

MEMORANDUM

DATE: August 17, 2018

TO: James Kelly, Sr. Claims Adjuster

FROM: Ginah Joseph, Procurement Division

SUBJECT: 12133-283 - Annual Bridge Repair, Maintenance and Painting Services - Lambert

Please review the attachments listed below in connection with the referenced contract:

☒ Insurance certificate

☒ Surety Bond – Capacity Letter

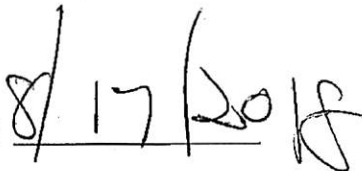
SURETY BOND REQUIREMENT – Bond Capacity Letter

If the City's requirements are met, please sign below and return. Thank you.

By:


James Kelly
Sr. Claims Adjuster

Date:



c: Contract

MEMORANDUM

DATE: August 17, 2018

TO: James Kelly, Sr. Claims Adjuster

FROM: Ginah Joseph, Procurement Division

SUBJECT: 12133-283 - Annual Bridge Repair, Maintenance and Painting Services *ECS*

Please review the attachments listed below in connection with the referenced contract:

☒ Insurance certificate

☒ Surety Bond

\$532,822

SURETY BOND REQUIREMENT \$533,822.00

If the City's requirements are met, please sign below and return. Thank you.

By:

James Kelly
James Kelly
Sr. Claims Adjuster

Date:

8/17/2018

c: Contract

CITY OF FORT LAUDERDALE

CONTRACT

12133-283 - Annual Bridge Repair, Maintenance and Painting Services

DESCRIPTION

Engineer Control Systems Corporation (Primary) & Lambert Bros, Inc. (Alternate)

CONTRACTORS

\$532,822

AMOUNT

August 21st, 2018

COMMISSION APPROVAL DATE

CITY OF FORT LAUDERDALE
CONSTRUCTION AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2018, by and between the City of Fort Lauderdale, a Florida municipal corporation (City) and **Engineer Control Systems Corporation**, (Contractor), (parties);

WHEREAS, the City desires to retain a contractor for the Project as expressed in its Invitation to **Bid No., 12133-283, Project No. 12010**, which was opened on **June 14th, 2018**; 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 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, representatives, 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, Task Orders, 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 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.
- 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 and each subsequent Task Order.
- 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 - 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 effective date of the agreement shall be the date the Contract is executed by the parties. The Contractor shall provide all required payment and performance bonds and insurances to the City within ten (10) Calendar days following the City Commission approval. Upon verification of all bonds and insurances, the City will issue a written notice to proceed (NTP) to the Contractor. Contract time will commence on the date when the Notice to Proceed is issued. The Contractor shall commence the work immediately upon receipt of the Notice to Proceed. Failure of the contractor to proceed with the Work agreed upon within each executed Task Order will constitute nonperformance of the Contractor and would be grounds for termination of the contract per ARTICLE 17 of the Agreement.
- 1.16 Final Completion Date – The date the Task Order 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. Task Orders executed under this Contract will contain set timeframes in which the Task Order work shall be started and completed.
- 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/or are referred to in the Contract Documents and/or Task Orders.
- 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 and each executed Task Order.
- 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 shall be signed and sealed by a Professional Engineer or a Professional Land Surveyor licensed in the State of Florida and employed by the Contractor at no cost to the City.
- 1.31 Substantially Completed Date – The Contractor shall submit a written request to the City for an inspection to determine if the Work is substantially complete. If, at the time of inspection, it is determined the project is substantially complete, the City will issue a letter of Substantial Completion along with a punch list of incomplete or deficient items to be completed prior to requesting a Final Completion inspection.

- 1.32 **Task Order** – A written agreement between the City and Contractor defining the particular scope of work to be performed under this Contract. When necessary, plans, permits and specifications may be provided by the City to clarify the requirements of the Task Order work. Each Task Order will contain a timeframe in which the work shall be completed in order for the Contractor to avoid being subjected to liquidated damages.
- 1.33 **Work** – The entire completed delivered product or the various separately identifiable parts thereof required to be furnished under the Contract Documents and/or Task Order. 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:

ANNUAL CONTRACT FOR BRIDGE REPAIRS, MAINTENANCE AND PAINTING
ITB 12133-283 PROJECT 12010

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

PROJECT DESCRIPTION

This project is located within the City boundaries of the City of Fort Lauderdale. The work to be accomplished under this contract includes, but is not limited to: Replacement/repair of seawalls along city waterways. Replacement of damaged boat ramps, piles, and docks, along with installation of both mooring and ocean exclusion vessel buoys, waterway signage, and construction of toe-walls]

- 2.3 Within ten (10) days of a Notice to Proceed of the start date noted on each Task Order, the Contractor shall submit a Construction Schedule, Schedule of Values and a listing of any 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 current and on-going 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, 5th Floor, Fort Lauderdale, FL 33301, telephone number: (954) 828-8954, and email address is rnazaire@fortlauderdale.gov. 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 [1] to [4] 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 NA through NA, 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., 12133- 283, Instructions to Bidders and Bid Bond.
- 4.12 Contractor's response to the City's Invitation to Bid No., 12133 - 283, dated June 14th, 2018.
- 4.13 Schedule of Completion and Schedule of Values.
- 4.14 All amendments, modifications, supplements, Task Orders, 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.

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

- a. Specific written direction from the City Manager (or designee)

- b. Approved change orders, addenda or amendments.
- c. Specifications (quality) and Drawings (location and quantity).
- d. Supplemental conditions or special terms.
- e. General Terms and Conditions.
- f. This Agreement dated _____, **2018** and any attachments.
- g. Invitation to Bid No., **12133-283**, and the specifications prepared by the City.
- h. Contractor's response to the City's Invitation to Bid No., **12133-283**, dated **June 14th, 2018**.
- i. Schedule of Values.
- j. 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, within five (5) calendar days, and before proceeding with the Work affected shall obtain a written interpretation or clarification from the City.

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 initial contract term shall commence upon the date of award by the City and shall expire **two (2)** years from that date. The City reserves the right to extend the contract for **two (2)** additional **one (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.
- 5.2 The Contractor recognizes that **TIME IS OF THE ESSENCE**. The Work on each Task Order shall commence immediately upon the Contractor's receipt of an executed Task Order.

- 5.3 The Contractor shall mobilize to the project site and begin construction activities within N/A calendar days of receipt of the executed Task Order or by the specific date noted within the Task Order (whichever applies).
- 5.4 The Work on each Task Order shall be substantially completed within the timeframe agreed upon and noted in each executed Task Order.
- 5.5 The Work on each Task Order shall be finally completed on or before the Final Completion Date and ready for final payment in accordance with Final Completion Date agreed upon and noted in each executed Task Order.
- 5.6 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. **No new Task Orders will be assigned after the contract's expiration nor will any new work be performed after that date.**

ARTICLE 6 – CONTRACT PRICE

- 6.1 City shall pay Contractor for performance of the Work in accordance with Article 7 based on the value of the executed Task Orders issued for this Contract.
- 6.2 The parties expressly agree that the Contract Price is a unit price contract, in accordance with those line item unit prices contained in the Contractor's ITB response and incorporated by reference herein. The quantities of work in the Proposal are a rough approximation only. The total quantities of work to be included in this Contract and actually performed may vary widely depending upon the work that will be authorized by the City through Task Orders, during the period of this Contract.
- 6.3 The Contract Price constitutes the total compensation payable to Contractor for the cumulative value of each executed Task 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, for each executed Task Order, in accordance with the Contract Documents. Applications for Payment will be processed by the City as provided for 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 executed Task Order and corresponding Application for Payment, which shall be submitted by the Contractor between the first (1st) and the tenth (10th) day after the end of each calendar month for which payment is requested, or upon completion of the work of the executed Task Order. All progress payments will be made on the basis of the progress of the Work completed on the executed Task Order.

- 7.3 Prior to Final Completion of each Task Order, 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 under each Task Order, 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.
- 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. The City has implemented a Purchasing Card Program using the VISA network. Purchases made from this Contract shall be made using the City's Purchasing Card. Contractor will receive payment from the purchasing card in the same manner as other VISA purchases. Accordingly, bidders must presently have the ability to accept VISA or take whatever steps necessary to implement this ability before the start of the contract term, or contract award by the City. The City reserves the right to revise this program in conjunction with implementation of an on-line procurement system. All costs associated with the implementation of this purchasing program shall be borne by the Contractor.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

In order to induce the City to enter into this Agreement, and prior to agreeing to and execution of each Task Order under this Contract, 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, conducted all necessary extensive tests, examinations and investigations and represents and warrants a thorough familiarization with the nature and extent of each Task Order and associated 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 within the Contract Time as defined in each Task Order. 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 each Task Order, 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 Task Order and all other matters which can in any way affect the Work, schedule, or the cost thereof under the Task Order and associated 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 will determine that no conditions exist that would in any manner affect the Proposed Price and that the Task Order Work can be completed for the Proposed Price submitted and within the timeframe agreed upon within each Task Order.
- 8.5 Contractor has made or cause 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 it deems necessary for the performance of the Work under each Task Order at the Contract Prices, within the Contract Time of the specified Task Order 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 related to each Task Order with the terms and conditions of the Contract Documents.
- 8.7 Contractor has given City written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents related to each Task Order and the written resolution by City is acceptable to the Contractor.
- 8.8 Labor
 - 8.8.1 The Contractor shall provide competent, suitable qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents for each Task Order. The Contractor shall at all times maintain good discipline and order at the site.
 - 8.8.2 The Contractor shall, at all times, have a competent superintendent, capable of reading and thoroughly understanding the drawings and specifications, as the Contractor's agent on the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work under each Task Order.
 - 8.8.3 The Contractor shall designate the superintendent on the job to the City, in writing, immediately after receipt of each Task Order. The Contractor understands and agrees that the superintendent's physical presence on the job site is indispensable to the successful completion of the Work. If the superintendent is frequently absent from the job site, the Project Manager may deliver written notice to the Contractor to stop work or terminate the Contract in accordance with Article 17.

8.8.4 A certified "competent person" shall be assigned to the job site for each Task Order. The Contractor shall assign personnel to the job site that have successfully completed training programs related to trench safety, confined space work, and maintenance of traffic (MOT). Personnel certified by the International Municipal Signal Associations with Florida Department of Transportation qualifications are required relative to MOT. Any other certifications that may be required by applicable permitting agencies for the Work assigned under each Task Order shall also be complied with by the Contractor. Failure to pursue the Work with the properly certified supervisory staff may result in a notice to stop work on a Task Order or termination of the Contract in accordance with Article 17.

8.9 Materials:

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

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

8.10 Work Hours: Except in connection with the safety or protection of persons, or the Work, or property at the site or adjacent thereto, and except as otherwise indicated in the Supplementary Conditions, all work at the site shall be performed during regular working hours between 7 a.m. and 6:00 p.m., Monday through Friday. The Contractor will not permit overtime work or the performance of work on Saturday, Sunday or any legal holiday (designated by the City of Fort Lauderdale) without the Project Manager's written consent at least seventy two (72) hours in advance of starting such work. If the Project Manager permits overtime work, the Contractor shall pay for the additional charges to the City with respect to such overtime work. Such additional charges shall be a subsidiary obligation of the Contractor and no extra payment shall be made to the Contractor for overtime work. It shall be noted that the City's Inspector work hours are from 8:00 AM to 4:30 PM and any Work requiring inspection oversight being performed outside of this timeframe shall be paid for by the Contractor as Inspector overtime. 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 in conflict, the Contractor shall give the Project Manager prompt written notice thereof within five (5) calendar days. If the Contractor performs any work knowing or having reason to know that it is contrary to such laws, ordinances, 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 its work in such a manner as to avoid damage to adjacent private or public property. Any damage to existing structures of work of any kind, including permanent reference markers or property corner markers, or the interruption of a utility service, shall be repaired or restored promptly at no expense to the City or property owner.

The Contractor will preserve and protect all existing vegetation such as trees, shrubs and grass on or adjacent to the site which does 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 may be required that is destroyed or damaged.

During the progress of the Work, the Contractor shall keep the premises free from accumulation 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.

8.16.6 Coordination with and scheduling of all required inspections from all permitting agencies.

- 8.17 Project Record Documents and As-Builts (Record Drawings): Contractor shall be responsible for maintaining up to date redline as-built drawings, on site, at all times during construction. All as-built information shall be surveyed and verified by a professional land surveyor registered in the State of Florida. Contractor shall provide the City with a minimum of three (3) sets of signed and sealed record drawings (Final As-builts) and a CD of the electronic drawing files created in AutoCAD 2014 or later. All costs associated with survey work required for construction layout and as-built preparation shall be the responsibility of the Contractor.

- 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 No Damages for Delay: 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.
- 8.22 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.

- 8.23 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 it is shut down for implementation of the preparedness plan, the duration of the storm and a reasonable period to restore the Premises.

- 8.24 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.

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

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

ARTICLE 9 – CITY’S RESPONSIBILITIES

- 9.1 The City shall furnish the data required of the City under the Contract Documents promptly and shall make payments to the Contractor promptly after they are due as provided in Article 7.
- 9.2 The City’s duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in the Contract Documents.
- 9.3 Technical Clarifications and Interpretations:
- 9.3.1 The City shall issue, with reasonable promptness, such written clarifications or interpretations of the Contract Documents as it may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Should the Contractor fail to request interpretation of questionable items in the Contract Documents, the City shall not entertain any excuse for failure to execute the Work in a satisfactory manner.
- 9.3.2 The City shall interpret and decide matters concerning performance under the requirements of the Contract Documents, and shall make decisions on all claims, disputes or other matters in question. Written notice of each claim,

dispute or other matter will be delivered by claimant to the other Party but in no event later than five (5) days after the occurrence of event, and written supporting date will be submitted to the other Party within five (5) days after such occurrence. All written decisions of the City on any claim or dispute will be final and binding.

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

ARTICLE 10 – BONDS AND INSURANCE

- 10.1 Public Construction and Other Bonds: The Contractor shall furnish Public Construction or Performance and Payment Bonds ("Bond"), in an amount equal to 100% of the value of each Task Order issued 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.

The Contractor shall execute and record in the public records of Broward County, Florida, a payment and performance bond in an amount at least equal to the Contract Price with a surety insurer authorized to do business in the State of Florida as surety, ("Bond"), in accordance with Section 255.05, Florida Statutes (2014), as may be amended or revised, as security for the faithful performance and payment of all of the Contractor's obligations under the Contract Documents.

- 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 As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Contractor, at the Contractor's sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Contractor. The Contractor shall provide the City a certificate of insurance evidencing such coverage. The Contractor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of A-, VII or better. All insurance policies are subject to approval by the City's Risk Manager.

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

The following insurance policies and coverages are required:

Commercial General Liability

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

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

Policy must include coverage for Contractual Liability and Independent Contractors.

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

Business Automobile Liability

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

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

Workers' Compensation and Employer's Liability

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

The Contractor waives, and the Contractor shall ensure that the Contractor's insurance carrier waives, all subrogation rights against the City and the City's officers, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

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

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.

Property Coverage (Builder's Risk)

Coverage must be afforded in an amount not less than 100% of the total project cost, including soft costs, with a deductible of no more than \$25,000 each claim. Coverage form shall include, but not be limited to:

- a. All Risk Coverage including Flood and Windstorm with no coinsurance clause
- b. Guaranteed policy extension provision
- c. Waiver of Occupancy Clause Endorsement, which will enable the City to occupy the facility under construction/renovation during the activity
- d. Storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the project

- e. Equipment Breakdown for cold testing of all mechanized, pressurized, or electrical equipment

This policy shall insure the interests of the owner, contractor, and subcontractors in the property against all risk of physical loss and damage, and name the City as a loss payee. This insurance shall remain in effect until the work is completed and the property has been accepted by the City.

Insurance Certificate Requirements

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

The Certificate Holder should read as follows:

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

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

If the Contractor's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Contractor may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Contractor's insurance coverage shall be primary insurance as applied to the City and the City's officers, employees, and volunteers. Any insurance or self-insurance maintained by the City covering the City, the City's officers, employees, or volunteers shall be non-contributory.

Any exclusion or provision in the insurance maintained by the Contractor that excludes coverage for work contemplated in this Agreement shall be unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Contractor must provide to the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Contractor's insurance policies.

The Contractor shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement shall be provided to the Contractor's insurance company or companies and the City's Risk Management office as soon as practical.

It is the Contractor's responsibility to ensure that any and all of the Contractor's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Contractor.

NOTE: CITY PROJECT NUMBER AND NAME MUST APPEAR ON EACH CERTIFICATE, AND THE CITY OF FORT LAUDERDALE MUST BE NAMED ON THE CERTIFICATE AS AN "ADDITIONAL INSURED".

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: Contractor shall retain the services of an independent, certified, testing lab to perform all testing as required by the specifications, Contract drawings, and any applicable permitting agency. Contractor shall provide evidence of certification to the City before the work and testing is done. Testing results shall be submitted to the Engineer for review and approval at the time the results are provided to the Contractor. The Contractor shall give the Project Manager and City Inspector a minimum of twenty-four (24) hours' advanced notice of readiness of the Work for all required inspections, tests, or approvals and shall notify all applicable permitting agencies in a timely manner based on requirements set forth in the permit documents.
 - 11.2.1 Neither observations by the Project Manager nor inspections, tests or approvals by others shall relieve the Contractor from its obligations to perform the Work in accordance with the 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 Section 11.2 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 of work on each Task Order, 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, suppliers, employees, or laborers; (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, from time to time order additions, deletions or revisions in the Work through the issuance Task Order Amendments. Upon receipt of a Task Order Amendment, the Contractor shall proceed with the Work involved. All Work shall be executed under the applicable conditions of the Contract Documents.
- 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

Contract Price shall not exceed that which is agreed to in this Agreement. Any increase to the Contract Price shall be executed through an Amendment to this agreement and approved by the City Commission.

- 14.1 Time for the City to Approve Contract Amendment: Should the cumulative amount of the executed Task Orders exceed the Contract Price, a Contract Amendment must be approved by the City Commission authorizing additional funding for this Contract.
- 14.2 Should the cumulative amount of the executed task orders exceed the Contract Price, a Contract Amendment must be approved by the City Commission authorizing additional funding for this Contract.

ARTICLE 15 – CHANGE OF THE CONTRACT TIME

- 15.1 The Contract Time shall be for two (2) years from the date of Commission award subject to two (2) one (1) year renewal terms.
- 15.2 All time limits stated in the Contract Documents and within each executed Task Order are of the essence. The provisions of this Article 15 shall not exclude recovery for damages for delay by the Contractor.
- 15.3 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.
- 15.4 Rights of Various Interests: Whenever work being done by City's forces or by other contractors is contiguous to or within the limits of work covered by this Contract, the respective rights of the various interests involved shall be established by the Project

Manager to secure the completion of the various portions of the work in general harmony.

ARTICLE 16 – LIQUIDATED DAMAGES

- 16.1 Upon failure of the Contractor to complete the Work of an executed Task Order within the agreed upon and approved time for said Task Order, the Contractor shall pay to the City the sum of **Two Hundred Dollars (\$200.00)** for each and every calendar day that the completion of the Task Order is delayed beyond the time agreed upon for said Task Order, 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 Task Order 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 as well as any task order, with thirty (30) days prior written notice. Additionally, the City may also terminate this Agreement as well as any task order 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 Contractor fails to begin the Work within fifteen (15) calendar days after the Project Initiation Date, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to ensure the prompt completion of the Work, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the Work pursuant to the accepted schedule or if Contractor shall fail to perform any material term set forth in the Contract Documents, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, Project Manager may give notice in writing to Contractor and its Surety of such delay, neglect or default, specifying the same.
- 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 If Contractor, within a period of ten (10) calendar days after such notice, shall not proceed in accordance therewith, the City may exclude the Contractor from the Work site and take the prosecution of the Work out of the hands of the Contractor, and take

possession of the Work and all of 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.

17.3.1 If after notice of termination of Contractor's right to proceed, it is determined for any reason that Contractor was not in default, the rights and obligations of City and Contractor shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause as set forth in Section 17.5 below.

17.3.2 Upon receipt of Notice of Termination pursuant to Sections 17.2 or 17.5, Contractor shall promptly discontinue all affected work unless the Notice of Termination directs otherwise and deliver or otherwise make available to City all data, drawings, specifications, reports, estimates, summaries and such other information as may have been required by the Contract Documents whether completed or in process.

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 Termination for Convenience: This Contract may be terminated for convenience in writing by City upon thirty (30) days written notice to Contractor (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, Contractor shall be paid for all work executed and expenses incurred prior to termination in addition to termination settlement costs reasonably incurred by Contractor relating to commitments which had become firm prior to the termination. Payment shall include reasonable profit for work/services satisfactorily performed. No payment shall be made for profit for work/services which have not been performed.

17.6 Where the Contractor's service has so been 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.

17.7 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 – DISPUTE RESOLUTION

- 18.1 **Resolution of Disputes:** Questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Agreement as to the character, quality, amount and value of any work done and materials furnished, or proposed to be done or furnished under or, by reason of, the Contract Documents which cannot be resolved by mutual agreement of Contract Administrator and Contractor shall be submitted to the Consultant for resolution. When either party has determined that a disputed question, claim, difficulty or dispute is at an impasse, that party shall notify the other party in writing and submit the question, claim, difficulty or dispute to the Consultant for resolution. The parties may agree to a proposed resolution at any time without the involvement and determination of the Consultant.
- 18.1.1 Consultant shall notify Contract Administrator and Contractor in writing of Consultant's decision within twenty-one (21) calendar days from the date of the submission of the question, claim, difficulty or dispute, unless Consultant requires time to gather information or allow the parties to provide additional information.
- 18.1.2 In the event the determination of a dispute by the Consultant under this Article is unacceptable to any of the parties hereto, the party objecting to the determination must notify the other party and the City Manager, in writing within ten (10) days after receipt of the determination. The notice must state the basis of the objection and the proposed resolution. Final resolution of such dispute shall be made by the City Manager. The City Manager's decision shall be final and binding on the parties.
- 18.1.3 All non-technical administrative disputes (such as billing and payment) shall be determined by Contract Administrator.
- 18.1.4 During the pendency of any dispute and after a determination thereof, Contractor, Consultant, and Contract Administrator shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction. During the pendency of any dispute arising under this Agreement, other than termination herein, Contractor shall carry on the Work and adhere to the progress schedule. The Work shall not be delayed or postponed pending resolution of any disputes or disagreements.
- 18.1.5 For any disputes which remain unsolved, within sixty (60) calendar days after Final Completion of the Work, the parties shall participate in mediation to address all unresolved disputes. A mediator shall be mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies under applicable law. If a party objecting to a determination, fails to comply in strict accordance with the requirements of this Article, said party specifically waives all of its rights provided hereunder, including its rights and remedies under applicable law.

ARTICLE 19 – NOTICES

- 19.1 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 copies to:

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

To the Contractor:

Frank Zayas, President
Engineer Control Systems, Corporation
1281 NE 83 Street
305-895-4376

ARTICLE 20 – LIMITATION OF LIABILITY

- 20.1 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.
- 20.2 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 21 – GOVERNING LAW

- 21.1 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. **By entering into this contract, Contractor and City hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to, or arising out of the Project. Contractor shall specifically bind all subcontractors to the provisions of this Contract.**

ARTICLE 22 – MISCELLANEOUS

- 22.1 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.
- 22.2 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.
- 22.3 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.
- 22.4 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.

- 22.5 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.
- 22.6 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.
- 22.7 Prohibition Against Contracting With Scrutinized Companies: Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2018), that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2018), as may be amended or revised. The City may terminate this Agreement at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2018), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2018), or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2018), as may be amended or revised.
- 22.8 Public Entity Crimes: In accordance with the Public Crimes Act, Section 287.133, Florida Statutes, a person or affiliate who is a contractor, consultant or other provider, who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the City, may not submit a bid on a contract with the City for the construction or repair of a public building or public work, may not submit bids on leases of real property to the City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the City, and may not transact any business with the City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section by Contractor shall result in cancellation of the City purchase and may result in Contractor debarment.
- 22.9 Attorney Fees: If CITY or CONSULTANT incurs any expense in enforcing the terms of this Agreement through litigation, the prevailing party in that litigation shall be reimbursed for all such costs and expenses, including but not limited to court costs, and reasonable attorney fees incurred during litigation.
- 22.10 Public Records

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT

**CONTACT THE CUSTODIAN OF PUBLIC RECORDS
AT PRRCONTRACT@FORTLAUDERDALE.GOV, 954-828-5002, CITY
CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE,
FLORIDA 33301.**

Contractor shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2018), as may be amended or revised, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of this contract if the Contractor does not transfer the records to the City.
4. Upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of this Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Annual Contract for Bridge Repairs, Maintenance and Painting
Engineer Control Systems Corporation
Project 12010

CITY

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

CITY OF FORT LAUDERDALE, a municipal
corporation of the State of Florida

By: 
LEE R. FELDMAN, City Manager

(CORPORATE SEAL)



ATTEST:

By: 
JEFFREY A. MODARELLI
City Clerk

Approved as to Legal Form:

By: 
RHONDA MONTOYA HASAN
Assistant City Attorney

CONTRACTOR

WITNESSES:

Alex Fabre
Alexandra Fabre
Print Name

Robert Fuente
ROBERT FUENTE
Print Name

Engineer Control Systems, Corporation,
a Florida corporation.

By Frank Zayas
FRANK ZAYAS President
PRINT NAME Title

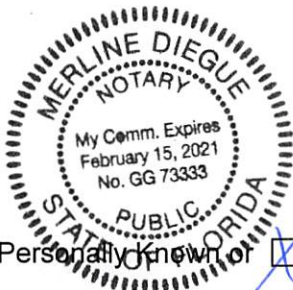
ATTEST:
BY: Angie Zayas
ANGIE ZAYAS
PRINT NAME Secretary

(CORPORATE SEAL)

STATE OF FLORIDA:
COUNTY OF Miami-Dade:

The foregoing instrument was acknowledged before me this 24th day of July, 2018, by Francisco Zayas (Name), as Contractor (Title) of Engineer Control Systems, Corporation (CONTRACTOR), a Florida corporation, on behalf of the Corporation.

SEAL



Merline Diegue
Notary Public, State of Florida

Merline Diegue
Name of Notary Typed, Printed or Stamped

☐ Personally known or ☒ Produced Identification:

Type of Identification Produced: Florida Driver License

CONSTRUCTION BID CERTIFICATION

Please Note: All fields below must be completed. If the field does not apply to you, please note N/A in that field. If you are a foreign corporation, you may be required to obtain a certificate of authority from the department of state, in accordance with Florida Statute §607.1501 (visit <http://www.dos.state.fl.us/>).

Company: (Legal Registration) **Engineer Control Systems, Corporation**

Address: **1281 NE 83 Street**

City: **Miami State: Florida** Zip: **33138**

Telephone No. **3058954376** FAX No. **3058950019** Email: **fzayas@ecscontrols.comcastbiz.net**

Does your firm qualify for MBE or WBE status: MBE ☒ WBE ☐

If a corporation, state the name of the President, Secretary and Resident Agent. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.

Frank Zayas
Name
Name

President
Title
Title

Angie Zayas
Name
Name

Secretary
Title
Name

ADDENDUM ACKNOWLEDGEMENT - Bidder acknowledges that the following addenda have been received and are included in the bid:

Addendum No.	Date Received	Addendum No.	Date Received	Addendum No.	Date Received	Addendum No.	Date Received

VARIANCES: If you take exception or have variances to any term, condition, specification, or requirement in this bid you must specify such variance in the space provided below or reference in the space provided below all variances contained on other pages within your bid. Additional pages may be attached if necessary. No variances will be deemed to be part of the bid submitted unless such is listed and contained in the space provided below. The City does not, by virtue of submitting a variance, necessarily accept any variances. If no statement is contained in the below space, it is hereby implied that your response is in full compliance with this competitive solicitation. If you do not have variances, simply mark N/A. If submitting your response electronically through BIDS SYNC you must also click the "Take Exception" button.

The below signatory affirms that he has or will obtain all required permits and licenses from the appropriate agencies, and that his firm is authorized to do business in the State of Florida. The below signatory agrees to furnish all labor, tools, material, equipment and supplies, and to sustain all the expense incurred in doing the work set forth in strict accordance with the bid plans and contract documents at the unit prices indicated if awarded a contract. The below signatory has not divulged to, discussed, or compared this bid with other bidders, and has not colluded with any other bidder or parties to this bid whatsoever. Furthermore, the undersigned guarantees the truth and accuracy of all statements and answers contained in this bid. The below signatory also hereby agrees, by virtue of submitting or attempting to submit a bid, that in no event shall the City's liability for bidder's direct, indirect, incidental, consequential, special or exemplary damages, expenses, or lost profits arising out of this competitive solicitation process, including but not limited to public advertisement, bid conferences, site visits, evaluations, oral presentations, or award proceedings exceed the amount of Five Hundred Dollars (\$500.00). This limitation shall not apply to claims arising under any provision of indemnification or the City's protest ordinance contained in this competitive solicitation.

Submitted by:

Frank Zayas
Name (printed)
06 04 2018
Date:

Frank Zayas
Signature
06 04 2018
Date:

CONTRACT PAYMENT METHOD BY P-CARD

THIS FORM MUST BY SUBMITTED WITH YOUR RESPONSE

The City of Fort Lauderdale has implemented a Procurement Card (P-Card) program which changes how payments are remitted to its vendors. The City has transitioned from traditional paper checks to payment by credit card via MasterCard or Visa. This allows you as a vendor of the City of Fort Lauderdale to receive your payment fast and safely. No more waiting for checks to be printed and mailed.

Payments will be made utilizing the City's P-Card (MasterCard or Visa). Accordingly, firms must presently have the ability to accept credit card payment or take whatever steps necessary to implement acceptance of a credit card before the commencement of a contract.

Please indicate which credit card payment you prefer:

☐ Master Card

☒ Visa Card

Company Name: **Engineer Control Systems, Corporation**

Frank Zayas
Name (Printed)

Frank Zayas
Signature

06 04 2018
Date:

President
Title

QUESTIONNAIRE SHEET

1. Have you personally inspected the proposed work and have you a complete plan for its performance?
Yes
2. Will you sublet any part of this work? If so, list the portions or specialties of the work that you will.
 - a) **Yes. Painting**
 - b)
 - c)
 - d)
 - e)
 - f)
 - g)
3. What equipment do you own that is available for the work?
Loaders, Air Compressors, Generators, Welding Machines, etc.
4. What equipment will you purchase for the proposed work?
As required.
5. What equipment will you rent for the proposed work?
As required.

statement upon request.

NOTE: Contractor must have proper licensing and shall provide copy of same with his proposal.

QUESTIONNAIRE SHEET

PLEASE PRINT OR TYPE:

**Firm Name: Engineer Control Systems,
Corporation**

President Frank Zayas, President

**Business Address: 1281 NE 83 Street,
Miami, FL 33138**

Telephone: 3058954376

Fax: 305-895-0019

E-Mail Address:

fzayas@ecscontrols.comcastbiz.net

What was the last project of this nature which you completed? Include the year, description, and contract value.

William Powell Bridge Repair \$1,102,454

Bridge Repair P12010 \$ 520,000

The following are named as three corporations and representatives of those corporations for which you have performed work similar to that required by this contract, and which the City may contact as your references (include addresses, telephone numbers and e-mail addresses). Include the project name, year, description, and contract value.

Dane Esdelle, City of Fort Lauderdale

954 649-2487

Raymond Nazaire, City of Fort

Lauderdale, 954-828-8954

Marcos Redondo, Miami Dade County

PW, 305-375-3848

How many years has your organization been in business? 37

Years

Have you ever failed to complete work awarded to you; if so, where and why?

No

The name of the qualifying agent for the firm and his position is: Frank Zayas, President

Certificate of Competency Number of Qualifying Agent: CGC 007494

Effective Date: Aug 2016 Expiration Date: Aug 2018

**Licensed in: Florida Engineering Contractor's License # N/A
(County/State)**

Expiration Date: N/A

NOTE: To be considered for award of this contract, the bidder must submit a financial

LOCAL BUSINESS PREFERENCE CERTIFICATION STATEMENT

The Business identified below certifies that it qualifies for the local BUSINESS preference classification as indicated herein, and further certifies and agrees that it will re-affirm its local preference classification annually no later than thirty (30) calendar days prior to the anniversary of the date of a contract awarded pursuant to this ITB. Violation of the foregoing provision may result in contract termination.

- | | | |
|-----|--|---|
| (1) | Business Name | is a Class A Business as defined in City of Fort Lauderdale Ordinance No. C-12-04, Sec.2-199.2. A copy of the City of Fort Lauderdale current year Business Tax Receipt <u>and</u> a complete list of full-time employees and their addresses shall be provided within 10 calendar days of a formal request by the City. |
| (2) | Business Name | is a Class B Business as defined in the City of Fort Lauderdale Ordinance No. C-12-04, Sec.2-199.2. A copy of the Business Tax Receipt <u>or</u> a complete list of full-time employees and their addresses shall be provided within 10 calendar days of a formal request by the City. |
| (3) | Business Name | is a Class C Business as defined in the City of Fort Lauderdale Ordinance No. C-12-04, Sec.2-199.2. A copy of the Broward County Business Tax Receipt shall be provided within 10 calendar days of a formal request by the City. |
| (4) | Business Name | requests a Conditional Class A classification as defined in the City of Fort Lauderdale Ordinance No. C-12-04, Sec.2-199.2. Written certification of intent shall be provided within 10 calendar days of a formal request by the City. |
| (5) | Business Name | requests a Conditional Class B classification as defined in the City of Fort Lauderdale Ordinance No. C-12-04, Sec.2-199.2. Written certification of intent shall be provided within 10 calendar days of a formal request by the City. |
| (6) | Engineer Control Systems, Corp.
Business Name | is considered a Class D Business as defined in the City of Fort Lauderdale Ordinance No. C-12-04, Sec.2-199.2. and does not qualify for Local Preference consideration. |

BIDDER'S COMPANY: **Engineer Control Systems, Corporation**

AUTHORIZED COMPANY PERSON:	Frank Zayas	Frank Zayas	06/01/2018
	NAME	SIGNATURE	DATE

LOCAL BUSINESS PREFERENCE

Section 2-199.2, Code of Ordinances of the City of Fort Lauderdale, (Ordinance No. C-12-04), provides for a local business preference.

In order to be considered for a local business preference, a bidder must include the Local Business Preference Certification Statement of this ITB, as applicable to the local business preference class claimed **at the time of bid submittal**:

Upon formal request of the City, based on the application of a Local Business Preference the Bidder shall within ten (10) calendar days submit the following documentation to the Local Business Preference Class claimed:

A) Copy of City of Fort Lauderdale current year business tax receipt, or Broward County current year business tax receipt, and

B) List of the names of all employees of the bidder and evidence of employees' residence within the geographic bounds of the City of Fort Lauderdale or Broward County, as the case may be, such as current Florida driver license, residential utility bill (water, electric, telephone, cable television), or other type of similar documentation acceptable to the City.

Failure to comply at time of bid submittal shall result in the bidder being found ineligible for the local business preference.

THE COMPLETE LOCAL BUSINESS PREFERENCE ORDINANCE MAY BE FOUND ON THE CITY'S WEB SITE AT THE FOLLOWING LINK:

<http://www.fortlauderdale.gov/purchasing/index.htm>

Definitions: The term "Business" shall mean a person, firm, corporation or other business entity which is duly licensed and authorized to engage in a particular work in the State of Florida. Business shall be broken down into four (4) types of classes:

1. **Class A Business** – shall mean any Business that has established and agrees to maintain a permanent place of business located in a non-residential zone and staffed with full-time employees within the limits of the City and shall maintain a staffing level of the prime contractor for the proposed work of at least fifty percent (50%) who are residents of the City.
2. **Class B Business** - shall mean any Business that has established and agrees to maintain a permanent place of business located in a non-residential zone and staffed with full-time employees within the limits of the City or shall maintain a staffing level of the prime contractor for the proposed work of at least fifty percent (50%) who are residents of the City.
3. **Class C Business** - shall mean any Business that has established and agrees to maintain a permanent place of business located in a non-residential zone and staffed with full-time employees within the limits of Broward County.
4. **Class D Business** – shall mean any Business that does not qualify as either a Class A, Class B, or Class C business.

**CONTRACTOR'S CERTIFICATE OF COMPLIANCE WITH
NON-DISCRIMINATION PROVISIONS OF THE CONTRACT**

The completed and signed form should be returned with the Contractor's submittal. If not provided with submittal, the Contractor must submit within three business days of City's request. Contractor may be deemed non-responsive for failure to fully comply within stated timeframes.

Pursuant to City Ordinance Sec. 2-17(a)(i)(ii), bidders must certify compliance with the Non-Discrimination provision of the ordinance.

- (a) Contractors doing business with the City shall not discriminate against their employees based on the employee's race, color, religion, gender (including identity or expression), marital status, sexual orientation, national origin, age, disability or any other protected classification as defined by applicable law.

Contracts. Every Contract exceeding \$100,000, or otherwise exempt from this section shall contain language that obligates the Contractor to comply with the applicable provisions of this section.

The Contract shall include provisions for the following:

- (i) The Contractor certifies and represents that it will comply with this section during the entire term of the contract.
- (ii) The failure of the Contractor to comply with this section shall be deemed to be a material breach of the contract, entitling the City to pursue any remedy stated below or any remedy provided under applicable law.

Frank Zayas
Authorized Signature

Frank Zayas, President
Print Name and Title

06/01/2018
Date

NON-COLLUSION STATEMENT:

By signing this offer, the vendor/contractor certifies that this offer is made independently and *free* from collusion. Vendor shall disclose below any City of Fort Lauderdale, FL officer or employee, or any relative of any such officer or employee who is an officer or director of, or has a material interest in, the vendor's business, who is in a position to influence this procurement.

Any City of Fort Lauderdale, FL officer or employee who has any input into the writing of specifications or requirements, solicitation of offers, decision to award, evaluation of offers, or any other activity pertinent to this procurement is presumed, for purposes hereof, to be in a position to influence this procurement.

For purposes hereof, a person has a material interest if they directly or indirectly own more than 5 percent of the total assets or capital stock of any business entity, or if they otherwise stand to personally gain if the contract is awarded to this vendor.

In accordance with City of Fort Lauderdale, FL Policy and Standards Manual, 6.10.8.3,

3.3. City employees may not contract with the City through any corporation or business entity in which they or their immediate family members hold a controlling financial interest (e.g. ownership of five (5) percent or more).

3.4. Immediate family members (spouse, parents and children) are also prohibited from contracting with the City subject to the same general rules.

Failure of a vendor to disclose any relationship described herein shall be reason for debarment in accordance with the provisions of the City Procurement Code.

NAME

RELATIONSHIPS

-

In the event the vendor does not indicate any names, the City shall interpret this to mean that the vendor has indicated that no such relationships exist.

MBE/WBE CONTRACTOR INFORMATION

The City, in a continuing effort, is encouraging the increased participation of minority and women-owned businesses in Public Works Department related contracts. Along those lines, we are requiring that each firm provide documentation detailing their own programs for utilizing minority and women-owned businesses.

Submit this information as a part of this bid package and refer to the checklist, to ensure that all areas of concern are covered. The low responsive bidder may be contacted to schedule a meeting to discuss these objectives. It is our intention to proceed as quickly as possible with this project, so your cooperation in this matter is appreciated.

CONTRACTOR CHECKLIST

- ☒ List Previous City of Fort Lauderdale Contracts
Annual Contract for Bridge Repair Maintenance and Painting 2016
- ☒ Number of Employees in your firm **14**
 - Percent (10%) Women
 - Percent (90%) Minorities
 - Job Classifications of Women and Minorities
Clerical, Technical, Construction
- ☒ Use of minority and/or women subcontractors on past projects.
We mostly self perform and subcontract about 10%
- ☒ Nature of the work subcontracted to minority and/or women-owned firms.
Painting, Structural
- ☒ How are subcontractors notified of available opportunities with your firm?
Phone, email.
- ☒ Anticipated amount to be subcontracted on this project.
10%
- ☒ Anticipated amount to be subcontracted to minority and/or women-owned businesses on this project.
10%

CITY OF FORT LAUDERDALE
PUBLIC WORKS DEPARTMENT

MINORITY BUSINESS ENTERPRISE (MBE) - WOMEN BUSINESS ENTERPRISE (WBE)

PRIME CONTRACTOR IDENTIFICATION FORM

In order to assist us in identifying the status of those companies doing business with the City of Fort Lauderdale, this form must be completed and returned with your bid package.

Name of Firm: **Engineer Control Systems, Corp.**

Address of Firm:

Telephone Number:

Name of Person Completing
Form:

Title:

Signature:

Date:

City Project Number:

City Project Description:

Please check the item(s) which properly identify the status of your firm:

- ☐ Our firm is not a MBE or WBE.
- ☒ Our firm is a MBE, as at least 51 percent is owned and operated by one or more socially and economically disadvantaged individuals.
- ☐ American Indian ☐ Asian ☐ Black ☒ Hispanic
- ☐ Our firm is a WBE, as at least 51 percent is owned and operated by one or more women.
- ☐ American Indian ☐ Asian ☐ Black ☐ Hispanic

Contact

Address 6330 University Parkway, Sarasota, Florida 34240, United States

Phone

Terror Rider <http://legacy.surety2000.com/Riders/>

Bid Bond from Surety2000
Engineer Control Systems, Corporation

Surety	Surety2000
Bid Bond Number	SFL18331987
Bond Type	0001
Bond Form	Bid Bond in accordance with Contract Specifications
Bid Date	6/6/2018
Bid ID	12133-283
Security Percent	5%
Job Description	Annual Contract for Bridge Repairs Maintenance & Painting (P12010)

Agency ID	A10113574
Name	Kahn-Carlin & Company, Inc.
Address	3350 South Dixie Highway, Miami, Florida 33133, United States
Phone	305-461-8205
Contact Name	Michael A. Bonet
Bond Status	
Execution Date	6/5/2018 2:20:38 PM
Executed By	Michael A. Bonet 3350 South Dixie Highway, Miami, Florida 33133, United States 305-461-8205

Contractor ID	
Name	Engineer Control Systems, Corporation
Contractor Tax ID	59-2073526
Assigned Contractor ID	2412304123
Address	1281 NE 83rd Street, Miami, Florida 33138, United States
Phone	305-895-4376

Name	City of Fort Lauderdale
Address	100 North Andrews Ave, Fort Lauderdale, Florida 33301, United States

Surety ID	SD10111930
Name	FCCI Insurance Company
NAIC Number	10178
State of Incorporation	Florida

6 Water Main		Product Code:				
12133-283-01-26	BASE BID: Install 8 Water Main	Supplier Product Code:	First Offer - \$55.00	200 / linear feet	\$11,000.00	Y
12133-283-01-27	BASE BID: Install Temporary Force Main	Supplier Product Code:	First Offer - \$35.00	200 / linear feet	\$7,000.00	Y
12133-283-01-28	BASE BID: Remove Force Main	Supplier Product Code:	First Offer - \$12.00	200 / linear feet	\$2,400.00	Y
12133-283-01-29	BASE BID: Install 4 DIP Force Main	Supplier Product Code:	First Offer - \$30.00	200 / linear feet	\$6,000.00	Y
12133-283-01-30	BASE BID: Install 6 DIP Force Main	Supplier Product Code:	First Offer - \$45.00	100 / linear feet	\$4,500.00	Y
12133-283-01-31	BASE BID: Deformed Rebar	Supplier Product Code:	First Offer - \$200.00	100 / linear feet	\$20,000.00	Y
12133-283-01-32	BASE BID: Pedestrian/Bicycle Bullet Railing	Supplier Product Code:	First Offer - \$195.00	200 / linear feet	\$39,000.00	Y
12133-283-01-33	BASE BID: Clean and Reseal Cracks	Supplier Product Code:	First Offer - \$450.00	1 / linear foot	\$450.00	Y
12133-283-01-34	BASE BID: Pressure Wash/Clean/Seal	Supplier Product Code:	First Offer - \$10.00	1 / square foot	\$10.00	Y
12133-283-01-35	BASE BID: Clean/Inject/Seal	Supplier Product Code:	First Offer - \$600.00	1 / linear foot	\$600.00	Y
12133-283-01-36	BASE BID: Remove Concrete Slab	Supplier Product Code:	First Offer - \$500.00	1 / cubic yard	\$500.00	Y
12133-283-01-37	BASE BID: Approach Slab	Supplier Product Code:	First Offer - \$750.00	1 / cubic yard	\$750.00	Y
12133-283-01-38	BASE BID: Mill Pavement	Supplier Product Code:	First Offer - \$12.00	1 / square foot	\$12.00	Y
Lot Total					\$532,822.00	
Supplier Total					\$532,822.00	

12133-283-01-11	BASE BID: Spall Areas	Supplier Product Code:	First Offer - \$330.00	500 / cubic feet	\$165,000.00	Y
12133-283-01-12	BASE BID: Spall Areas	Supplier Product Code:	First Offer - \$95.00	300 / linear feet	\$28,500.00	Y
12133-283-01-13	BASE BID: Concrete Cap	Supplier Product Code:	First Offer - \$48.00	100 / linear feet	\$4,800.00	Y
12133-283-01-14	BASE BID: Reseal Joints	Supplier Product Code:	First Offer - \$20.00	200 / linear feet	\$4,000.00	Y
12133-283-01-15	BASE BID: Demolish Concrete Bulkhead	Supplier Product Code:	First Offer - \$10.00	1000 / square feet	\$10,000.00	Y
12133-283-01-16	BASE BID: Construct Concrete Bulkhead	Supplier Product Code:	First Offer - \$45.00	1000 / linear feet	\$45,000.00	Y
12133-283-01-17	BASE BID: Construct Toewall	Supplier Product Code:	First Offer - \$170.00	50 / linear feet	\$8,500.00	Y
12133-283-01-18	BASE BID: Misc. Reinforced Concrete	Supplier Product Code:	First Offer - \$200.00	100 / cubic yard	\$20,000.00	Y
12133-283-01-19	BASE BID: Paint Concrete Parapets	Supplier Product Code:	First Offer - \$1.50	10000 / square feet	\$15,000.00	Y
12133-283-01-20	BASE BID: Install Containment System	Supplier Product Code:	First Offer - \$800.00	9 / each	\$7,200.00	Y
12133-283-01-21	BASE BID: Fill Voids: (a) without slab jacking procedure	Supplier Product Code:	First Offer - \$150.00	30 / cubic yard	\$4,500.00	Y
12133-283-01-22	BASE BID: Fill Voids: (b) using slab jacking procedure	Supplier Product Code:	First Offer - \$250.00	30 / cubic yard	\$7,500.00	Y
12133-283-01-23	BASE BID: Temporary Water Main	Supplier Product Code:	First Offer - \$40.00	200 / linear feet	\$8,000.00	Y
12133-283-01-24	BASE BID: Remove Water Main	Supplier Product Code:	First Offer - \$25.00	200 / linear feet	\$5,000.00	Y
12133-283-01-25	BASE BID: Install	Supplier	First Offer - \$45.00	200 / linear feet	\$9,000.00	Y

Engineer Control Systems, Corp.

Bid Contact **Frank Zayas**
fzayas@ecscontrols.comcastbiz.net
Ph 305-895-4376

Address **12550 Biscayne Blvd.**
Ste 800
North Miami, FL 33181

Qualifications **MBE**

Bid Bond **(Status: Authorized on Jun 5, 2018)**

Item #	Line Item	Notes	Unit Price	Qty/Unit	Attch. Docs
12133-283-01-01	BASE BID: Mobilization	Supplier Product Code:	First Offer - \$1,000.00	1 / lump sum	\$1,000.00 Y
12133-283-01-02	BASE BID: Maintenance of Traffic	Supplier Product Code:	First Offer - \$500.00	4 / each	\$2,000.00 Y
12133-283-01-03	BASE BID: Remove/Disposal Expansion Joint	Supplier Product Code:	First Offer - \$18.50	1000 / linear feet	\$18,500.00 Y
12133-283-01-04	BASE BID: Approach Railing: (a) Aluminum railing up to 48- inches in high	Supplier Product Code:	First Offer - \$40.00	100 / linear feet	\$4,000.00 Y
12133-283-01-05	BASE BID: Approach Railing: (b) Galvanize steel up to 48- inches high	Supplier Product Code:	First Offer - \$25.00	100 / linear feet	\$2,500.00 Y
12133-283-01-06	BASE BID: Rail Painting	Supplier Product Code:	First Offer - \$8.00	200 / linear feet	\$1,600.00 Y
12133-283-01-07	BASE BID: Turbidity Barrier	Supplier Product Code:	First Offer - \$1,000.00	9 / each	\$9,000.00 Y
12133-283-01-08	BASE BID: Bonded Fiber Reinforcement Polymer	Supplier Product Code:	First Offer - \$300.00	50 / linear feet	\$15,000.00 Y
12133-283-01-09	BASE BID: Prestressed Concrete Vertical Pile	Supplier Product Code:	First Offer - \$50.00	300 / linear feet	\$15,000.00 Y
12133-283-01-10	BASE BID: Prestressed Concrete Vertical Pile	Supplier Product Code:	First Offer - \$100.00	300 / linear feet	\$30,000.00 Y

CITY OF FORT LAUDERDALE
CONSTRUCTION AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2018, by and between the City of Fort Lauderdale, a Florida municipal corporation (City) and **Lambert Bros., Inc.**, (Contractor), (parties);

WHEREAS, the City desires to retain a contractor for the Project as expressed in its Invitation to Bid No., **12133-283**, Project No. **12010**, which was opened on **June 14th, 2018**; 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 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, representatives, 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, Task Orders, 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 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.
- 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 and each subsequent Task Order.
- 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 – 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 effective date of the agreement shall be the date the Contract is executed by the parties. The Contractor shall provide all required payment and performance bonds and insurances to the City within ten (10) Calendar days following the City Commission approval. Upon verification of all bonds and insurances, the City will issue a written notice to proceed (NTP) to the Contractor. Contract time will commence on the date when the Notice to Proceed is issued. The Contractor shall commence the work immediately upon receipt of the Notice to Proceed. Failure of the contractor to proceed with the Work agreed upon within each executed Task Order will constitute nonperformance of the Contractor and would be grounds for termination of the contract per ARTICLE 17 of the Agreement.
- 1.16 Final Completion Date – The date the Task Order 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. Task Orders executed under this Contract will contain set timeframes in which the Task Order work shall be started and completed.
- 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/or are referred to in the Contract Documents and/or Task Orders.
- 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 and each executed Task Order.
- 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 shall be signed and sealed by a Professional Engineer or a Professional Land Surveyor licensed in the State of Florida and employed by the Contractor at no cost to the City.
- 1.31 Substantially Completed Date – The Contractor shall submit a written request to the City for an inspection to determine if the Work is substantially complete. If, at the time of inspection, it is determined the project is substantially complete, the City will issue a letter of Substantial Completion along with a punch list of incomplete or deficient items to be completed prior to requesting a Final Completion inspection.

- 1.32 **Task Order** – A written agreement between the City and Contractor defining the particular scope of work to be performed under this Contract. When necessary, plans, permits and specifications may be provided by the City to clarify the requirements of the Task Order work. Each Task Order will contain a timeframe in which the work shall be completed in order for the Contractor to avoid being subjected to liquidated damages.
- 1.33 **Work** – The entire completed delivered product or the various separately identifiable parts thereof required to be furnished under the Contract Documents and/or Task Order. 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:

ANNUAL CONTRACT FOR BRIDGE REPAIRS, MAINTENANCE AND PAINTING
ITB 12133-283 PROJECT 12010

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

PROJECT DESCRIPTION

This project is located within the City boundaries of the City of Fort Lauderdale. The work to be accomplished under this contract includes, but is not limited to: Replacement/repair of seawalls along city waterways. Replacement of damaged boat ramps, piles, and docks, along with installation of both mooring and ocean exclusion vessel buoys, waterway signage, and construction of toe-walls]

- 2.3 Within ten (10) days of a Notice to Proceed of the start date noted on each Task Order, the Contractor shall submit a Construction Schedule, Schedule of Values and a listing of any 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 current and on-going 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, 5th Floor, Fort Lauderdale, FL 33301, telephone number: (954) 828-8954, and email address is rnazaire@fortlauderdale.gov. 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 [1] to [4] 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 NA through NA, 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., 12133- 283, Instructions to Bidders and Bid Bond.
- 4.12 Contractor's response to the City's Invitation to Bid No., 12133 - 283, dated June 14th, 2018.
- 4.13 Schedule of Completion and Schedule of Values.
- 4.14 All amendments, modifications, supplements, Task Orders, 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.

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

- a. Specific written direction from the City Manager (or designee)

- b. Approved change orders, addenda or amendments.
- c. Specifications (quality) and Drawings (location and quantity).
- d. Supplemental conditions or special terms.
- e. General Terms and Conditions.
- f. This Agreement dated _____, **2018** and any attachments.
- g. Invitation to Bid No., **12133-283**, and the specifications prepared by the City.
- h. Contractor's response to the City's Invitation to Bid No., **12133-283**, dated **June 14th, 2018**.
- i. Schedule of Values.
- j. 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, within five (5) calendar days, and before proceeding with the Work affected shall obtain a written interpretation or clarification from the City.

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 initial contract term shall commence upon the date of award by the City and shall expire **two (2)** years from that date. The City reserves the right to extend the contract for **two (2)** additional **one (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.
- 5.2 The Contractor recognizes that **TIME IS OF THE ESSENCE**. The Work on each Task Order shall commence immediately upon the Contractor's receipt of an executed Task Order.

- 5.3 The Contractor shall mobilize to the project site and begin construction activities within N/A calendar days of receipt of the executed Task Order or by the specific date noted within the Task Order (whichever applies).
- 5.4 The Work on each Task Order shall be substantially completed within the timeframe agreed upon and noted in each executed Task Order.
- 5.5 The Work on each Task Order shall be finally completed on or before the Final Completion Date and ready for final payment in accordance with Final Completion Date agreed upon and noted in each executed Task Order.
- 5.6 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. **No new Task Orders will be assigned after the contract's expiration nor will any new work be performed after that date.**

ARTICLE 6 – CONTRACT PRICE

- 6.1 City shall pay Contractor for performance of the Work in accordance with Article 7 based on the value of the executed Task Orders issued for this Contract.
- 6.2 The parties expressly agree that the Contract Price is a unit price contract, in accordance with those line item unit prices contained in the Contractor's ITB response and incorporated by reference herein. The quantities of work in the Proposal are a rough approximation only. The total quantities of work to be included in this Contract and actually performed may vary widely depending upon the work that will be authorized by the City through Task Orders, during the period of this Contract.
- 6.3 The Contract Price constitutes the total compensation payable to Contractor for the cumulative value of each executed Task 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, for each executed Task Order, in accordance with the Contract Documents. Applications for Payment will be processed by the City as provided for 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 executed Task Order and corresponding Application for Payment, which shall be submitted by the Contractor between the first (1st) and the tenth (10th) day after the end of each calendar month for which payment is requested, or upon completion of the work of the executed Task Order. All progress payments will be made on the basis of the progress of the Work completed on the executed Task Order.

- 7.3 Prior to Final Completion of each Task Order, 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 under each Task Order, 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.
- 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. The City has implemented a Purchasing Card Program using the VISA network. Purchases made from this Contract shall be made using the City's Purchasing Card. Contractor will receive payment from the purchasing card in the same manner as other VISA purchases. Accordingly, bidders must presently have the ability to accept VISA or take whatever steps necessary to implement this ability before the start of the contract term, or contract award by the City. The City reserves the right to revise this program in conjunction with implementation of an on-line procurement system. All costs associated with the implementation of this purchasing program shall be borne by the Contractor.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

In order to induce the City to enter into this Agreement, and prior to agreeing to and execution of each Task Order under this Contract, 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, conducted all necessary extensive tests, examinations and investigations and represents and warrants a thorough familiarization with the nature and extent of each Task Order and associated 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 within the Contract Time as defined in each Task Order. 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 each Task Order, 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 Task Order and all other matters which can in any way affect the Work, schedule, or the cost thereof under the Task Order and associated 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 will determine that no conditions exist that would in any manner affect the Proposed Price and that the Task Order Work can be completed for the Proposed Price submitted and within the timeframe agreed upon within each Task Order.
- 8.5 Contractor has made or cause 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 it deems necessary for the performance of the Work under each Task Order at the Contract Prices, within the Contract Time of the specified Task Order 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 related to each Task Order with the terms and conditions of the Contract Documents.
- 8.7 Contractor has given City written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents related to each Task Order and the written resolution by City is acceptable to the Contractor.
- 8.8 Labor
 - 8.8.1 The Contractor shall provide competent, suitable qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents for each Task Order. The Contractor shall at all times maintain good discipline and order at the site.
 - 8.8.2 The Contractor shall, at all times, have a competent superintendent, capable of reading and thoroughly understanding the drawings and specifications, as the Contractor's agent on the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work under each Task Order.
 - 8.8.3 The Contractor shall designate the superintendent on the job to the City, in writing, immediately after receipt of each Task Order. The Contractor understands and agrees that the superintendent's physical presence on the job site is indispensable to the successful completion of the Work. If the superintendent is frequently absent from the job site, the Project Manager may deliver written notice to the Contractor to stop work or terminate the Contract in accordance with Article 17.

8.8.4 A certified "competent person" shall be assigned to the job site for each Task Order. The Contractor shall assign personnel to the job site that have successfully completed training programs related to trench safety, confined space work, and maintenance of traffic (MOT). Personnel certified by the International Municipal Signal Associations with Florida Department of Transportation qualifications are required relative to MOT. Any other certifications that may be required by applicable permitting agencies for the Work assigned under each Task Order shall also be complied with by the Contractor. Failure to pursue the Work with the properly certified supervisory staff may result in a notice to stop work on a Task Order or termination of the Contract in accordance with Article 17.

8.9 Materials:

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

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

8.10 Work Hours: Except in connection with the safety or protection of persons, or the Work, or property at the site or adjacent thereto, and except as otherwise indicated in the Supplementary Conditions, all work at the site shall be performed during regular working hours between 7 a.m. and 6:00 p.m., Monday through Friday. The Contractor will not permit overtime work or the performance of work on Saturday, Sunday or any legal holiday (designated by the City of Fort Lauderdale) without the Project Manager's written consent at least seventy two (72) hours in advance of starting such work. If the Project Manager permits overtime work, the Contractor shall pay for the additional charges to the City with respect to such overtime work. Such additional charges shall be a subsidiary obligation of the Contractor and no extra payment shall be made to the Contractor for overtime work. It shall be noted that the City's Inspector work hours are from 8:00 AM to 4:30 PM and any Work requiring inspection oversight being performed outside of this timeframe shall be paid for by the Contractor as Inspector overtime. 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 in conflict, the Contractor shall give the Project Manager prompt written notice thereof within five (5) calendar days. If the Contractor performs any work knowing or having reason to know that it is contrary to such laws, ordinances, 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 its work in such a manner as to avoid damage to adjacent private or public property. Any damage to existing structures of work of any kind, including permanent reference markers or property corner markers, or the interruption of a utility service, shall be repaired or restored promptly at no expense to the City or property owner.

The Contractor will preserve and protect all existing vegetation such as trees, shrubs and grass on or adjacent to the site which does 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 may be required that is destroyed or damaged.

During the progress of the Work, the Contractor shall keep the premises free from accumulation 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.

8.16.6 Coordination with and scheduling of all required inspections from all permitting agencies.

- 8.17 Project Record Documents and As-Builts (Record Drawings): Contractor shall be responsible for maintaining up to date redline as-built drawings, on site, at all times during construction. All as-built information shall be surveyed and verified by a professional land surveyor registered in the State of Florida. Contractor shall provide the City with a minimum of three (3) sets of signed and sealed record drawings (Final As-builts) and a CD of the electronic drawing files created in AutoCAD 2014 or later. All costs associated with survey work required for construction layout and as-built preparation shall be the responsibility of the Contractor.

- 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 No Damages for Delay: 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.
- 8.22 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.

- 8.23 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 it is shut down for implementation of the preparedness plan, the duration of the storm and a reasonable period to restore the Premises.

- 8.24 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.

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

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

ARTICLE 9 – CITY’S RESPONSIBILITIES

- 9.1 The City shall furnish the data required of the City under the Contract Documents promptly and shall make payments to the Contractor promptly after they are due as provided in Article 7.
- 9.2 The City's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in the Contract Documents.
- 9.3 Technical Clarifications and Interpretations:
- 9.3.1 The City shall issue, with reasonable promptness, such written clarifications or interpretations of the Contract Documents as it may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Should the Contractor fail to request interpretation of questionable items in the Contract Documents, the City shall not entertain any excuse for failure to execute the Work in a satisfactory manner.
- 9.3.2 The City shall interpret and decide matters concerning performance under the requirements of the Contract Documents, and shall make decisions on all claims, disputes or other matters in question. Written notice of each claim,

dispute or other matter will be delivered by claimant to the other Party but in no event later than five (5) days after the occurrence of event, and written supporting date will be submitted to the other Party within five (5) days after such occurrence. All written decisions of the City on any claim or dispute will be final and binding.

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

ARTICLE 10 – BONDS AND INSURANCE

- 10.1 Public Construction and Other Bonds: The Contractor shall furnish Public Construction or Performance and Payment Bonds ("Bond"), in an amount equal to 100% of the value of each Task Order issued 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.

The Contractor shall execute and record in the public records of Broward County, Florida, a payment and performance bond in an amount at least equal to the Contract Price with a surety insurer authorized to do business in the State of Florida as surety, ("Bond"), in accordance with Section 255.05, Florida Statutes (2014), as may be amended or revised, as security for the faithful performance and payment of all of the Contractor's obligations under the Contract Documents.

- 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 As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Contractor, at the Contractor's sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Contractor. The Contractor shall provide the City a certificate of insurance evidencing such coverage. The Contractor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of A-, VII or better. All insurance policies are subject to approval by the City's Risk Manager.

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

The following insurance policies and coverages are required:

Commercial General Liability

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

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

Policy must include coverage for Contractual Liability and Independent Contractors.

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

Business Automobile Liability

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

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

Workers' Compensation and Employer's Liability

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

The Contractor waives, and the Contractor shall ensure that the Contractor's insurance carrier waives, all subrogation rights against the City and the City's officers, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

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

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.

Property Coverage (Builder's Risk)

Coverage must be afforded in an amount not less than 100% of the total project cost, including soft costs, with a deductible of no more than \$25,000 each claim. Coverage form shall include, but not be limited to:

- a. All Risk Coverage including Flood and Windstorm with no coinsurance clause
- b. Guaranteed policy extension provision
- c. Waiver of Occupancy Clause Endorsement, which will enable the City to occupy the facility under construction/renovation during the activity
- d. Storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the project

- e. Equipment Breakdown for cold testing of all mechanized, pressurized, or electrical equipment

This policy shall insure the interests of the owner, contractor, and subcontractors in the property against all risk of physical loss and damage, and name the City as a loss payee. This insurance shall remain in effect until the work is completed and the property has been accepted by the City.

Marine Liability including Hull/Protection & Indemnity:

The Contractor should provide marine liability including hull/protection indemnity with a \$1,000,000 Combined Single Limit.

Insurance Certificate Requirements

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

The Certificate Holder should read as follows:

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

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

If the Contractor's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Contractor may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Contractor's insurance coverage shall be primary insurance as applied to the City and the City's officers, employees, and volunteers. Any insurance or self-insurance maintained by the City covering the City, the City's officers, employees, or volunteers shall be non-contributory.

Any exclusion or provision in the insurance maintained by the Contractor that excludes coverage for work contemplated in this Agreement shall be unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Contractor must provide to the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Contractor's insurance policies.

The Contractor shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement shall be provided to the Contractor's insurance company or companies and the City's Risk Management office as soon as practical.

It is the Contractor's responsibility to ensure that any and all of the Contractor's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Contractor.

NOTE: CITY PROJECT NUMBER AND NAME MUST APPEAR ON EACH CERTIFICATE, AND THE CITY OF FORT LAUDERDALE MUST BE NAMED ON THE CERTIFICATE AS AN "ADDITIONAL INSURED".

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: Contractor shall retain the services of an independent, certified, testing lab to perform all testing as required by the specifications, Contract drawings, and any applicable permitting agency. Contractor shall provide evidence of certification to the City before the work and testing is done. Testing results shall be submitted to the Engineer for review and approval at the time the results are provided to the Contractor. The Contractor shall give the Project Manager and City Inspector a minimum of twenty-four (24) hours' advanced notice of readiness of the Work for all required inspections, tests, or approvals and shall notify all applicable permitting agencies in a timely manner based on requirements set forth in the permit documents.
 - 11.2.1 Neither observations by the Project Manager nor inspections, tests or approvals by others shall relieve the Contractor from its obligations to perform the Work in accordance with the 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 Section 11.2 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 of work on each Task Order, 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, suppliers, employees, or laborers; (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, from time to time order additions, deletions or revisions in the Work through the issuance Task Order Amendments. Upon receipt of a Task Order Amendment, the Contractor shall proceed with the Work involved. All Work shall be executed under the applicable conditions of the Contract Documents.
- 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

Contract Price shall not exceed that which is agreed to in this Agreement. Any increase to the Contract Price shall be executed through an Amendment to this agreement and approved by the City Commission.

- 14.1 Time for the City to Approve Contract Amendment: Should the cumulative amount of the executed Task Orders exceed the Contract Price, a Contract Amendment must be approved by the City Commission authorizing additional funding for this Contract.
- 14.2 Should the cumulative amount of the executed task orders exceed the Contract Price, a Contract Amendment must be approved by the City Commission authorizing additional funding for this Contract.

ARTICLE 15 – CHANGE OF THE CONTRACT TIME

- 15.1 The Contract Time shall be for two (2) years from the date of Commission award subject to two (2) one (1) year renewal terms.
- 15.2 All time limits stated in the Contract Documents and within each executed Task Order are of the essence. The provisions of this Article 15 shall not exclude recovery for damages for delay by the Contractor.
- 15.3 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.
- 15.4 Rights of Various Interests: Whenever work being done by City's forces or by other contractors is contiguous to or within the limits of work covered by this Contract, the respective rights of the various interests involved shall be established by the Project

Manager to secure the completion of the various portions of the work in general harmony.

ARTICLE 16 – LIQUIDATED DAMAGES

- 16.1 Upon failure of the Contractor to complete the Work of an executed Task Order within the agreed upon and approved time for said Task Order, the Contractor shall pay to the City the sum of **Two Hundred Dollars (\$200.00)** for each and every calendar day that the completion of the Task Order is delayed beyond the time agreed upon for said Task Order, 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 Task Order 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 as well as any task order, with thirty (30) days prior written notice. Additionally, the City may also terminate this Agreement as well as any task order 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 Contractor fails to begin the Work within fifteen (15) calendar days after the Project Initiation Date, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to ensure the prompt completion of the Work, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the Work pursuant to the accepted schedule or if Contractor shall fail to perform any material term set forth in the Contract Documents, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, Project Manager may give notice in writing to Contractor and its Surety of such delay, neglect or default, specifying the same.
- 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 If Contractor, within a period of ten (10) calendar days after such notice, shall not proceed in accordance therewith, the City may exclude the Contractor from the Work site and take the prosecution of the Work out of the hands of the Contractor, and take

possession of the Work and all of 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.

17.3.1 If after notice of termination of Contractor's right to proceed, it is determined for any reason that Contractor was not in default, the rights and obligations of City and Contractor shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause as set forth in Section 17.5 below.

17.3.2 Upon receipt of Notice of Termination pursuant to Sections 17.2 or 17.5, Contractor shall promptly discontinue all affected work unless the Notice of Termination directs otherwise and deliver or otherwise make available to City all data, drawings, specifications, reports, estimates, summaries and such other information as may have been required by the Contract Documents whether completed or in process.

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 Termination for Convenience: This Contract may be terminated for convenience in writing by City upon thirty (30) days written notice to Contractor (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, Contractor shall be paid for all work executed and expenses incurred prior to termination in addition to termination settlement costs reasonably incurred by Contractor relating to commitments which had become firm prior to the termination. Payment shall include reasonable profit for work/services satisfactorily performed. No payment shall be made for profit for work/services which have not been performed.

17.6 Where the Contractor's service has so been 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.

17.7 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 – DISPUTE RESOLUTION

- 18.1 **Resolution of Disputes:** Questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Agreement as to the character, quality, amount and value of any work done and materials furnished, or proposed to be done or furnished under or, by reason of, the Contract Documents which cannot be resolved by mutual agreement of Contract Administrator and Contractor shall be submitted to the Consultant for resolution. When either party has determined that a disputed question, claim, difficulty or dispute is at an impasse, that party shall notify the other party in writing and submit the question, claim, difficulty or dispute to the Consultant for resolution. The parties may agree to a proposed resolution at any time without the involvement and determination of the Consultant.
- 18.1.1 Consultant shall notify Contract Administrator and Contractor in writing of Consultant's decision within twenty-one (21) calendar days from the date of the submission of the question, claim, difficulty or dispute, unless Consultant requires time to gather information or allow the parties to provide additional information.
- 18.1.2 In the event the determination of a dispute by the Consultant under this Article is unacceptable to any of the parties hereto, the party objecting to the determination must notify the other party and the City Manager, in writing within ten (10) days after receipt of the determination. The notice must state the basis of the objection and the proposed resolution. Final resolution of such dispute shall be made by the City Manager. The City Manager's decision shall be final and binding on the parties.
- 18.1.3 All non-technical administrative disputes (such as billing and payment) shall be determined by Contract Administrator.
- 18.1.4 During the pendency of any dispute and after a determination thereof, Contractor, Consultant, and Contract Administrator shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction. During the pendency of any dispute arising under this Agreement, other than termination herein, Contractor shall carry on the Work and adhere to the progress schedule. The Work shall not be delayed or postponed pending resolution of any disputes or disagreements.
- 18.1.5 For any disputes which remain unsolved, within sixty (60) calendar days after Final Completion of the Work, the parties shall participate in mediation to address all unresolved disputes. A mediator shall be mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies under applicable law. If a party objecting to a determination, fails to comply in strict accordance with the requirements of this Article, said party specifically waives all of its rights provided hereunder, including its rights and remedies under applicable law.

ARTICLE 19 – NOTICES

- 19.1 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 copies to:

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

To the Contractor:

Frank Zayas, President
Engineer Control Systems, Corporation
1281 NE 83 Street
305-895-4376

ARTICLE 20 – LIMITATION OF LIABILITY

- 20.1 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.
- 20.2 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 21 – GOVERNING LAW

- 21.1 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. **By entering into this contract, Contractor and City hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to, or arising out of the Project. Contractor shall specifically bind all subcontractors to the provisions of this Contract.**

ARTICLE 22 – MISCELLANEOUS

- 22.1 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.
- 22.2 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.
- 22.3 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.
- 22.4 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.

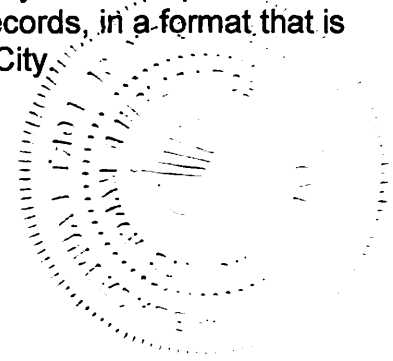
- 22.5 The remedies expressly provided in this Agreement to the City shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of the City now or later existing at law or in equity.
- 22.6 Should any part, term or provisions of this Agreement be decided 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.
- 22.7 Prohibition Against Contracting With Scrutinized Companies: Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2018), that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2018), as may be amended or revised. The City may terminate this Agreement at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2018), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2018), or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2018), as may be amended or revised.
- 22.8 Public Entity Crimes: In accordance with the Public Crimes Act, Section 287.133, Florida Statutes, a person or affiliate who is a contractor, consultant or other provider, who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the City, may not submit a bid on a contract with the City for the construction or repair of a public building or public work, may not submit bids on leases of real property to the City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the City, and may not transact any business with the City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section by Contractor shall result in cancellation of the City purchase and may result in Contractor debarment.
- 22.9 Attorney Fees: If CITY or CONSULTANT incurs any expense in enforcing the terms of this Agreement through litigation, the prevailing party in that litigation shall be reimbursed for all such costs and expenses, including but not limited to court costs, and reasonable attorney fees incurred during litigation.
- 22.10 Public Records

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT

**CONTACT THE CUSTODIAN OF PUBLIC RECORDS
AT PRRCONTRACT@FORTLAUDERDALE.GOV, 954-828-5002, CITY
CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE,
FLORIDA 33301.**

Contractor shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2018), as may be amended or revised, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of this contract if the Contractor does not transfer the records to the City.
4. Upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of this Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.



Annual Contract for Bridge Repairs, Maintenance and Painting
Lambert Bros. Inc.
Project 12010

CITY

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

CITY OF FORT LAUDERDALE, a municipal
corporation of the State of Florida

By: 
LEE R. FELDMAN, City Manager

(CORPORATE SEAL)

ATTEST:

By: 
JEFFREY A. MODARELLI
City Clerk

Approved as to Legal Form:

By: 
RHONDA MONTOYA HASAN
Assistant City Attorney



CONTRACTOR

WITNESSES:

LAMBERT BROS. INC.,
a Florida corporation.

Denise Lambert

By [Signature]

Denise Lambert
Print Name

Gregg Lambert Pres.
PRINT NAME Title

[Signature]

ATTEST:

Christina Buerosse
Print Name

BY: [Signature]

Gregg Lambert Sec.
PRINT NAME Secretary

(CORPORATE SEAL)

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 23rd day of July 2018, by Gregg Lambert (Name), as Pres. (Title) of Lambert Bros. (CONTRACTOR), a Florida corporation, on behalf of the Corporation.

SEAL

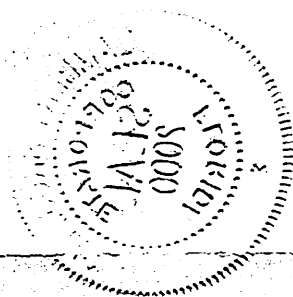


[Signature]
Notary Public, State of Florida

MICHELE DEBOE
Name of Notary Typed, Printed or Stamped

☒ Personally Known or ☐ Produced Identification:

Type of Identification Produced: _____



Lambert Bros Inc

Bid Contact **Gregg Lambert**
gl@lambertbros.net
Ph 954-491-9380
Fax 954-491-9425

Address **5501 N Powerline Road**
Fort Lauderdale, FL 33309

Supplier Code 00020601

Item #	Line Item	Notes	Unit Price	Qty/Unit	Attch. Docs
12133-283-01-01	BASE BID: Mobilization	Supplier Product Code:	First Offer - \$1,000.00	1 / lump sum	\$1,000.00 Y
12133-283-01-02	BASE BID: Maintenance of Traffic	Supplier Product Code:	First Offer - \$500.00	4 / each	\$2,000.00 Y
12133-283-01-03	BASE BID: Remove/Disposal Expansion Joint	Supplier Product Code:	First Offer - \$9.50	1000 / linear feet	\$9,500.00 Y
12133-283-01-04	BASE BID: Approach Railing: (a) Aluminum railing up to 48- inches in high	Supplier Product Code:	First Offer - \$150.00	100 / linear feet	\$15,000.00 Y
12133-283-01-05	BASE BID: Approach Railing: (b) Galvanize steel up to 48- inches high	Supplier Product Code:	First Offer - \$125.00	100 / linear feet	\$12,500.00 Y
12133-283-01-06	BASE BID: Rail Painting	Supplier Product Code:	First Offer - \$19.00	200 / linear feet	\$3,800.00 Y
12133-283-01-07	BASE BID: Turbidity Barrier	Supplier Product Code:	First Offer - \$2,000.00	9 / each	\$18,000.00 Y
12133-283-01-08	BASE BID: Bonded Fiber Reinforcement Polymer	Supplier Product Code:	First Offer - \$625.00	50 / linear feet	\$31,250.00 Y
12133-283-01-09	BASE BID: Prestressed Concrete Vertical Pile	Supplier Product Code:	First Offer - \$42.00	300 / linear feet	\$12,600.00 Y
12133-283-01-10	BASE BID: Prestressed Concrete Vertical Pile	Supplier Product Code:	First Offer - \$153.00	300 / linear feet	\$45,900.00 Y
12133-283-01-11	BASE BID: Spall	Supplier	First Offer - \$347.00	500 / cubic feet	\$173,500.00 Y

Areas		Product Code:				
12133-283-01-12	BASE BID: Spall Areas	Supplier Product Code:	First Offer - \$21.00	300 / linear feet	\$6,300.00	Y
12133-283-01-13	BASE BID: Concrete Cap	Supplier Product Code:	First Offer - \$335.00	100 / linear feet	\$33,500.00	Y
12133-283-01-14	BASE BID: Reseal Joints	Supplier Product Code:	First Offer - \$54.00	200 / linear feet	\$10,800.00	Y
12133-283-01-15	BASE BID: Demolish Concrete Bulkhead	Supplier Product Code:	First Offer - \$14.50	1000 / square feet	\$14,500.00	Y
12133-283-01-16	BASE BID: Construct Concrete Bulkhead	Supplier Product Code:	First Offer - \$47.00	1000 / linear feet	\$47,000.00	Y
12133-283-01-17	BASE BID: Construct Toewall	Supplier Product Code:	First Offer - \$805.00	50 / linear feet	\$40,250.00	Y
12133-283-01-18	BASE BID: Misc. Reinforced Concrete	Supplier Product Code:	First Offer - \$850.00	100 / cubic yard	\$85,000.00	Y
12133-283-01-19	BASE BID: Paint Concrete Parapets	Supplier Product Code:	First Offer - \$1.50	10000 / square feet	\$15,000.00	Y
12133-283-01-20	BASE BID: Install Containment System	Supplier Product Code:	First Offer - \$1,600.00	9 / each	\$14,400.00	Y
12133-283-01-21	BASE BID: Fill Voids: (a) without slab jacking procedure	Supplier Product Code:	First Offer - \$340.00	30 / cubic yard	\$10,200.00	Y
12133-283-01-22	BASE BID: Fill Voids: (b) using slab jacking procedure	Supplier Product Code:	First Offer - \$650.00	30 / cubic yard	\$19,500.00	Y
12133-283-01-23	BASE BID: Temporary Water Main	Supplier Product Code:	First Offer - \$940.00	200 / linear feet	\$188,000.00	Y
12133-283-01-24	BASE BID: Remove Water Main	Supplier Product Code:	First Offer - \$87.00	200 / linear feet	\$17,400.00	Y
12133-283-01-25	BASE BID: Install 6 Water Main	Supplier Product Code:	First Offer - \$210.00	200 / linear feet	\$42,000.00	Y

Code:						
12133-283-01-26	BASE BID: Install 8 Water Main	Supplier Product Code:	First Offer - \$315.00	200 / linear feet	\$63,000.00	Y
12133-283-01-27	BASE BID: Install Temporary Force Main	Supplier Product Code:	First Offer - \$290.00	200 / linear feet	\$58,000.00	Y
12133-283-01-28	BASE BID: Remove Force Main	Supplier Product Code:	First Offer - \$55.00	200 / linear feet	\$11,000.00	Y
12133-283-01-29	BASE BID: Install 4 DIP Force Main	Supplier Product Code:	First Offer - \$140.00	200 / linear feet	\$28,000.00	Y
12133-283-01-30	BASE BID: Install 6 DIP Force Main	Supplier Product Code:	First Offer - \$212.00	100 / linear feet	\$21,200.00	Y
12133-283-01-31	BASE BID: Deformed Rebar	Supplier Product Code:	First Offer - \$5.00	100 / linear feet	\$500.00	Y
12133-283-01-32	BASE BID: Pedestrian/Bicycle Bullet Railing	Supplier Product Code:	First Offer - \$145.00	200 / linear feet	\$29,000.00	Y
12133-283-01-33	BASE BID: Clean and Reseal Cracks	Supplier Product Code:	First Offer - \$4.00	1 / linear foot	\$4.00	Y
12133-283-01-34	BASE BID: Pressure Wash/Clean/Seal	Supplier Product Code:	First Offer - \$2.50	1 / square foot	\$2.50	Y
12133-283-01-35	BASE BID: Clean/Inject/Seal	Supplier Product Code:	First Offer - \$15.00	1 / linear foot	\$15.00	Y
12133-283-01-36	BASE BID: Remove Concrete Slab	Supplier Product Code:	First Offer - \$300.00	1 / cubic yard	\$300.00	Y
12133-283-01-37	BASE BID: Approach Slab	Supplier Product Code:	First Offer - \$800.00	1 / cubic yard	\$800.00	Y
12133-283-01-38	BASE BID: Mill Pavement	Supplier Product Code:	First Offer - \$5.00	1 / square foot	\$5.00	Y
Lot Total					\$1,080,726.50	
Supplier Total					\$1,080,726.50	

CITY OF FORT LAUDERDALE
PUBLIC WORKS DEPARTMENT

MINORITY BUSINESS ENTERPRISE (MBE) - WOMEN BUSINESS ENTERPRISE (WBE)

PRIME CONTRACTOR IDENTIFICATION FORM

In order to assist us in identifying the status of those companies doing business with the City of Fort Lauderdale, this form must be completed and returned with your bid package.

Name of Firm: **Lambert Bros., Inc.**

Address of Firm: **5501 N Powerline Road**

Telephone Number: **954-491-9380**

Name of Person Completing Form: **Gregg Lambert**

Title: **President**

Signature: **Gregg Lambert**

Date: **12/19/2017**

City Project Number: **1712-004, P12297**

City Project Description: **Carter Park Stormwater Improvements**

Please check the item(s) which properly identify the status of your firm:

- ☒ Our firm is not a MBE or WBE.
- ☐ Our firm is a MBE, as at least 51 percent is owned and operated by one or more socially and economically disadvantaged individuals.
- ☐ American Indian ☐ Asian ☐ Black ☐ Hispanic
- ☐ Our firm is a WBE, as at least 51 percent is owned and operated by one or more women.
- ☐ American Indian ☐ Asian ☐ Black ☐ Hispanic

MBE/WBE CONTRACTOR INFORMATION

The City, in a continuing effort, is encouraging the increased participation of minority and women-owned businesses in Public Works Department related contracts. Along those lines, we are requiring that each firm provide documentation detailing their own programs for utilizing minority and women-owned businesses.

Submit this information as a part of this bid package and refer to the checklist, to ensure that all areas of concern are covered. The low responsive bidder may be contacted to schedule a meeting to discuss these objectives. It is our intention to proceed as quickly as possible with this project, so your cooperation in this matter is appreciated.

CONTRACTOR CHECKLIST

☐ List Previous City of Fort Lauderdale Contracts

City of FTL Lifeguard Stands

City of FTL Fire Station 13

City of FTL Jack & Harriet Kaye Park

City of FTL Bass Park

☒ Number of Employees in your firm **20**

--Percent (20%) Women

--Percent (65%) Minorities

--Job Classifications of Women and Minorities

Office, Project Management, General Laborers, Various equipment operators

☒ Use of minority and/or women subcontractors on past projects.

including, but not limited to, surveying, concrete, landscaping, materials supplier

☒ Nature of the work subcontracted to minority and/or women-owned firms.

We are open to subcontracting all natures of work to MBE or WBE.

☒ How are subcontractors notified of available opportunities with your firm?

Email, phone, fax

☒ Anticipated amount to be subcontracted on this project.

TBD

☒ Anticipated amount to be subcontracted to minority and/or women-owned businesses on this project.

TBD

NON-COLLUSION STATEMENT:

By signing this offer, the vendor/contractor certifies that this offer is made independently and *free* from collusion. Vendor shall disclose below any City of Fort Lauderdale, FL officer or employee, or any relative of any such officer or employee who is an officer or director of, or has a material interest in, the vendor's business, who is in a position to influence this procurement.

Any City of Fort Lauderdale, FL officer or employee who has any input into the writing of specifications or requirements, solicitation of offers, decision to award, evaluation of offers, or any other activity pertinent to this procurement is presumed, for purposes hereof, to be in a position to influence this procurement.

For purposes hereof, a person has a material interest if they directly or indirectly own more than 5 percent of the total assets or capital stock of any business entity, or if they otherwise stand to personally gain if the contract is awarded to this vendor.

In accordance with City of Fort Lauderdale, FL Policy and Standards Manual, 6.10.8.3,

3.3. City employees may not contract with the City through any corporation or business entity in which they or their immediate family members hold a controlling financial interest (e.g. ownership of five (5) percent or more).

3.4. Immediate family members (spouse, parents and children) are also prohibited from contracting with the City subject to the same general rules.

Failure of a vendor to disclose any relationship described herein shall be reason for debarment in accordance with the provisions of the City Procurement Code.

NAME**RELATIONSHIPS**

-

N/A

N/A

Gregg Lambert 6/5/2018

In the event the vendor does not indicate any names, the City shall interpret this to mean that the vendor has indicated that no such relationships exist.

**CONTRACTOR'S CERTIFICATE OF COMPLIANCE WITH
NON-DISCRIMINATION PROVISIONS OF THE CONTRACT**

The completed and signed form should be returned with the Contractor's submittal. If not provided with submittal, the Contractor must submit within three business days of City's request. Contractor may be deemed non-responsive for failure to fully comply within stated timeframes.

Pursuant to City Ordinance Sec. 2-17(a)(i)(ii), bidders must certify compliance with the Non-Discrimination provision of the ordinance.

- (a) Contractors doing business with the City shall not discriminate against their employees based on the employee's race, color, religion, gender (including identity or expression), marital status, sexual orientation, national origin, age, disability or any other protected classification as defined by applicable law.

Contracts. Every Contract exceeding \$100,000, or otherwise exempt from this section shall contain language that obligates the Contractor to comply with the applicable provisions of this section.

The Contract shall include provisions for the following:

- (i) The Contractor certifies and represents that it will comply with this section during the entire term of the contract.
- (ii) The failure of the Contractor to comply with this section shall be deemed to be a material breach of the contract, entitling the City to pursue any remedy stated below or any remedy provided under applicable law.

Gregg Lambert
Authorized Signature

Gregg Lambert, President
Print Name and Title

6/5/2018
Date

LOCAL BUSINESS PREFERENCE

Section 2-199.2, Code of Ordinances of the City of Fort Lauderdale, (Ordinance No. C-12-04), provides for a local business preference.

In order to be considered for a local business preference, a bidder must include the Local Business Preference Certification Statement of this ITB, as applicable to the local business preference class claimed **at the time of bid submittal**:

Upon formal request of the City, based on the application of a Local Business Preference the Bidder shall within ten (10) calendar days submit the following documentation to the Local Business Preference Class claimed:

A) Copy of City of Fort Lauderdale current year business tax receipt, or Broward County current year business tax receipt, and

B) List of the names of all employees of the bidder and evidence of employees' residence within the geographic bounds of the City of Fort Lauderdale or Broward County, as the case may be, such as current Florida driver license, residential utility bill (water, electric, telephone, cable television), or other type of similar documentation acceptable to the City.

Failure to comply at time of bid submittal shall result in the bidder being found ineligible for the local business preference.

THE COMPLETE LOCAL BUSINESS PREFERENCE ORDINANCE MAY BE FOUND ON THE CITY'S WEB SITE AT THE FOLLOWING LINK:

<http://www.fortlauderdale.gov/purchasing/index.htm>

Definitions: The term "Business" shall mean a person, firm, corporation or other business entity which is duly licensed and authorized to engage in a particular work in the State of Florida. Business shall be broken down into four (4) types of classes:

1. **Class A Business** – shall mean any Business that has established and agrees to maintain a permanent place of business located in a non-residential zone and staffed with full-time employees within the limits of the City and shall maintain a staffing level of the prime contractor for the proposed work of at least fifty percent (50%) who are residents of the City.
2. **Class B Business** - shall mean any Business that has established and agrees to maintain a permanent place of business located in a non-residential zone and staffed with full-time employees within the limits of the City or shall maintain a staffing level of the prime contractor for the proposed work of at least fifty percent (50%) who are residents of the City.
3. **Class C Business** - shall mean any Business that has established and agrees to maintain a permanent place of business located in a non-residential zone and staffed with full-time employees within the limits of Broward County.
4. **Class D Business** – shall mean any Business that does not qualify as either a Class A, Class B, or Class C business.

LOCAL BUSINESS PREFERENCE CERTIFICATION STATEMENT

The Business identified below certifies that it qualifies for the local BUSINESS preference classification as indicated herein, and further certifies and agrees that it will re-affirm its local preference classification annually no later than thirty (30) calendar days prior to the anniversary of the date of a contract awarded pursuant to this ITB. Violation of the foregoing provision may result in contract termination.

- | | | |
|-----|--|---|
| (1) | Business Name | is a Class A Business as defined in City of Fort Lauderdale Ordinance No. C-12-04, Sec.2-199.2. A copy of the City of Fort Lauderdale current year Business Tax Receipt <u>and</u> a complete list of full-time employees and their addresses shall be provided within 10 calendar days of a formal request by the City. |
| (2) | Business Name | is a Class B Business as defined in the City of Fort Lauderdale Ordinance No. C-12-04, Sec.2-199.2. A copy of the Business Tax Receipt <u>or</u> a complete list of full-time employees and their addresses shall be provided within 10 calendar days of a formal request by the City. |
| (3) | Lambert Bros Inc
Business Name | is a Class C Business as defined in the City of Fort Lauderdale Ordinance No. C-12-04, Sec.2-199.2. A copy of the Broward County Business Tax Receipt shall be provided within 10 calendar days of a formal request by the City. |
| (4) | Business Name | requests a Conditional Class A classification as defined in the City of Fort Lauderdale Ordinance No. C-12-04, Sec.2-199.2. Written certification of intent shall be provided within 10 calendar days of a formal request by the City. |
| (5) | Business Name | requests a Conditional Class B classification as defined in the City of Fort Lauderdale Ordinance No. C-12-04, Sec.2-199.2. Written certification of intent shall be provided within 10 calendar days of a formal request by the City. |
| (6) | Business Name | is considered a Class D Business as defined in the City of Fort Lauderdale Ordinance No. C-12-04, Sec.2-199.2. and does not qualify for Local Preference consideration. |

BIDDER'S COMPANY: **Lambert Bros Inc**

AUTHORIZED COMPANY PERSON:	Gregg Lambert 6/14/2018		
	NAME	SIGNATURE	DATE

QUESTIONNAIRE SHEET

PLEASE PRINT OR TYPE:

Firm Name: **Lambert Bros., Inc.**

President **Gregg Lambert**

Business Address: **5501 Powerline Road
Fort Lauderdale, FL 33309**

Telephone: **954-491-9380**

Fax: **954-491-9425**

E-Mail Address: **gl@lambertbros.net**

What was the last project of this nature which you completed? Include the year, description, and contract value.

2017 - Miami-Dade County -Port of Miami Concrete Bridge Repairs \$ 350,904.63

The following are named as three corporations and representatives of those corporations for which you have performed work similar to that required by this contract, and which the City may contact as your references (include addresses, telephone numbers and e-mail addresses). Include the project name, year, description, and contract value.

**Palm Beach County - Palmwood Road
Slope Stabilization - Stephen O'Neil
561-684-4180**

**FDOT - E8P74 - Samuel Norris - 305-
964-4858**

**FDEP - Bill Baggs - Mark Hodges -
772-546-0903**

How many years has your organization been in business? **18**

Have you ever failed to complete work awarded to you; if so, where and why?

No

The name of the qualifying agent for the firm and his position is: **Gregg Lambert, President**

Certificate of Competency Number of Qualifying Agent: **01-1707-W**

Effective Date: Expiration Date: **8/31/2019**

Licensed in: **Broward, Florida** Engineering Contractor's License # **CGC1504682**
(County/State)

Expiration Date:
8/31/2018

NOTE: To be considered for award of this contract, the bidder must submit a financial statement upon request.

NOTE: Contractor must have proper licensing and shall provide copy of same with his proposal.

QUESTIONNAIRE SHEET

1. Have you personally inspected the proposed work and have you a complete plan for its performance?
Yes
2. Will you sublet any part of this work? If so, list the portions or specialties of the work that you will.
 - a) **N/A**
 - b)
 - c)
 - d)
 - e)
 - f)
 - g)
3. What equipment do you own that is available for the work?
excavator, loader, vibratory hammers, trucks, trailers, saw, compactor, cutter, misc. tools
4. What equipment will you purchase for the proposed work?
N/A
5. What equipment will you rent for the proposed work?
TBD

CONTRACT PAYMENT METHOD BY P-CARD

THIS FORM MUST BY SUBMITTED WITH YOUR RESPONSE

The City of Fort Lauderdale has implemented a Procurement Card (P-Card) program which changes how payments are remitted to its vendors. The City has transitioned from traditional paper checks to payment by credit card via MasterCard or Visa. This allows you as a vendor of the City of Fort Lauderdale to receive your payment fast and safely. No more waiting for checks to be printed and mailed.

Payments will be made utilizing the City's P-Card (MasterCard or Visa). Accordingly, firms must presently have the ability to accept credit card payment or take whatever steps necessary to implement acceptance of a credit card before the commencement of a contract.

Please indicate which credit card payment you prefer:

☐ Master Card

☒ Visa Card

Company Name: **LAMBERT BROS., INC.**

Gregg Lambert
Name (Printed)

Gregg Lambert
Signature

6/14/2018
Date:

President
Title

CONSTRUCTION BID CERTIFICATION

Please Note: All fields below must be completed. If the field does not apply to you, please note N/A in that field. If you are a foreign corporation, you may be required to obtain a certificate of authority from the department of state, in accordance with Florida Statute §607.1501 (visit <http://www.dos.state.fl.us/>).

Company: (Legal Registration) **LAMBERT BROS., INC.**

Address: **5501 N Powerline Road**

City: **Fort Lauderdale** State: **FL** Zip: **33309**

Telephone No. **954-491-9380** FAX No. **954-491-9425** Email: **GL@LambertBros.net**

Does your firm qualify for MBE or WBE status: MBE ☐ WBE ☐

If a corporation, state the name of the President, Secretary and Resident Agent. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.

Gregg Lambert	President		
Name	Title	Name	Title
Name	Title	Name	Title

ADDENDUM ACKNOWLEDGEMENT - Bidder acknowledges that the following addenda have been received and are included in the bid:

Addendum No.	Date Received	Addendum No.	Date Received	Addendum No.	Date Received	Addendum No.	Date Received
1	6/6/2018						

VARIANCES: If you take exception or have variances to any term, condition, specification, or requirement in this bid you must specify such variance in the space provided below or reference in the space provided below all variances contained on other pages within your bid. Additional pages may be attached if necessary. No variances will be deemed to be part of the bid submitted unless such is listed and contained in the space provided below. The City does not, by virtue of submitting a variance, necessarily accept any variances. If no statement is contained in the below space, it is hereby implied that your response is in full compliance with this competitive solicitation. If you do not have variances, simply mark N/A. If submitting your response electronically through BIDS SYNC you must also click the "Take Exception" button.

The below signatory affirms that he has or will obtain all required permits and licenses from the appropriate agencies, and that his firm is authorized to do business in the State of Florida. The below signatory agrees to furnish all labor, tools, material, equipment and supplies, and to sustain all the expense incurred in doing the work set forth in strict accordance with the bid plans and contract documents at the unit prices indicated if awarded a contract. The below signatory has not divulged to, discussed, or compared this bid with other bidders, and has not colluded with any other bidder or parties to this bid whatsoever. Furthermore, the undersigned guarantees the truth and accuracy of all statements and answers contained in this bid. The below signatory also hereby agrees, by virtue of submitting or attempting to submit a bid, that in no event shall the City's liability for bidder's direct, indirect, incidental, consequential, special or exemplary damages, expenses, or lost profits arising out of this competitive solicitation process, including but not limited to public advertisement, bid conferences, site visits, evaluations, oral presentations, or award proceedings exceed the amount of Five Hundred Dollars (\$500.00). This limitation shall not apply to claims arising under any provision of indemnification or the City's protest ordinance contained in this competitive solicitation.

Submitted by:

Gregg Lambert
Name (printed)
6/14/2018
Date:

Gregg Lambert
Signature
6/14/2018
Date:



COMMISSION AGENDA ITEM
DOCUMENT ROUTING FORM

106 9/6/18

Today's Date: 8/31/2018

DOCUMENT TITLE: AGREEMENT FOR ANNUAL BRIDGE REPAIR, MAINTENANCE AND PAINTING PROJECT

VENDOR: ENGINEER CONTROL SYSTEMS CORPORATIONS

COMM. MTG. DATE: 8/21/2018 CAM #: 18-0698 ITEM #: PUR-3 CAM attached: ☒ YES ☐ NO

Routing Origin: CAO Router Name/Ext: Melissa Innocent / Ext. 6088

CIP FUNDED: ☒ YES ☐ NO

Capital Investment / Community Improvement Projects 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, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

2) City Attorney's Office # of originals attached: 1 Approved as to Form: ☒ YES ☐ NO

Date to CCO: 8/31/18
9/4/18 Initials: [Signature]

3) City Clerk's Office: # of originals: 1 Routed to: Gina Ri/CMO/X5013 Date: 9/4/18

4) City Manager's Office: CMO LOG #: Sep 5 Date received from CCO: 9/4/18

Assigned to: L. FELDMAN ☒ S. HAWTHORNE ☐ C. LAGERBLOOM ☐
L. FELDMAN as CRA Executive Director ☐

☐ APPROVED FOR LEE FELDMAN'S SIGNATURE ☐ N/A FOR L. FELDMAN TO SIGN

PER ACM: S. HAWTHORNE (Initial/Date) C. LAGERBLOOM
(Initial/Date) ☐ PENDING APPROVAL (See comments below)

Comments/Questions: _____

Forward ___ originals to ☐ Mayor ☒ CCO Date: 9/5/18

5) Mayor/CRA Chairman: Please sign as indicated. Forward ___ originals to CCO for attestation/City seal (as applicable) Date: _____

INSTRUCTIONS TO CLERK'S OFFICE

City Clerk: Retains 0 original(s) and forwards 1 original(s) to: Ginah Joseph

Attach ___ certified Reso # _____ ☐ YES ☐ NO Original Route form to CAO

DOCUMENT ROUTING FORM

NAME OF DOCUMENT: Annual Bridge Repair, Maintenance and Painting Services (Bid # 12132-283; Project 12010)
CONTRACTOR'S NAMES: Engineer Control Systems, Corporation (Primary) and SLambert Bros. Inc. (Alternate)

SURETY BOND REQUIRED? XX Yes No

Approved Comm. Mtg. on: 08/21/2018

CAM#: **18-0698**

ITEM: ☒ PUR- **3**

Item: ☐ M- ☐ PH- ☐ O - ☐ CR- ☐ R- ☐

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

ATTACHED: ☐ Copy of CAR ☒ ACM Form ☒ 2 original

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: \$319,693 Dept./Div: PW/ENG

Index/Sub-object: P12010.331-6599 Project #: 12010

Please Check the proper box: CIP FUNDED ☒ YES ☐ NO Signature Roman Yalan Date: 8/30/18

1.) Approved as to Content: by Paula Berg Date: 8-30-18
(Public Works Director)
2.) Approved as to Procurement: by Joel St. Louis Date: 8/30/18
(Procurement Manager or designee)
3.) Approved as to Funds Available: by [Signature] Date: 8/30/18
(Finance Director or designee)

4.) City Attorney's Office: Approved as to Form: # 2 Originals to City Mgr. By:

Rhonda Hasan	_____	Paul G. Bangel	_____	Robert B. Dunckel	_____
Lynn Solomon	_____	D'Wayne Spence	_____	Cole J. Copertino	_____

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

by: _____ by: _____
Stanley Hawthorne, Assistant City Manager Christopher Lagerbloom, 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 _____, x_____.

	Contract Routing	
1	Shannon Graham	8/30/18
2	Paul Berg	8/30/18
3	Jodi Hart	8/30/18
4	Alicia Sheffield ✓	8/30/18
5	Linda LS <i>Kirk B.</i>	8/30/18
6	City Attorney	
7	City Manager	
8	City Clerck	
9	Ginah Joseph	