization and demobilization of Construction Manager's plant, forces and equipment;
3. An equitable amount to reimburse Construction Manager for the cost of maintaining and protecting that portion of the Work upon which work has been suspended; and
4. If as a result of any such suspension of Work the cost to Construction Manager of subsequently performing Work is increased or decreased, an equitable adjustment will be made in the GMP.

11.2.3 In no event shall the Construction Manager be entitled to assert a claim for home office overhead in accordance with the Eichleay Formula, or otherwise, in the event of an Owner suspension. Upon receipt of notice to resume suspended work, Construction Manager shall immediately resume performance of the suspended work to the extent required in the notice. Any claim on the part of Construction Manager for time and/or compensation arising from suspension shall be made within twenty-one (21) calendar days after receipt of notice to resume work and Construction Manager shall submit for review a revised construction schedule. No adjustment shall be made for any suspension to the extent that performance would have been suspended, delayed, or interrupted by any Construction Manager's non-compliance with the requirements of this Contract.

### 11.3 DECLARATION OF DEFAULT

The failure of the Construction Manager a) to supply enough properly skilled workers or materials, or b) its failure to make prompt payments to subcontractors/subconsultants, or for materials or labor, or c) to obey laws, ordinances, rules, regulations or orders of public agencies having jurisdiction, or d) to comply in any way with the Contract Documents, shall be sufficient grounds for the Owner to find the Construction Manager in material default, and that sufficient cause exists to terminate the Contract for cause, and to withhold payment or any part thereof until the cause or causes giving rise to the default has/have been eliminated by the Construction Manager and approved by the Owner. If a finding of default is made by the Owner, the Construction Manager and its Surety shall remain responsible for performance of the requirements of the Contract

Documents unless and until the Owner terminates the Contract. Upon a finding of default, the Owner shall set a reasonable time, but in no event in excess of seven (7) calendar days after written notice from Owner detailing the default, within which the Construction Manager and its Surety shall eliminate the cause or causes of default. When the basis for finding of default no longer exists, the Owner shall notify the Construction Manager and its Surety, in writing, that the default has been corrected, and that the Construction Manager is no longer in default. If the Construction Manager fails to correct the default within the time allowed, the Owner, without further notice to Construction Manager or its Surety, may immediately terminate the Contract and the employment of the Construction Manager, without otherwise waiving its rights against the Construction Manager or its Surety.

#### 11.4 TERMINATION

11.4.1 Termination for Cause. It is expressly understood and agreed that the CITY may terminate this Agreement at any time for cause in the event that the CONSTRUCTION MANAGER (1) violates any provisions of this Agreement or performs same in bad faith or (2) unreasonably delays the performance of the services or does not perform the services in a timely manner upon written notice to the CONSTRUCTION MANAGER. Notice of termination shall be provided in accordance with Section 11.29. In the case of termination by the CITY for cause, the CONSTRUCTION MANAGER shall be first granted a 10-working day cure period after receipt of written notice from the CITY. In the event that the Agreement is terminated, the CONSTRUCTION MANAGER shall be entitled to be compensated for the services rendered from the date of execution of the Agreement up to the time of termination. Such compensation shall be based on the fee as set forth above, wherever possible. For those portions of services rendered to which the applicable fee cannot be applied, payment shall be based upon the appropriate rates for the actual time spent on the project. In the event that the CONSTRUCTION MANAGER abandons this Agreement or through violation of any of the terms and conditions of this Agreement, causes it to be terminated, CONSTRUCTION MANAGER shall indemnify the CITY against any loss pertaining to this termination.

All finished or unfinished documents, data, studies, surveys, maps, models, photographs and reports prepared by CONSTRUCTION MANAGER shall become the property of CITY and shall be delivered by CONSTRUCTION MANAGER to the CITY within five (5) days of CITY's request. Upon payment of such sum by CITY to CONSTRUCTION MANAGER, CITY shall have no further duties or obligations pursuant to or arising from this Agreement.

11.4.2 This Agreement may also be terminated by CITY upon such notice as CITY deems appropriate in the event City Manager or Contract Administrator determines that termination is necessary to protect the public health, safety, or welfare.



11.4.3 Notice of termination shall be provided in accordance with Section 11.27, NOTICES, except that Contract Administrator may provide a prior verbal stop work order if the Contract Administrator deems a stop work order of this Agreement in whole or in part is necessary to protect the public's health, safety, or welfare. A verbal stop work order shall be promptly confirmed in writing as set forth in Section 11.27, NOTICES.

11.4.4 Termination for Convenience. In the event this Agreement is terminated for convenience, CONSTRUCTION MANAGER shall be paid for any services performed and accepted by CITY to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 11.3 of this Agreement are provided to the CITY. Upon being notified of CITY's election to terminate, CONSTRUCTION MANAGER shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment for services which have not been performed or deemed unacceptable.

11.4.5 Termination by CONSTRUCTION MANAGER. CONSTRUCTION MANAGER shall have the right to terminate this Agreement upon substantial breach by the CITY of its obligation under this Agreement as to unreasonable delay in payment or non-payment of undisputed amounts. CONSTRUCTION MANAGER shall have no right to terminate this Agreement for its convenience.

11.4.6 Cancellation for Unappropriated Funds The City reserves the right, in its best interest as determined by the City, to cancel this contract for unappropriated funds or unavailability of funds by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.

## 11.5 PUBLIC RECORDS

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV, ADDRESS: CITY CLERK'S OFFICE, 100 NORTH ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA 33301.**

Contractor shall comply with public records laws, and Contractor shall:

1. Keep and maintain public records required by the City to perform the service.

2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2019), as may be amended or revised, or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.

4. Upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

11.6 NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

CONSTRUCTION MANAGER The Contractor shall not, in any of its activities, including employment, discriminate against any individual on the basis of race, color, national origin, religion, creed, sex, disability, sexual orientation, gender, gender identity, gender expression, or marital status.

1. The Contractor certifies and represents that it will comply with Section 2-187, Code of Ordinances of the City of Fort Lauderdale, Florida, (2019), as may be amended or revised, ("Section 2-187).

2. The failure of the Contractor to comply with Section 2-187 shall be deemed to be a material breach of this Agreement, entitling the City to pursue any remedy stated below or any remedy provided under applicable law.

3. The City may terminate this Agreement if the Contractor fails to comply with Section 2-187.

4. The City may retain all monies due or to become due until the Contractor complies with Section 2-187.

5. The Contractor may be subject to debarment or suspension proceedings. Such proceedings will be consistent with the procedures in section 2-183 of the Code of Ordinances of the City of Fort Lauderdale, Florida.

## 11.7 MINORITY PARTICIPATION

Historically, the CITY has been able to achieve participation levels of approximately twelve percent (12%) by MBE/WBE firms in CITY projects, and in the purchase of goods and services. The CONSTRUCTION MANAGER shall make a good faith effort to help the CITY maintain and encourage MBE/WBE participation levels consistent with such historical levels and market conditions. The CONSTRUCTION MANAGER will be required to document all such efforts and supply the CITY with this documentation at the end of the Project, or in cases where projects are longer than one year, each CITY fiscal year. This good faith effort for Minority Participation shall be performed during the Construction Phase of the Project.

## 11.8 PUBLIC ENTITY CRIMES ACT

CONSTRUCTION MANAGER represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor/subconsultant, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto and may result in debarment from CITY's competitive procurement activities.

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

## 11.9 CONSTRUCTION MANAGER'S SUBCONTRACTOR(S)/SUBCONSULTANT(S)

11.9.1 CONSTRUCTION MANAGER may subcontract certain items of work to CONSTRUCTION MANAGER'S Subcontractor(s)/Subconsultant(s). The parties expressly agree that the CONSTRUCTION MANAGER shall submit pertinent information regarding the proposed CONSTRUCTION MANAGER'S Subcontractor/Subconsultant, including CONSTRUCTION MANAGER'S Subcontractor/Subconsultant's scope of work and fees, for review and approval by the CITY prior to the CONSTRUCTION MANAGER'S Subcontractor/Subconsultant proceeding with any work.

11.9.2 CONSTRUCTION MANAGER shall utilize the CONSTRUCTION MANAGER's Subcontractor/Subconsultant identified in the proposal that were a material part of the selection of CONSTRUCTION MANAGER to provide the services for this Project. CONSTRUCTION MANAGER shall obtain written approval of Contract Administrator prior to changing or modifying the list of Subcontractors/Subconsultants submitted by CONSTRUCTION MANAGER.

The list of CONSTRUCTION MANAGER's Subcontractor/Subconsultant submitted is as follows: None Submitted

#### 11.10 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the other party, and CONSTRUCTION MANAGER shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 11.9.

CONSTRUCTION MANAGER represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CITY's satisfaction for the agreed compensation.

CONSTRUCTION MANAGER shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSTRUCTION MANAGER's performance and all interim and final product(s) provided to or on behalf of CITY shall meet or exceed all professional standards as referenced in Section 4.2.

#### 11.11 INDEMNIFICATION OF CITY

11.11.1 CONSTRUCTION MANAGER shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the Contractor or by any officer, employee, agent, invitee, subcontractor/subconsultant, or sublicensee of the Contractor. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager, any sums due Contractor under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.

11.11.2 It is specifically understood and agreed that the consideration inuring to the CONSTRUCTION MANAGER for the execution of this Agreement are the promises, payments, covenants, rights and responsibilities contained herein and the award of this Agreement to the CONSTRUCTION MANAGER.

11.11.3 The execution of this Agreement by the CONSTRUCTION MANAGER shall obligate the CONSTRUCTION MANAGER to comply with the foregoing indemnification provision.

#### 11.12 LIMITATION OF CITY'S LIABILITY

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 \$100.00. For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CONSTRUCTION MANAGER expresses its willingness to enter into this Agreement with the knowledge that the CONSTRUCTION MANAGER'S recovery from the CITY to any action or claim arising from the Agreement is limited to a maximum amount of \$100.00 less the amount of all funds actually paid by the CITY to the CONSTRUCTION MANAGER pursuant to this Agreement. Accordingly, and notwithstanding any other term or condition of this Agreement that may suggest otherwise, the CONSTRUCTION MANAGER agrees that the CITY shall not be liable to the CONSTRUCTION MANAGER for damages in an amount in excess of \$100.00, which amount shall be reduced by the amount actually paid by the CITY to the CONSTRUCTION MANAGER 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 manner 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, as amended; and no claim or award against the CITY shall include attorney's fees, investigative costs, extended damages, expert fees, suit costs or pre-judgment interest. Notwithstanding the foregoing, the parties agree and understand that the provisions of this Article 11.10 do not apply to monies owed, if any, for services rendered to CONSTRUCTION MANAGER by the CITY under the provisions of this Agreement.

#### 11.13 INSURANCE

11.13.1 As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, CONSTRUCTION MANAGER (also referred to as "Contractor" in this section) shall provide and shall require all of its Sub-CONSTRUCTION MANAGER's, Subconsultants and Subcontractors to provide, pay for, and maintain in force at all times during the term of the Agreement, all required insurance. Providing proof of and maintaining adequate insurance coverage are material obligations of the Contractor.

The Contractor shall provide the City a certificate of insurance evidencing such coverage. The Contractor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of "A-" VII or better. All insurance policies are subject to approval by the City's Risk Manager.

11.13.2 The coverages, limits, and endorsements required herein protect the interests of the City, and these coverages, limits, and endorsements may not be relied upon by the Contractor for assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposure, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Agreement.

11.13.3 The following insurance policies and coverages are required:

**Commercial General Liability**

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Contractors.

The City and the City's officers, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City or the City's officers, employees, and volunteers.

**Business Automobile Liability**

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

If the Contractor does not own vehicles, the Contractor shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

**Workers' Compensation and Employer's Liability**

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

**Professional Liability and/or Errors and Omissions**

Coverage must be afforded for Wrongful Acts in the following amounts:

Combined Single Limit	
Each occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000 Deductible
not to exceed 10%	
Must be in effect for at least five (5) years after Project completion	

11.13.4 **Insurance Certificate Requirements**

- a. The Contractor shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- b. The Contractor shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, 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 certificate holder.
- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, the Contractor shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The City shall be named as an Additional Insured on the general liability policy.
- g. The City shall be granted a Waiver of Subrogation on the Contractor's Workers' Compensation insurance policy.
- h. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of

Insurance.

- i. The Contractor waives, and the Contractor shall ensure that the Contractor's insurance carrier waives, all subrogation rights against the City and the City's officers, employees, and volunteers for all losses or damages.
- j. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.
- k. The CONSTRUCTION MANAGER is allowed to use the contract scope of services to determine which Subcontractors/Subconsultants will be required to document their Professional Liability insurance. The contractor, as per his contractual responsibilities, will be responsible for verifying which Subcontractors/Subconsultants need the Professional Liability coverage and for obtaining documentation of their policies.
- l. The Contractor / CONSTRUCTION MANAGER is also allowed to determine the necessary policy limits for all of the required insurance coverages for their Subcontractor/Subconsultant based on the tasks that they will be performing. This determination will need to be made based on the liability exposure for the actual work that the individual Subcontractors/Subconsultants will be performing. Once again, the contractor will need to document their actual coverage and the City will need to be named as an additional insured under their Commercial General Liability policies.
- m. The contractor will be required to carry and document his Owners and Contractors Protective Liability policy, however, the requirement is waived for the subconsultants.
- n. Employers Liability limit is less than \$500,000 for the Subcontractor/Subconsultant. The Subcontractors/Subconsultants will need to carry a minimum of \$100,000 in coverage on their Employers Liability policies.

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

The Certificate Holder should read as follows:

City of Fort Lauderdale  
Procurement Services Division  
100 N. Andrews Avenue  
Fort Lauderdale, FL 33301

- 11.13.5 The Contractor has the sole responsibility for the payment of all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Contractor's expense.



- 11.13.6 If the Contractor's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Contractor may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.
- 11.13.7 The Contractor's insurance coverage shall be primary insurance as applied to the City and the City's officers, employees, and volunteers. Any insurance or self-insurance maintained by the City covering the City, the City's officers, employees, or volunteers shall be non-contributory.
- 11.13.8 Any exclusion or provision in the insurance maintained by the Contractor that excludes coverage for work contemplated in this Agreement shall be unacceptable and shall be considered breach of contract.
- 11.13.9 All required insurance policies must be maintained until the contract work has been accepted by the City, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Contractor must provide to the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Contractor's insurance policies.
- 11.13.10 The Contractor shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement shall be provided to the Contractor's insurance company or companies and the City's Risk Management office as soon as practical.
- 11.13.11 It is the Contractor's responsibility to ensure that any and all of the Contractor's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Contractor.

Contractor must keep insurance in force until the third anniversary of expiration of this Agreement or the third anniversary of acceptance of work by the City.

#### 11.14 INSURANCE – SUBCONTRACTORS

Contractor shall require all of its subcontractors/subconsultant to provide the aforementioned coverage as well as any other coverage that the contractor may consider necessary, and any deficiency in the coverage or policy limits of said subcontractors will be the sole responsibility of the contractor.

#### 11.15 REPRESENTATIVE OF CITY AND CONSTRUCTION MANAGER

- 11.15.1 The parties recognize that questions in the day-to-day conduct of the Project will arise. The Contract Administrator, upon CONSTRUCTION MANAGER's request, shall advise CONSTRUCTION MANAGER in writing of one (1) or more CITY employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed.
- 11.15.2 CONSTRUCTION MANAGER shall inform the Contract Administrator in writing of CONSTRUCTION MANAGER's representative to whom matters involving the conduct of the Project shall be addressed.

#### 11.16 ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

#### 11.17 CONSTRUCTION MANAGER'S STAFF

CONSTRUCTION MANAGER will provide the key staff identified in its proposal for the Project as long as said key staff are in CONSTRUCTION MANAGER's employment.

CONSTRUCTION MANAGER will obtain prior written approval of Contract Administrator to change key staff. Such approval will not be unreasonably withheld. CONSTRUCTION MANAGER shall provide Contract Administrator with such information as necessary to determine the suitability of any proposed new key staff. Contract Administrator will be reasonable in evaluating key staff qualifications.

If Contract Administrator desires to request removal of any of CONSTRUCTION MANAGER's staff, Contract Administrator shall first meet with CONSTRUCTION MANAGER and provide reasonable justification for said removal.

#### 11.18 INDEPENDENT CONSTRUCTION MANAGER

CONSTRUCTION MANAGER is an independent contractor under this Agreement. In performing its obligations hereunder, CONSTRUCTION MANAGER or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the CITY. Personnel policies, tax responsibilities, social

security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONSTRUCTION MANAGER. Construction Manager represents that all subcontractor agreements entered into shall incorporate by reference the terms and conditions of this Contract.

#### 11.19 THIRD PARTY BENEFICIARIES

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

#### 11.20 CONFLICTS

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

CONSTRUCTION MANAGER agrees that none of its officers or employees shall, during the term of this Agreement, serve as expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this Section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

In the event CONSTRUCTION MANAGER is permitted to utilize CONSTRUCTION MANAGER's Subcontractors/Subconsultants to perform any services required by this Agreement, CONSTRUCTION MANAGER agrees to prohibit such CONSTRUCTION MANAGER's Subcontractors/Subconsultants, by written contract, from having any conflicts as within the meaning of this Section.

#### 11.21 CONTINGENCY FEE

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

#### 11.22 WAIVER OF BREACH AND MATERIALITY

Failure by CITY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. Failure by CITY to complain of any act or failure to act of the CONSTRUCTION MANAGER or to declare the CONSTRUCTION MANAGER in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of the CITY, provided however this section shall not alter or amend the notice provisions set forth in the Agreement. Inspection by, payment by or tentative approval or acceptance by the CITY, or the failure of the CITY to perform any inspection hereunder shall not constitute a final acceptance of the Work or any part thereof and shall not release CONSTRUCTION MANAGER from any of its obligations hereunder.

#### 11.23 COMPLIANCE WITH LAWS

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

If, during the term of this Contract, there are any changed or new laws, ordinances or regulations not known at the time of signing this Contract which become effective and which are known to Construction Manager as a licensed general contractor regarding the performance and conduct of the Work, and which affect the cost or time of performance of the Contract, Construction Manager shall immediately notify Owner, in writing, and submit detailed documentation of such affect in terms of both time and cost of performing the Contract. Upon concurrence by Owner as to the effect of such changes, an adjustment in the compensation and/or time of performance may be made, subject to the provisions elsewhere set forth in these Contract Documents.

Owner shall not be liable for any costs, delays or damages which Construction Manager incurs as a result of the actions or orders of any other governmental entity or agency that are caused by Construction Manager's failure to comply with the terms of this Contract.

#### 11.24 ENTIRE AGREEMENT; SEVERABILITY; AMENDMENTS

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in the Contract Documents. Accordingly, the parties agree that no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with this Agreement. In the event this Agreement or a portion of this Agreement is found by

a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

#### 11.25 JOINT PREPARATION

Preparation of this Agreement has been a joint effort of CITY and CONSTRUCTION MANAGER and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other. The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

#### 11.26 GOVERNING LAW, VENUE AND WAIVER OF JURY TRIAL

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement and for any other legal proceeding shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, CONSTRUCTION MANAGER AND CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

In the event CONSTRUCTION MANAGER is a corporation organized under the laws of any province of Canada or is a Canadian federal corporation, the CITY may enforce in the United States of America or in Canada or in both countries a judgment entered against the CONSTRUCTION MANAGER. The CONSTRUCTION MANAGER waives any and all defenses to the CITY's enforcement in Canada of a judgment entered by a court in the United States of America.

#### 11.27 EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits, if not physically attached, should be treated as part of this Agreement, and are incorporated herein by reference.

#### 11.28 TWO ORIGINAL AGREEMENTS

This Agreement shall be executed in two (2), signed Agreements, with each one treated as an original.

#### 11.29 NOTICES

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

CITY: City of Fort Lauderdale Public Works Director or designee  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301  
Telephone: (954) 828-5772

With a copy to: City Manager  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301  
Telephone: (954) 828-5364

With a copy to: City Attorney  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301  
Telephone : (954) 828-5037

CONSTRUCTION MANAGER:  
Burkhardt Construction, Inc  
1400 Alabama Ave. #20  
West Palm Beach, FL 33401  
Telephone: (561) 659-1400

#### 11.30 ATTORNEY FEES

If CITY or CONSTRUCTION MANAGER incurs any expense in enforcing the terms of this Agreement through litigation, the prevailing party in that litigation shall be reimbursed for all such costs and expenses, including but not limited to court costs, and reasonable attorney fees incurred during litigation.

#### 11.31 PERMITS, LICENSES AND TAXES

CONSTRUCTION MANAGER shall, at its own expense, obtain all necessary permits and licenses, pay all applicable fees, and pay all applicable sales, consumer, use and other taxes required to comply with local ordinances, state and federal law. Construction Manager shall pay all taxes, levies, duties and assessments of every nature, which may be applicable to any Work under this Contract. The cost of any such permits, licenses and applicable fees, etc. shall be included within the GMP Proposal. CONSTRUCTION MANAGER is responsible for reviewing the pertinent state statutes regarding state taxes and for complying

with all requirements therein. Any change in tax laws after the execution of this Agreement will be subject to further negotiation and CONSTRUCTION MANAGER shall be responsible for complying with all state tax requirements. Construction Manager shall make any and all payroll deductions required by law. Construction Manager herein indemnifies and holds the Owner harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

#### 11.32 ENVIRONMENTAL, HEALTH AND SAFETY

CONSTRUCTION MANAGER shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the work. CONSTRUCTION MANAGER shall comply, and shall secure compliance by its employees, agents, and CONSTRUCTION MANAGER's Subcontractors/Subconsultants, with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of CONSTRUCTION MANAGER. CONSTRUCTION MANAGER shall be responsible for examining all requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the work. CONSTRUCTION MANAGER agrees to utilize protective devices as required by applicable laws, regulations, and any industry or CONSTRUCTION MANAGER's health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all such persons shall be fit and qualified to carry out the Work.

#### 11.33 STANDARD OF CARE

CONSTRUCTION MANAGER represents that he/she/it is qualified to perform the work, that CONSTRUCTION MANAGER and his/her/its CONSTRUCTION MANAGER's Subcontractor/Subconsultant possess current, valid state and/or local licenses to perform the Work, and that their services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other qualified CONSTRUCTION MANAGERS under similar circumstances

#### 11.34 TRUTH-IN-NEGOTIATION CERTIFICATE

CONSTRUCTION MANAGER's compensation under this Agreement is based upon representations supplied to CITY by CONSTRUCTION MANAGER, and CONSTRUCTION MANAGER certifies that the information supplied, including without limitation in the negotiation of this Agreement, is accurate, complete and current at the time of contracting. CITY shall be entitled to recover any damages it incurs to the extent such representation is untrue.

#### 11.35 EVALUATION

The CITY maintains the right to periodically review the performance of the CONSTRUCTION MANAGER. This review will take into account the timely execution of the work, the quality of the work performed, the cost to the CITY and the good faith efforts made by the CONSTRUCTION MANAGER to maintain

MBE/WBE participation on this CITY Project. Any deficiencies in performance will be described in writing and an opportunity afforded, where practicable, for the CONSTRUCTION MANAGER to address and/or remedy such deficiencies.

#### 11.36 STATUTORY COMPLIANCE

CONSTRUCTION MANAGER shall prepare all documents and other materials for the Project in accordance with all applicable rules, laws, ordinances and governmental regulations of the State of Florida, Broward County, the City of Fort Lauderdale, Florida and all governmental agencies having jurisdiction over the services to be provided by CONSTRUCTION MANAGER under this Agreement or over any aspect or phase of the Project.

#### 11.37 REGULATORY AUTHORITY

In the event CITY exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, 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 CITY as a party to this Agreement.

#### 11.38 SCRUTINIZED COMPANIES

The CONSTRUCTION MANAGER certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2019), and that it is not engaged in a boycott of Israel. The City may terminate this Agreement at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2019), as may be amended or revised, or been placed on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2019), as may be amended or revised, or is engaged in a boycott of Israel.

#### 11.39 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

#### 11.40 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City; and CONSTRUCTION MANAGER disclaims any copyright in such materials. In the event of and upon termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by CONSTRUCTION MANAGER, whether finished or unfinished, shall become the property of City and shall be delivered by CONSTRUCTION MANAGER to the City's Contract



Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to CONSTRUCTION MANAGER shall be withheld until CONSTRUCTION MANAGER delivers all documents to the City as provided herein.

#### 11.41 INTELLECTUAL PROPERTY

CONSTRUCTION MANAGER shall protect and defend at CONSTRUCTION MANAGER's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, royalties, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any infringement or allegation of infringement of any patent, copyright, or other intellectual property right in connection with the CONSTRUCTION MANAGER's or the City's use of any copyrighted, patented or un-patented invention, process, article, material, or device that is manufactured, provided, or used pursuant to this Agreement. If the CONSTRUCTION MANAGER uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

#### 11.42 NEWS RELEASE/PUBLICITY

News releases, publicity releases, or advertisements relating to this contract or the tasks or projects associated with the project shall not be made without prior City approval.

#### 11.43 COST SAVINGS

Upon final completion of the project the CITY and the CONSTRUCTION MANAGER shall share 50% / 50% in cost savings. Cost savings shall be defined as the difference between the GMP (including authorized amendments) and the final invoice amount. The CONSTRUCTION MANAGER's 50% share in the cost savings shall be capped at a maximum of 3% of the total GMP (including authorized amendments).

IN WITNESS OF THE FOREGOING, the parties execute this Agreement as follows:

**CITY:**

CITY OF FORT LAUDERDALE, a Florida  
municipality

By \_\_\_\_\_  
Christopher J. Lagerbloom, ICMA-CM  
City Manager

(CORPORATE SEAL)

ATTEST:

\_\_\_\_\_  
Jeffrey A. Modarelli, City Clerk

Approved as to form:

\_\_\_\_\_  
SHARI C. WALLEN  
Assistant City Attorney

**CONSTRUCTION MANAGER:**

WITNESSES:

BURKHARDT CONSTRUCTION, INC., a  
Florida Corporation

\_\_\_\_\_  
\_\_\_\_\_  
Print Name

By \_\_\_\_\_  
Vincent G. Burkhardt, President

\_\_\_\_\_  
\_\_\_\_\_  
(Witness print name)

ATTEST:

By \_\_\_\_\_  
Sharon H. Burkhardt, Secretary

(CORPORATE SEAL)

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me by means of ☐ physical presence  
or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Vincent G. Burkhardt as  
President for **Burkhardt Construction, Inc.**, a Florida corporation.

(SEAL)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name  
of Notary Public)

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

#### **Construction Management at Risk (CMAR) Services for Breakers Avenue Streetscape Improvements**

##### **1. Scope Of Services**

The anticipated scope of work includes, but not limited to: street roadway improvements; water, sewer, and drainage improvements; signing and pavement markings; new landscaping and irrigation, new sidewalks; hardening and/or overhead utility to conversion (undergrounding); and new lighting. Other improvements may also be necessary and determined during the design process. The proposed improvements provided for in this project may not occur at the same time and phased as necessary. Phasing may be subject to funding availability as well.

The anticipated Scope of Services may include, but is not limited, to the following:

- Working side-by-side with the CITY contracted professional engineering team during the design stages. CONSTRUCTION MANAGER will be tasked to review plans at 30%, 60%, 90% and 100% to ensure constructability, adequacy of pricing and materials, preparation of project schedules, conducting feasibility analyses, assisting with site plans and/or design alternative and recommendations and preliminary cost estimates leading to a Guaranteed Maximum Price (GMP). Contractor shall help Identify any design restrictions that could affect the overall design and intent of the project(s).
- Preparation of a detailed cost estimate at the 30%, 60% and 90% design intervals to confirm initial budget allocations and/or to seek CITY's advice before proceeding with next level and final designs. The CONSTRUCTION MANAGER will be responsible for cost controls throughout the design and construction project except for design and construction elements added or deleted by an expressed CITY directive.
- CONSTRUCTION MANAGER may be requested to participate in presentations to elected officials, advisory boards, staff, and the public.
- CONSTRUCTION MANAGER shall work with design team members to prepare all required bidding and construction documents for final permitting.
- CONSTRUCTION MANAGER will prepare bidding packages and secure no less than three (3) proposals for work not conducted by own work forces.
- Attendance at City Commission, Advisory Committee meetings, and public meeting may be required.

## **2. Tasks/Deliverables**

CONSTRUCTION MANAGERS will provide constructability analysis and value engineering review at various intervals (30-60-90%) for CITY staff review. Due to the requirement that the Contractor(s) be readily available for meetings, discussions and tours within the affected areas of responsibility, it will be necessary for any Qualifier to have an office physically located within the tri-county areas of Miami- Dade, Broward or Palm Beach County. This office must be an active facility from which services are routinely provided and not merely a post office box or other type of mail drop, nor can it be the office of simply a representative agent. The CITY reserves the right to inspect any facility designated by the Qualifier to insure that it complies with this section.

### **SCOPE OF WORK**

The CONSTRUCTION MANAGER may be responsible for both preconstruction and construction phases of the project and/or may be responsible for only the construction phase on projects, depending on the determination of the CITY for each particular project. Generally, the selected CONSTRUCTION MANAGER will be responsible for the successful, timely, and economical completion of each project. CONSTRUCTION MANAGER is encouraged to self-perform any of the general services listed herein. The CONSTRUCTION MANAGER may retain necessary design professionals under the process provided in Florida Statute Section 287.055. The types of services required may include, but shall not be limited to, the following.

#### **Preconstruction:**

- A. Review and coordination of the proposed work that the architect, engineer and/or the owner prepare for the project, within the existing site conditions.
- B. Submit to the architect, engineer and owner for consideration appropriate cost and savings programs (value engineering), suitability of materials and equipment and schedule of construction.
- C. Coordinate competitive bidding and contracting for trade subcontractors.
- D. Calculate and provide a GMP for the project or each phase of the project.
- E. Provide a preliminary construction schedule.
- F. Attend all required meetings as required to facilitate the project.

#### **Guaranteed Maximum Price:**

The CONSTRUCTION MANAGER shall prepare and submit a Guaranteed Maximum Price (GMP) proposal to the CITY after completion of the preconstruction services. The GMP proposal must be prepared in accordance with the guideline and delivered in the format specified by the CITY. The CITY, at its sole option and discretion, may specify different requirements for the GMP proposal. The CONSTRUCTION MANAGER shall not withdraw its Guaranteed Maximum Price proposal for ninety (90) days following submission to the CITY.

The CONSTRUCTION MANAGER shall submit the GMP proposal in a bound format which shall include but not limited to the following:

- Cover sheet including project title and CITY project number.
- Summary sheet of GMP Proposal including subcontractor bids, allowances, contingencies, bonds, insurance, conditions, and exclusions. This sheet shall also contain contract time, construction start date, date of submittal completion, date of final completion, critical path schedule, and proposes work hours.
- Schedule of costs
- Detailed summary of general conditions.
- Allowance list statement amount and uses.
- Proposed subcontractor list.
- List of all solicited contractors.
- Subcontractor bid sheets with proposed selected contractors highlighted.
- Plans, drawings, and specifications specific to the GMP.
- Any supporting documents reference in the GMP.

After appropriate general review, and comparison of the initial GMP proposed by the CONSTRUCTION MANAGER with the CITY's projected budget, the CITY may accept, or reject the GMP proposed by the CONSTRUCTION MANAGER, or attempt to negotiate its amount and its terms and conditions with the CONSTRUCTION MANAGER.

At such time the GMP preparation process results in a mutually agreeable GMP value, the CITY will document its acceptance thereof in writing and both parties shall execute a contract amendment for the project that incorporates the GMP and its supporting documents into the contract. The CONSTRUCTION MANAGER scope of basic and additional services shall be detailed and subject to a final determination of the project scope and size and careful negotiation and coordination between the selected CONSTRUCTION MANAGER and the CITY.

### **Construction:**

The Contract shall establish a GMP for the project and shall be negotiated and executed prior to the commencement of any work. The types of services required may include, but shall not be limited to, the following:

- A. Provide Performance and Payment Bonds for the full value of the GMP for each phase of the project.
- B. Monitor CITY's Purchasing guidelines, and CITY's goals for the project.
- C. Apply for, obtain, coordinate and pay for all permits, inspections and tests. Ensure the successful, timely, and economical completion of the project or phases of the project.
- D. Coordinate and insure compliance with all contract and insurance requirements.
- E. Create, maintain, and present an overall construction schedule and Schedule of Values for the project or phases of the project.
- F. Coordinate Construction Management Services, including but not limited to:

1. Regular job site meetings.
2. Maintaining and updating schedules.
3. Overseeing quality assurances.
4. Maintaining and providing copies of all contract documents.
5. Insuring compliance with all safety programs.
6. Coordination of all construction.
7. Coordination of all onsite administration.

### **General Services:**

Work to be accomplished under this contract may include services to develop an active, unique and exciting street including outdoor uses for the community and right-of-way improvements to public roadways as per scope of work. The following are examples of possible efforts:

- A. Undergrounding existing FPL, ATT and Comcast overhead utilities.
- B. Lining sewer infrastructure, replacing water infrastructure
- C. Green storm water infrastructure
- D. Pedestrian improvements
- E. Sustainable street elements.
- F. Art elements.
- G. Landscape Beautification.
- H. On-Street Parking
- I. Base information review/identification of site design issues/opportunities.
- J. Cost estimating and value engineering.
- K. Paving and Hardscape materials.
- L. Lighting-Electrical Engineering (Fixture selection, photometrics and location).
- M. Site Furnishings and Special Features.
- N. Roadway alignment plan coordination.
- O. Outline Specifications.
- P. Plans that shall reflect the location and dimensioning of the following elements:
  1. Plazas, walkways/sidewalks, and specialty features.
  3. Site furnishings
  4. Exterior lighting
  5. Hardscape/Paving Plans
  6. Special pavement materials and patterns (Type and location)
  7. Pedestrian surfaces/Plazas
  8. Curbs and paving borders
  9. Planting Plans - Quantity, size, and description of the following:
    - Trees
    - Shrubs and groundcovers
    - Soil mixes
    - Planting details and specifications
  10. Irrigation (CITY water source)
    - Piping and hydraulics design
    - Pump and/or well design
    - Specifications
- Q. Construction Details

- Special pavements
- Various lighting treatments
- Landscaped edges and buffers
- Curbs and hardscape edges
- Site furniture
- Construction Details
- Construction Specifications
- Technical Specifications
- ADA compliance



**EXHIBIT “B”**

**COST BREAKDOWN**

Vincent G. Burkhardt  
President



February 1, 2020; Rev. 5/5/2020; Rev. 6/17/2020

City of Fort Lauderdale  
Transportation & Mobility Department  
290 NE 3<sup>rd</sup> Avenue  
Fort Lauderdale, FL 33301  
Attn: Mr. Louis Lafaurie, P.E.

Re: Preconstruction Services - RFQ 12309-296 Construction Manager at Risk (CMAR)  
for Breakers Ave. Streetscape Improvements Project

Mr. Lafaurie,

Burkhardt Construction, Inc., acting as Construction Manager at Risk (CMAR), is pleased to provide the attached scope and fee proposal for pre-construction services for the Breakers Avenue Streetscape Improvements Project.

**SCOPE OF WORK**

Burkhardt Construction, Inc. pre-construction services are composed of the following tasks:

- I. Design Phase Services; Constructability Reviews and Cost Estimates
- II. Traffic Control Plan
- III. Pre-construction Progress Meetings
- IV. Pre-construction Scheduling
- V. Community Plan and Public Outreach
- VI. Guaranteed Maximum Price Development

Please feel free to contact me directly should you have any questions regarding any of the information included in this letter or the attached schedule of pre-construction fees and services.

Respectfully submitted,

Burkhardt Construction, Inc.

A handwritten signature in blue ink, appearing to read 'Marc R. Kleisley', is written over the company name.

Marc R. Kleisley  
Vice President

**Task 1: Design Phase Services; Constructability Review and Cost Estimate:**

The CMAR will conduct construction document design reviews at 30%, 60%, and 90% design development stages. CMAR shall work with the designer to provide alternatives and design solutions that are cost effective, value added and provide risk mitigation during construction. The CMAR shall provide construction expertise in development of the construction documents to provide optimal phasing and sequencing of the construction work to stay within budget and schedule. CMAR shall perform a constructability analysis to identify defects, omissions, and recommendations for alternatives; value engineering for all phases of the Project. The constructability analysis shall include a review of: accessibility, construction methods, assembly, installation, material handling, expandability, phasing and other construction phase activities, and shall be delivered to Owner as a written document. CMAR shall also identify and help resolve other issues that might affect the aesthetics and longevity of the final work product and to mitigate logistical construction constraints. A cost estimate will be performed at 30% and 60% design development stages to help determine the budget and to keep the project on track.

**Task 1 – \$19,330.00****Task 2: Traffic Control Plan:**

The CMAR will develop a traffic control plan which will provide coordinated adequate accessibility to parking and businesses. The Traffic Control Plan shall address typical rush hour traffic loading and provide for construction sequencing that will optimize the coordinated construction schedule along the work corridor

**Task 2 – \$2,200.00****Task 3: Pre-Construction Progress Meetings:**

The CMAR shall conduct team progress meetings attended by the CM, Designer, Owner, and others as requested. The CMAR shall provide agendas and produce meeting notes from each meeting documenting the issues of the Project, assigning responsibilities for issue resolution and tracking timelines for issue resolution. CMAR shall facilitate utilities coordination meetings along with the Designer and appropriate utilities provider such as City of Fort Lauderdale Utilities, FPL, AT&T, Comcast, Fibernet, TECO Peoples Gas, etc. CMAR shall provide meeting minutes after every progress meeting for the Owner to review and accept.

**Task 3 – \$16,000.00**

**Task 4: Pre-Construction Scheduling:**

The CMAR shall develop a master Pre-Construction Phase Bar Chart schedule incorporating design development, permitting, plan review, cost estimate preparation, guaranteed maximum price preparation, submittal review and approval, long lead item identification and procurement, kickoff informational meeting, project ground-breaking, coordinated construction sequencing and staging to minimize impacts to businesses, and the overall construction schedule for the Project.

**Task 4 – \$6,600.00****Task 5: Community Plan and Public Outreach:**

CMAR shall develop, for approval by the City, a community plan to minimize the construction impacts to residents and merchants, vehicular traffic and pedestrians, the public and surrounding projects, in this active urban environment. Such plan shall include methods of outreach and information flow and communication between the Construction Team and businesses, business associations, condominium associations and/or neighborhood associations impacted by each Project phase.

**Task 5 – \$2,670.00****Task 6: Guaranteed Maximum Price Development:**

CMAR shall prepare a Guaranteed Maximum Price (“GMP”) and the final construction budget based on the 90% construction documents development with CMAR’s input. The GMP shall consist of a detailed line item quantity and price survey for all major items of work to be performed. Any project scope of work items for which 90% plans were not yet developed, may be included in the GMP as Allowance items, or may be added to the contract at a future date by change order. The CMAR’s costs for general conditions shall be detailed as well as the CMAR’s Fee. The GMP shall be presented to the Owner along with all supporting documentation for review. Negotiations of the final GMP shall be conducted between the CMAR and the City. The agreed upon GMP shall be documented as an amendment to this Contract.

The CMAR shall submit a proposed subcontractor/supplier selection plan and propose a subcontractor/supplier list. This plan and list will be reviewed by the Owner with an opportunity to comment and/or make suggested changes and or additions. Following the approval of the subcontractor/supplier list, the CMAR shall distribute drawings and specifications to the subcontractors and conduct a pre-bid meeting. The CMAR shall prepare all appropriate bid documents, establish the bidding schedule, advertise for bids and develop bidder interest, collect bids, open bids and prepare a comparison report for the Owner. Evaluation of the bids will be conducted by the CMAR and the Owner in order to explain additional considerations relative to the subcontractor’s quote. A pre-award conference shall be conducted with the apparent low subcontractor/supplier in order to confirm all qualifications

**Task 7 – \$29,990.00**

**COMPENSATION**

Fees for professional services rendered in connection with this proposal shall not exceed the following total. The Fee established for this proposal is as follows:

**TOTAL PRE-CONSTRUCTION SERVICES FEE ALL TASKS 1 THROUGH 6:**

**\$ 76,790.00**

# Pre-construction Services Backup

From **Burkhardt Construction, Inc.**  
 1400 Alabama Ave., Suite #20  
 West Palm Beach, FL, 33401  
 Att: Marc R. Kleisley  
 Telephone: (561)-659-1400

To: **City of Fort Lauderdale**

Regarding: Pre-construction services as Construction Manager at Risk (CMAR)  
 RFQ 12309-296  
 Breakers Avenue Streetscape Improvements Project

Date: 2/1/2020, REV. 5/5/2020, REV. 6/17/2020

Item Description						
		QTY	HRS	RATE		
<b>Task 1, Design Phase review/Constructability Review/Cost estimate</b>						<b>\$ 19,330.00</b>
<b>A. Design Development Cost Estimate - 30% (IOPCC)</b>						
Project Principal	1	EA	4	\$	200.00	\$ 800.00
Proj. Mgr	1	EA	30	\$	120.00	\$ 3,600.00
Const. Field Mgr.	1	EA	4	\$	100.00	\$ 400.00
Cost. Engineer	1	EA	15	\$	75.00	\$ 1,125.00
Clerical	1	EA	4	\$	50.00	\$ 200.00
<b>B. 60% Cost Estimate</b>						
Project Principal	1	EA	4	\$	200.00	\$ 800.00
Proj. Mgr	1	EA	30	\$	120.00	\$ 3,600.00
Const. Field Mgr.	1	EA	4	\$	100.00	\$ 400.00
Cost. Engineer	1	EA	15	\$	75.00	\$ 1,125.00
Clerical	1	EA	4	\$	50.00	\$ 200.00
<b>C. Review of Construction Documentation/Value Engineering</b>						
Sr. Project Mgr.	1	EA	24	\$	175.00	\$ 4,200.00
Project Mgr.	1	EA	24	\$	120.00	\$ 2,880.00



**Task 2, Traffic Control Plan****\$ 2,200.00**

Project Mgr.	1	EA	4	\$120.00	\$	480.00
Asst. Proj. Mgr	1	EA	8	\$90.00	\$	720.00
Const. Field Mgr.	1	EA	8	\$100.00	\$	800.00
Clerical	1	EA	4	\$50.00	\$	200.00

**Task 3, Preconstruction Progress Meetings****\$ 16,000.00****A. Plan Design Status**

Project Principal	20	EA	2.5	\$ 200.00	\$	10,000.00
Proj. Mgr	20	EA	2.5	\$ 120.00	\$	6,000.00

**B. Permit Tracking and Coordination (Not Included)**

Project Mgr.	0	EA	0	\$ 120.00		
Clerical	0	EA	0	\$ 50.00		
Permitting Consultar	0	EA	4	\$ 150.00	\$	-

**Task 4, Preconstruction Scheduling****\$ 6,600.00****A. Phasing Plan**

Project Mgr.	1	EA	4	\$120.00	\$	480.00
Asst. Proj. Mgr	1	EA	8	\$90.00	\$	720.00
Const. Field Mgr.	1	EA	8	\$100.00	\$	800.00
Clerical	1	EA	4	\$50.00	\$	200.00

**B. Scheduling**

Project Mgr.	1	EA	4	\$120.00	\$	480.00
Asst. Proj. Mgr	1	EA	8	\$90.00	\$	720.00
Const. Field Mgr.	1	EA	8	\$100.00	\$	800.00
Clerical	1	EA	4	\$50.00	\$	200.00

**C. Identifying Owner Direct Purchase Materials**

Project Mgr.	1	EA	4	\$120.00	\$	480.00
Asst. Proj. Mgr	1	EA	8	\$90.00	\$	720.00
Const. Field Mgr.	1	EA	8	\$100.00	\$	800.00
Clerical	1	EA	4	\$50.00	\$	200.00

**Task 5, Community Plan/Public Outreach****\$ 2,670.00**

Project Principal	2	EA	3	\$ 200.00	\$	1,200.00
Proj. Manager	2	EA	3	\$ 120.00	\$	720.00
Merchant Outreach	2	EA	3	\$ 75.00	\$	450.00
Clerical	2	EA	3	\$ 50.00	\$	300.00



**Task 6, Greenroads Initiative - Scope Deleted****\$ -****A. Plan**

Project Principal	0	EA	8	\$	200.00	\$	-
Proj. Mgr	0	EA	40	\$	120.00	\$	-
Const. Field Mgr.	0	EA	20	\$	100.00	\$	-
Cost. Engineer	0	EA	40	\$	75.00	\$	-
Clerical	0	EA	20	\$	50.00	\$	-

**Task 7, Guaranteed Maximum Price (GMP)****\$ 29,990.00****A. Public Advertisement**

Newspaper Ad	1	LS	1	\$	2,000.00	\$	2,000.00
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**B. Subcontractor Pre-Qualification**

Project Principal	1	EA	8	\$	200.00	\$	1,600.00
Project Mgr.	1	EA	8	\$	120.00	\$	960.00

**C. Bid Package Preparation**

Project Principal	1	EA	4	\$	200.00	\$	800.00
Project Mgr.	1	EA	32	\$	120.00	\$	3,840.00
Asst. Proj. Mgr	1	EA	40	\$	75.00	\$	3,000.00
Clerical	1	EA	4	\$	50.00	\$	200.00

**D. Issuance of Bid Packages**

Project Principal	1	EA	8	\$	200.00	\$	1,600.00
Project Mgr.	1	EA	8	\$	120.00	\$	960.00
Asst. Proj. Mgr	1	EA	2	\$	75.00	\$	150.00
Clerical	1	EA	2	\$	50.00	\$	100.00

**E. Analyzing of Subcontractor Bids**

Project Principal	1	EA	8	\$	200.00	\$	1,600.00
Project Mgr.	1	EA	32	\$	120.00	\$	3,840.00
Asst. Proj. Mgr	1	EA	20	\$	75.00	\$	1,500.00
Clerical	1	EA	4	\$	50.00	\$	200.00

**F. Preparation of Guaranteed Maximum Price**

Project Principal	1	EA	8	\$	200.00	\$	1,600.00
Project Mgr.	1	EA	32	\$	120.00	\$	3,840.00
Asst. Proj. Mgr	1	EA	24	\$	75.00	\$	1,800.00
Clerical	1	EA	8	\$	50.00	\$	400.00

**GUARANTEED NOT TO EXCEED****\$ 76,790.00**



RFQ 12309-296 Construction Manager at Risk (CMAR) for  
Breakers Ave. Streetscape Improvements Project

Preconstruction Services Rates

<u>Name</u>	<u>Position</u>	<u>Rate</u>
Vincent G. Burkhardt	President	\$260.00
Sharon H. Burkhardt	Secretary/C.P.A.	\$200.00
Dennis E. Haynes	Vice President	\$200.00
Marc R. Kleisley	Vice President/Proj. Principal	\$200.00
Anthony Sabatino	Senior Project Manager	\$150.00
Bill Zammit	Snr. Vertical Project Manager	\$150.00
Adam Rossmell	Project Manager	\$120.00
CJ Rhody	Project Manager	\$120.00
Brandon Rhodes	Project Manager	\$120.00
Kevin Brennen	Asst. Project Manager	\$ 90.00
Ruben Almazan	Const. Field Mgr.	\$100.00
Karl T. Kaminski	Utilities Const. Field Mgr.	\$100.00
Hemant Tank	Estimator/Cost Engineer	\$ 75.00
Diane Decker	Resident/Merchant Outreach	\$ 75.00
Sarah B. Hoadley	Accounting Manager/M.B.A.	\$ 90.00
Katy Pantaleon	Accounting	\$ 75.00
Brittany Darville	Admin. Ass't/Clerical	\$ 50.00

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