

**DOCUMENT ROUTING FORM**

② ✓ 7/2/14 (L)

NAME OF DOCUMENT: ANNUAL MARINE FACILITIES REPAIR MAINTENANCE CONTRACT  
CONTRACTOR'S NAME : B & M MARINE Construction, Inc.

Approved Comm. Mtg. on 5-6-14 CAR# 14-0512 ITEM:  PUR- 9

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

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

ATTACHED:  Copy of CAR  ACM Form  2 originals

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

Funding Source: Amount Required by Contract/Agreement \$Unit Priced Contract Dept./Div: PW/ENG

Index/Sub-object P11027.343 } # 735,372  
P11650.345 } AS STATED ON Project # P11825  
P11718.345 } CAM 14-0512 *KA*

Please Check the proper box: CIP FUNDED  YES  NO

1.) Approved as to Content: *[Signature]* for *Handeas Guard*  
(Public Works Director)

2.) Approved as to Procurement: by *[Signature]* Date: 6/3/14  
(Deputy Finance Director or designee)

3.) Approved as to Funds Available: by *[Signature]* Date: 6/3/14  
(Finance Director or designee)

4.) City Attorney's Office: Approved as to Form:# 3 Originals to City Mgr. By: Paul Bangel  
Paul Bangel ✓

5.) Approved as to content: Assistant City Manager:  
By: Stanley Hawthorne, Assistant City Manager By: Susanne Torriente, Assistant City Manager

6.) Acting City Manager: Please sign as indicated and forward : 2 originals to City Clerk  
7.) To City Clerk for attestation and City seal. 2 originals to Clerk.

**INSTRUCTIONS TO CLERK'S OFFICE**

8.) City Clerk: Date first page with last date signed, and forward 2 original documents with routing form to Rafeela x 7810

C: Project File

2014 JUN 23 PM: 00  
CITY MANAGER

2014 JUN -4 AM 11:36

COMMUNICATIONS

7/1

CITY OF FORT LAUDERDALE  
CONSTRUCTION AGREEMENT

THIS AGREEMENT made and entered into this 6<sup>th</sup> day of May, 2014, by and between the City of Fort Lauderdale, a Florida municipal corporation (City) and B & M Marine Construction, Inc., (Contractor), (parties);

WHEREAS, the City desires to retain a contractor for the Project as expressed in its Invitation to Bid/Request for Proposals No. 243-11357, Project 11825, which was opened on March 28, 2014; and,

WHEREAS, the Contractor has expressed its willingness and capability to perform the necessary work to accomplish the Project.

NOW, THEREFORE, the City and the Contractor, in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, agree as follows:

**ARTICLE 1 – DEFINITIONS**

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

- 1.1 Agreement – This written agreement between the City and the Contractor covering the work to be performed including other Contract Documents that are attached to or incorporated in the Agreement.
- 1.2 Application for Payment – The form accepted by the City which is to be used by the Contractor in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents
- 1.3 Approve – The word approve is defined to mean review of the material, equipment or methods for general compliance with design concepts and with the design concepts and with the information given in the Contract Documents. It does not imply a responsibility on the part of the City to verify in every detail conformance with plans and specifications.
- 1.4 Bid – The offer or Bid of the Contractor submitted on the prescribed form setting forth the total prices for the Work to be performed.
- 1.5 Bid Documents – This Agreement, advertisement for Invitation to Bids, the Instructions to Bidders, the Bid Form (with supplemental affidavits and agreements), the Contract Forms, General Conditions, the Supplementary Conditions, the Specifications, and the Plans, which documents all become an integral part of the Contract Documents.
- 1.6 Certificate of Substantial Completion - Certificate provided by the City certifying that all Work, excluding the punch list items, has been completed, inspected, and accepted by the City.

- 1.7 Change Order - A change order is defined as a written order to a contractor approved by the city, authorizing a revision of an underlying agreement between the city and a contractor 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 the contract.
- 1.8 City - The City of Fort Lauderdale, Florida including but not limited to its employees, agents, officials, representative, contractors, subcontractors, volunteers, successors and assigns, with whom the Contractor has entered into the Agreement and for whom the Work is to be provided. The Project Manager, or designee, shall be the authorized agent for the City unless otherwise specified.
- 1.9 Contract Documents - The Contract Documents shall consist of this Agreement, Exhibits to this Agreement, Public Construction Bond, Performance Bond, Payment Bond and Certificates of Insurance, Notice of Award and Notice to Proceed, General Conditions as amended by the Special Conditions, Technical Specifications, Plans/Drawings, Addenda, Bid Form and supplement Affidavits and Agreements, all applicable provisions of State and Federal Law and any modification, including Change Orders or written amendments duly delivered after execution of Agreement, Invitation to Bid, Instructions to Bidders and Bid Bond, Contractor's response to the City's Invitation to Bid, Schedule of Completion, Schedule of Values, all amendments, modifications and supplements, change orders and work directive changes issued on or after the Effective Date of the Agreement, as well as any additional documents that are required to be submitted under the Agreement.
- Permits on file with the City and/or those permits to be obtained shall be considered directive in nature and will be considered as part of this Agreement. A copy of all permits shall be given to the City for inclusion in the Contract Documents. Terms of permits shall be met prior to acceptance of the Work and release of the final payment.
- 1.10 Contract Price - The monies payable to the Contractor by the City under the Contract Documents and in accordance with the line item unit prices listed in the Bid.
- 1.11 Contract Time - The number of calendar days stated in the Agreement for the completion of the Work. The dates on which the work shall be started and shall be completed as stated in the Notice to Proceed.
- 1.12 Contractor - The person, firm, company, or corporation with whom the City has entered into the Agreement, including but not limited to its employees, agents, representatives, contractors, subcontractors, their subcontractors and their other successors and assigns.
- 1.13 Day - A calendar day of twenty-four (24) hours ending at midnight.
- 1.14 Defective - An adjective which when modifying the word "Work" refers to work that is unsatisfactory, faulty, or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to the Project Manager's recommendation of final payment.

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

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

## ARTICLE 2 - SCOPE OF WORK

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

PROJECT NAME  
ITB # 243-11357 PROJECT 11825

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

#### PROJECT DESCRIPTION

Under this Annual contract, the contractor shall restore/repair City marine facilities and their amenities along the New River and all City canals as indicated by the Engineer. The scope of work shall be as follows:

- 1) Repair or restoration of City seawalls along New River and City canals;
  - 2) Replacement of pilings; repair or restoration of fixed and floating docks including their amenities.
  - 3) Injecting flowable fill at all locations indicated by the Engineer.
- 2.3 Within ten (10) days of the execution of this Agreement, the Contractor shall submit a Construction Schedule, Schedule of Values and a listing of those subcontractors that will be utilized by the Contractor. The general sequence of the work shall be submitted by the Contractor and approved by the City before any work commences. The City reserves the right to issue construction directives necessary to facilitate the Work or to minimize any conflict with operations.

#### ARTICLE 3 – PROJECT MANAGER

- 3.1 The Project Manager is hereby designated by the City as Raymond Nazaire whose address is 100 N. Andrews Avenue, 4<sup>th</sup> Floor, Fort Lauderdale, FL 33301. The Project Manager will assume all duties and responsibilities and will have the rights and authorities assigned to the Project Manager in the Contract Documents in connection with completion of the Work in accordance with this Agreement.

#### ARTICLE 4 – CONTRACT DOCUMENTS

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

- 4.1 This Agreement.
- 4.2 Exhibits to this Agreement (Plans (sheets [ - ] to [ ] inclusive)).
- 4.3 Public Construction Bond, Performance Bond, Payment Bond and Certificates of Insurance.

- 4.4 Notice of Award and Notice to Proceed.
- 4.5 General Conditions as amended by the Special Conditions.
- 4.6 Technical Specifications.
- 4.7 Plans/Drawings
- 4.8 Addenda number -- through --, inclusive.
- 4.9 Bid Form and supplement Affidavits and Agreements.
- 4.10 All applicable provisions of State and Federal Law and any modification, including Change Orders or written amendments duly delivered after execution of Agreement.
- 4.11 Invitation to Bid No., 243-11357, Instructions to Bidders and Bid Bond.
- 4.12 Contractor's response to the City's Invitation to Bid No., 243-11357 dated March 28, 2014.
- 4.13 Schedule of Completion and Schedule of Values.
- 4.14 All amendments, modifications and supplements, change orders and work directive changes issued on or after the Effective Date of the Agreement.
- 4.15 Any additional documents that are required to be submitted under the Agreement.
- 4.16 Permits on file with the City and/or those permits to be obtained shall be considered directive in nature and will be considered a part of this Agreement. A copy of all permits shall be given to the City for inclusion in the Contract Documents. Terms of permits shall be met prior to acceptance of the Work and release of the final payment.

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

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

- a. Specific direction from the City Manager (or designee)
- b. This Agreement dated May 6, 2014 and any attachments.
- c. Invitation to Bid No., 243-11357 and the specifications prepared by the City.
- d. Contractor's response to the City's Invitation to Bid No., 243-11357 dated March 28, 2014.

e. Schedule of Values.

f. Schedule of Completion.

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

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

#### ARTICLE 5 – CONTRACT TIME

- 5.1 The Contractor recognizes that **TIME IS OF THE ESSENCE**. The work/task order shall commence within 5 calendar days of the date of the Purchase Order/Notice to Proceed.
- 5.2 The Work shall be Substantially Completed within     calendar days after the date when the Contract Time commences to run as provided in the Notice to Proceed. **N/A**
- 5.3 The Work shall be finally completed on the Final Completion Date and ready for final payment in accordance with this Agreement within     calendar days after the date when the Contract Time commences to run as provided in the Notice to Proceed. **N/A**
- 5.4 The initial contract term shall commence upon date of award by the City and shall expire 1 years from that date. The City reserves the right to extend the contract for 3 additional 1 year terms, providing all terms conditions and specifications remain the same, both parties agree to the extension, and such extension is approved by the City.
- 5.5 In the event services are scheduled to end because of the expiration of this contract, the Contractor shall continue the service upon the request of the City as authorized by the awarding authority. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing contract. The Contractor shall be compensated for the service at the rate in effect when this extension clause is invoked by the City.



## ARTICLE 6 – CONTRACT PRICE

- 6.1 City shall pay Contractor for performance of the Work in accordance with Article 7, subject to additions and deletions by Change Order, as provided for in this Agreement.
- 6.2 The parties expressly agree that the Contract Price in the not to exceed amount of \$735,372 constitutes the total maximum compensation payable to Contractor for performing the Work, plus any Work done pursuant to a Change Order. The Contract Price is in accordance with the line item unit prices listed in the Bid. Line items are based on a unit price cost multiplied by a defined quantity. Any additional duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at Contractor's expense without change to the Contract Price.
- 6.3 The Contract Price constitutes the compensation payable to Contractor for performing the Work plus any Work done pursuant to a Change Order. All duties responsibilities and obligations assigned to or undertaken by Contractor shall be at Contractor's expense without change in the Contract price.

## ARTICLE 7 – PAYMENT PROCEDURES

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

## ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

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

- 8.1 Contractor is qualified in the field of public construction and in particular to perform the Work and services set forth in this Agreement.
- 8.2 Contractor has visited the Work Site, has conducted extensive tests, examinations and investigations and represents and warrants a thorough familiarization with the nature and extent of the Contract Documents, the Work, locality, soil conditions, moisture conditions and all year-round local weather and climate conditions (past and present), and, in reliance on such tests, examination and investigations conducted by Contractor and the Contractor's experts, has determined that no conditions exist that would in any manner affect the Proposed Price and that the project can be completed for the Proposed Price submitted. Furthermore, Contractor warrants and confirms that he is totally familiar with, understands and obligates Contractor to comply with all federal, state and local laws, ordinances, rules, regulations and all market conditions that affect or may affect the cost and price of materials and labor needed to fulfill all provisions of this Agreement or that in any manner may affect cost, progress or performance of the Work.
- 8.3 The Contractor has satisfied itself as to the nature and location of the Work under the Contract Documents, the general and local conditions of the Project, particularly those bearing upon availability of transportation, disposal, handling and storage of materials, availability of labor, water, electric power, and roads, the conformation and conditions at the ground based on City provided reports, the type of equipment and facilities needed preliminary to and during the prosecution of the Work and all other matters which can in any way affect the Work or the cost thereof under the Contract Documents.
- 8.4 The Contractor has also studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Works, and finds and has further determined that no conditions exist that would in any manner affect the Proposed Price and that the project can be completed for the Proposed Price submitted.
- 8.5 Contractor has made or caused to be made examinations, investigations, tests and studies of such reports and related data in addition to those referred to in Paragraphs 8.2, 8.3 and 8.4 above as he deems necessary for the performance of the Work at the Contract Prices, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are, or will be, required by Contractor for such purposes.
- 8.6 Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

will not permit overtime work or the performance of work on Saturday, Sunday or any legal holiday (designated by the City of Fort Lauderdale) without the Project Manager's written consent at least seventy two (72) hours in advance of starting such work. If the Project Manager permits overtime work, the Contractor shall pay for the additional charges to the City with respect to such overtime work. Such additional charges shall be a subsidiary obligation of the Contractor and no extra payment shall be made to the Contractor for overtime work. The cost to the Contractor to reimburse the City for overtime inspection is established at direct-labor and overtime costs for each person or inspector required. Incidental overtime costs for engineering, testing and other related services will also be charged to the Contractor at the actual rate accrued.

- 8.11 Patent Fee and Royalties: The Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work, or any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. The Contractor hereby expressly binds himself or itself to indemnify and save harmless the City from all such claims and fees and from any and all suits and action of every name and description that may be brought against City on account of any such claims, fees, royalties, or costs for any such invention or patent, and from any and all suits or actions that may be brought against said City for the infringement of any and all patents or patent rights claimed by any person, firm corporation or other entity.
- 8.12 Permits: The Contractor shall obtain and pay for all permits and licenses. There shall be no allowance for Contractor markup, overhead or profit for permits and licenses. The Contractor shall pay all government charges which are applicable at the time of opening of proposals. It shall be the responsibility of the Contractor to secure and pay for all necessary licenses and permits of a temporary nature necessary for the prosecution of Work.
- 8.13 Law and Regulations: The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If the Contractor observes that the specifications or plans are at variance therewith, the Contractor shall give the Project Manager prompt written notice thereof, and any necessary changes shall be adjusted by any appropriate modifications. If the Contractor performs any work knowing or having reason to know that it is contrary to such laws, ordinance, rules and regulations, and without such notice to the Project Manager, the Contractor shall bear all costs arising therefrom; however, it shall not be the Contractor's primary responsibility to make certain that the specifications and plans are in accordance with such laws, ordinances, rules and regulations.
- 8.14 Taxes: The Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by him in accordance with the laws of the City of Fort Lauderdale, County of Broward, State of Florida.
- 8.15 Contractor Use of Premises: The Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits and/or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.

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

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

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

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

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

8.16.1 Flow of material and equipment from suppliers.

8.16.2 The interrelated work with affected utility companies.

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

8.16.4 The effort of independent testing agencies.

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

**8.17 Project Record Documents and As-Builts (Record Drawings):** The Contractor shall keep one record copy of all specifications, plans addenda, modifications, shop drawings and samples at the site, in good order and annotated to show all changes made during the construction process. These shall be available to the Project Manager for examination and shall be delivered to the Project Manager upon completion of the Work. Upon completion of the project and prior to final payment, an

as-built (record drawings) of the Project shall be submitted to the Project Manager. The as-built drawings shall be signed and sealed by a Florida Registered Professional Surveyor and Mapper, Engineer, Architect or Landscape Architect depending on the type of drawing.

**8.18 Safety and Protection:**

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

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

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

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

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

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

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

8.21 Environmental: The Contractor has fully inspected the Premises and agrees, except as to the presence of any asbestos, to accept the Premises in an "as is" physical condition, without representation or warranty by the City of any kind, including, without

limitation, any and all existing environmental claims or obligations that may arise from the presence of any "contamination" on, in or about the Premises. Further, Contractor and all entities claiming by, through or under the Contractor, releases and discharges the City, from any claim, demand, or cause of action arising out of or relating to the Contractor's use, handling, storage, release, discharge, treatment, removal, transport, decontamination, cleanup, disposal and/or presence of any hazardous substances including asbestos on, under, from or about the Premises. The Contractor shall have no liability for any pre-existing claims or "contamination" on the Premises.

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

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

For other and additional consideration, the Contractor hereby agrees, at its sole cost and expense, to indemnify and protect, defend, and hold harmless the City and its respective employees, agents, officials, officers, representatives, contractors and subcontractors, successors, and assigns (hereafter the "City") from and against any and all claims, demands, losses, damages, costs, expenses, including but not limited to mitigation, restoration, and natural restoration expenses; liabilities, assessments, fines, penalties charges, administrative and judicial proceedings and orders, judgments, causes of action, in law or in equity, remedial action requirements and/or enforcement actions of any kind (including, without limitation, attorneys' fees and costs) directly or indirectly arising out of or attributable to, in whole or in part, the Contractor's use, handling, storage, release, threatened release, discharge, treatment, removal, transport, decontamination, cleanup, disposal and/or presence of a Hazardous Substance (excluding asbestos) on, under, from, to or about the Premises or any other activity carried on or undertaken on or off the Premises by the Contractor or its employees, agents or subcontractors, in connection with the use, handling, storage, release, threatened release, discharge, treatment, mitigation, natural resource restoration, removal, transport, decontamination, cleanup, disposal and/or presence or any Hazardous Substance including asbestos located, transported, or present on, undue, from, to, or about the Premises. This indemnity is intended to be operable under 42 U.S.C. sections 9607, as amended, and any successor section.

The scope of the indemnity obligations includes, but is not limited to: (a) all consequential damages; (b) the cost of any required or necessary repair, cleanup, or detoxification of the applicable real estate and the preparation and implementation of any closure, remedial or other required plan, including without limitation; (i) the costs of removal or remedial action incurred by the United States government or the State of

Florida or response costs incurred by any other person, or damages from injury to destruction of, or loss of, natural resources, including the cost of assessing such injury, destruction, or loss, incurred pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended; (ii) the clean-up costs, fines, damages, or penalties incurred pursuant to any applicable provisions of Florida law; and (iii) the cost and expenses of abatement, correction or cleanup, fines, damages, responses costs, or penalties which arise from the provisions of any other statute, law, regulation, code ordinance, or legal requirement state or federal; and (c) liability for personal injury or property damage arising under any statutory or common law tort theory, including damages assessed for the maintenance of a public private nuisance, response costs, or for the carrying on of an abnormally dangerous activity.

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

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

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

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

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

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

Inclement weather, continuous rain for less than three (3) days or the acts or omissions of subcontractors, third-party contractors, materialmen, suppliers, or their subcontractors, shall not be considered acts of force majeure. No Party shall be liable for its failure to carry out its obligations under the Agreement during a period when such Party is rendered unable by force majeure to carry out its obligation, but the obligation of the Party or Parties relying on such force majeure shall be suspended only during the continuance of the inability and for no longer period than the unexpected or uncontrollable event.

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

8.26 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTED CONTRACTS: The recipient shall not discriminate on the basis of race, color, national origin, or sex in the



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

## ARTICLE 10 – BONDS AND INSURANCE

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

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

- 10.2 Disqualification of Surety: If the Surety on any Bond furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of clauses (i) and (ii) of Paragraph 10.1, the Contractor shall within five (5) days thereafter substitute another Bond and Surety, both of which shall be acceptable to the City.

### 10.3 Insurance

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

of Florida and having agents upon whom service of process may be made in the State of Florida.

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

10.3.2 **Property Insurance (Builder's Risk)**: The Contractor shall purchase and maintain property insurance upon the Work at or off the site of 100% of the contract completed value. These policies shall insure the interest of the owner, contractor and subcontractors in the Work, and shall insure against "all risks" of physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage. All such insurance required by this paragraph shall remain in effect until the Work is completed and accepted by the City.

10.3.3 **Commercial General Liability**

- A. Limits of Liability:
- |   |             |
|---|-------------|
| Bodily Injury and Property Damage - Combined Single Limit |             |
| Each Occurrence   | \$1,000,000 |
| Project Aggregate   | \$1,000,000 |
| General Aggregate   | \$2,000,000 |

Personal Injury \$1,000,000  
Products/Completed Operations \$1,000,000

- B. Endorsements Required:  
City of Fort Lauderdale included as an Additional Insured  
Broad Form Contractual Liability  
Waiver of Subrogation  
Premises/Operations  
Products/Completed Operations  
Independent Contractors  
Owners and Contractors Protective Liability  
Contractors Pollution Liability

10.3.4 Business Automobile Liability

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

10.3.5 Workers' Compensation and Employer's Liability Insurance

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

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

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

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

10.3.7 Marine Liability: \$1,000,000

10.3.8 Crane Liability: \$1,000,000

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

The Contractor's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the

insurance maintained by the Contractor that precludes coverage for work contemplated in this project shall be deemed unacceptable, and shall be considered breach of contract.

**NOTE: CITY PROJECT NUMBER MUST APPEAR ON EACH CERTIFICATE.**

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

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

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

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

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

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

11.1.2 Warranty of Specifications: The Contractor warrants that all equipment, materials and workmanship furnished, whether furnished by the Contractor, its subcontractors or suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted and that all services will be performed in a workmanlike manner.

11.1.3 Warranty of Merchantability: The Contractor warrants that any and all equipment to be supplied pursuant to this Agreement is merchantable, free from defects, whether patent or latent in material or workmanship, and fit for the ordinary purposes for which it is intended.

11.2 Tests and Inspections: The Contractor shall give the Project Manager timely (minimum of thirty six (36) hours) notice of readiness of the Work for all required inspections, tests, or approvals.

11.2.1 If any law, ordinance, rule, regulation, code or order of any public body having jurisdiction requires any Work (or part thereof) to specifically be inspected, tested or approved, the Contractor shall assume full responsibility, pay all costs in connection therewith and furnish the Project Manager the required certificates of inspection, testing or approval. The Contractor shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the City's acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment submitted for approval prior to the Contractor's purchase thereof for incorporation of the Work.

11.2.2 All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction shall be performed by the City or by a professional testing firm designated by the City. The City will pay for sampling and testing if the test results are passing. The Contractor will reimburse the City for sampling, testing, and retesting costs associated with failing tests.

11.2.3 Neither observations by the Project Manager nor inspections, tests or approvals by others shall relieve the Contractor from his obligations to perform the Work in accordance with Contract Documents.

11.3 Uncovering Work: If any work that is to be inspected, tested or approved is covered without approval or consent of the Project Manager, it must, if requested by the Project Manager, be uncovered for observation and/or testing. Such uncovering and replacement shall be at the Contractor's sole expense unless the Contractor has given the Project Manager timely notice of the Contractor's intention to cover such Work and the Project Manager has not acted with reasonable promptness in response to such notice.

11.3.1 If the Project Manager considers it necessary or advisable that Work covered in accordance with Paragraph 11.2.1, 11.2.2 and 11.2.3 be observed by the City or inspected or tested by others, the Contractor at the City's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the Project Manager may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, the Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services, and an appropriate deductive Change Order shall be issued. If, however, such work is not found to be defective, the Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection testing and reconstruction if he makes a claim therefore as provided in Articles 14 and 15.

11.4 City May Stop the Work: If the Work is defective, or the Contractor fails to supply sufficient skilled supervisory personnel or workmen or suitable materials or equipment or the work area is deemed unsafe, the City may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the City to stop the Work shall not give rise to any duty on the

part of the City to exercise this right for the benefit of the Contractor or any other party. The City will not award any increase in Contract Price or Contract Time if the Work is stopped due to the circumstances described herein.

11.5 Correction or Removal of Defective Work Before Final Payment: If required by the Project Manager, the Contractor shall promptly, without cost to the City and as Specified by the Project Manager, either correct any defective Work, whether or not fabricated, installed or completed, or if the Work has been rejected by the City remove it from the site and replace it with non-defective Work.

11.6 One Year Correction Period After Final Payment: If within one (1) year after the date of final acceptance, or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any work is found to be defective, the Contractor shall promptly, without cost to the City and in accordance with the City's written instructions, either correct such defective Work, or, if it has been rejected by the City, remove it from the site and replace it with non-defective Work.

If The Contractor does not promptly comply with the terms of such instructions or in an emergency where delay would cause serious risk of loss or damage, the City may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs for such removal and replacement, including compensation for additional professional services, shall be paid by the Contractor.

11.7 Acceptance of Defective Work, Deductions: If, instead of requiring correction or removal and replacement of defective Work, the City, at the city's sole option, prefers to accept it, the City may do so. In such a case, if acceptance occurs prior to the Project Manager's recommendation of final payments, a Change Order shall be issued incorporating the necessary revisions in the Contracts Documents, including appropriate reduction in the Contract Price; or if the acceptance occurs after such recommendation, an appropriate amount shall be paid by the Contractor to the City.

11.8 City May Correct Defective Work: If the Contractor fails within a reasonable time after written notice of the Project Manager to proceed to correct defective Work or to remove and replace rejected Work as required by the Project Manager in accordance with Paragraph 11.5, or if the Contractor fails to perform the Work in accordance with the Contract Documents, the City may, after seven (7) days written notice to the Contractor, correct and remedy any such deficiency. In exercising its rights under this paragraph, the City shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the City may exclude the Contractor from all or part of the site, take possession of all or part of the Work, suspend the Contractor's services related thereto and take possession of the Contractor's tools, construction equipment and materials stored at the site or elsewhere. The Contractor shall allow the City's representative agents and employees such access to the site as may be necessary to enable the City to exercise its rights under this paragraph. All direct and indirect costs of the City in exercising such rights shall be charged against the Contractor in an amount verified by the Project Manager, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Contract Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and costs of repair and replacement of work of others destroyed or damaged by correction,

removal or replacement of the Contractor's defective Work. The Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by the City of the City's right hereunder.

## ARTICLE 12 – INDEMNIFICATION

12.1 Disclaimer of Liability: The City shall not at any time, be liable for injury or damage occurring to any person or property from any cause, whatsoever, arising out of Contractor's construction and fulfillment of this agreement.

12.2 Indemnification: For other, additional good valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

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

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

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

12.2.4 If any Subcontractor, supplier, laborer, or materialmen of Contractor or any other person directly or indirectly acting for or through Contractor files or attempts to file a mechanic's or construction lien against the real property on

which the work is performed or any part or against any personal property or improvements thereon or make a claim against any monies due or to become due from the City to Contractor or from Contractor to a Subcontractor, for or on account of any work, labor, services, material, equipment, or other items furnished in connection with the Work or any change order, Contractor agrees to satisfy, remove, or discharge such lien or claim at its own expense by bond, payment, or otherwise within five (5) days of the filing or from receipt of written notice from the City.

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

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

### **ARTICLE 13 – CHANGES IN THE WORK**

- 13.1 Without invalidating this Agreement, the City may, at any time or from time to time order additions, deletions or revisions in the Work through the issuance of Change Orders. Upon receipt of a Change Order, the Contractor shall proceed with the Work involved. All Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Article 14 or Article 15 on the basis of a claim made by either Party.
- 13.2 The Project Manager may authorize minor changes in the work not involving an adjustment in the Contract Price or the Contract Time, which are consistent with the overall intent of the Contract Documents. Such changes must be in writing and signed by the City and the Contractor.
- 13.3 If notice of any change affecting the general scope of the Work or change in the Contract Price is required by the provisions of any Bond to be given to the Surety, it will be the Contractor's responsibility to so notify the Surety, and the amount of each



applicable Bond shall be adjusted accordingly. The Contractor shall furnish proof of such adjustment to the City.

## ARTICLE 14 – CHANGE OF CONTRACT PRICE

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

14.1 Cost of the Work: The term "Cost of the Work" means the sum of all direct costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by the City, these costs shall be in amounts no higher than those prevailing in the City and shall include only the following items and shall not include any of the costs itemized in Paragraph 14.2:

14.1.1 Payroll costs for employees in the direct employ of the Contractor in the performance of the Work under schedules of job classifications agreed upon by the City and the Contractor. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus and cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and applicable holiday pay.

14.1.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage, and required suppliers and field services. All cash discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to the City, and the Contractor shall make provisions so that they may be obtained.

14.1.3 Supplemental costs including the following:

14.1.3.1 Cost, including transportation and maintenance of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work.

14.1.3.2 Rentals of all construction equipment and machinery and the parts whether rented from the Contractor or others in accordance with rental agreements approved by the City, and the costs of transporting, loading, unloading, installation, dismantling and removal. The rental of any such equipment, machinery or parts shall cease when the use is no longer necessary for the Work.

14.1.3.3 Sales, consumer, use or similar taxes related to the Work and for which the Contractor is liable, imposed by laws and regulations.

14.1.3.4 Royalty payments and fees for permits and licenses.

14.1.3.5 The cost of utilities, fuel and sanitary facilities at the Work site.

14.1.3.6 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

14.1.3.7 Cost of premiums for additional bonds and insurance required because of changes in the Work.

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

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

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

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

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

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

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

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

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

14.4.1 A mutually acceptable negotiated fee:

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

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

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

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

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

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

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

14.6 Time for the City to Approve Extra Work: Any Extra Work in an amount up to and not exceeding a cumulative amount of \$25,000 for a specific project can be approved by the City Manager and shall require a written Change Order proposal to be submitted to the Public Works Director for submittal and approval by the City Manager. Extra Work exceeding the cumulative amount of \$25,000 for a specific project must be approved by the City Commission and a written Change Order proposal must be submitted to the Public Works Director for submittal and approval by the City Manager and City Commission. No financial or time claim for delay to the project resulting from the Change Order approval process outlined above under Section 14.6 will be allowed.

#### **ARTICLE 15 – CHANGE OF THE CONTRACT TIME**

15.1 The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to the Project Manager within five (5) days of the occurrence of the event giving rise to the claim. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

15.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of the Contractor if a claim is made there for as provided in Paragraph 15.1. Such delays shall include but not be limited to, acts or neglect by the

City, or to fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God.

- 15.3 All time limits stated in the Contract Documents are of the essence. The provisions of this Article 15 shall not exclude recovery for damages for delay by the Contractor.
- 15.4 Delays caused by or resulting from entities, contractors or subcontractors who are not affiliated with the CONTRACTOR (non-affiliated Contractors) shall not give rise to a claim by the CONTRACTOR for damages for increases in material and/or labor costs. Such entities, contractors and subcontractors include, but are not limited to, the City's contractors and subcontractors, Florida Power and Light Company, AT&T and Florida East Coast Railway, LLC.

#### ARTICLE 16 – LIQUIDATED DAMAGES

- 16.1 Upon failure of the Contractor to complete the Work, described in each Work Order, within the time specified for completion, the Contractor shall pay to the City the sum of **Five Hundred Dollars (\$500.00)** for each and every calendar day that the completion of the Work is delayed beyond the time specified in this Agreement for completion, as fixed and agreed liquidated damages and not as a penalty, so long as the delay is caused by the Contractor. Should an act of God or the acts or omissions of the City, its agents or representatives, in derogation to the terms of this Agreement cause the delay, the Contractor shall not be responsible for the delay nor liquidated damages. Liquidated damages are fixed and agreed upon between the Parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by the City as a consequence of such delay and both parties desiring to obviate any question of dispute concerning the amount of damages and the cost and effect of the failure of the Contractor to complete the Work on time. Liquidated damages shall apply separately to each portion of the Work for which a time of completion is given. The City shall have the right to deduct from or retain any compensation which may be due or which may become due and payable to the Contractor the amount of liquidated damages, and if the amount retained by the City is insufficient to pay in full such liquidated damages, the Contractor shall pay all liquidated damages in full. The Contractor shall be responsible for reimbursing the City, in addition to liquidated damages or other damages for delay, for all costs of engineering, architectural fees, and inspection and other costs incurred in administering the construction of the Project beyond the completion date specified or beyond an approved extension of time granted to the Contractor whichever is later. Delays caused by or resulting from entities, contractors or subcontractors who are not affiliated with the Contractor shall not give rise to a claim by Contractor for damages for increase in material and/or labor costs. Such entities, contractors and subcontractors include, but are not limited to, the CITY's contractors and subcontractors, Florida Power and Light Company, AT&T, and Florida East Coast Railway, LLC.
- 16.2 No Extended Damages: For other and additional good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Contractor covenants and agrees that in the event of any delay of construction or for any reason, allegation or claim, and notwithstanding the reason of the delay, reason, claim or allegation or who caused them or the construction delay or whether they were caused by the City, that there will be no entitlement to Contractor to or for any direct or indirect financial damages or losses for extended corporate overhead impact, extended project

overhead impacts, project support services, mobilization or demobilization or by whatever other label or legal concept or theory and types of names or labels or basis such claims may have, or any business damages or losses of whatever type or nature, and Contractor hereby waives any right to make any such claim or claims. This provision will have application and effect when construction delays are anticipated and agreed upon by both the City and the Contractor.

## ARTICLE 17 – SUSPENSION OF WORK AND TERMINATION

- 17.1 City May Suspend Work: The City may, at any time and without cause, suspend the Work or any portion of the Work for a period of not more than ninety (90) days by notice in writing to the Contractor which shall fix the date on which Work shall be resumed. The Contractor shall resume the Work on the date fixed. The Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension, if the Contractor makes a claim as provided in Articles 14 and 15.
- 17.2 City May Terminate Work: The City retains the right to terminate this Agreement, with thirty (30) days prior written notice. Additionally, the City may also terminate this Agreement upon 15 days' notice upon the occurrence of any one or more of the following events:
- 17.2.1 If the Contractor commences a voluntary case or a petition is filed against the Contractor, under any chapter of the Bankruptcy Code, or if the Contractor takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.
- 17.2.2 If the Contractor makes a general assignment for the benefit of creditors.
- 17.2.3 If a trustee, receiver, custodian or agent of the Contractor is appointed under applicable law or under Contract, whose appointment or authority to take charge of property of the Contractor is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of the Contractor's creditors.
- 17.2.4 If the Contractor persistently fails to perform the Work in accordance with the Contract Documents, including but not limited to, failure to supply sufficient skilled Workers or suitable materials or equipment or failure to adhere to the progress schedule as same may be revised from time to time.
- 17.2.5 If the Contractor repeatedly fails to make prompt payments to subcontractors or for labor, material or equipment.
- 17.2.6 If the Contractor repeatedly disregards proper safety procedures.
- 17.2.7 If the Contractor disregards any local, state or federal laws or regulations.
- 17.2.8 If the Contractor otherwise violates any provisions of this Agreement.
- 17.3 Further, the Contractor may be excluded from the Work site and the City take possession of the Work and of all the Contractor's tools, appliances, construction equipment and machinery at the site and use them without liability to the City for

trespass or conversion, incorporate in the Work all materials and equipment stored at the site or for which the City has paid the Contractor but which are stored elsewhere, and finish the Work as the City may deem expedient. In this instance, the Contractor shall not be entitled to receive any further compensation until the Work is finished.

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

17.4 If the Contractor commits a default due to its insolvency or bankruptcy, the following shall apply:

17.4.1 Should this Agreement be entered into and fully executed by the parties, funds released and the Contractor (Debtor) files for bankruptcy, the following shall occur:

17.4.1.1 In the event the Contractor files a voluntary petition under 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Contractor shall acknowledge the extent, validity, and priority of the lien recorded in favor of the City. The Contractor further agrees that in the event of this default, the City shall, at its option, be entitled to seek relief from the automatic stay pursuant to 11 U.S.C. 362. The City shall be entitled to relief from the automatic stay pursuant to 11 U.S.C. 362(d) (1) or (d) (2), and the Contractor agrees to waive the notice provisions in effect pursuant to 11 U.S.C. 362 and any applicable Local Rules of the United States Bankruptcy Court. The Contractor acknowledges that such waiver is done knowingly and voluntarily.

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

17.4.1.3 In the event the Contractor files for bankruptcy under Chapter 13 of Title 11, United States Code in addition to the foregoing provisions, the Contractor agrees to cure any amounts in arrears over a period not to exceed twenty-four (24) months from the date of the confirmation order, and such payments shall be made in addition to the regular monthly payments required by the Note and mortgage.

Additionally, the Contractor shall agree that the City is over secured and, therefore, entitled to interest and attorney's fees pursuant to 11 U.S.C. 506(b). Such fees shall be allowed and payable as an administrative expense. Further, in the event the Contractor has less than five (5) years of payments remaining on the Note, the Contractor agrees that the treatment afforded to the claim of the City under any confirmed plan of reorganization shall provide that the remaining payments shall be satisfied in accordance with the Note, and that the remaining payments or claim shall not be extended or amortized over a longer period than the time remaining under the Note.

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

17.4.2.1 In the event the Contractor files a voluntary petition pursuant to 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Contractor acknowledges that the commencement of a bankruptcy proceeding constitutes an event of default under the terms of this Agreement. Further, the Contractor acknowledges that this Agreement constitutes an executory contract within the meaning of 11 U.S.C. 365. The Contractor acknowledges that this Agreement is not capable of being assumed pursuant to 11 U.S.C. 365(c)(2), unless the City expressly consents in writing to the assumption. In the event the City consents to the assumption, the Contractor agrees to file a motion to assume this Agreement within ten (10) days after receipt of written consent from the City, regardless of whether the bankruptcy proceeding is pending under Chapter 7, 11, or 13 of Title 11 of the United States Code. The Contractor further acknowledges that this Agreement is not capable of being assigned pursuant to 11 U.S.C. 365(b)(1).

17.5 Where the Contractor's service have been so terminated by the City, the termination shall not affect any rights of the City against the Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the Contractor by the City will not release the Contractor from liability.

17.6 The Contractor has no right, authority or ability to terminate the Work except for the wrongful withholding of any payments due the Contractor from the City.

#### ARTICLE 18 - NOTICES

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

To the City:

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

with copy to the

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

To the Contractor:

B & M Marine Construction, Inc.  
3500 SW 14 Street  
Deerfield Beach, FL 33442

#### **ARTICLE 19 – LIMITATION OF LIABILITY**

- 19.1 The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action arising out of this Agreement, so that the City's liability for any breach never exceeds the sum of \$1,000. For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor expresses its willingness to enter into this Agreement with the knowledge that the Contractor's recovery from the City to any action or claim arising from the Agreement is limited to a maximum amount of \$1,000 which amount shall be reduced by the amount actually paid by the City to the Contractor pursuant to this Agreement, for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended either to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Florida Statutes, or to extend the City's liability beyond the limits established in said Section 768.28; and no claim or award against the City shall include attorney's fees, investigative costs, expert fees, suit costs or pre-judgment interest.
- 19.2 No Extended Damages: For other and additional good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Contractor covenants and agrees that in the event of any delay of construction or for any reason, allegation or claim, and notwithstanding the reason of the delay, reason, claim or allegation or who caused them or the construction delay or whether they were caused by the City, that there will be no entitlement to Contractor to or for any direct or indirect financial damages or losses for extended corporate overhead impact, extended project overhead impacts, project support services, mobilization or demobilization or by whatever other label or legal concept or theory and types of names or labels or basis such claims may have, or any business damages or losses of whatever type or nature, and Contractor hereby waives any right to make any such claim or claims. This provision will have application and effect when construction delays are anticipated and agreed upon by both the City and the Contractor.

#### **ARTICLE 20 – GOVERNING LAW**

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

#### **ARTICLE 21 – MISCELLANEOUS**



- 21.1 The duties and obligations imposed by this Agreement and the rights and remedies available to the parties and, in particular but without limitation, the warranties, guaranties and obligations imposed upon the Contractor and all of the rights and remedies available to the City, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents, and the provisions of this Paragraph will survive final payment and termination or completion of this Agreement.
- 21.2 The Contractor shall not assign or transfer this Agreement or its rights, title or interests. The obligations undertaken by the Contractor pursuant to this Agreement shall not be delegated or assigned to any other person or firm. Violation of the terms of this Paragraph shall constitute a material breach of Agreement by the Contractor and the City any, at its discretion, cancel this Agreement and all rights, title and interest of the Contractor which shall immediately cease and terminate.
- 21.3 The Contractor and its employees, volunteers and agents shall be and remain an independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be constructed to create a partnership, association or any other kind of joint undertaking or venture between the Parties.
- 21.4 The City reserves the right to audit the records of the Contractor relating in any way to the Work to be performed pursuant to this Agreement at any time during the performance and term of this Agreement and for a period of three (3) years after completion and acceptance by the City. If required by the City, the Contractor agrees to submit to an audit by an independent certified public accountant selected by the City. The Contractor shall allow the City to inspect, examine and review the records of the Contractor at any and all times during normal business hours during the term of this Agreement.
- 21.5 The remedies expressly provided in this Agreement to the City shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of the City now or later existing at law or in equity.
- 21.6 Should any part, term or provisions of this Agreement be decided by the courts to be invalid, illegal or in conflict with any state or federal law, the validity of the remaining portion or provision shall not be affected.

**Bid # 243-11357**  
**PROJECT 11825**  
**ANNUAL MARINE FACILITIES REPAIR, MAINTENANCE CONTRACT**

TO THE COMMISSION OF THE CITY OF  
FORT LAUDERDALE, FLORIDA

Gentlemen:

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

**REMOVAL AND/OR DEMOLITION**

**ITEM 1:** Remove existing timber and/or concrete piling and dispose off the job site to a Broward County approved location. This item includes the removal of fallen debris and materials from the river's bottom.

Approximately 15

@ \$ 450.00 /EACH

\$ 6,750.00

**ITEM 2:** Demolish deteriorated, existing reinforced concrete seawall, including seawall cap, concrete piling, concrete panels, and the excavation and removal of all debris and materials off the job site to a Broward County approved location. This item includes the removal of fallen debris and materials from the river's bottom.

Approximately 500 Cubic Yards

@ \$ 185.00 /C.Y.

\$ 92,500.00

**ITEM 3:** Remove rubble rock seawall including but not limited to removal of concrete cap, any existing toe-wall footing, or any type of existing footer, and any structure attached to it including its support, disposal and removal of all the debris and materials off the job site to a Broward County approved location. This item includes the removal of fallen debris and materials from the river's bottom.

Approximately 500 Cubic Yards

@ \$ 165.00 /C.Y.

\$ 82,500.00

**Removal and/or Demolition (Continued)**

**ITEM 4:** Remove a section of existing concrete cap up to 36" wide and up to 16" thick, or any other dimensions not included in this item, disposal of all the materials off the job site to a Broward County approved disposal location, removal of fallen debris and materials from the river's bottom, including any and all incidentals to complete same.

Approximately 300 Square Feet.

@ \$ 20.00/S.F.

\$ 6,000.00

**ITEM 5:** Demolish an existing reinforced concrete structure of any length, up to fourteen (14) inches wide and up to sixteen (16) inches thick, including but not limited to, any utility pipe attached to it, or any other attachments, disposal of all the materials off the job site to a Broward County approved disposal location, removal of fallen debris and materials from the river's bottom, including any and all incidentals to complete the work.

Approximately 500 Linear Feet

@ \$ 38.00/L.F.

\$ 19,000.00

**ITEM 6:** Remove an existing reinforced concrete structure of any length and width and no more than twenty-four (24) inches thick, including but not limited to, any utility pipe attached to it, or any other attachments, disposal of all the materials off the job site to a Broward County approved disposal location, removal of fallen debris and materials from the river's bottom, and all incidentals to complete it.

Approximately 700 Square Feet

@ \$ 33.00/S.F.

\$ 23,100.00

**TIMBER PILING**

**ITEM 7:** Furnish timber marine pile, fourteen-inch (14") tip diameter, and thirty feet (30') long, inspected and certified at plant.

Approximately 50

@ \$ 483.00/EACH

\$ 24,150.00

**Timber Piling (Continued)**

**ITEM 8:** Drive timber marine pile, fourteen-inch (14") tip diameter, thirty-feet (30') long, including but not limited to, any required specialty equipment and means to drive the pile length into the ground as directed by the Engineer, regardless of the existing soil layers, and all incidental to complete same.

Approximately 50

@ \$ 680.00 /EACH \$ 34,000.00

**ITEM 9:** Furnish timber marine pile, fourteen-inch (14") tip diameter, and forty five feet (45') long, inspected and certified at plant.

Approximately 25

@ \$ 635.00 /EACH \$ 15,875.00

**ITEM 10:** Drive timber marine pile, fourteen-inch (14") tip diameter, forty-five feet (45') long, including but not limited to, any required specialty equipment and means to drive the pile length into the ground as directed by the Engineer, regardless of the existing soil layers, and all incidental to complete same.

Approximately 25

@ \$ 690.00 /EACH \$ 17,250.00

**ITEM 11:** Furnish timber marine pile fourteen-inch (14") tip diameter, sixty feet (60') long, inspected and certified at plant.

Approximately 25

@ \$ 825.00 /EACH \$ 20,625.00

**ITEM 12:** Drive timber marine pile fourteen-inch (14") tip diameter, sixty-feet (60') long, including but not limited to, any required specialty equipment and means to drive the pile length into the ground as directed by the Engineer, regardless of the existing soil layers, and all incidental to complete same.

Approximately 25

@ \$ 780.00 /EACH \$ 19,500.00

**PRESTRESSED CONCRETE PILING**

**ITEM 13:** Furnish 4-strand twelve inch (12") by twelve-inch (12"), twenty-feet (20') long prestressed concrete pile inspected and certified at plant, according to the details and notes shown in Exhibit 1.

Approximately 5

@ \$ 275.00 /EACH

\$ 1,375.00

**ITEM 14:** Drive twelve inch (12") by twelve-inch (12"), twenty-feet (20') long prestressed concrete vertical pile, including but not limited to, reflector strip, any required specialty equipment and means to drive the pile length into the ground as directed by the Engineer, regardless of the existing soil layers, and all incidental to complete same.

Approximately 5

@ \$ 575.00 /EACH

\$ 2,875.00

**ITEM 15:** Furnish 4-strand twelve-inch (12") by twelve-inch (12"), twenty-five-feet (25') long prestressed concrete pile inspected and certified at plant, according to the details and notes shown in Exhibit 1.

Approximately 5

@ \$ 350.00 /EACH

\$ 1,750.00

**ITEM 16:** Drive twelve-inch (12") by twelve-inch (12"), twenty-five feet (25') long prestressed concrete vertical pile, including but not limited to, reflector strip, any required specialty equipment and means to drive the pile length into the ground as directed by the Engineer, regardless of the existing soil layers, and all incidental to complete same.

Approximately 5

@ \$ 600.00 /EACH

\$ 3,000.00

**Prestressed Concrete Piling (Continued)**

**ITEM 17:** Drive twelve inch (12") by twelve-inch (12"), twenty-five feet (25') long prestressed concrete **batter** pile, including but not limited to, reflector strip, any required specialty equipment and means to drive the pile length into the ground as directed by the Engineer, regardless of the existing soil layers, and all incidental to complete same.

Approximately 5

@ \$ 600.00/EACH

\$ 3,000.00

**ITEM 18:** Furnish 4-strand twelve-inch (12") by twelve-inch (12"), thirty-feet (30') long prestressed concrete pile inspected and certified at plant, according to the details and notes shown in Exhibit 1.

Approximately 5

@ \$ 410.00/EACH

\$ 2,050.00

**ITEM 19:** Drive twelve-inch (12") by twelve-inch (12"), thirty-feet (30') long prestressed concrete **vertical** pile, including but not limited to, reflector strip, any required specialty equipment and means to drive the pile length into the ground as directed by the Engineer, regardless of the existing soil layers, and all incidental to complete same.

Approximately 5

@ \$ 635.00/EACH

\$ 3,175.00

**ITEM 20:** Furnish 8-strand 14" x 14" twenty-feet (20') long prestressed concrete piles inspected and certified at plant, according to the details and notes shown in Exhibit 1.

Approximately 5

@ \$ 530.00/EACH

\$ 2,650.00

**Prestressed Concrete Piling (Continued)**

**ITEM 21:** Drive 8-strand 14" x 14" twenty-foot (20') long prestressed concrete **vertical** piling, including but not limited to, any required specialty equipment and means to drive the pile length into the ground as directed by the Engineer, regardless of the existing soil layers, and all incidental to complete same.

Approximately 5

@ \$ 790.00 /EACH

\$ 3,950.00

**ITEM 22:** Furnish 8-strand 14" x 14" twenty-five feet (25') long prestressed concrete piles inspected and certified at plant, according to the details and notes shown in Exhibit 1.

Approximately 5

@ \$ 660.00 /EACH

\$ 3,300.00

**ITEM 23:** Drive 14" x 14" twenty-five feet (25') long prestressed concrete **vertical** piling, including but not limited to, any required specialty equipment and means to drive the pile length into the ground as directed by the Engineer, regardless of the existing soil layers, and all incidental to complete same.

Approximately 5

@ \$ 740.00 /EACH

\$ 3,700.00

**ITEM 24:** Drive 14" x 14" twenty-five feet (25') long prestressed concrete **batter** piling, including but not limited to, any required specialty equipment and means to drive the pile length into the ground as directed by the Engineer, regardless of the existing soil layers, and all incidental to complete same.

Approximately 5

@ \$ 740.00 /EACH

\$ 3,700.00

**CAP ON PILING**

**ITEM 25:** Install new black synthetic rubber cone pile cap on timber piling, According to the details shown in Exhibit 7.

Approximately 20

@ \$ 65.00 /EACH \$ 1,300.00

**ITEM 26:** Install new white synthetic rubber cap, pyramid in shape, on 12" x 12" concrete pile, as shown in Exhibit 3, including any and all incidentals required to complete same.

Approximately 20

@ \$ 73.00 /EACH \$ 1,460.00

**PILE WRAP**

**ITEM 27:** Install thirty- (30) mil polyethylene pile wrap, four-feet (4') high, as shown in Exhibit 7.

Approximately 30

@ \$ 120.00 /EACH \$ 3,600.00

**REINFORCED CONCRETE SEAWALL PANEL**

**ITEM 28:** Construct new reinforced concrete panels (L x 8-6" wide x 7-1/2" thick minimum), including sealing joints at the vertical piles by installing grout material behind vertical piles at least 1-foot deep beyond length of panel from dry ground elevation behind the seawall, including but not limited to installation, and incidentals to complete same, and according to the details and notes shown in Exhibit 4.

Engineer to provide (L) dimension during construction.

Approximately 200 Square Feet

@ \$ 25.00 /S.F. \$ 5,000.00



**TOE WALL**

**ITEM 29:** Construct a toe-wall footing consisting of five-feet (5') long aluminum sheet piling, topped with 12" of Class "B" concrete seal, including but not limited to, any required specialty equipment and means to drive the specified sheet length into the ground regardless of the existing soil layers, all incidentals to complete same, and according to the details shown in Exhibit 9.

Approximately 700 Linear Feet

@ \$ 105.00 /L.F.

\$ 73,500.00

**ITEM 30:** Furnish all materials, labor, and equipment to construct a toe-wall footing consisting of eight-feet (8') long aluminum sheet piling, topped with 12" of Class "B" concrete seal, including but not limited to, any required specialty equipment and means to drive the specified sheet length into the ground regardless of the existing soil layers, all incidentals to complete same, and according to the details shown in Exhibit 9.

Approximately 200 Linear Feet

@ \$ 135.00 /L.F.

\$ 27,000.00

**ITEM 31:** Furnish all materials, labor, and equipment to construct a toe-wall footing consisting of five-feet (5') long steel sheet piling 3/8" thick, topped with 12" of Class "B" concrete seal, including but not limited to, any required specialty equipment and means to drive the specified sheet length into the ground regardless of the existing soil layers, all incidentals to complete same, and according to the details shown in Exhibit 9.

Approximately 200 Linear Feet

@ \$ 245.00 /L.F.

\$ 49,000.00

(Continued)

PROJECT 11825

**Toe Wall (Continued)**

**ITEM 32:** Furnish all materials, labor, and equipment to construct toe-wall footing consisting of eight-feet (8') long steel sheets 3/8" thick, topped with 12" of Class "B" concrete seal, including but not limited to, any required specialty equipment and means to drive the specified sheet length into the ground regardless of the existing soil layers, all incidentals to complete same, and according to the details shown in Exhibit 9.

Approximately 20 Linear Feet

@ \$ 395.00 /L.F.

\$ 7,900.00

**SEAWALL CONCRETE CAP**

**ITEM 33:** Furnish all labor, materials, and equipment to construct 24" wide x 6" thick concrete cap, according to the details shown in Exhibit 8.

Approximately 20 Linear Feet

@ \$ 70.00 /L.F.

\$ 1,400.00

**ITEM 34:** Furnish all labor, materials, and equipment to construct 18" wide x 6" thick concrete cap, according to the details shown in Exhibit 8.

Approximately 20 Linear Feet

@ \$ 68.00 /L.F.

\$ 1,360.00

**ITEM 35:** Furnish all labor, materials, and equipment to construct a new 18" x 12" reinforced cap according to the dimensions and sections shown in Exhibit 8.

Approximately 10 Linear Feet

@ \$ 95.00 /L.F.

\$ 950.00

(Continued)

PROJECT 11825

**ITEM 36:** Furnish all labor, materials, and equipment to construct a new 30" x 16" reinforced concrete cap, according to the dimensions and sections shown in Exhibit 5.

Approximately 10 Linear Feet

@ \$ 125.00 /L.F

\$ 1,250.00

**ITEM 37:** Furnish all labor, materials, and equipment to construct 24" wide x 10" thick concrete cap, according to the details shown in Exhibit 8.

Approximately 500 Linear Feet

@ \$ 93.00 /L.F.

\$ 46,500.00

**FENDER SYSTEM**

**ITEM 38:** Furnish all material, labor and equipment to install three-inch (3") by eight-inch (8"), eight-feet (8') long bolted fender system, including one-half inch (1/2") stainless steel HILTI 316 HVA adhesive anchor system, or approved equal, minimum five-inch (5") embedment, and according to the details shown in Exhibit 9.

Approximately 20

@ \$ 225.00 /EACH

\$ 4,500.00

**ITEM 39:** Furnish all materials, labor and equipment to install three-inch (3") by eight-inch (8") by ten-feet (10') long bolted fender system, including one-half inch (1/2") stainless steel HILTI 316 HVA adhesive anchor system, or approved equal, minimum five-inch (5") embedment, and according to the details shown in Exhibit 9.

Approximately 10

@ \$ 256.00 /EACH

\$ 2,560.00

(Continued)

PROJECT 11825

**ITEM 40:** Furnish all labor, materials and equipment to install a double layer of fender bumper material, manufactured from plasticized PVC with UV inhibitors, on fender boards, including all hardware, and according to the details shown in Exhibit 10.

Approximately 80 Linear Feet

@ \$ 39.00 /L.F.

\$ 3,120.00

**ITEM 41:** Furnish all labor, materials and equipment to install four-inch (4") by four-inch (4") by eight-feet (8') long recycled plastic lumber, aluminum channel backed, bolted fender system, including one-half inch (1/2") stainless steel HILTI 316 HVA adhesive anchor system, or approved equal, and according to details shown in Exhibit 9.

Approximately 1

@ \$ 510.00 /EACH

\$ 510.00

### CLEATS

**ITEM 42:** Furnish all labor, materials and equipment to install eighteen-inch (18") cleats ductile iron-hot dipped galvanized or approved equal dock cleats, including all hardware, adhesive anchor system, all incidentals to complete same and according to the details, notes shown on Exhibit 7, and detailed specifications.

Approximately 15

@ \$ 135.00 /EACH

\$ 2,025.00

**ITEM 43:** Furnish all labor, materials and equipment to install fifteen-inch (15") cleats ductile iron-hot dipped galvanized or approved equal dock cleats, including all hardware, adhesive anchor system, all incidentals to complete same and according to the details, notes shown on Exhibit 7, and detailed specifications.

Approximately 6

@ \$ 90.00 /EACH

\$ 540.00

**ITEM 44:** Reinstall existing cleats, all sizes, using new stainless steel bolts, and stainless steel wedge anchors and/or nuts (as required) in existing or new holes, as directed by the Engineer.

Approximately 6

@ \$ 45.00 /EACH

\$ 270.00

**ALUMINUM LADDER**

**ITEM 45:** Construct and install aluminum ladders according to the dimensions shown in Exhibit 3, including removal of existing ones or part of it, stainless steel hardware, and any incidentals required to complete same.

Approximately 6 Ladders

@ \$ 325.00 /EACH

\$ 1,950.00

**ITEM 46:** Re-set existing aluminum ladders as shown in Exhibit 3, including drilling on concrete to set new anchor bolts, stainless steel hardware, and any incidentals required to complete same.

Approximately 1 Location

@ \$ 160.00 /EACH

\$ 160.00

**RUBBLE ROCK SEAWALL**

**ITEM 47:** Repair existing rubble rock seawalls by filling voids on the wall with rubble rock material of the appropriate size.

Approximately 20 Tons

@ \$ 135.00 /Tons.

\$ 2,700.00

**ITEM 48:** Seal face of existing rubble rock seawalls with non-shrink cement mortar, coat not less than 1/4" thick.

Approximately 300 Square Feet

@ \$ 6.00 /S.F.

\$ 1,800.00

**CONCRETE REPAIR**

**ITEM 49:** Construct miscellaneous reinforced concrete work as directed by the Engineer.

Approximately 5 Cubic Yards

@ \$ 1,100.00 /C.Y.

\$ 5,500.00

**ITEM 50:** Repair spalled, broken concrete areas, or both with epoxy mortar, including but not limited to, removal of loose material to sound concrete, preparing surface to receive repair material, form work and installing steel reinforcement and/or wire mesh if necessary and as directed by Engineer, cleaning of river bottom incidentals to complete same, and according to the details shown in Exhibit 2.

Approximately 100 Cubic Feet

@ \$ 60.00 /C.F.

\$ 6,000.00

Item cost shall be reduced to half if there is no loose concrete.

**JOINTS**

**ITEM 51:** Remove existing expansion joint seal on concrete cap and install new one, according to the details shown in Exhibit 5.

Approximately 100 Linear Feet

@ \$ 12.00 /L.F.

\$ 1,200.00

**ITEM 52:** Clean and seal vertical joints in between existing T-piling and concrete panels and in between existing concrete sheet piling, using sealant/epoxy intended for underwater use.

Approximately 100 Linear Feet

@ \$ 9.00 /L.F.

\$ 900.00

**RESTORATION**

**ITEM 53:** Haul and install one-foot (1') to three-foot (3') average size of riprap rock material in front of existing or newly constructed seawall, and at any required places indicated by the Engineer. Delivery tickets shall verify quantities.

Approximately 40 Tons

@ \$ 135.00 /TON

\$ 5,400.00

**ITEM 54:** Haul, place, and compact in lifts, clean sandy fill material along the back of newly constructed seawall and at any other required places as directed by the Engineer. Delivery tickets shall verify quantities.

Approximately 100 Cubic Yards

@ \$ 90.00 /C.Y.

\$ 9,000.00

**ITEM 55:** Haul and place St. Augustine "Floritam" and Bahia Sod along the back of newly constructed seawall and any other places as directed by the Engineer.

A) Bahia Sod

Approximately 200 S.Y. @ \$ 7.00 /S.Y.

\$ 1,400.00

B) St. Augustine Sod

Approximately 400 S.Y. @ \$ 8.10 /S.Y.

\$ 3,240.00

**TURBIDITY BARRIER**

**ITEM 56:** Install a turbidity barrier at any working area, during demolition and construction. No additional compensation or extra payment will be allowed for relocating the turbidity barrier as many times as necessary or indicated by the Engineer to any working area or working project site under this contract.

Approximately 150 Linear Feet

@ \$ 25.00 /L.F.

\$ 3,750.00

**WATER WAYS WORK**

**ITEM 57:** Furnish all labor, material, fully equipped diver (no boat) to perform diving inspection at several locations as directed by the engineer. Mobilization to and demobilization from the job site are included. Inspection time shall start after diving equipment is operational landside and diver enters the water as agreed by the City inspector. Inspection time shall end as soon as the diver exits the water as agreed by the City inspector. Under this scope of work, contractor shall inspect condition of existing toe walls, seawall, vertical joints separation, scouring under concrete panel, scouring at concrete panels joints, boat ramps including and not limited to other inspections directed by the engineer.

Approximately 20 hours

@ \$ 145.00/HOUR

\$ 2,900.00

**ITEM 58:** Furnish all labor, material, fully equipped diver including boat or barge to perform inspection at several locations as directed by the engineer. Mobilization to and demobilization from the job site are included. Inspection time shall start after diving equipment is operational and diver enters the water as agreed by the City inspector. Inspection time shall end as soon as the diver exits the water as agreed by the City inspector. Under this scope of work, contractor shall inspect existing toe walls, seawall condition, scouring under concrete panel, scouring at concrete panels joints, boat ramps, and detailed inspection of whole intracoastal mooring buoy assemblies, including and not limited to other inspections directed by the engineer.

Approximately 20 hours

@ \$ 295.00/HOUR

\$ 5,900.00

**BUOYS**

**ITEM 59:** Perform semi-annual inspection tasks on all 10 mooring buoys assembly including the delivery of a video and written report of inspection. See Detailed Specifications "Maintenance of Mooring Buoy System."



**Buoys (Continued)**

**ITEM 59 (Continued)**

Approximately 5

@ \$ 1,650.00 /DIVE

\$ 8,250.00

The Contractor shall prepare and submit a semi-annual maintenance report after completing the semi-annual inspection and maintenance tasks. The report shall list each buoy, inspection dates, condition of buoy, and a description of type of repairs and replacements made. The report will be delivered to the Engineer in both written form and electronically on a CD or an electronic media utilizing Microsoft, Excel, Access or equivalent software.

The Contractor shall also provide an annual report giving dates, condition of ocean substrate, replacement dates and repairs of all items including qualities of materials used during the year.

The report shall be delivered to the Engineer in hard copy and electronically on an electronic media or CD in Microsoft, Excel, Word or equivalent spreadsheet format.

**ITEM 60:** Replace the eight (8) components of mooring buoy system. This item includes all labor, materials and equipment to replace components if and when necessary.

A) Anchor eyebolt (pin)		
4 each \$ <u>200.00</u> /Eyebolt	\$	<u>800.00</u>
B) Stainless steel Shackles		
4 each \$ <u>105.00</u> /SS Shackle	\$	<u>420.00</u>
C) Mooring buoy down line		
4 each \$ <u>195.00</u> /Down Line	\$	<u>780.00</u>
D) Subs-surface buoy		
4 each \$ <u>45.00</u> /Buoy	\$	<u>180.00</u>
E) Mooring buoy thruline		
4 each \$ <u>60.00</u> /Thruline	\$	<u>240.00</u>
F) Buoy pick-up line		
4 each \$ <u>125.00</u> /Pick-up Line	\$	<u>500.00</u>
G) Mooring buoy		
4 each \$ <u>260.00</u> /Buoy	\$	<u>1,040.00</u>
H) Stainless steel swivel		
4 each \$ <u>150.00</u> /SS Swivel	\$	<u>600.00</u>

TOTAL- A Thru H: \$ 4,560.00

**MISCELLANEOUS WORK**

**ITEM 61:** Install two (2) rows of 4-3/8" x 4-3/8" ceramic tile as shown in Exhibit 6, including any and all incidentals to complete same.

Approximately 50 Square Feet

@ \$ 9.50/S.F.

\$ 475.00

**ITEM 62:** Install a 12" x 12" precast concrete logo according to the details shown in Exhibit 6, including any and all incidentals to complete same.

Approximately 6

@ \$ 145.00/EACH

\$ 870.00

**ITEM 63:** Install brick pavers at miscellaneous locations as outlined in the Detailed Specifications, including any and all incidentals to complete same.

Approximately 1000 Square Feet

@ \$ 5.95/S.F.

\$ 5,950.00

**ITEM 64:** Reset existing brick pavers at miscellaneous locations as outlined in the Detailed Specifications, including any and all incidentals to complete same.

Approximately 1000 Square Feet

@ \$ 3.95/S.F.

\$ 3,950.00

**ITEM 65:** Furnish all labor, materials, and equipment to remove existing and install new conduit for plumbing, electrical, and fire services utilities:

- A) 1" Plumbing
  - 50 LF \$ 12.00 /LF \$ 600.00
- B) 1 1/2" Plumbing
  - 50 LF \$ 14.00 /LF \$ 700.00
- C) 2" Plumbing
  - 50 LF \$ 17.00 /LF \$ 850.00
- D) 1" Electrical
  - 50 LF \$ 12.75 /LF \$ 637.50

Miscellaneous Work (Continued)

ITEM 65 (Continued)

E) 1 1/2" Electrical		
50 LF \$ 13.05 /LF	\$	652.50
F) 2" Electrical		
50 LF \$ 13.50 /LF	\$	675.00
G) 2 1/2" Fire Service		
50 LF \$ 29.50 /LF	\$	1,475.00

TOTAL - A Thru G: \$ 5,590.00

ITEM 66: Construct 12" x 12" x 5' reinforced concrete post as directed by the Engineer, including removal of existing post, disposal off the job site, form work, and all incidentals to complete same, as according to the details shown on Exhibit 9.

Approximately 10

@ \$ 600.00/EACH \$ 6,000.00

ITEM 67: Install new 3" x 10" x 10' wooden stringers as directed by the Engineer, including but not limited to removal of existing ones, disposal off the job site, 3/4" diameter stainless steel bolts, washers and nuts, and all incidentals to complete same.

Approximately 10

Item cost shall be reduced to half cost if only bolts are being replaced

@ \$ 195.00/EACH \$ 1,950.00

ITEM 68: Install new 3" x 6" x 4' wooden deck planks as directed by the Engineer, including but not limited to removal of existing ones, disposal off the job site, 5/16" x 6" stainless steel lag bolts plus washer, to tie down decking to main beams, and all incidentals to complete same.

Approximately 10

Item cost shall be reduced to half if only bolts are replaced

@ \$ 36.00/EACH \$ 360.00

**ITEM 69:** Install 3" x 6" x 8' wood decking as directed by the Engineer, including but not limited to removal of existing ones, disposable off the jobsite, 5/16" x 6" stainless steel lag bolts plus washer, to tie planks to main beams, and all incidentals to complete same.

Approximately 10

Item cost shall be reduced to half if only bolts are replaced

@ \$ 68.00 /EACH

\$ 680.00

**ITEM 70:** Replace damaged white-plastic trash cans as directed by the Engineer, including removal of damaged ones, disposal off job site, hardware to anchor to concrete, and all incidentals to complete same.

Approximately 5

@ \$ 255.00 /EACH

\$ 1,275.00

**ITEM 71:** Replace damaged black-metal trash cans as directed by the Engineer, including removal of damaged ones, disposal off job site, stainless steel hardware to anchor to concrete, and all incidentals to complete same.

Approximately 5

@ \$ 305.00 /EACH

\$ 1,525.00

**ITEM 72:** Furnish all materials, labor and equipment necessary to construct **Polyethylene pipe**, smooth interior storm drain, including but not limited to unloading, stringing, excavating, dewatering, removal and disposal of unsuitable materials, bedding, laying, connecting to existing catch basins, core drilling, and filter fabric, backfilling, compacting, restoraton, including adjustments of valves, rims, covers and grading, and all other necessary appurtenances, as shown on project detail sheet.

**OPEN CUT (TRENCHED) PIPE:**

a) 12 - 15 inches @ \$ 465.00 /L.F. (approx 1')

\$ 465.00

b) 18 inches @ \$ 505.00 /L.F. (approx 1')

\$ 505.00

c) Elliptical Pipes

12 inches high x 18 inches wide

@ \$ 548.00 /L.F. (approx 1')

\$ 548.00

**ITEM 73:** Furnish all materials, labor and equipment to construct and install **aluminum manatee grate, per FDOT Index #230**, with all fittings, including excavation, grading, removal, and disposal of soil and debris and all other necessary appurtenances, including sod.

Approximately 1 in Each Case

- a) 12-inch @ \$ 975.00 /EACH
- b) 15-inch @ \$ 995.00 /EACH
- c) 18-inch @ \$ 1,027.00 /EACH
- d) 24-inch @ \$ 1,072.00 /EACH

TOTAL \$ 4,069.00

**ITEM 74:** Furnish all materials, labor and equipment to core drill existing seawalls to install outfall drainage pipes of varies sites including excavation, grading, removal, and disposal of soil and debris and all other necessary appurtenances, including sod.

Approximately 1 in Each Case

- a) 12-inch outfall pipe core drill @ \$ 825.00 /EACH
- b) 15-inch outfall pipe core drill @ \$ 850.00 /EACH
- c) 18-inch outfall pipe core drill @ \$ 905.00 /EACH
- d) 24-inch outfall pipe core drill @ \$ 950.00 /EACH

TOTAL \$ 3,530.00

**ITEM 75:** Mobilization, demobilization (move-in and move-out), staging of equipment, insurance base cost and other fixed costs. This item shall not exceed 5% of the total contract amount.

LUMP SUM \$ 3,500.00

GRAND TOTAL: \$ 735,372.00  
(Items 1 - 75) (FIGURES)

Seven Hundred Thirty Five Thousand Three Hundred Seventy Two Dollars and Zero Cents  
(TOTAL WRITTEN DOLLAR AMOUNT)

The City of Fort Lauderdale reserves the right to waive any informality in any bid and to reject any or all bids. The City of Fort Lauderdale reserves the right to reduce or delete any of the above items.

At time of award of contract, the City reserves the right to set a maximum dollar limit that may be expended on this project. Contract quantities of any or all items may be increased,

reduced, or eliminated to adjust the contract amount to coincide with the amount of work necessary or to bring the contract value to within the established limit. All quantities are estimated and the City reserves the right to increase, reduce, or eliminate the contract quantities in any amount.

### CONTRACT TIME

- 1.1 The Contractor recognizes that **TIME IS OF THE ESSENCE**. The Work shall commence within 5 calendar days of the date of the Notice to Proceed.
- 1.2 The Work shall be Substantially Completed within \_\_\_ calendar days after the date when the Contract Time commences to run as provided in the Notice to Proceed. **N/A**
- 1.3 The Work shall be finally completed on the Final Completion Date and ready for final payment in accordance with this Agreement within \_\_\_ calendar days after the date when the Contract Time commences to run as provided in the Notice to Proceed. **N/A**
- 1.4 The initial contract term shall commence upon date of award by the City and shall expire 1 year from that date. The City reserves the right to extend the contract for 3, additional 1 year terms, providing all terms conditions and specifications remain the same, both parties agree to the extension, and such extension is approved by the City.
- 1.5 In the event services are scheduled to end because of the expiration of this contract, the Contractor shall continue the service upon the request of the City as authorized by the awarding authority. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing contract. The Contractor shall be compensated for the service at the rate in effect when this extension clause is invoked by the City.

Rev. 7/10/2013

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

**CONTRACTOR:**

B & M Marine Construction, Inc.

**WITNESSES:**

[Signature]  
(Signature)

MITCH BRYANT  
(Witness print/type name)

[Signature]  
(Signature)

David Simmonds  
(Witness print/type name)

(Corporate Seal)

By: [Signature]  
(Signature)

GLEN BRYANT President  
(Print Name and Title)

Attest: [Signature]  
By: [Signature]  
(Signature)

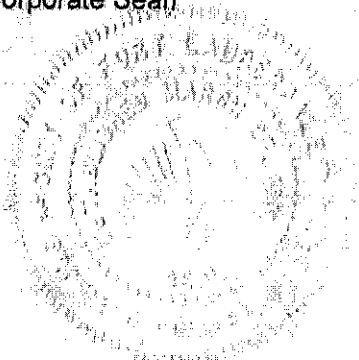
Chris Bryant, Treasurer  
(Print/type name)

**CITY:**

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

By: [Signature]  
LEE R. FELDMAN, City Manager

(Corporate Seal)



**ATTEST:**

By: [Signature]  
JONDA K. JOSEPH, City Clerk

**APPROVED AS TO FORM:**

By: [Signature]  
Senior Assistant City Attorney

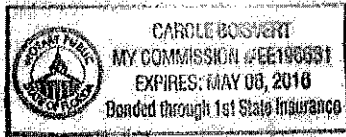
ACKNOWLEDGEMENT OF CONTRACTOR

STATE OF: Florida

COUNTY OF: Broward

The foregoing instrument was acknowledged before me this 12th day of May,  
20 14, by Glen Bryant, President and Chris Bryant, T,  
as President and Treasurer, respectively,  
of B&M Marine Construction Inc, a Florida  
corporation, on behalf of the corporation, who is  personally known to me or  has produced  
\_\_\_\_\_ as identification.

(SEAL)

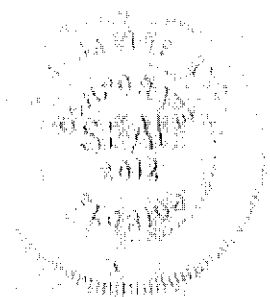


Carole Boisvert  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgement)

Carole Boisvert  
Name of Notary Typed, Printed or Stamped

My Commission Expires: 5/8/10

#EE196631  
Commission Number





**SURETY BOND**

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

THIS IS A SURETY BOND given by B & M Marine Construction, Inc. the "Contractor" as principal, referred to in this Bond as "Contractor" and Capitol Indemnity Corporation as "Surety," and they represent by this Instrument that they are bound to the CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida ("City"), for 100% performance bond at the time of the Work Order release per contract terms. Total Estimated annual value of the contract is \$735,372.00 Seven Hundred Thirty Five Thousand Three Hundred Seventy Two Dollars and Zero Cents. for the payment of which, to be made to the City of Fort Lauderdale, Florida, they jointly and severally, bind themselves and each of their heirs, executors, administrators, successors and assigns.

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

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

**Bond No.:** 60101261

**Contractor Name, Address, Telephone:** B & M Marine Construction, Inc.  
3500 SW 14 Street  
Deerfield Beach, FL 33442

**Surety Company, Address, Telephone:** Capitol Indemnity Corporation  
P.O. Box 5900  
Madison, WI 53705-0900  
608-829-4200

**City Project No.:** Project 11825, Bid #243-11357  
**Name of Project:** Annual Marine Facilities Repair, Maintenance Contract

**Project Location:** Within City of Fort Lauderdale

**Legal Description and Street Address**  
**Description of Work:** The work under this contract shall consist of furnishing all labor, materials, equipment and incidentals necessary for restoring City of Fort Lauderdale marine facility structures. The work shall consist of repairing or replacing debilitated seawalls, fixed and floating docks, toe-walls, replacing pilings and buoys both mooring and ocean exclusion.

"Contractor" is bound by an instrument in writing dated the 6<sup>th</sup> day of May, 2014, by which Contractor has contracted with the City of Fort Lauderdale, Florida, to furnish labor, tools, and materials for the Project referenced and described above, together with all work incidental thereto, as fully set out in the plans, specifications and details on file in the Office of the City Engineer of the City.

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

Print Name and Title

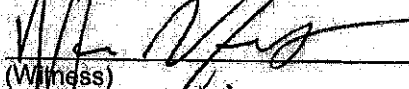
comply with the conditions of the contract, including payment of penalties, in strict accordance with the terms and provisions stipulated in it and shall indemnify and hold harmless the City against and for payments of any and all damages that may happen to persons or property by reason of excavations,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

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


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

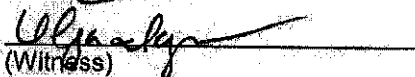
IN WITNESS WHEREOF, the above "Contractor" has signed this Agreement, and the "Surety" has caused this Agreement to be signed in its name by its Attorney-in-Fact, and its corporate seal affixed, this 14<sup>th</sup> day of May, 2014.

Signed, sealed and delivered  
in the presence of:

  
(Witness)

(Witness)

  
(Witness)

  
(Witness)

CONTRACTOR:



(SEAL)

Glen Bryant President

(SEAL)

Print Name and Title

SURETY:

Capitol Indemnity Corporation

(SEAL)

Local Agent

Charles D. Nielson, Attorney-in-Fact

(SEAL)

Print Name and Title

CAPITOL INDEMNITY CORPORATION  
POWER OF ATTORNEY

60101261

KNOW ALL MEN BY THESE PRESENTS, That the CAPITOL INDEMNITY CORPORATION, a corporation of the State of Wisconsin, having its principal offices in the City of Middleton, Wisconsin, does make, constitute and appoint

DAVID R. HOOVER, CHARLES D. NIELSON, CHARLES J. NIELSON, JOSEPH P. NIELSON

its true and lawful Attorney(s)-in-fact, to make, execute, seal and deliver for and on its behalf, as surety, and as its act and deed, any and all bonds, undertakings and contracts of suretyship, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of

ALL WRITTEN INSTRUMENTS IN AN AMOUNT NOT TO EXCEED \$20,000,000.00

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of CAPITOL INDEMNITY CORPORATION at a meeting duly called and held on the 15th day of May, 2002.

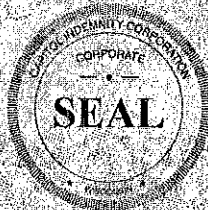
"RESOLVED, that the President, Executive Vice President, Vice President, Secretary or Treasurer, acting individually or otherwise; be and they hereby are granted the power and authorization to appoint by a Power of Attorney for the purposes only of executing and attesting bonds and undertakings, and other writings obligatory in the nature thereof, one or more resident vice-presidents, assistant secretaries and attorney(s)-in-fact, each appointee to have the powers and duties usual to such offices to the business of this company; the signature of such officers and seal of the Company may be affixed to any such power of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company, and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking or other writing obligatory in the nature thereof to which it is attached. Any such appointment may be revoked, for cause, or without cause, by any of said officers, at any time."

IN WITNESS WHEREOF, the CAPITOL INDEMNITY CORPORATION has caused these presents to be signed by its officer undersigned and its corporate seal to be hereto affixed duly attested, this 2nd day of May, 2011

Attest:

*Richard W. Allen III*

Richard W. Allen III  
President  
Surety & Fidelity Operations



CAPITOL INDEMNITY CORPORATION

*David F. Pauly*

David F. Pauly  
CEO & President

STATE OF WISCONSIN }  
COUNTY OF DANE } s.s.

On the 2nd day of May, 2011 before me personally came David F. Pauly, to me known, who being by me duly sworn, did depose and say that he resides in the County of Dane, State of Wisconsin; that he is President of CAPITOL INDEMNITY CORPORATION, the corporation described herein and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.



*Daniel W. Krueger*

Daniel W. Krueger  
Notary Public, Dane Co., WI  
My Commission Is Permanent

STATE OF WISCONSIN }  
COUNTY OF DANE } s.s.

I, the undersigned, duly elected to the office stated below, now the incumbent in CAPITOL INDEMNITY CORPORATION, a Wisconsin Corporation, authorized to make this certificate, DO HEREBY CERTIFY that the foregoing attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolution of the Board of Directors, set forth in the Power of Attorney is now in force.

Signed and sealed at the City of Middleton, State of Wisconsin this 14th day of May, 2011



*Alan S. Ogilvie*

Alan S. Ogilvie  
Secretary

THIS DOCUMENT IS NOT VALID UNLESS PRINTED ON GRAY SHADED BACKGROUND WITH A RED SERIAL NUMBER IN THE UPPER RIGHT HAND CORNER. IF YOU HAVE ANY QUESTIONS CONCERNING THE AUTHENTICITY OF THIS DOCUMENT CALL 800-475-4450