

AGREEMENT  
between  
CITY OF FORT LAUDERDALE  
and  
HENSEL PHELPS CONSTRUCTION  
for  
DESIGN/BUILD SERVICES FOR THE  
FORT LAUDERDALE AQUATIC CENTER RENOVATION

RFP No. 12072-483

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018 between the CITY OF FORT LAUDERDALE, FLORIDA, a municipal corporation of the State of Florida, its successors and assigns, hereinafter referred to as "CITY" and HENSEL PHELPS CONSTRUCTION, a Delaware General Partnership authorized to transact business in the State of Florida, its successors and assigns, hereinafter referred to as "DESIGN/BUILD FIRM."

WITNESSETH, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and DESIGN/BUILD FIRM agree as follows:

### **ARTICLE 1 – DEFINITIONS AND IDENTIFICATIONS**

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

**Agreement** - This document, inclusive and including all exhibits and documents that are expressly incorporated by reference.

**Applicable Laws** - All federal, state, county, and local statutes, codes, laws, rules, regulations, ordinances, orders and standards applicable to the Project and any other such law hereafter enacted, and any rules adopted pursuant thereto, as all such laws may be amended from time to time to perform the Work.

**Change Order** - A written document ordering a change in the Guaranteed Maximum Price or Contract Time or a material change in the Work.

**CITY** - The CITY (or CITY) shall mean the City of Fort Lauderdale, a Florida municipal corporation, having its principal offices at 100 North Andrews Avenue, Fort Lauderdale, Florida 33301, which is a party hereto and/or for which this Contract is to be performed. In all respects hereunder, CITY's performance is pursuant to CITY's position as the owner of a construction project. In the event CITY exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred pursuant to the CITY's regulatory authority as a governmental body and shall not be attributable in any manner to CITY as a party to this Contract.

**City Commission** - City Commission shall mean the governing and legislative body of the CITY.

**City Manager** - City Manager shall mean the Chief Administrative Officer of the CITY.

**Construction Documents Phase** - The phase in which DESIGN/BUILD FIRM will consult with Project Manager and prepare the Construction Documents for the Project, based upon the

Design Criteria Package (DCP), for review and approval of the CITY (including, without limitation, any and all applicable CITY departments) and any applicable regulatory agencies.

**Construction Manager** - The Construction Manager is the authorized individual or firm which is the representative of the DESIGN/BUILD FIRM, who/which will administer/manage the construction effort on behalf of the DESIGN/BUILD FIRM.

**Contractor** – The person, firm, company, or corporation with whom the DESIGN/BUILD FIRM has entered into the agreement, including but not limited to its employees, agents, representatives, contractors, subcontractors, their subcontractors and their other successors and assigns.

**Construction Phase** - The phase which constitutes DESIGN/BUILD FIRM's administration of the construction of the Project and all activities necessary for the completion of the Project.

**Contingency Use Matrix** - The Contingency Use Matrix attached as Exhibit 4 to this agreement shall represent the agreed upon negotiations between the City and DESIGN/BUILD FIRM related to how and when each contingency will be utilized to address issues as they arise of the project.

**Contract Documents** - This Agreement, as approved by the Mayor and City Commission and its exhibits, attachments and forms, any addenda, performance bond and payment bond, plans and specifications (as approved and permitted) as prepared by the DESIGN/BUILD FIRM in accordance with the DCP, Notice of Award, Notice(s) to Proceed, and any and all agreed upon contract and/or design modifications, including but not limited to change orders; Project schedule; a schedule of values, and any additional documents the submission of which is required by this Agreement. When reference is made in the Contract Documents to publications, standards or codes issued by associations or societies, the intent shall be to specify the current or adopted edition of such publication or standard including revision and effect on the date of the issuance of all applicable permits.

**Contract Time** - The time between the Project Initiation Date specified in the Notice to Proceed and final completion, including any milestone dates thereof, established in the Contract, as may be amended by Change Order.

**Contract Price** - The Contract Price is the Cost of Work defined in Article 9.2.2 plus the DESIGN/BUILD FIRM fee as defined in Article 9.2.2 not to exceed the Guaranteed Maximum Price (GMP) set forth in Article 9.2. The Contract Price is not subject to increase, except as expressly allowed within the Contract Documents.

**DESIGN/BUILD FIRM** - HENSEL PHELPS CONSTRUCTION, its successors and assigns, is the DESIGN/BUILD FIRM selected to perform the Work pursuant to this Agreement, and is the person, firm or corporation liable for the acceptable performance of, and payment of, all legal debts pertaining to the Project. All references in the Contract Documents to third parties under contract or control of DESIGN/BUILD FIRM shall be deemed to be a reference to DESIGN/BUILD FIRM. The DESIGN/BUILD FIRM will be responsible for the provision, installation, and performance of all equipment, materials, services and Work. The DESIGN/BUILD FIRM is in no way relieved of the responsibility for the performance of all equipment furnished.

**Design Criteria Package (DCP) -** DCP shall mean those certain conceptual plans and specifications and performance oriented drawings or specifications of the Project, as prepared and sealed by the Design Criteria Professional, and in compliance with the requirements of Section 287.055, Florida Statutes.

**Design Criteria Professional -** Design Criteria Professional shall mean the individual or entity who/which holds a current certificate as a registered engineer under Chapter 471 to practice engineering and who/which is employed by or retained by the CITY to provide professional services in compliance with the requirements of Section 287.055, Florida Statutes, and in connection with the preparation of the DCP who/which shall review and provide recommendations regarding the Construction Documents prepared by the DESIGN/BUILD FIRM for the Project, and evaluate compliance of Project construction with the DCP.

**Field Order or Supplemental Instruction -** A written order for minor changes or interpretations of the Contract Documents but which does not involve a change in the Guaranteed Maximum Price or Contract Time.

**Final Completion -** The date certified by the Project Manager that all conditions of the permits and regulatory agencies have been met; all construction, including corrective and punch list work, has been performed; all administrative requirements of the Contract Documents have been completed; and CITY has received from DESIGN/BUILD FIRM all necessary documentation, as deemed required by the CITY including, but not limited to, the following: all final releases of liens, consent of surety, release of claims by DESIGN/BUILD FIRM, correct as-built drawings, a final bill of materials, executed final adjusted Change Orders, final invoice, copies of pertinent test results, correspondence, warranties, guarantees, operational manuals, spare parts, service contracts and tools.

**Guaranteed Maximum Price (GMP)-** The mutually agreed upon contract price to be paid to the DESIGN/BUILD FIRM, and that the DESIGN/BUILD FIRM guarantees not to exceed, for all labor, equipment, and materials to design, permit (as required by the contract documents), administer, coordinate, inspect, construct and install the project within the contract time. The dollar amount shall include, but not be limited to all profit, overhead, and administrative costs. The guaranteed maximum price is not subject to increase except as expressly allowed. In the event that upon full completion of the design services and work of the project, the actual cost, plus the DESIGN/BUILD FIRM's fee, is less than the guaranteed maximum price, any remaining funds shall be distributed as follows: after final completion, all remaining funds in owner contingency and contractor contingency budgets shall be combined into one final contingency account. Design / Builder shall retain from the combined final contingency account as additional fee an amount equal to the fee value negotiated in the original contract. Any remaining funds in the final combined contingency budget will then be split equally between the DESIGN/BUILD FIRM and city.

**Holidays -** Those designated non-work days as established by the City Commission of the City of Fort Lauderdale.

**Notice to Proceed -** One or more written notice(s) to DESIGN/BUILD FIRM issued by the Contract Administrator authorizing the commencement of specified Work.

**CITY** – The City of Fort Lauderdale, Florida.

**Plans and Specifications** - The official graphic representations of the Project as prepared, signed and sealed by Architect/Engineer and which, upon written approval of CITY, shall become a part of the Contract Documents.

**Project** - The design/construction project described in the Contract Documents, including the Work described in the Design Criteria Package, the Design Build Firm's Response to RFP, and design revisions to the RFP response as shown in Exhibit 1.

**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. The Project Manager, or designee, shall be the authorized agent for the City unless otherwise specified.

**Punch List** - The City's list of Work yet to be done or be corrected by the DESIGN/BUILD FIRM before the final completion date can be determined by the City.

**Shop Drawings** - Drawings, diagrams and schedules, and other data specially prepared by the DESIGN/BUILD FIRM or its Subcontractors, sub-Subcontractors, manufacturer, supplier or distributor to illustrate some portion of the Work.

**Sub-Consultant** - The person or entity who is a registered architect, professional engineer, professional land surveyor, and/or registered landscape architect having a contract with Consultant or DESIGN/BUILD FIRM to provide professional services for the design of the Project, and who is licensed by the State of Florida to provide said services.

**Subcontractor** – Means any person or entity with whom the Construction Manager contracts to perform any part of the Work or to supply materials in relation t the Work. In addition, the term Subcontractor shall apply to Subcontractors of any tier and suppliers and materialmen employed on or for the Project pursuant to a subcontract or other agreement with a Subcontractor or lower-tier Subcontractor.

**Substantial Completion** - The date, as certified by the Contract Administrator and the Project Manager that all conditions of the permits and regulatory agencies have been met for the CITY's stated use of the Project, and all construction has been performed therein in accordance with the Contract Documents so CITY can beneficially enjoy, use or occupy and can operate it in all respects for its intended purpose.

**Surety** - The surety company or individual which is bound by the performance bond and payment bond with and for DESIGN/BUILD FIRM, who is primarily liable, and which surety company or individual is responsible for DESIGN/BUILD FIRM's acceptable performance of the Work under the Contract and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes.

**Work** - The totality of the obligations, including design, permitting, governmental entitlements, site plan approvals and construction and all other services required by the Contract Documents,

whether completed or partially completed, including all labor, materials, equipment and services provided to or to be provided by DESIGN/BUILD FIRM to fulfill its obligations.

## **ARTICLE 2 – GENERAL PROVISIONS**

- 2.1 DESIGN/BUILD FIRM hereby agrees to furnish all of the labor, materials, equipment, Work, services and incidentals necessary to complete the Project, in accordance with the Contract Documents, within the Contract Time and for the Guaranteed Maximum Price.
- 2.2 Relationship of CITY and DESIGN/BUILD FIRM: The DESIGN/BUILD FIRM accepts the relationship of trust and confidence established between it and the CITY by this Agreement. The DESIGN/BUILD FIRM warrants and represents to CITY that it will furnish its best skill and judgment in performing the Work, and shall always act to further the interest of the CITY in the expeditious completion of the Project at the lowest cost to the CITY, and in strict accordance with the Contract Documents and prudent and customary construction practices.
- 2.3 By signing this Contract, the DESIGN/BUILD FIRM accepts a fiduciary duty with the CITY and warrants and represents to the CITY that the DESIGN/BUILD FIRM: (a) has all licenses and certifications required by applicable laws; (b) is experienced in all aspects of pre-construction and construction planning for projects similar to the Project; (c) will act in the CITY's highest and best interests in performing the Work; and (d) that no employees or affiliates of the DESIGN/BUILD FIRM, including all Sub-consultants, Subcontractors, and suppliers, at any tier, have been convicted of a public entity crime, fraud, theft, and/or a property damage crime within the preceding thirty-six (36) months from the time this Contract is executed, as required pursuant to Section 287.133, Florida Statutes.
- 2.4 Intention of Contract Documents: It is the intent of the Contract Documents to describe a functionally complete Project to be designed and constructed in accordance with the Contract Documents. Any Work, design, construction, other professional services, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied by the DESIGN/BUILD FIRM, whether or not specifically called for by the Contract Documents. When words, which have a well-known technical or trade meaning are used to describe Work, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference is specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of permit issuance. CITY shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.
- 2.5 DESIGN/BUILD FIRM shall plan, record, and update, at least monthly, the design and construction schedule of the Project. The Project Schedule shall indicate the dates for the commencement and completion of the various stages of design and construction and shall be revised at least monthly and as required by the conditions of the Work. The Project Schedule shall encompass all of the work of all professions and trades necessary for the

construction of the Project and shall be sufficiently complete and comprehensive to enable progress to be monitored on a weekly basis. DESIGN/BUILD FIRM shall be responsible to have available to it all materials, supplies, and appropriate personnel, trades, etc., necessary to complete the Work in accordance with the Project Schedule.

### **ARTICLE 3 – PROJECT MANAGER**

- 3.1 The Project Manager is hereby designed by the City as Thomas Green, Senior Project Manager, whose address is 914 NW 6<sup>TH</sup> Street, Fort Lauderdale, Florida 33311. The Project Manager will assume all duties and responsibilities and will have the rights and authority 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**

- 4.1 The Contract Documents shall be followed as to Work, Materials and dimensions except with the Project Manager may authorize, in his/her sole discretion, and in writing, an exception.
- 4.2 Dimensions given in figures are to hold preference over scaled measurements from the drawings; however, all discrepancies shall be decided upon by the Consultant, with concurrent written notice to Contract Administrator and Project Manager. DESIGN/BUILD FIRM shall not proceed when in doubt as to any dimension or measurement but shall seek clarification from the Consultant, with concurrent written notice to Project Manager.
- 4.3 DESIGN/BUILD FIRM shall maintain two (2) copies of the Contract Documents, one of which shall be preserved and always kept accessible at the site for the Project Manager, and/or authorized representatives.
- 4.4 The Contract Documents shall have the following order of precedence, beginning with the most important:
- A. Agreement (Contract) and all exhibits, addenda, and amendments thereto;
  - B. City's Solicitation and all addenda;
  - C. Design Build Firm's Response to RFP;
  - D. Change Orders (to the extent permitted under this Agreement);
  - E. The Specifications, as approved and permitted;
  - F. The Plans, as approved and permitted;
  - G. The DCP; and

#### H. Critical Plan Method (CPM) Project Schedule and Schedule of Values

### **ARTICLE 5 – SCOPE OF WORK**

- 5.1 DESIGN/BUILD FIRM agrees to complete the Project generally described by the DCP, including, drawings and specifications; job site inspection; administration of construction, engineering, architecture, landscape architecture, and land surveying services, labor, materials, equipment and other services necessary to perform all of the Work described in the Contract Documents, to be prepared by the DESIGN/BUILD FIRM, including drawings and addenda thereto for the construction of the Project; the Project shall be construed in accordance with the requirements and provisions of said Contract Documents and for the Guaranteed Maximum Price.
- 5.2 DESIGN/BUILD FIRM agrees to meet with the Project Manager or his/her respective designees at reasonable times and with reasonable notice.
- 5.3 Prior to the Final Completion of construction services under this Agreement, and as a condition precedent to final payment, there shall be established a record set of plans on reproducible vellum and a record set of Specifications, both of which shall bear the written approvals of the DESIGN/BUILD FIRM and Contract Administrator. Such approval shall be indicated by the written signature of both parties. In addition, there shall be established electronic copies on CD-ROM of the record set plans, non-compressed, formatted in the latest version of AutoCAD and of the record set of Specifications.
- 5.4 DESIGN/BUILD FIRM herein represents that Construction Manager, at a minimum, will provide the following services:
  - 5.4.1 At least five (5) days prior to the commencement of the construction phase of the Project, the DESIGN/BUILD FIRM will identify and provide the qualifications of a suitably qualified and experienced Construction Manager who will be on site full time at the Project.
  - 5.4.2 DESIGN/BUILD FIRM will use reasonable efforts to have the same Construction Manager on the Project, full time, to its conclusion, and any new representative will first be approved in writing by Contract Administrator before permanent assignment. Approval shall not be unreasonably withheld.
  - 5.4.3 The Construction Manager will conduct weekly meetings with the Contractor and its Subcontractors at regular times, as previously agreed upon and approved by the Project Manager, and shall issue weekly reports on the progress of the Work and the minutes of the previous meeting.
  - 5.4.4 The Construction Manager will administer the Contractor's Work.

- 5.4.5 The Construction Manager shall coordinate the processing of shop drawings and material submittals.
- 5.4.6 The Construction Manager will endeavor to achieve satisfactory performance by Contractor and, if required, will require corrections to Contractor's Work including, but not limited to, maintaining punch lists and observing testing.
- 5.4.7 The Construction Manager will monitor the cost of the Project, including payment applications and the preparation thereof.
- 5.4.8 The Construction Manager will assist in the preparation of record drawings, and shall transmit to the Consultant requests for additional information concerning the design. In addition, the Project Manager shall be copied on these requests for monitoring purposes.
- 5.4.9 The Construction Manager will observe testing and start-up activities of machinery and utilities.
- 5.4.10 The Construction Manager will secure all equipment brochures and warranties from the Contractor.
- 5.4.11 The Construction Manager will coordinate the correction and completion of the Work including that required by the punch list.
- 5.5 DESIGN/BUILD FIRM herein represents that Consultant, at a minimum, will provide the following services:
  - 5.5.1 Consultant shall perform all of the architectural and engineering services necessary to describe, detail and design the Project in accordance with the Contract Documents.
  - 5.5.2 Consultant shall design the Project so as to comply with Applicable Laws.
  - 5.5.3 Consultant shall prepare the Plans and Specifications, as well as obtain all required and necessary reviews and approvals (or take other appropriate action upon) for same, and/or other submittals including, but not limited to, shop drawings, product data, and samples.
  - 5.5.4 Consultant shall also submit the Plans and Specifications to the Design Criteria Professional, with a copy to Project Manager, for his/her review and written approval. Design Criteria Professional shall expeditiously review and approve the Plans and Specifications in accordance with the accepted Project Schedule. Design Criteria Professional's approval of the Plans and Specifications shall not constitute acceptance of any design work which does not comply with Applicable Laws, the DCP, and/or with the terms of this Contract. Except as provided herein, and to the extent limited by, the preceding sentence, the approval of the Plans and Specifications by the Design Criteria Professional, shall constitute a representation by the Design Criteria Professional that the Project, if constructed as required by the Contract Documents, will be sufficient for its purposes. The

Plans and Specifications shall include technical drawings, schedules, diagrams, and specifications setting forth in detail the requirements for construction of the Project; provide information necessary for the use of Contractor, Subcontractors and those in the building trade; and include documents necessary for regulatory agencies and other governmental approvals.

5.5.5 Consultant shall prepare construction change directives, if necessary, at no additional cost to the CITY, and authorize minor changes in the Work, as provided in the Contract Documents.

5.5.6 Consultant shall receive and review for compliance with the Contract Documents all written warranties and related documents required hereby to be assembled upon Substantial Completion and issue Applications for Payment performed in compliance with the requirements of the Contract Documents.

5.6 The approved and permitted Plans and Specifications shall constitute a representation by Consultant to CITY that the Project, if construed as required by the Contract Documents, will be sufficient for its purposes. The Plans and Specifications include technical drawings, schedules, diagrams, and specifications setting forth in detail the requirements for construction of the Project; provide information necessary for the use of Contractor, Subcontractors, and those in the building trade; and include documents necessary for regulatory agencies and other governmental approvals.

5.7 Project Manager will provide the following services:

5.7.1 The Project Manager shall review Applications for Payment and coordinate the processing thereof with the CITY.

5.7.2 The Project Manager shall monitor the schedule(s).

5.7.3 The Project Manager shall track, log and review all required Project related documents and subsequently address any and all concerns with DESIGN/BUILD FIRM.

5.7.4 The Project Manager shall review and observe the Work and testing thereof for conformance and compliance with the requirements of the Contract Documents.

5.7.5 The Project Manager shall attend all required meetings and maintain and distribute meeting minutes.

5.7.6 At all times, the Project Manager will act as liaison between the parties to this Agreement, and the City's Project Manager.

#### **ARTICLE 6 – CONTRACT TIME AND COMPLETION DATE**

6.1 Time is of the essence for the DESIGN/BUILD FIRM's performance of the Work pursuant to this Contract. The DESIGN/BUILD FIRM agrees to complete the Work in accordance with the approved and accepted Project Schedule and to achieve Substantial

Completion of the Work, in accordance with this Contract, and within the Contract Time. DESIGN/BUILD FIRM acknowledges that failure to achieve Substantial Completion will result in substantial damages to the CITY, such as loss of beneficial use and/or occupancy of the Project.

- 6.2 DESIGN/BUILD FIRM shall be instructed to execute the Contract with seven (7) calendar days after CITY COMMISSION approval. DESIGN/BUILD FIRM shall immediately commence scheduling activities, permit applications and other preconstruction work after the Notice to Proceed.
- 6.3 The DESIGN/BUILD FIRM shall complete the Construction Documents Phase within thirty (30) calendar days of the issuance of the Notice to Proceed.
- 6.4 The DESIGN/BUILD FIRM shall meet the following milestones:

<b>Milestone</b>	<b>Calendar Days from Notice to Proceed (Completion Date)</b>
Anticipated Notice to Proceed Date	August 22, 2018
Substantial Completion of Construction	736 Calendar Days (August 27, 2020)
Final Completion of Project	777 Calendar Days (October 7, 2020)

#### **ARTICLE 7 – LIQUIDATED DAMAGES**

- 7.1 Failure of the DESIGN/BUILD FIRM to timely complete the Project in accordance with Section 6.4(D) above, or meet any of the milestones as indicated in Sections 6.4 (A) through (C) above, DESIGN/BUILD FIRM shall pay to the City the sum of Five Thousand and 00/100 Dollars (\$5,000.00) for each calendar day after the time specified in Section 6.4 (plus any approved time extensions at the sole discretion of the CITY) that DESIGN/BUILD FIRM fails to meet any of the milestones. The time frame for liquidated damages shall not commence and thus shall not be tolled until the Project Manager submits the punch list to the DESIGN/BUILD FIRM. DESIGN/BUILD FIRM and CITY HEREBY MUTUALLY AGREE AND ACKNOWLEDGE THAT THE LIQUIDATED DAMAGES AMOUNT SET FORTH HEREIN are not penalties but are liquidated damages to CITY for its inability to obtain full beneficial occupancy and/or use of the Project. Liquidated damages are hereby fixed and agreed upon between the Parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by the CITY as a consequence of such delay, and both parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of DESIGN/BUILD FIRM to complete the Contract on time. Liquidated damages shall apply separately to each portion of the Work for which a time of completion is given. The CITY shall have the right to deduct from or retain any compensation which may be due or which may become due and payable to the DESIGN/BUILD FIRM the amount of liquidated damages, and if the amount retained by the CITY is insufficient to pay in full such liquidated damages, the DESIGN/BUILD FIRM shall pay all liquidated damages in full. The DESIGN/BUILD FIRM shall be

responsible for reimbursing the CITY, in addition to liquidated damages or other damages for delay, for all costs of engineering 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 DESIGN/BUILD FIRM whichever is later.

- 7.2 CITY is authorized to deduct liquidated damages from monies withheld due to DESIGN/BUILD FIRM for the Work under this Contract or as much thereof as CITY may, in its sole discretion, deem just and reasonable.

#### **ARTICLE 8 – CHANGE OF THE CONTRACT TIME**

- 8.1 The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to the Project Manager within five (5) days of the occurrence of the event giving rise to the claim. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.
- 8.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of the DESIGN/BUILD FIRM if a claim is made there for as provided in paragraph 8.1. Such delays shall include but not be limited to, acts or neglect by the CITY, or to fires, floods, labor disputes, abnormal weather conditions, or acts of God.
- 8.2.1 Such adjustment to the Contract Time will only be considered when accompanied by a CPM schedule and other such supporting documentation as required by the CITY to evaluate such request.
- 8.2.2 The Cost of the Work will be adjusted as described in 10.3, however, additional General Condition Costs may be paid the Construction Contractor provided an increase in General Condition Costs can be documented and supported. In no case shall additional General Conditions Costs allowed to exceed the daily rate as calculated from the General Conditions Costs contained in the originally approved GMP divided by the originally approved Contract Time.
- 8.3 All time limits stated in the Contract Documents are of the essence. The provisions of this Article shall not exclude recovery for damages for delay by the DESIGN/BUILD FIRM.
- 8.4 Delays caused by or resulting from entities, contractors or subcontractors who are not affiliated with DESIGN/BUILD FIRM shall not give rise to a claim by the DESIGN/BUILD FIRM for damages for increases in material and/or labor costs.

#### **ARTICLE 9 - CONTRACT PRICE / GUARANTEED MAXIMUM PRICE AND METHOD OF PAYMENT**

- 9.1 The Contract Price for the Project, which is the actual price paid for the Work by the CITY, shall be (1) the DESIGN/BUILD FIRM's fees, as defined in 9.2.1, plus the Cost of

the Work as defined in Article 9.2.2, or (2) the GMP as defined in 9.2, whichever is less when the Work is complete. All costs in excess of the final approved Guaranteed Maximum Price are the responsibility of the DESIGN/BUILD FIRM. All savings between the GMP and the actual cost of the Work, plus the DESIGN/BUILD FIRM's fee, will be returned to the CITY.

- 9.2 The Guaranteed Maximum Price (broken out by DESIGN/BUILD FIRM'S FEE, general conditions, general requirements, subcontractor / trade costs via schedule of values – see Exhibit 2) is \$26,995,368 agreed to by the DESIGN/BUILD FIRM and the CITY under this Agreement and is the maximum price payable to complete the Work in accordance with the Agreement and DCP, and, to the extent permitted by this Agreement, as may be increased or decreased by Change Order.
- A. The GMP shall include all taxes in the Cost of the Work which are legally enacted at the time the GMP is established. In the event the CITY opts to make CITY direct purchases, as provided in Exhibit 6, the Guaranteed Maximum Price shall be reduced so that all sales tax savings accrue to the benefit of the CITY. As such, the GMP would include material that may be purchased directly by the CITY ("CITY Direct Purchases"). The DESIGN/BUILD FIRM will initially process one (1) deductive Change Order under the Agreement for the entire estimated amount of CITY Direct Purchases, inclusive of sales tax. Prior to final payment, a final reconciliation of CITY Direct Purchases against the GMP will be performed and such deductive Change Order will be prepared for CITY's review and execution.
- B. The GMP shall include allowances, where applicable. To the extent applicable, "Allowances" as referenced in this Agreement shall not be exceeded without first acquiring a written Change Order executed by the CITY, the DESIGN/BUILD FIRM and Architect as provided in Article 10. "IN THE EVENT THERE ARE UNUSED ALLOWANCES, ALL OF THOSE FUNDS, PLUS THE ASSOCIATED DESIGN/BUILD FIRM FEE, SHALL BE RETAINED BY THE OWNER."
- C. In addition to the cost of work, a GMP will include an agreed upon sum as the construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The DESIGN/BUILD FIRM will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the CITY. Documentation for use of the Contingency shall be determined by the Construction Team. The Architect/Engineer shall verify the actual costs. If bids are received below the applicable line items in the GMP, the surplus will be added to the contingency. If bids are received above the applicable line item in the GMP, the deficiency will be taken from the contingency; however, such events shall not be cause to increase the GMP. If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the DESIGN/BUILD FIRM reserves the right to perform that portion of the work, subject to the CITY's prior written approval, or negotiate for its performance for the specified line item lump sum amount or less.
- D. Contingency Account Usage

1. The contingency account is not to be used to pay for improper and /or defective Work, removal of hazardous materials or contaminated soils or to pay for material changes in the Scope of the Project.
2. No funds may be transferred from or spent from the DESIGN/BUILD FIRM's Contingency Account without the prior written consent of CITY, which shall not be unreasonably withheld.
3. CITY shall have the right to disallow any draw made by the DESIGN/BUILD FIRM from the Contingency Account for General Conditions that CITY did not pre- approve.
4. CITY also has the right to disallow any draw made by the DESIGN/BUILD FIRM for direct Cost of the Work from the Contingency Account that does not qualify as an element of the direct Cost of the Work as defined by Article 9.2.2.
5. To request any expenditure or transfer from the Contingency Account, the DESIGN/BUILD FIRM shall submit a zero cost proposed Change Order, transferring amounts from the Contingency Account to the affected line items on the Schedule of Values.
6. The DESIGN/BUILD FIRM shall include with each monthly Application for Payment an itemization of each requested draw from the Contingency Account (by date, payee, purpose and amount of each transfer or payment – detailed by labor hours and rate, materials, supplies, taxes and insurance, plus any other documentation required to allow the City to properly evaluate the cost estimate, plus the mark-up fee) made during the Billing Month.
7. The total mark-up fee shall mean the full amount of compensation, both indirect and direct, including without limitation all overhead, profit and general conditions, to be paid to the Subcontractors or Sub-subcontractors.
8. The mark-up fee shall be a fixed percentage based on the Cost of Work (excluding bonds and insurance costs). The mark-up fee shall be computed as follows:
  - a. Ten percent (10%) of that portion of the Work to be performed by a Subcontractor with its own forces.
  - b. Ten percent (10%) of that portion of the Work to be performed by a Sub-Subcontractor with its own forces, or any lower tier of subcontractor, plus five (5%) for the Subcontractor. Total mark-up fee for subcontracted work shall not exceed (15%).
  - c. Six Percent (6%) of the total costs of the change will be added for the DESIGN/BUILD FIRM.

9. All approved proposed contingency usage modifying the DESIGN/BUILD FIRM's Schedule of Values shall be incorporated into each monthly Pay Application

E. As part of the DESIGN/BUILD FIRM's "buyout" process with its subcontractors, suppliers and vendors, the DESIGN/BUILD FIRM may generate savings as compared to the Schedule of Values ("Buyout Savings"). The DESIGN/BUILD FIRM shall furnish the CITY with copies of all bids, subcontract agreements, purchase orders, invoices, and other materials and information reasonably requested by the CITY to evaluate and verify the amount, or absence, of any Buyout Savings. Upon CITY's written approval of each subcontract or material purchase order, the Buyout Savings shall be transferred to the contingency line item on the Schedule of Values and shall be subject to the provisions of Articles 9 and 10. The DESIGN/BUILD FIRM shall update and submit, on a monthly basis, the written "Buyout Report" for any subsequent Buyout Savings and shall likewise be subject to the provisions of this Articles 9 and 10. Any subsequent Buyout Savings shall be similarly transferred to the contingency line item on the Schedule of Values after "buyout" is complete. The DESIGN/BUILD FIRM shall make the records underlying and/or relating to its buyout, and alternatives, including, without limitation, its trades and supplier quotations, cost information, available to CITY for its review and evaluation as CITY may request in connection with buyout.

9.2.1 The DESIGN/BUILD FIRM Stated Fee (Overhead and Profit included in the GMP) DESIGN/BUILD FIRM's Fee is equal to a lump sum cost of Work, excluding contingency, not to exceed 3% of the Cost plus any distribution of additional fees as outlined in the Contingency Use Matrix and Article 1 of this Agreement. ~~included in the GMP: DESIGN/BUILD FIRM's Fee is equal to an agreed upon percentage times the actual cost of Work, excluding contingency, not to exceed 3% of the Cost, plus any distribution of additional fees as outlined in the Contingency Use Matrix and Article 1 of this Agreement.~~

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A. Costs and Expenses included in the DESIGN/BUILD FIRM Fee. The following are included in the DESIGN/BUILD FIRM Fee which is included and part of the GMP:

1. Expenses and overhead related to this project by the DESIGN/BUILD FIRM's principal and branch offices.
2. Costs of all data processing, accounting, purchasing and associated staff which is performed at the home office.
3. General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.2.2.
4. Salaries or other compensation of the DESIGN/BUILD FIRM's employees at principal and branch offices except those listed in Exhibit 3
5. Costs of all estimating, safety and accounting staff except those listed in Exhibit 3

6. All other services to be provided under this Agreement, except as expressly included in Article 9.2.2.

#### 9.2.2 Cost of Work

A. Definition. The term Cost of the Work shall mean costs necessarily incurred and paid by the DESIGN/BUILD FIRM in the proper performance of the work. Such costs shall not be included in the Fees (also see 9.1). The Cost of the Work shall include only the items set forth below in this Article. Where any cost is subject to the CITY's prior written approval, the DESIGN/BUILD FIRM shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement. Costs as defined herein shall be actual allowable costs paid by the DESIGN/BUILD FIRM, less all discounts, rebates, and salvages that shall be taken by the DESIGN/BUILD FIRM. All payments made by the CITY pursuant to this Article 9.4, whether those payments are actually made before or after the execution of the Agreement are included within the Guaranteed Maximum Price specified in Article 9.2.2 above; provided, however, that in no event shall the CITY be required to reimburse the DESIGN/BUILD FIRM for any portion of the Cost of the Work incurred prior to the date of commencement unless the DESIGN/BUILD FIRM has received the CITY's written consent prior to incurring such cost. Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 9.2.2 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories. The CITY agrees to pay the DESIGN/BUILD FIRM for the Cost of the Work subject to the limits set forth in Article 9.2.2 and 9.3 not to exceed the GMP. Such payment shall be in addition to the DESIGN/BUILD FIRM's fees stipulated in Article 9.2.1.

#### B. Direct Cost Items

1. Labor wages paid for the on-site project team directly responsible for the operation and supervision of the Project (as opposed to wages paid to management or supervisory personnel who are not part of the on-site project team with no direct involvement) in the direct employ of the DESIGN/BUILD FIRM in the performance of the DESIGN/BUILD FIRM's work under Agreement, acceptable salary or wage schedules and such fringe benefits, if any, as may be payable with respect thereto (labor burden) shall be reimbursed based on actual labor burdens certified by DESIGN/BUILD FIRM CFO and approved by City Project Manager). Costs (burden) paid or incurred by the DESIGN/BUILD FIRM for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, routine, reasonable and customary non-discretionary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work as defined herein. Payment for these items shall take into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, and the like.

DESIGN/BUILD FIRM shall reduce its standard payroll tax percentages to reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes (e.g. FUTA, SUTA, and FICA). A line item detail of the allowable burden costs is included as Exhibit 3

2. Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof. Costs of materials described herein in excess of those actually installed shall allow for reasonable waste and spoilage. Unused excess materials, if any, is the CITY's property at the completion of the Work shall be properly stored at the Project site in accordance with the CITY's instructions. Charges for material shall be the DESIGN/BUILD FIRM's net actual cost for the purchase of the material required to complete the Work. All materials purchased that exceed the quantities required to complete the Work shall be returned or sold for scrap, with the proceeds credited to the CITY. Credits for cost reductions available to the DESIGN/BUILD FIRM due to trade discounts, free material credits, and/or volume rebates will accrue to the benefit of the CITY. Cash discounts available on material purchases shall be credited to CITY if the DESIGN/BUILD FIRM is provided funds from the CITY in time to enable DESIGN/BUILD FIRM to take advantage of any such cash discounts. The DESIGN/BUILD FIRM is required to provide written notice to the CITY should the cash discount on a particular purchase equal or exceed \$1,000.00 to allow the CITY the opportunity to participate in the cash discount.
3. Payments due Subcontractors from the DESIGN/BUILD FIRM or made by the DESIGN/BUILD FIRM to Subcontractors for their work performed in accordance with the requirements of the subcontracts properly entered into under this Agreement. CITY shall receive credits for any and all back charges the DESIGN/BUILD FIRM makes against Subcontractor based upon subcontracts.

Costs, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools (not owned by the workers) consumed in the performance of the Work. Any such materials or supplies used but not consumed, which are paid for by the CITY, shall become the property of the CITY and shall be delivered to the CITY upon completion of the Work in accordance with instructions furnished by the CITY. If the CITY elects, however, the DESIGN/BUILD FIRM shall purchase any such items from the CITY at a purchase price equal to the original cost charged to the CITY, less the reduction in fair market value resulting directly from use of any such item in connection with the Work or such other price that is mutually acceptable to the CITY and the DESIGN/BUILD FIRM. Tools and equipment with a cost less than \$250 requires written approval from the CITY

4. Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, including installation, repairs and replacements, dismantling, removal, cost of lubrication, transportation and delivery costs thereof, which are used in the support of a Subcontractor or the DESIGN/BUILD FIRM's own forces in the performance of the work. Such rental charges shall be consistent with those generally prevailing in the location of the Project or as set forth in the most recent AED Green Book, whichever is less. In

no event shall the DESIGN/BUILD FIRM be entitled to reimbursement for any cumulative total of rental charges in connection with any single piece of machinery or equipment in excess of 75 % of its fair market value as of the date that such machinery or equipment is first put into service in connection with the Work. The DESIGN/BUILD FIRM shall pay any excess rental charges. Rental charges do not include charges for DESIGN/BUILD FIRM's leased equipment. For all anticipated rental charges in excess of the threshold identified above, the DESIGN/BUILD FIRM shall perform an "own versus lease" analysis for tangible personal property. The DESIGN/BUILD FIRM shall submit this written analysis to the CITY before incurring any excess rental charges.

5. Cost of the premiums for all insurance (General Liability not to exceed .8%) and cost of premiums for all bonds which the DESIGN/BUILD FIRM is required to procure by this Agreement specifically for the construction project. This includes any Subcontractor bonds, or Subguard, the DESIGN/BUILD FIRM deems appropriate and required by the terms of this Agreement and as set forth in the Schedule of Values are final for the duration of the Project (and only subject to adjustment for changes in the scope or duration of the Project). Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, but only with the CITY's prior written approval. However, the cost of such bonds shall only be included in the Cost of the Work on those subcontracts whose value is in excess of \$50,000.00. Any other subcontractor bonds shall not be considered a Cost of the Work and, hence shall not be reimbursable by the CITY to the DESIGN/BUILD FIRM.
6. Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by a governmental authority, that are related to the Work and for which the DESIGN/BUILD FIRM is liable provided that each Subcontractor of every tier pay all sales, consumer, use, and similar taxes applicable to their respective portion of the Work. DESIGN/BUILD FIRM shall be liable for each and every penalty, fine or other cost incurred as a result of its failure to report and pay such taxes whether for itself or for any Subcontractor or supplier of any tier. No penalty, fine or other cost incurred as a result of its failure to report and pay such taxes whether for itself or for any Subcontractor or supplier shall be included in the Cost of the Work for purposes of calculating the DESIGN/BUILD FIRM's Fee.
7. After prior written approval of the CITY, the cost of corrective work subject, however, to the GMP and except for any corrective work made necessary because of defective workmanship or other causes contributed to by the DESIGN/BUILD FIRM or his Subcontractors or Suppliers. No costs shall be paid by the CITY to the DESIGN/BUILD FIRM for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the DESIGN/BUILD FIRM, its agents or subcontractors.
8. Minor expenses at the site, such as faxes, long-distance telephone calls, telephone service, expressage, postage, and similar petty cash items in connection with the

Project to be billed at cost. Cell phones will be limited to the lesser of actual costs or \$100.00 per month per assigned construction representative as authorized in Exhibit 3.

9. Costs for trash and debris control and removal from the site and its proper legal disposal.
10. Cost incurred due to an emergency affecting the safety of person or property as long as such emergency is not otherwise covered by insurance or not the result of the negligence of the DESIGN/BUILD FIRM, its agents or subcontractors.
11. After prior written approval of the CITY, that portion of the reasonable expenses of the DESIGN/BUILD FIRM's supervisory personnel (as identified in Exhibit 3) incurred while traveling in discharge of duties connected with the Work (However, The regular daily commute to and from the job site shall not be considered a reimbursable travel item.)
12. If pre-approved by the CITY in writing, the DESIGN/BUILD FIRM, when qualified, may perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work. Mark-up of the direct cost of the work shall not exceed the profit and overhead percentage of 6% multiplied by the actual direct cost of the work to be self-performed excluding any additional time incurred by the project team acting in a supervisory capacity.
13. Costs of all reproductions used for bidding or information purposes required by the Project to directly benefit the Project. The cost of document reproductions shall be limited to the amount negotiated in the guaranteed maximum price.
14. Costs for watchman and security services for the Project.
15. Subject to prior written approval by the CITY, costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel.
16. Cost to DESIGN/BUILD FIRM of temporary electric power, lighting, water and heat required for the performance of the Work, or required to protect the Work from weather damage.
17. Reasonable legal costs resulting from prosecution of the Work for CITY, provided they are not the result of the DESIGN/BUILD FIRM's own negligent acts or omissions or willful misconduct. Legal costs incurred in connection with disputes solely between DESIGN/BUILD FIRM and CITY or incurred in connection with disputes solely between DESIGN/BUILD FIRM and Subcontractors are the responsibility of DESIGN/BUILD FIRM and shall not be included herein.

C. The Cost of Work shall not include the items listed below:

1. Salaries and other compensation of the DESIGN/BUILD FIRM's personnel stationed at the DESIGN/BUILD FIRM's principal office or offices other than the site office, except as specifically provided elsewhere in Article 9.2.19.2.2 B., or as may be provided in Article 9.2.19.2.1.
2. Expenses of the DESIGN/BUILD FIRM's principal office and offices other than the site office.
3. Overhead and general expenses, except as may be expressly included in Article 9.2.19.2.1.
4. The DESIGN/BUILD FIRM's capital expenses, including interest on the DESIGN/BUILD FIRM's capital employed for the Work.
5. Costs due to the negligence or failure of the DESIGN/BUILD FIRM, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract.
6. Costs, other than costs included in Change Orders approved by the CITY, that would cause the Guaranteed Maximum Price to be exceeded.
7. Any cost for DESIGN/BUILD FIRM's General Conditions in excess of the amount set forth in the Schedule of Values attached hereto.
8. Costs resulting from failure of DESIGN/BUILD FIRM or any subcontractor to procure and maintain insurance by the Contract Documents.
9. Unless approved in writing by the CITY in advance, costs, and expenses for obtaining release of any liens and claims unless such lien and/or claim is a result to CITY's failure to make payments in accordance with the Contract Documents.
10. Amounts due by DESIGN/BUILD FIRM for federal and state income and franchise taxes, and the costs of licenses, fees, taxes, and other charges of a similar nature, etc., required to be obtained or maintained by DESIGN/BUILD FIRM for the general conduct of its business.
11. Costs to replace or pay for lost or stolen machinery or equipment.
12. The cost for any legal, accounting or other professional services except to the extent provided in Article 9.2.19.2.2.B.
13. Penalties, fines, or costs imposed by governmental authorities in connection with, or resulting from any violation of, or noncompliance with, laws, regulations,

codes, ordinances, or directives by the DESIGN/BUILD FIRM or any subcontractor;

14. Costs of any insurance deductibles paid by the Company or any subcontractor (notwithstanding anything in Article 9.2.22.B. to the contrary) and losses or expenses for which the DESIGN/BUILD FIRM or any subcontractor is compensated by insurance.
15. Costs associated with the DESIGN/BUILD FIRM's failure to obtain any and all permits in a timely manner, including, without limitation, the costs of any delays resulting therefrom, unless such failure is due to the failure of the Drawings and Specifications to conform with the laws and regulations applicable thereto.
16. Cost of accelerating the Work to the extent caused by the negligence or default of the DESIGN/BUILD FIRM or any subcontractor of any tier.
17. Overtime costs required to the extent caused by the DESIGN/BUILD FIRM or any subcontractor of any tier. ALL OVERTIME COSTS ARE SUBJECT TO PRIOR WRITTEN APPROVAL BY THE OWNER.
18. Project incentive bonuses, except WITH PRIOR APPROVAL as approved by the CITY in writing;
19. Costs of bonding or securing liens or defending claims filed by subcontractors of any tier arising from any default by DESIGN/BUILD FIRM in making any payment due to a subcontractor of any tier, material supplier, or laborer, unless such default is due to a default by the CITY in making progress payments to the DESIGN/BUILD FIRM hereunder;
20. Costs for electronic equipment and software, directly related to the Work are included in the General Conditions and shall not otherwise be included as part of the Cost of the Work.
21. Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the DESIGN/BUILD FIRM or paid to any Subcontractor or vendor shall not be deemed a Cost of the Work without CITY's prior written approval;
22. Tools and equipment with an individual cost of \$250 or less must be approved by the owner in writing;

~~23. Any cost not specifically and expressly described in Article 9.2.21.B.~~

### 9.2.3 Related Party Transactions

For purposes of this section (9.2.3), the term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the DESIGN/BUILD FIRM; any entity in which any stockholder in, or management employee of, the DESIGN/BUILD FIRM owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the DESIGN/BUILD FIRM. The term “related party” includes any member of the immediate family of any person identified above. If any of the costs to be reimbursed arise from a transaction between the DESIGN/BUILD FIRM and a related party, the DESIGN/BUILD FIRM shall notify the CITY of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the CITY, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the DESIGN/BUILD FIRM shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 5. If the CITY fails to authorize the transaction, the DESIGN/BUILD FIRM shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 11.

9.3 In the event that the DESIGN/BUILD FIRM’s total approved expenditures for the Project exceed the Guaranteed Maximum Price and all outstanding changes, claims and contract modifications have been settled, the DESIGN/BUILD FIRM shall pay such excess from its own funds. CITY shall not be required to pay any amount that exceeds the Guaranteed Maximum Price and the DESIGN/BUILD FIRM shall have no claim against the CITY on account thereof beyond claims for changes or disputed amounts as defined by the contract. IN THE EVENT THAT UPON FULL COMPLETION OF THE DESIGN SERVICES AND WORK OF THE PROJECT, THE ACTUAL COST, PLUS THE DESIGN/FIRM’S FEE, IS LESS THAN THE GUARANTEED MAXIMUM PRICE, ANY REMAINING FUNDS SHALL BE DISTRIBUTED AS FOLLOWS: AFTER FINAL COMPLETION, ALL REMAINING FUNDS IN OWNER CONTINGENCY AND CONTRACTOR CONTINGENCY BUDGETS SHALL BE COMBINED INTO ONE FINAL CONTINGENCY ACCOUNT. DESIGN / BUILDER SHALL RETAIN FROM THE COMBINED FINAL CONTINGENCY ACCOUNT AS ADDITIONAL FEE AN AMOUNT EQUAL TO THE FEE VALUE NEGOTIATED IN THE ORIGINAL CONTRACT. ANY REMAINING FUNDS IN THE FINAL COMBINED CONTINGENCY BUDGET WILL THEN BE SPLIT EQUALLY BETWEEN THE DESIGN/BUILD FIRM AND CITY.

#### 9.4 METHOD OF BILLING AND PAYMENT

9.4.1 During the Construction Documents Phase, DESIGN/BUILD FIRM may submit a request for payment monthly based upon percentage of completion of the (final construction) Plans and Specifications. During the Construction Phase, DESIGN/BUILD FIRM may submit a request for payment thirty (30) calendar days after beginning field operations, subject to the Notice to Proceed, and every thirty (30) calendar days thereafter. Payment during the Construction Phase will be based upon percentage of work completed for each item in the approved Schedule of Values. DESIGN/BUILD FIRM’s requisition for payment shall show a complete breakdown of the Project components, and the amount due, together with such supporting evidence, as may be required by the Contract

Administrator. At a minimum, the requisition for payment shall be accompanied by a completed certification of Work; consent of surety in the applicable amount; list of Subcontractors that performed Work during the payment application period being submitted; releases of liens from the Contractor for the previous period being billed; releases of liens from Subcontractors that have performed Work during the previous billing period unless payment for the previous period has not been received by the DESIGN/BUILD FIRM; arials and photographs of the areas of Work for the applicable billing period; an accepted, updated Project Schedule (as approved); and back up for all items being billed. The certification of Work will mean compliance by DESIGN/BUILD FIRM with the approved Project Schedule; that as-built drawings of Improvements are current for the prior period; and applicable laws are being met and complied with. Each requisition for payment shall be submitted to the Project Manager for approval. Payment for Work performed will be made in accordance with the Florida Prompt Payment Act, Sections 255.0705 – 255.078, but not more frequently than once a month. The Contract Administrator shall verify completion of the various phases, as noted, and authorize payment accordingly. Should the Project fall behind schedule, as indicated in the Project Schedule, DESIGN/BUILD FIRM shall include a written plan demonstrating how the Final Completion date shall be maintained.

- 9.4.2 CITY agrees that it will pay DESIGN/BUILD FIRM within thirty (30) calendar days of receipt of DESIGN/BUILD FIRM's proper requisition for payment, as provided above.
- 9.4.3 Ten percent (10%) of all monies earned by DESIGN/BUILD FIRM shall be retained by CITY until the Project has obtained Final Completion and been accepted by the CITY, except upon completion of the Construction Documents Phase and approval of the CITY of the Work performed under such phase, the Contract Administrator may release the entire amount of the retainage pertaining to the Consultant fees associated with the Construction Documents Phase. After fifty percent (50%) of the Construction Phase of the Project has been completed, the Contract Administrator, upon written request of the DESIGN/BUILD FIRM and written Consent of Surety in support of said request, may reduce the retainage to five percent (5%) of all monies earned subsequent to the Construction Documents Phase. Any interest earned on retainage shall accrue to the benefit of the CITY.
- 9.4.4 Undisputed amounts remaining unpaid thirty (30) calendar days after CITY's request of DESIGN/BUILD FIRM's proper requisition for payment for conforming Work shall bear interest at the rat set forth in Section 218.74(4), Florida Statutes. This section shall not apply if the CITY has a right to withhold any portion of the payment under this Agreement.
- 9.4.5 Upon receipt of written notice from DESIGN/BUILD FIRM that the Project is ready for final inspection and acceptance, the Contract Administrator shall, within seven (7) calendar days, make an inspection thereof. If the Contract Administrator finds the Project acceptable under the Contract Documents and the Project fully performed, a Final Certificate of Payment shall be issued by the

Contract Administrator over his/her own signature, stating that the Work required by this Agreement has been completed and is accepted under the terms and conditions thereof.

9.4.6 Before issuance of the Final Certificate for Payment, DESIGN/BUILD FIRM shall deliver to the Contract Administrator a complete release of all liens arising out of this Agreement, or receipts in full in lieu thereof, and an affidavit certifying that all suppliers, Consultant, Subcontractors, and Subconsultants have been paid in full, and that all other indebtedness connected with the Project has been paid, and a consent of the surety to final payment. All as-builts, warranties, guarantees, operational manuals, and instructions in operation must be delivered to CITY at this time. Contractor shall submit a completed as-built drawings package signed and sealed by a land surveyor registered in the State of Florida and as approved by the CITY's Public Works Department, and proof that all permits have been closed, which shall be delivered prior to requesting final payment. A Certificate of Occupancy, and/or Certificate of Completion (CC) will be obtained prior to final payment being made, if required.

9.4.7 CITY may withhold final payment or any progress payment to such extent as may be necessary on account of:

- A. Defective Work not remedied.
- B. Claims filed or written notices of nonpayment indicating probable filing of claims as may be prescribed by law by other parties against DESIGN/BUILD FIRM.
- C. Failure of DESIGN/BUILD FIRM to make payments properly to Consultant, Subcontractors or Subconsultants, or for material or labor.
- D. Damage to another Subcontractor, Subconsultant, supplier, material, person (as provided for in Florida Statute Chapter 713, party or person not remedied which are attributable to DESIGN/BUILD FIRM, its agents, servants, employees, Contractor, Consultant, Subconsultants, Subcontractors, sub-Subcontractors, sub-Subconsultants, material person and suppliers.
- E. Liquidated damages pursuant to Article 5 herein.
- F. As-built drawings not being in a current and acceptable state.

9.5 The DESIGN/BUILD FIRM warrants to the CITY that all materials and equipment furnished under this Agreement will be new unless otherwise specified, and that all Work will be of good quality and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized by Contract Administrator, may be considered defective. If required by the CITY, the DESIGN/BUILD FIRM shall furnish satisfactory evidence as to the origin, nature and quality of materials and equipment used for the Project. DESIGN/BUILD FIRM shall properly store and protect all construction materials. Materials which become defective through improper storage shall be replaced with new materials at no

additional costs. THE DESIGN/BUILD FIRM's warranty excludes reedy for damage or defect caused by abuse, modifications not executed by the DESIGN/BUILD FIRM, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

- 9.6 When the above grounds are removed or resolved, or DESIGN/BUILD FIRM provides a surety bond or consent of surety satisfactory to CITY which will protect CITY in the amount withheld, payment may be made in whole or in part, as applicable.
- 9.7 If, after the Project has been substantially completed, full completion thereof is delayed through no fault of DESIGN/BUILD FIRM, or by issuance of Change Orders affecting final completion, and the Project Manager so certifies. CITY shall, upon certification of the Project Manager, and without terminating the Contract, make payment of the balance due for that portion of the Project fully completed and accepted. Such payment shall be made as required by law under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
- 9.8 The making and acceptance of the final payment shall constitute a waiver of all claims by CITY, other than those arising from faulty or defective Work, failure of the Project to comply with requirements of the Contract Documents, or terms of any warranties required by the Contract Documents. It shall also constitute a waiver of all claims by DESIGN/BUILD FIRM, except those previously made in writing and identified by DESIGN/BUILD FIRM as unsettled at the time of the final application for payment.
- 9.10 DESIGN/BUILD FIRM shall remain liable for Subcontractors' Work and for any unpaid laborers, material suppliers of Subcontractors in the event it is later discovered that said Work is deficient or that any Subcontractors, laborers, or material suppliers did not receive payments due to them on the Project.
- 9.11 The DESIGN/BUILD FIRM shall use the sums advanced to it solely for the performance of the Work and the construction, furnishing and equipping of the Work in accordance with the Contract Documents and payment of bills incurred by the DESIGN/BUILD FIRM in performance of the Work.
- 9.12 Payment will be made by check.

#### **ARTICLE 10 - ADDITIONAL SERVICES AND CHANGES IN SCOPE OF WORK**

- 10.1 Without invalidating the Agreement and without notice to any surety, CITY reserves and shall have the right to make such changes from time to time in the character and quantity of the WORK as may be considered necessary or desirable to complete fully and acceptably the Project in a satisfactory manner. The City may order additions, deletions or revisions in the Work. Upon receipt of a Change Order, the DESIGN/BUILD FIRM shall proceed with the Work involved. All Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or

decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made on the basis of a claim made by either party.

10.2 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 DESIGN/BUILD FIRM.

10.3 Increases and Decreases in the Scope of Work

10.3.1 If the cost is increased by Change Order, the City shall pay the DESIGN/BUILD FIRM the aggregate net cost directly paid by the Construction Contractor to subcontractors or suppliers for the performance of the Work. Such costs shall be charged at the lowest price available to the Construction Contractor but in no event shall such costs exceed competitive costs available from other subcontractors, suppliers, manufacturers and distributors in the area of the Project site. Full documentation of all Costs shall be included in the itemized cost estimate, including labor by hours and rate, materials, supplies, taxes and insurance, plus any other documentation required to allow the CITY to properly evaluate the cost estimate.

A. The Change Order Fee shall mean the full amount of compensation, both indirect and direct, including without limitation all overhead, profit and general conditions, to be paid to the Subcontractors or Sub-subcontractors. The Change Order Fee shall be a fixed percentage based on the Cost of Work (excluding bonds and insurance costs). The Change Order Fee shall be computed as follows:

1. Ten percent (10%) of that portion of the Work to be performed by a Subcontractor with its own forces, plus five percent (5%) for the DESIGN/BUILD FIRM. Total Change Order Fee shall not exceed 15%.
2. Ten percent (10%) of that portion of the Work to be performed by a Sub-Subcontractor with its own forces, or any lower tier of subcontractor, plus five (5%) for the Subcontractor, plus five percent (5%) for the DESIGN/BUILD FIRM. Total Change Order fee shall not exceed (20%).

10.3.2 If the Cost of the Work is decreased by Change Order, payment due from the CITY to Construction Contractor shall be reduced by the amount the Construction Contractor is no longer obligated to pay subcontractors or suppliers for performance of the Work. If a Contingency line item has been established as part of the GMP, decreases in the Cost of Work shall accrue to the Contingency line item for the benefit of the CITY.

10.3.3 Construction Manager agrees that any designated CITY's representative will have the right to examine the Construction Manager's records to verify the accuracy and appropriateness of the pricing data used to price change proposals. Even after a Change Order Proposal has been approved, Construction Manager agrees that if the CITY later determines the cost and pricing data submitted was inaccurate, incomplete, not current or not in compliance with the terms of the contract regarding pricing of Change Orders; then an appropriate contract price reduction will be made.

- 10.3.4 Construction Manager agrees to provide and require all Subcontractors to provide a breakdown of allowable labor and labor burden cost information as outlined in this Article. This information will be used to evaluate the potential cost of labor and labor burden related to Change Order work. It is intended that this information represent an accurate estimate of the Construction Manager's actual labor and labor burden cost components. This information is not intended to establish fixed billing or Change Order pricing labor rates. However, at the time Change Orders are priced, the submitted cost data for labor rates may be used to price Change Order work. The accuracy of any such agreed upon labor cost components used to price Change Orders will be subject to later audit. Approved Change Order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.

#### **ARTICLE 11 - DESIGN/BUILD FIRM'S RESPONSIBILITIES**

- 11.1 The parties acknowledge and agree that the DESIGN/BUILD FIRM will be responsible for the design, construction and construction management of the Project according to the Design Criteria Package (DCP).
- 11.2 The CITY will be responsible for security, with full cooperation of DESIGN/BUILD FIRM, all environmental permits for the Project, including without limitation, SFWMD, Broward County, Army Corp of Engineers and FDEP. Except as provided in the preceding sentences (as to the permits the CITY is responsible for securing), the DESIGN/BUILD FIRM shall be fully responsible for any and all other permits and approvals from all governmental authorities having jurisdiction over the Project. All permits and licenses (except those that the CITY is expressly responsible for herein) require by federal, state or local laws, rules, and regulations necessary for the prosecution of the Project by DESIGN/BUILD FIRM pursuant to this Agreement shall be secured by the DESIGN/BUILD FIRM and paid for by the CITY. It is the DESIGN/BUILD FIRM's responsibility to have and maintain appropriate certificate(s) of competency, valid for the Work to be performed, and for all persons working on the Project for whom a certificate of competency is required.
- 11.3 DESIGN/BUILD FIRM shall be fully responsible for the actions of all its agents, servants, employees, including, but not limited to, the Contractor, Consultant, Subcontractors, Sub-Consultants, sub-Subcontractors, Materials persons (pursuant to Chapter 713, Florida Statutes), and any and all other persons working for it in conjunction with the design and construction of the Project.
- 11.4 DESIGN/BUILD FIRM shall be fully responsible for all acts or omissions of its Contractor, Consultant, Subcontractors, Sub-Consultants, sub-Subcontractors, sub-Sub-Consultants, Materials persons, and any and all other persons working for DESIGN/BUILD FIRM in conjunction with the design and construction of the Project; any and all persons working for Contractor, Consultant, Subcontractors or Sub-Consultant; and any and all persons for whose acts any of the aforesaid may be liable, to the same extent DESIGN/BUILD FIRM is responsible for the acts and omissions of persons directly employed by DESIGN/BUILD FIRM. Nothing in this Agreement shall

create any contractual relationship between CITY and Consultant, or CITY and any Subcontractor, Sub-Consultant, sub-Subcontractor, sub-Sub-Consultant, or any other person working either for DESIGN/BUILD FIRM or for any of the aforesated parties in conjunction with the design and construction of the Project, including, without limitation, any obligation on the part of the CITY to pay or to see the payment of any monies due to any of the aforesated parties pursuant to this section.

- 11.5 DESIGN/BUILD FIRM agrees to bind its Consultant, Subcontractors, and Sub-Consultants to the applicable terms and conditions of this Agreement for the benefit of the CITY. Subcontractors will include the cost of warranty work within their subcontract price and will not receive any additional payment for complying with their warranty obligations.
- 11.6 Unless otherwise provided herein, DESIGN/BUILD FIRM shall provide and pay for all architecture, engineering, landscape architecture, land surveying services, materials, construction and other labor, water, tools, equipment, light, power, transportation, and other facilities and services necessary for the proper execution and completion of the design and construction of the Project, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Project.
- 11.7 DESIGN/BUILD FIRM shall at all times enforce strict discipline and good order among its employees, Consultants, Subcontractors and Sub-Consultants at the Project site, and shall not employ on the Project any unfit person or anyone not skilled in the work and/or services assigned to him or her.
- 11.8 DESIGN/BUILD FIRM shall keep itself fully informed of, and shall take into account and comply with any and all Applicable Laws affecting those engaged or employed in the Project; or the Materials used or employed in the design and construction of the Project; or in any way affecting the conduct of the Project, including, without limitation, all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same and of all provisions required by law to be made a part of this Agreement, all of which provisions are hereby incorporated by reference and made a part hereof. If any specification or contract for this Project is in violation of any such Applicable Laws, DESIGN/BUILD FIRM shall forthwith report the same to the Contract Administrator in writing. DESIGN/BUILD FIRM shall cause all its employees, agents, Consultant, Subcontractors, Subconsultants, sub-Subconsultants and sub-Subcontractors to observe and comply with all Applicable Laws.
- 11.9 DESIGN/BUILD FIRM shall pay all applicable sales, consumer, use and other taxes required by law. DESIGN/BUILD FIRM is responsible for reviewing the pertinent State statutes involving State taxes and complying with all requirements.
- 11.10 If DESIGN/BUILD FIRM has knowledge that the Contract Documents do not comply with Applicable Laws, in any respect, the DESIGN/BUILD FIRM shall promptly notify the Project Manager, in writing, and any necessary changes shall be adjusted by appropriate revisions. If the DESIGN/BUILD FIRM performs any Work not in accordance with Applicable Laws, and without such notice to the Project Manager, the DESIGN/BUILD FIRM shall assume full responsibility therefore, and shall bear all costs attributable thereto. DESIGN/BUILD FIRM warrants to CITY that it has thoroughly

reviewed and studied the DCP, to perform the Work for the Guaranteed Maximum Price and the Contract Time. DESIGN/BUILD FIRM shall promptly but no longer than 10 days notify any deficiencies in the DCP once discovered. Provided contractor provided adequate notice, impacts associated with deficiencies in the DCP ~~shall~~may be considered a change to the project scope and the GMP and/or project budgets shall be adjusted appropriately in accordance with the Change Order process or contingency use process. Failing any said notifications, the DESIGN/BUILD FIRM warrants to CITY that the DCP is consistent, practical, feasible and constructible.

- 11.11 DESIGN/BUILD FIRM accepts the Project site in its observable and/or documented condition existing at the time of this Agreement, or conditions ordinarily encountered and generally recognized as inherent to the character of the Work to be provided for in this Project. By signing this Contract, the DESIGN/BUILD FIRM represents to the CITY that it has: (a) visited the Project site to become familiar with the conditions under which the Work is to be performed; (b) become familiar with all information provided (without warranty) by the CITY pertaining to the Project site; and (c) correlated its observations with the information furnished by the CITY (without warranty), and the Contract Documents. The DESIGN/BUILD FIRM hereby waives additional time or compensation for additional work made necessary by observable and/or documented conditions existing at the Project site, or conditions ordinarily encountered and generally recognized as inherent to the character of the Work to be provided for in this Project.
- 11.13 The DESIGN/BUILD FIRM shall comply with all conditions of any permits issued by government authorities.
- 11.14 All material and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. Suppliers shall be selected and paid by the DESIGN/BUILD FIRM; the CITY reserves the right to approve all suppliers and materials.
- 11.15 The DESIGN/BUILD FIRM 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 DESIGN/BUILD FIRM hereby expressly binds itself to indemnify and save harmless the CITY from all such claims and fees and from any and all suits and actions 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.
- 11.16 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 8:00 am to 6:00 pm, Monday through Friday. The DESIGN/BUILD FIRM 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 DESIGN/BUILD FIRM 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 DESIGN/BUILD FIRM and no extra payment shall be made to the DESIGN/BUILD FIRM for overtime work. The cost to the DESIGN/BUILD FIRM to reimburse the CITY for overtime inspections 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 DESIGN-BUILD FIRM at the actual rate accrued.

- 11.17 In the event of an emergency affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, DESIGN/BUILD FIRM, without special instruction or authorization from the CITY is obligated to act to prevent threatened damage, injury or loss. DESIGN/BUILD FIRM shall give the Project Manager prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.
- 11.18 Upon issuance of a Hurricane Watch by the National Weather Service, DESIGN/BUILD FIRM 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 DESIGN/BUILD FIRM 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 DESIGN/BUILD FIRM has not already done so, the DESIGN/BUILD FIRM 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 DESIGN/BUILD FIRM to any additional compensation. DESIGN/BUILD FIRM shall be entitled to request an extension of time for completion of the Work, in accordance with the provision of Article \_\_\_\_ 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.
- 11.19 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 these 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 respective 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 DESIGN/BUILD FIRM 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 DESIGN/BUILD FIRM shall use its reasonable efforts to minimize such delays. The DESIGN/BUILD FIRM shall promptly provide an estimate of the anticipated additional time required to complete the Project.

11.20 Construction services will be performed by Subcontractors and suppliers under contract with DESIGN/BUILD FIRM. DESIGN/BUILD FIRM shall not perform construction services with its own forces without the written consent of CITY. If DESIGN/BUILD FIRM desires to perform any portion of the Work, it shall be subject to the same procedures as the various other bidders for such portion of the Work, including the submittal of blind bids.

11.21 DESIGN/BUILD FIRM will develop procedures for the selection of Subcontractors in accordance with CITY's standard policies and procedures. In addition, the DESIGN/BUILD FIRM may elect to team with additional DESIGN/ASSIST Subcontractors during design development provided such agreements are negotiated at or below established budgets. For all scopes of work not subcontracted to DESIGN/ASSIST Subcontractors the DESIGN/BUILD FIRM shall develop Subcontractor interest in the Project and publicly advertise and conduct pre-bid conferences with interested bidders to review the documents. DESIGN/BUILD FIRM will announce at all pre-bid conferences that proof of licensure required by applicable law must be available for review at the bid opening, and review such evidence of licensure of apparent qualified low bidders, take competitive bids on the Work of the various Subcontractors or, if authorized by the CITY in writing negotiate for the performance of that Work. DESIGN/BUILD FIRM may require bidders to submit bid bonds or other bid security acceptable to DESIGN/BUILD FIRM as a prerequisite to bidding on the Work. DESIGN/BUILD FIRM will analyze and evaluate the results of the various bids and their relationship to budgeted and estimated amounts, and prepare for review with the CITY a bid tabulation analysis and such other support data as necessary to properly compare the various bids and their responsiveness to the desired scope of Work. DESIGN/BUILD FIRM will review the scope of Work in detail with apparent low qualified and responsive bidders to determine that their bids are complete but do not include duplicate scope items. DESIGN/BUILD FIRM will maintain records of all pre-award interviews with all bidders, prepare and submit written recommendations to CITY for award of contracts by the DESIGN/BUILD FIRM and promptly award and execute contracts with approved Subcontractors. DESIGN/BUILD FIRM will disclose any ownership stake in a bidding subcontractor in writing prior to the award of contracts.

11.22 Manage, schedule and coordinate the Work and coordinate the Work with the activities and responsibilities of CITY and DESIGN/BUILD FIRM in order to complete the Project in accordance with the CITY's budget and schedule.

11.23 Develop and maintain a program, acceptable to CITY, to assure quality control of the construction.

11.24 Require of the various Subcontractors such coordination drawings as may be necessary to properly coordinate the Work among the Subcontractors.

11.25 In consultation with CITY, take necessary corrective actions when requirements of a subcontract or a subcontract schedule are not being met.

11.26 If CITY-Furnished Contractor-Installed ("OFCI") materials or equipment are shipped to the Project site, notify CITY and be responsible for their acceptance, proper storage, and incorporation into the Work provided the scope of the OFCI work is included within the Guaranteed Maximum Price. The OFCI materials or equipment will be in conformance with the Design Documents and will be coordinated by CITY or CITY's representative with DESIGN/BUILD FIRM's schedule. This provision does not apply to Direct Purchase Materials, which will be handled pursuant to Section.

11.27 DESIGN/BUILD FIRM will verify that subcontractors have obtained the bonds and insurance required by this Agreement, in section 9.2.2.B.6.

11.28 DESIGN/BUILD FIRM will maintain a system of accounting consistent with generally accepted accounting principles. DESIGN/BUILD FIRM will preserve all accounting records for a period of four (4) years after final acceptance of the Work and CITY shall have access to such records at all times during performance of the Work and for a period of four (4) years after final acceptance of the Work.

#### **ARTICLE 12 - CITY'S RESPONSIBILITIES**

12.1 CITY shall assist DESIGN/BUILD FIRM by placing at its disposal any available information pertinent to the Project including previous reports, laboratory tests and inspections of samples, materials and equipment; property, boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; and known zoning, deed and other land use restrictions.

12.2 CITY shall arrange for access to and make all provisions for DESIGN/BUILD FIRM to enter upon public property as required for DESIGN/BUILD FIRM to perform its services.

12.3 CITY shall render decisions under this Agreement in a timely manner.

#### **ARTICLE 13 - SUPERINTENDENCE AND SUPERVISION**

13.1 The orders of the CITY are to be given through the Project Manager, whose instructions are to be strictly and promptly followed in every case, provided that they are in accordance with this Contract and the other Contract Documents. Construction Manager shall keep on the Project during its progress, a full-time, competent, English speaking supervisor, who shall be the Construction Manager Representative and who shall serve as the superintendent, and any necessary assistants, all satisfactory to the Project Manager.

13.2 Construction Manager or Construction Manager Representative shall prepare, on a daily basis, and keep on the Project site, a bound log setting forth at a minimum, for each day: the weather conditions and how any weather conditions affected progress of the Work; time of commencement of Work for the day; the Work performed; materials, labor,

personnel, equipment and Subcontractors used for the Work; any idle equipment and reasons for idleness; visitors to the Project site; any special or unusual conditions or occurrences encountered; any materials delivered to the Project site; and the time of termination of Work for the day. The daily bound log shall be available for inspection by the CITY, or its authorized designee, at all times during the Project, without previous notice.

- 13.3 If DESIGN/BUILD FIRM, in the course of the Project, finds any discrepancy between the Contract Documents and the physical conditions of the site, or any errors or omissions in the Contract Documents including, but not limited to, the Plans and Specifications, it shall be DESIGN/BUILD FIRM's sole obligation and duty to immediately inform the Project Manager, in writing, and the Project Manager will promptly verify same. Any Work done prior to or after such discovery will be done at DESIGN/BUILD FIRM's sole risk. NOTWITHSTANDING THE PRECEDING, OR ANY OTHER TERM OR CONDITION OF THIS AGREEMENT, DESIGN/BUILD FIRM HEREBY ACKNOWLEDGES AND AGREES THAT THIS IS A DESIGN/BUILD PROJECT AND, ACCORDINGLY, ANY ERRORS OR OMISSIONS SHALL BE CORRECTED AT THE SOLE COST AND EXPENSE OF DESIGN/BUILD FIRM AND WITHOUT A CLAIM FOR ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT PRICE.
- 13.4 DESIGN/BUILD FIRM shall coordinate, supervise and direct the Project competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform and complete the Project in accordance with the Contract Documents. DESIGN/BUILD FIRM shall be solely responsible for the design, preparation of Construction Documents, means, methods, techniques, safety, sequences and procedures of construction. DESIGN/BUILD FIRM shall give efficient supervision to the Work, using DESIGN/BUILD FIRM's best skill, attention and judgment.

#### **ARTICLE 14 - RESOLUTION OF DISPUTES**

- 14.1 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 CITY Project Manager and Design/Build Team Project Manager shall be submitted to the City Manager or his designee and Design/Build Team's representative 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 next level of the parties' respective management levels for resolution. Each party may determine in such party's reasonable discretion as to who the "next level of management" is for purposes of resolving disputes.
- 14.2 All non-technical administrative disputes (such as billing and payment) shall be determined by the Project Manager.

- 14.3 During the pendency of any dispute and after a determination thereof, Design/Build Team, and CITY shall act in good faith to mitigate any potential damages including using construction schedule changes and alternate means of construction. During the pendency of any dispute arising under this Agreement, other than termination herein, Design/Build Team shall proceed diligently with performance of this Agreement and CITY shall continue to make payments for undisputed amounts in accordance with the Contract Documents.
- 14.4 In the event a resolution of a dispute under this section cannot be resolved, the issue shall be submitted by the Design/Build Team to the CITY MANAGER or designee, in writing within ten (10) days of the impasse. The notice must state the basis of the dispute and the Design/Build Team's proposed resolution. The notice given by the Design/Build Team must include a written notarized certification that any GMP adjustment claimed is the entire adjustment to which the Design/Build Team has reason to believe it is entitled to as a result of the question, claim, difficulty or dispute. Resolution of such dispute shall be made by the City Manager or designee. The City Manager's decision shall be final and binding on the parties subject to mediation and judicial review.
- 14.5 Prior to any litigation being commenced, for any disputes which remain unresolved, within sixty (60) days after Final Completion of the Work, the parties shall participate in mediation to address all unresolved disputes to a mediator mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies provided under the laws of Florida. Failure by a party to comply in strict accordance with the requirements of this Article, then said party specifically waives all of its rights provided hereunder, including its rights and remedies under the laws of Florida.

#### **ARTICLE 15 - CITY'S RIGHT TO TERMINATE AGREEMENT**

- 15.1 If DESIGN/BUILD FIRM fails to begin the design and construction of the Project within the time specified, or fails to perform the Project with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Project, in accordance with the Contract Documents and schedules, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable; or shall discontinue the prosecution of the Project, except for excused delays in accordance with this Agreement; or if DESIGN/BUILD FIRM shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors; or shall not carry on the Project in accordance with the Contract Documents, then the CITY shall give notice, in writing, to DESIGN/BUILD FIRM and its surety of such delay, neglect or default, specifying the same. If DESIGN/BUILD FIRM within a period of ten (10) calendar days after such notice, shall not proceed in accordance therewith, then CITY may, upon written notice from the Project Manager of the fact of such delay, neglect or default and DESIGN/BUILD FIRM's failure to comply with such notice, terminate the services of DESIGN/BUILD FIRM, exclude DESIGN/BUILD FIRM from the Project site, and take the prosecution of the Project out of the hands of DESIGN/BUILD FIRM, as appropriate, or use any or all materials and equipment on the Project site as may be suitable and acceptable, in the CITY's reasonable discretion. In such case, DESIGN/BUILD FIRM shall not be entitled to receive any further payment

until the Project is finished. In addition, CITY may enter into an Agreement for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in its opinion shall be required for the completion of the Project in an acceptable manner. All damages, costs and charges incurred by CITY shall be deducted from any monies due or which may become due to said DESIGN/BUILD FIRM. Actions will be instituted to recover on the posted bonds. In case the damages and expense so incurred by CITY shall be less than the sum which would have been payable under this Agreement, if it had been completed by said DESIGN/BUILD FIRM, then DESIGN/BUILD FIRM shall be entitled to receive the difference. If such damages and costs exceed the unpaid balance, then DESIGN/BUILD FIRM shall be liable and shall pay to CITY the amount of said excess.

- 15.2 If, after Notice of Termination of DESIGN/BUILD FIRM's right to proceed, it is determined for any reason that DESIGN/BUILD FIRM was not in default, the rights and obligations of CITY and DESIGN/BUILD FIRM 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 13.3 below.
- 15.3 Notwithstanding any other provision in this Agreement, the performance of work under this Agreement may be terminated in writing by CITY, for convenience and without cause, upon ten (10) business days from the date of DESIGN/BUILD FIRM's receipt of the written notice to DESIGN/BUILD FIRM of intent to terminate and the date on which such termination becomes effective. In such case, DESIGN/BUILD FIRM shall be paid for all work and reimbursables executed, and expenses incurred, such as materials stored, cost of severance of leases/contracts directly associated with the Project, and demobilization prior to termination. PAYMENT SHALL INCLUDE REASONABLE PROFIT FOR SERVICES ACTUALLY PERFORMED IN FULL PRIOR TO TERMINATION DATE, BUT SHALL EXCLUDE ALL LOST PROFITS, INDIRECT CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES.
- 15.4 Upon receipt of Notice of Termination pursuant to Sections 13.1 and 13.2 above, DESIGN/BUILD FIRM shall, at its sole cost and expense (other than demobilization as a result of the Notice of Termination pursuant to Section 13.3 which shall be paid for by the CITY) and as a condition precedent to any further payment obligation by the CITY, promptly discontinue all affected work, unless the Notice of Termination directs otherwise, and deliver to CITY within seven (7) calendar days of termination, 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. Compensation shall be withheld until all documents are produced to CITY pursuant to this Article.

#### **ARTICLE 16 - DESIGN/BUILD FIRM'S RIGHT TO STOP WORK OR TERMINATE CONTRACT**

- 16.1 If the Project should be stopped under any order of any court or other public authority for a period of more than ninety (90) calendar days, through no act or fault of DESIGN/BUILD FIRM or of anyone employed by DESIGN/BUILD FIRM, or if the Project Manager should fail to review and approve or state in writing reasons for non-

approval of any requisition for payment within twenty (20) business days after it is presented; or if CITY fails to pay DESIGN/BUILD FIRM within thirty (30) calendar days after submittal of a proper requisition for payment, as approved by the Project Manager, then DESIGN/BUILD FIRM may give written notice to CITY, of such delay, neglect or default, specifying same. If CITY, within a period of ten (10) business days after such written notice, shall not remedy the delay, neglect, or default upon which notice is based, then DESIGN/BUILD FIRM may stop work until payment is made, or terminate this Agreement and recover from CITY payment for all Work executed and reasonable expenses sustained, but excluding any claim for payments for lost profits, indirect, special, consequential or other damages.

#### **ARTICLE 17 – NOTICES**

- 17.1 Whenever either party desires to give notice to the other, such notice must be in writing with proof of delivery or receipt. The notice shall be address to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

**FOR 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

**FOR THE DESIGN/BUILD FIRM:**

Richard A. Cohen  
Operations Manager  
Hensel Phelps Construction  
Phone: 954-447-0000  
Email: Rcohen@henselphelps.com

#### **ARTICLE 18 – BONDS AND INSURANCE**

- 18.1 DESIGN/BUILD FIRM shall furnish, or cause to be furnished, on or before seven (7) days after execution of this Agreement, the following: Performance Bond and Payment Bond (Surety)

- 18.2 THE DESIGN/BUILD FIRM 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 guaranteeing to CITY the completion and performance of the Project covered in this Agreement as well as full payment of all suppliers, material persons, laborers, or Subcontractors employment pursuant to the Project. The Payment and Performance bond shall be with a surety insurer authorized to do business in the state of Florida as surety, ("Bond"), in accordance with Sec. 255.05, Fla. Stat., 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. The performance and payment bond shall remain in full force and effect during the Project and 60 days beyond the contract term for close out.
- 18.3 THE DESIGN/BUILD FIRM shall furnish to the CITY, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below and in the solicitation:

**COMMERCIAL GENERAL LIABILITY**

Commercial General Liability and Required Endorsements in Solicitation:

**Bodily Injury and Property Damage Liability**

**Combined Single Limit**

Each Occurrence Limit: \$1,000,000

General Aggregate Limit Limit: \$2,000,000

Personal Injury Limit: \$1,000,000

Products/Completed Operations: Limit: \$1,000,000

**Bodily Injury and Property Damage Liability**

**Combined Single Limit**

Any Auto Limit: \$1,000,000

Other:

Longshoreman/Jones Act to the Workers Comp Limit: Statutory

Pollution Liability Limit: \$1,000,000

Excess/Umbrella Liability Limit: \$2,000,000

Marine Liability, with P & I and Hull Coverage Limit: \$1,000,000

Professional Liability/Errors and Omissions Coverage:

**Combined Single Limit**

Each Occurrence Limit: \$1,000,000

General Aggregate Limit Limit: \$2,000,000

Deductible not to exceed 10%

Must be in effect for at least five (5) years after Project completion

- 18.4 All deductibles for insurance required in this Agreement are the responsibility of the DESIGN/BUILD FIRM. Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder. Certificate holder must read: CITY OF FORT LAUDERDALE, 100 N. Andrews Avenue, Fort Lauderdale, Florida 33301. Compliance with the foregoing requirements shall not relieve the DESIGN/BUILD FIRM of its liability and obligation under this section or under any other section of this Agreement.

18.5 The DESIGN/BUILD FIRM 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 DESIGN/BUILD FIRM shall be responsible for submitted 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 19 - SUBSTANTIAL COMPLETION**

19.1 When DESIGN/BUILD FIRM considers that the Project, or a designated portion thereof, which is acceptable to CITY, in the event CITY chooses to accept same pursuant to the sole authority and discretion, is substantially complete, DESIGN/BUILD FIRM shall so notify the Project Manager, in writing, and shall prepare for submission to the Project Manager a thorough list of items to be completed or corrected, together with a schedule for completion of all items. The failure to include any items on such list does not alter the responsibility of DESIGN/BUILD FIRM to complete all Work in accordance with the Contract Documents. The Project Manager, and such other persons as they may deem necessary, shall conduct a joint inspection to determine that the Project (or designated portion thereof) is substantially complete. The Project Manager will then instruct DESIGN/BUILD FIRM to prepare and deliver to the Project Manager a Certificate of Substantial Completion which shall establish the date of Substantial Completion for the Project (or that portion of the Project). After review of the certificate by the Project Manager, CITY shall either accept or reject the certificate. Acceptance of Substantial Completion by CITY shall be based upon compliance with the Contract Documents and Applicable Laws. DESIGN/BUILD FIRM shall have thirty (30) days to complete the items listed therein. Warranties required by the Contract Documents and submitted in appropriate form to the Project Manager along with the request for Substantial Completion shall commence on the date of Substantial Completion of the Project (or for that portion of the Project). The Certificate of Substantial Completion shall be submitted to CITY through the Project Manager and DESIGN/BUILD FIRM for its written acceptance of the responsibilities assigned to it in such Certificate.

#### **ARTICLE 20 - SHOP DRAWINGS AND SCHEDULE OF VALUES**

20.1 DESIGN/BUILD FIRM shall submit Shop Drawings for all equipment, apparatus, machinery, fixtures, piping, wiring, fabricated structures and manufactured articles. The purpose of a Shop Drawing is to show the suitability, efficiency, technique of

manufacture, installation requirements, details of the item and evidence of its compliance or noncompliance with the Contract Documents.

- 20.2 DESIGN/BUILD FIRM shall thoroughly review and check the Shop Drawings and each and every copy shall show DESIGN/BUILD FIRM's approval thereon.
- 20.3 If the Shop Drawings show or indicate departures from the Contract requirements, DESIGN/BUILD FIRM shall make specific mention thereof in its shop drawing submittal and a separate letter. Failure to point out such departures shall not relieve DESIGN/BUILD FIRM from its responsibility to comply with the Contract Documents. Project Manager shall determine acceptability of change and, in considering said change, may require data, technical comparisons, cost comparisons, quality comparisons and/or calculations to determine the equality of deviations. Project Manager is not obligated to accept deviations.
- 20.4 No acceptance will be given to partial submittal of Shop Drawings for items which interconnect and/or are interdependent. It is DESIGN/BUILD FIRM's responsibility to assemble the Shop Drawings for all such interconnecting and/or independent items, check them, and then make one (1) submittal to the Project Manager, along with DESIGN/BUILD FIRM's comments as to compliance, noncompliance, or features requiring special attention.
- 20.5 If catalog sheets or prints of manufacturers' standard drawings are submitted as Shop Drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink. Catalog sheet with multiple options shall be highlighted to depict specific pertinent data including options.
- 20.6 DESIGN/BUILD FIRM shall submit to Project Manager five (5) copies. Re-submissions of Shop Drawings shall be made in the same quantity until final acceptance is obtained.
- 20.7 Project Manager's acceptance of the Shop Drawings, as approved by DESIGN/BUILD FIRM, will be for general compliance with the Plans and Specifications, and shall not relieve DESIGN/BUILD FIRM of responsibility for the accuracy of such Drawings, nor for the proper fittings and construction of the Work, nor for the furnishing of the Materials or Work required by the Contract and not indicated on the Drawings.
- 20.8 DESIGN/BUILD FIRM shall keep one (1) set of Shop Drawings, marked with the Contract Administrator's acceptance, as the Project site at all times.
- 20.9 The DESIGN/BUILD FIRM shall submit a Schedule of Values to the Contract Administrator as specified in the Technical Specifications. DESIGN/BUILD FIRM shall submit to the Project Manager a separate Schedule of Values for demolition, abatement, and site work ten (10) calendar days prior to commencing such portion of the Work. The schedule will be typed on 8 1/2" x 11" white paper listing: title of Project, location, Project number, Consultant, Contractor, Contract designation and date of submission. The schedule shall list the installed value of the component parts of the Work in sufficient detail to serve as a basis for computing values for progress payments during the construction. The table of contents of the specifications shall establish the format for listing the component items. Each line item will be identified by the number and title of

the respective major section of the specifications. For each line item, DESIGN/BUILD FIRM shall list the sub-values of major products or operations under the item. Each item shall include the proportion of DESIGN/BUILD FIRM's overhead and profit. For any items for which progress payments will be requested for stored materials, the value will be broken down with:

- A. The cost of materials delivered, unloaded, properly stored and safeguarded, with taxes paid; and
- B. The total installed value.

#### **ARTICLE 21 - FIELD ENGINEERING**

- 21.1 The DESIGN/BUILD FIRM shall provide and pay for field engineering services required for the Project. This work shall include the following elements:
  - A. Survey work required in execution of the Project;
  - B. Civil, structural or other professional engineering, architectural, landscape architectural, or land surveying services specified, or required to execute the DESIGN/BUILD FIRM's construction methods.
- 21.2 The survey completed by DESIGN/BUILD FIRM will identify the qualified engineer or registered land surveyor, acceptable to the CITY, and he or she shall be retained by the DESIGN/BUILD FIRM at the outset of this Project.
  - 21.2.1 The survey will locate and protect control points prior to starting site work, and will preserve all permanent reference points during construction.
  - 21.2.2 No changes or relocations will be made without prior written notice to the Project Manager.
  - 21.2.3 A written report shall be made to the Project Manager when any reference point is lost or destroyed, or requires relocation because of necessary changes in grades or locations.
  - 21.2.4 The surveyor shall be required to replace Project control points which may be lost or destroyed. The surveyor shall be duly registered as a surveyor or mapper, as required by state law.
  - 21.2.5 Replacements shall be established based upon original survey control.

#### **ARTICLE 22 - FIELD LAYOUT FOR THE WORK AND RECORD DRAWINGS**

- 22.1 The entire responsibility for establishing and maintaining a line and grade in the field lies with DESIGN/BUILD FIRM. DESIGN/BUILD FIRM shall maintain an accurate and precise horizontal and vertical record of the existing pavement conditions; final pavement conditions; and all pipe lines, conduits, structures, underground utility access portals,

handholes, fittings, etc. encountered or installed during construction. DESIGN/BUILD FIRM shall deliver these records in good order to the Project Manager as the work is completed. These records shall serve as a basis for "as-built" drawings. The cost of all such field layout and recording work is included in the Contract Price.

- 22.2 DESIGN/BUILD FIRM shall maintain in a safe place at the site, one (1) record copy of the Plans and Specifications, addenda, written amendments, Change Orders and written interpretations and clarifications, in good order and annotated to show all changes made during construction. These record documents, together with all approved samples and a counterpart of all approved Shop Drawings, will be available to Project Manager for reference. Upon completion of the Project, these record documents, samples and Shop Drawings shall be delivered to the Project Manager.
- 22.3 At the completion of the Project, the DESIGN/BUILD FIRM shall turn over to the City a set of reproducible drawings and a complete set of all drawings in the latest version of AutoCAD on Compact Disk, not compressed, which accurately reflect the "as-built" conditions of the new facilities. All changes made to the Construction Documents, either as clarifications or as changes, will be reflected in the plans. The changes shall be submitted at least monthly to the Project Manager. These "as-built" drawings and the latest version of the AutoCAD format media must be delivered and found to be acceptable prior to final payments.

#### **ARTICLE 23 - NO DAMAGES FOR DELAY**

- 23.1 NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST CITY BY REASON OF ANY DELAYS EXCEPT AS PROVIDED HEREIN OR ELSEWHERE IN THE CONTRACT. DESIGN/BUILD FIRM shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from CITY for direct, indirect, consequential, impact, or other costs, expenses or damages including, but not limited to, costs of acceleration or inefficiency arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference, or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, DESIGN/BUILD FIRM hindrances or delays are not due to fraud, bad faith or active interference and/or actions or omissions by the CITY, DESIGN/BUILD FIRM shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delays, in accordance with and to the extent specifically provided above. The specific application of this Article to other provisions of this Agreement shall not be construed as a limitation of any sort upon the further application of this Article. Ten Dollars (\$10.00) of DESIGN/BUILD FIRM's fee is acknowledged as separate and independent consideration for the covenants contained in this Article. In the event DESIGN/BUILD FIRM is unable to complete its contractual services because of delays resulting from untimely review by the CITY or other governmental authorities having jurisdiction over the Project, and such delays are not the fault of DESIGN/BUILD FIRM, CITY shall grant a reasonable extension of time for completion of the services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of DESIGN/BUILD FIRM to notify the Project Manager or Contract Administrator in writing whenever a delay in approval by a governmental

agency is anticipated or experienced, and to inform CITY of all facts and details related to the delay.

#### **ARTICLE 24 - LIMITATION OF LIABILITY**

- 24.1 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 \$5,000,000.00. For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the DESIGN/BUILD FIRM hereby expresses its willingness to enter into this Agreement with the knowledge that the DESIGN/BUILD FIRM's recovery from the CITY to any action or claim arising from the Agreement is limited to a maximum amount of \$5,000,000.00, , 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 beyond the limits established in Fla. Stat. Sec. 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.

#### **ARTICLE 25 - GOVERNING LAW**

- 25.1 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the exclusive jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs, and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, EACH PARTY HEREBY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY SUCH LITIGATION. DESIGN/BUILD FIRM SHALL SPECIFICALLY BIND ITS PROJECT TEAM MEMBERS AND ANY AND ALL SUBCONTRACTORS TO THE PROVISIONS OF THE CONTRACT.

#### **ARTICLE 26 - MISCELLANEOUS PROVISIONS**

- 26.1 OWNERSHIP OF DOCUMENTS: All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, specifications, plans and reports prepared or provided by Design/Build Team in connection with this Agreement shall become the property of CITY, whether the Project for which they are made is completed or not, shall become the property of CITY and shall be delivered by Design/Build Team to Project Manager within fifteen (15) days of the receipt of the written notice of termination or upon completion of the Project. If applicable, CITY may withhold payments then due to Design/Build Team until Design/Build Team complies with the provisions of this section.
- 26.2 AUDIT RIGHT AND RETENTION OF RECORDS: CITY and its designees shall have the right to audit and copy the books, records, and accounts of Design/Build Team that

are related to this Project. Design/Build Team shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. Design/Build Team shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. Construction Manager's "records", as referred to in this Agreement, shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in CITY's judgment have any bearing upon or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.), complete with all executed change orders and the applicable supporting pricing documentation in accordance with Sections 10.3.1 and 10.3.4 of this Agreement; original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back-charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Construction Manager records which may have a bearing on matters of interest to the CITY in connection with Construction Manager's dealings with the CITY (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Construction Manager compliance with the requirements of this Agreement, b) compliance with provisions for pricing change orders, invoices or claims submitted by the Construction Manager or his payees. Construction Manager shall require all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Construction Manager and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Construction Manager will cooperate fully and will require its Related Parties and all of its Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to CITY from time to time whenever requested in an expeditious manner any and all such information, materials and data. CITY's authorized representative or designee shall have reasonable access to the Construction Manager's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to Design/Build Team's records, Design/Build Team shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by DESIGN-BUILD TEAM. Any incomplete or incorrect entry in such books,

records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry. If an audit inspection or examination in accordance with this Article, and finds that the Construction Manager overcharged CITY, the Construction Manager shall pay to CITY the Overcharged Amount, which is defined as the total aggregate overcharged amount together with interest thereon (such interest to be established at the rate of 12% annum – calculated based on the Overcharged Amount average date of occurrence until the Construction Manager is notified of the Overcharged Amount. If the Overcharged Amount is not paid within 7 days of notification, then interest will continue to accrue and be payable until the Construction Manager pays the amount owed). If the Overcharged Amount is equal to or greater than \$35,000.00, the Construction Manager shall pay to CITY the Overcharged Amount (including any accrued interest as defined above) and the Audit Amount, which is defined as the total aggregate of CITY's reasonable audit costs, incurred as a result of its audit of the Construction Manager and CITY. If such amounts owed the Construction Manager are insufficient to cover the Overcharged Amount and Audit amount, as applicable, then the Construction Manager hereby acknowledges and agrees that it shall pay such remaining amounts; to CITY within seven (7) business day of its receipt of CITY's invoice or such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.

- 26.3 ARCHITECT/ENGINEER: DESIGN/BUILD FIRM shall use the architect/engineer, including subconsultants, identified in the proposal that were a material part of the selection of the Design/Build Team to provide the services for this Project. DESIGN/BUILD FIRM shall obtain written approval of CITY's Public Works Director prior to changing or modifying the list of subconsultants submitted by the Design/Build Team. The list of Architect/Engineer, including subconsultants, is provided on the Design Build Firm's Response to RFP.
- 26.4 ASSIGNMENT AND PERFORMANCE: Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the prior written consent of the other party.
- 26.5 COUNTERPARTS: This Agreement may be executed in three (3) counterparts, each of which shall be deemed to be an original.
- 26.6 ALL PRIOR AGREEMENTS SUPERSEDED: This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this Agreement. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.
- 26.7 AMENDMENTS: No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by both parties with the same formality and of equal dignity herewith.
- 26.8 INDEPENDENT CONTRACTOR: DESIGN/BUILD FIRM is an independent contractor under this Agreement. Services provided by DESIGN/BUILD FIRM shall be subject to

the supervision of DESIGN/BUILD FIRM. In providing the services, DESIGN/BUILD FIRM or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the CITY. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to DESIGN/BUILD FIRM or its agents any authority of any kind to bind CITY in any respect whatsoever.

- 26.9 THIRD PARTY BENEFICIARIES: Neither DESIGN/BUILD FIRM or CITY intends to directly or substantially benefit a third party by this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.
- 26.10 WAIVER OF BREACH AND MATERIALITY: Failure by the CITY or DESIGN/BUILD FIRM to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.
- 26.11 MATERIAL TERM: CITY and DESIGN/BUILD FIRM agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and therefore, may be considered ~~is~~ a material term by the CITY.
- 26.12 COMPLIANCE WITH LAWS: DESIGN/BUILD FIRM shall comply with all federal, state, and local laws, codes, ordinances, rules and regulations in performing its duties, responsibilities, and obligations related to this Agreement.
- 26.13 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT: DESIGN/BUILD FIRM shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act in the course of providing any services funded in whole or in part by CITY, including Titles 1 and 11 of the Act, and all applicable regulations, guidelines and standards.

DESIGN/BUILD FIRM's decisions regarding the delivery of work and services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

DESIGN/BUILD FIRM shall comply with Title 1 of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, DESIGN/BUILD FIRM shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination,

rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship) and accessibility.

DESIGN/BUILD FIRM shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship) and accessibility.

- 26.14 PUBLIC ENTITY CRIMES ACT: In accordance with the Public Entity Crimes Act, Sec. 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, as amended, 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 shall result in cancellation of the CITY purchase and may result in debarment.
- 26.15 SEVERENCE: In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
- 26.16 JOINT PREPARATION: Preparation of this Agreement has been a joint effort of the CITY and DESIGN/BUILD FIRM and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.
- 26.17 PRIORITY OF PROVISIONS: If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 21 shall prevail and be given effect.  
In the event of a conflict among the Contract Documents, the most stringent requirement shall control.
- 26.18 TAXES: DESIGN/BUILD FIRM shall pay all applicable sales, consumer, use and other taxes as required by law. DESIGN/BUILD FIRM is responsible for reviewing the pertinent state statutes involving state taxes and complying with all requirements.

All such taxes that are required as of the time of Agreement execution shall be included in the Guaranteed Maximum Price.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

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

**CITY**

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

\_\_\_\_\_  
LEE R. FELDMAN, City Manager

(CORPORATE SEAL)

ATTEST:

\_\_\_\_\_  
JEFFREY A. MODARELLI, City Clerk

Approved as to form:

\_\_\_\_\_  
RHONDA MONTTOYA HASAN  
Assistant City Attorney

**DESIGN/BUILD FIRM**

WITNESSES:

HENSEL PHELPS CONSTRUCTION,  
a Delaware General Partnership authorized to do  
business in Florida

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Signature

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

By: \_\_\_\_\_

\_\_\_\_\_  
[Print Name, check title]

☐ President ☐ Vice President

☐ Authorized Signatory (Please provide corporate  
authorization)

ATTEST:

(CORPORATE SEAL)

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
[Print Name]

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2018, by \_\_\_\_\_ as \_\_\_\_\_ of  
HENSEL PHELPS CONSTRUCTION, a Delaware General Partnership authorized to transact  
business in the State of Florida, who is ☐ personally known to me or ☐ has produced  
\_\_\_\_\_ as identification.

(SEAL)

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

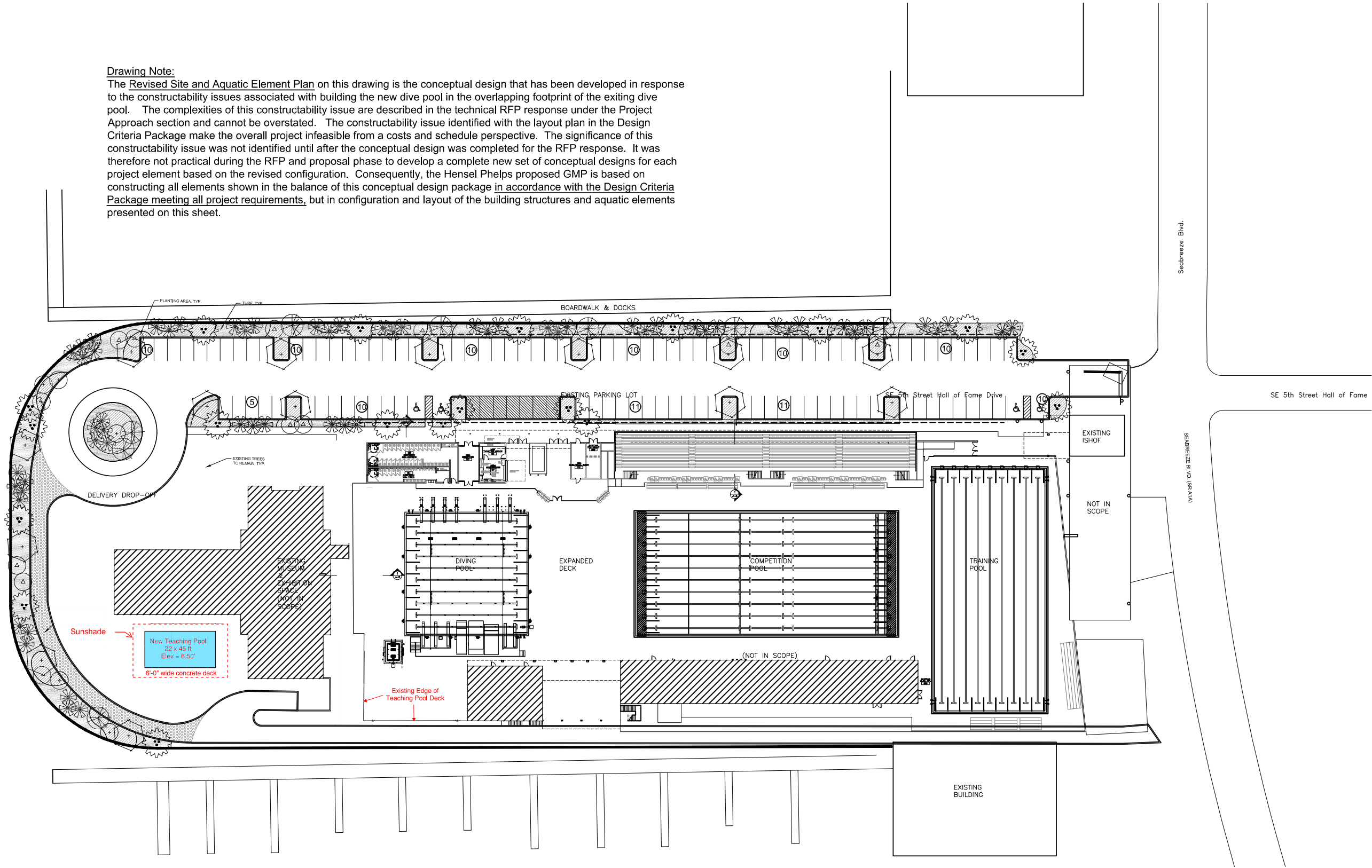
\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped

My Commission Expires: \_\_\_\_\_

Commission Number: \_\_\_\_\_

# EXHIBIT 1

**Drawing Note:**  
The Revised Site and Aquatic Element Plan on this drawing is the conceptual design that has been developed in response to the constructability issues associated with building the new dive pool in the overlapping footprint of the exiting dive pool. The complexities of this constructability issue are described in the technical RFP response under the Project Approach section and cannot be overstated. The constructability issue identified with the layout plan in the Design Criteria Package make the overall project infeasible from a costs and schedule perspective. The significance of this constructability issue was not identified until after the conceptual design was completed for the RFP response. It was therefore not practical during the RFP and proposal phase to develop a complete new set of conceptual designs for each project element based on the revised configuration. Consequently, the Hensel Phelps proposed GMP is based on constructing all elements shown in the balance of this conceptual design package in accordance with the Design Criteria Package meeting all project requirements, but in configuration and layout of the building structures and aquatic elements presented on this sheet.



**REVISED SITE AND AQUATIC ELEMENTS PLAN**  
SCALE 1/32" = 1'-0"

Amended - August 2, 2018

DESIGN BUILDER:  
**HENSEL PHELPS**  
Plan, Build, Manage

ARCHITECTURE:  
**CARTAYA & ASSOCIATES ARCHITECTS P.A.**

CIVIL/LANDSCAPE:  
**KATH & ASSOCIATES INC.**  
Consulting Engineers

LEED & SUSTAINABLE DESIGN:  
**Louis Berger**

POOL CONSULTANT:  
**Counsillman Hunsaker**  
AQUATICS FOR LIFE

DESIGN ASSIST AQUATIC BUILDER:  
**WELLER POOLS**

PROJECT:  
**FORT LAUDERDALE AQUATIC CENTER RENOVATION**  
AIA AND SE. 5th STREET  
FORT LAUDERDALE, FLORIDA

ALL DESIGNS AND DETAILS INDICATED OR REPRESENTED BY THIS DRAWING ARE FOR USE ON AND IN CONNECTION WITH THE SPECIFIED PROJECT. THIS IS THE SOLE RESPONSIBILITY OF THE DESIGNER. THE DESIGNER SHALL NOT BE RESPONSIBLE FOR THE CONSTRUCTION OF THE PROJECT. THE CONTRACTOR SHALL VERIFY ALL EXISTING CONDITIONS AND MAKE NECESSARY ADJUSTMENTS TO THE DESIGN. THE DESIGNER SHALL NOT BE RESPONSIBLE FOR THE CONSTRUCTION OF THE PROJECT. THE CONTRACTOR SHALL VERIFY ALL EXISTING CONDITIONS AND MAKE NECESSARY ADJUSTMENTS TO THE DESIGN.

TITLE:  
**REVISED SITE AND AQUATIC ELEMENTS PLAN**

DATE: 02/16/2018  
DRAWN BY: GC, JV  
CHECKED BY: MC, TW

JOB NO.  
**1799**

SHEET:  
**BP-1**  
OAM 18-0856  
Revised EXHIBIT 1  
Page 51 of 120



## Fort Lauderdale Aquatic Complex

### Project Scope Elements

8/6/2018

	Item Description	Included	Included Minimum Requirement (Deferred Purchase)	NOT included	NOT included	Comments
		Minimum Requirement		Project Enhancement	Removed from Project	
1	<b>Dive Pool</b>					
2	New Dive Pool	✓				
3	New equipment for Dive Pool	✓				
4	Alternate for steps on south of Dive Pool	✓				
5	Provide 5 meter deep Dive Pool				✓	10 meter platform per FINA guidelines
6	Provide 6 meter deep Dive Pool	✓				High Dive per FINA guidelines
7	Starting Blocks at Dive Pool			TBD		Not in original scope of work
8	Spring Boards and Platforms at North of Dive Pool			\$ 182,195		Deferred purchase
9	Spring Boards at South Dive Tower		\$ 52,000			
10	Liquid Bleach	✓				
11	UV System			\$ 57,869		
12	ChlorKing System			\$ 160,462		
13	Pool furnishings and accessories		\$ 12,016			Lane dividers & storage reels, Backstroke stanchions
14						
15	<b>Competition Pool</b>					
16	New Competition Pool	✓				
17	New Pool Equipment for Competition Pool	✓				
18	Liquid Bleach	✓				
19	UV System			\$ 57,869		
20	ChlorKing System			\$ 160,462		
21	Provide one Stainless Steel Bulkhead instead of two		\$ 205,000			
22	Provide second Stainless Steel Bulkhead		\$ 205,000			
23	Pool furnishings and accessories (FFE items)		\$ 129,680			Water polo goals/course markings, Starting Blocks (20), Lane dividers & storage reels, stanchions, pennant lines, Lifeguard Chairs (4)
24						
25	<b>Training Pool</b>					
26	Resurface existing Training Pool	✓				
28	Liquid Bleach	✓				
27	Provide all underground rough-in to new equipment room	✓				Equipment, piping & labor inside of pool equipment
29	Use existing pool equipment at Training Pool				✓	
29a	Allowance to integrate existing pool equipment at Training Pool	✓			✓	
	Provide new pool equipment for Training Pool inside new equipment room	✓		\$ 347,775		
30	UV System			\$ 57,869		
31	ChlorKing System			\$ 182,972		
32	Existing pool accessories to remain	✓				
33	Provide additional pool accessories per DCP criteria		TBD			
34						
35						



## Fort Lauderdale Aquatic Complex

### Project Scope Elements

8/6/2018

	Item Description	Included	Included Minimum Requirement (Deferred Purchase)	NOT included	NOT included	Comments
		Minimum Requirement		Project Enhancement	Removed from Project	
36	<b>Teaching pool</b>					
37	Resurface Existing Teaching Pool				✓	
38	Existing Shade Structure at Teaching Pool to remain				✓	
39	Existing Teaching Pool equipment, structure and pool deck to remain				✓	
40	New Teaching Pool located in SW lawn of HOF	✓				46x22 ft pool with minimum 6ft concrete deck
41	Liquid Bleach	✓		not included		
42	New pool equipment for teaching pool in same location as existing	✓		w/above		
43	New Shade Structure for new Teaching Pool	✓				
44	UV System			TBD		
45	ChlorKing System			TBD		
46	Pool furnishings and accessories			w/above		
47						
48	<b>Spa</b>					
49	Provide new Spa located west of new Dive Tower	✓				
50	Provide new Spa equipment in same location of existing	✓				
51	Existing shade structure at existing spa location to remain	✓				
52	Provide new shade structure at new Spa			TBD		
53						
54	<b>Grandstand Seating Competition Pool</b>					
55	Alternate for Canopy over grandstand seating at competition pool				X	
56	Provide 1550 seating per DCP criteria	✓				
57	Provide Storage Room per DCP criteria	✓				
58						
59	<b>Diving Grandstand Seating</b>					
60	Provide standalone grandstand bleachers with 340 seats			\$ 156,774		
61	Delete diving grandstand bleachers	✓				Existing portable bleachers to be used
62						
63	Provide grandstand building below seating			TBD		
64	Storage Area below diving grandstand			TBD		Space underneath not enclosed
65						
66	<b>Public Bathroom Building</b>					
67	Construct new public bathroom building west of facility entrance	✓				
68	Reduce fixture count to 39 based on revised 1,900 grandstand seats	✓				
69	Provide Storage Room at Public Bathroom Building			TBD		
70						
71	<b>Dryland Training</b>					
72	Concrete slab only (pit not required)				X	
73	Shade structure at dryland diving			TBD		
74	Locate dryland diving at location of Future Teaching Pool			TBD		
75	Reuse existing dryland diving training equipment and trapeze	✓				Owner to remove
76	Fencing around new dryland dive training at Future Teaching pool			TBD		
77						



## Fort Lauderdale Aquatic Complex

### Project Scope Elements

8/6/2018

		Included	Included Minimum Requirement (Deferred Purchase)	NOT included	NOT included	
Item Description		Minimum Requirement		Project Enhancement	Removed from Project	Comments
78	<b>Pool Deck</b>					
79	New Iconic Scoreboard posts	✓				
80	Provide 12' x 24' 16mm pixel scoreboard per Design Criteria Package			\$ 64,084		
80.1	Provide (1) – 9' x 16' 16mm pixel scoreboard	✓				
80.2	Provide Additional 9' x 16' 16mm pixel scoreboard to create a "two sided" scoreboard			\$ 143,989		
81	Open spec for athletic lighting	✓				
82	Provide revised lighting criteria per local building codes	✓				Per email from Laura Voet meeting w/Musco. Temporary event lighting not included
83	Enhanced Athletic lighting per DCP criteria	✓				
84	Open spec for Timing System	✓		TBD		Either Colorado or Omega.
85	Timing Equipment		\$ 315,576			
86	<b>Sitework</b>					
87	Landscape seeding, sod and plantings	✓				
88	Trees (provided by Parks projects)				\$ 50,000	
89	Work at south service perimeter road to west of circle			\$ 170,513		
90	Incorporate public pedestrian access to west side of HOF			TBD		
92	<b>Contract Terms &amp; Contingency</b>					
93	Permit Allowance				\$ 250,000	
94	Unforeseen Contingency	✓				
95	Owner Contingency	✓				
96	Builder's Risk Insurance	✓				
97	Payment & Performance Bond	✓				
98	Extended Warranty Pool Equipment	✓				
Subtotal		\$ -	\$ 919,272			

# EXHIBIT 2

PRICE PROPOSAL FORM - (HENSEL PHELPS)  
RFP# 12072-483 DESIGN-BUILD SERVICES FOR  
FORT LAUDERDALE AQUATIC CENTER RENOVATION AT 501 SEABREEZE BOULEVARD

**BASE BID FORM**  
**(Revised 08-02-18)**

**GENERAL CONDITIONS**

Division 1	General Conditions	\$	2,143,708
Division 1	General Requirements	\$	710,788
<b>Subtotal - GENERAL CONDITIONS</b>		<b>\$</b>	<b>2,854,496</b>

**DIRECT WORK (Minimum Requirements)**

Division 2	Sitework	\$	1,148,950
Division 3	Structural Concrete/Foundation	\$	1,452,296
Division 3	Foundation Dewatering	\$	3,407,115
Division 4	Masonry	\$	253,884
Division 5	Metals	\$	149,922
Division 6	Woods and Plastics	\$	30,085
Division 7	Thermal and Moisture Protection	\$	206,607
Division 8	Doors and Windows	\$	59,250
Division 9	Finishes	\$	529,247
Division 10	Specialties	\$	411,709
Division 11	Equipment	\$	10,000
Division 12	Furnishings	\$	13,600
Division 13	Special Construction - Pools, Equipment, Dive Tower	\$	8,451,390
Division 21	Fire Protection	\$	-
Division 22	Plumbing	\$	577,000
Division 23	Heating, Ventilation and Air Conditioning	\$	360,000
Division 24	Electrical	\$	1,405,447
Division 27	IT/Low Voltage System	\$	-
Division 28	Fire Alarm		w/electrical
Division 31	Earthwork	\$	394,826
Division 32	Exterior Improvements	\$	276,860
	Minimum Required Deferred Purchases		w/above
<b>Subtotal - DIRECT WORK</b>		<b>\$</b>	<b>19,138,188</b>

PRICE PROPOSAL FORM - (HENSEL PHELPS)  
RFP# 12072-483 DESIGN-BUILD SERVICES FOR  
FORT LAUDERDALE AQUATIC CENTER RENOVATION AT 501 SEABREEZE BOULEVARD

**BASE BID FORM**  
**(Revised 08-02-18)**

**INDIRECTS & RESERVES**

Contractor's Bonds	\$	148,475
Subcontractor & Supplier Bonds	\$	239,228
Builder's Risk Insurance	\$	200,325
General Liability Insurance	\$	136,076
Permits		By Owner
A & E Design Costs	\$	1,549,400
Professional Liability Insurance		w/above
Gross Receipts Tax		Not Required
Utility Development & Tap Fees		By Owner
Hazardous Material Abatement		By Owner
Testing & Inspections		By Owner
Escalation		None
Contractor Contingency	\$	1,563,409
Unforeseen Conditions Contingency		w/Owner Contingency
Owner's Contingency	\$	390,138
<b>Subtotal - INDIRECTS &amp; RESERVES</b>		<b>\$ 4,227,051</b>

**FEES**

Contractor's Fee (3%)	\$	775,633
<b>Subtotal - FEES</b>		<b>\$ 775,633</b>

**TOTAL CONSTRUCTION COST**

<b>TOTAL CONSTRUCTION COST</b>		<b>\$ 26,995,368</b>
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# EXHIBIT 3

## Salaried Wages (Loaded) Summary

STAFF POSITION:	Loaded Wage	Base Wage
OPERATIONS MANAGER	\$17,778 MO	\$11,575 MO
GENERAL SUPERINTENDENT	\$17,729 MO	\$11,460 MO
PROJECT MANAGER	\$14,727 MO	\$9,250 MO
PROJECT SUPERINTENDENT	\$15,021 MO	\$9,475 MO
AREA SUPERINTENDENT	\$12,468 MO	\$7,525 MO
PROJECT ENGINEER	\$11,580 MO	\$6,350 MO
SAFETY MANAGER	\$13,800 MO	\$8,128 MO
SAFETY ENGINEER	\$10,398 MO	\$6,048 MO
CQC MANAGER (PM RATE)	\$14,301 MO	\$8,925 MO
CQC LEAD (PE RATE)	\$11,875 MO	\$6,575 MO
CQC ASSISTANT	\$10,213 MO	\$6,073 MO
OFFICE ENGINEER	\$10,638 MO	\$6,275 MO
FIELD ENGINEER	\$10,111 MO	\$5,995 MO
ROD MAN & HELPER	\$8,187 MO	\$5,023 MO
INTERN	\$4,594 MO	\$3,810 MO
DESIGN MANAGER	\$15,809 MO	\$10,145 MO
MEP COORDINATOR	\$13,225 MO	\$8,159 MO
VDC MANAGER	\$11,911 MO	\$7,150 MO
LEAD VDC ENGINEER	\$11,650 MO	\$6,370 MO
VDC ENGINEER	\$10,215 MO	\$5,950 MO
SENIOR ESTIMATOR	\$15,379 MO	\$9,814 MO
LEAD ESTIMATOR	\$13,385 MO	\$7,703 MO
ESTIMATOR	\$10,387 MO	\$6,248 MO
SCHEDULER	\$15,822 MO	\$9,575 MO
OFFICE MANAGER	\$10,378 MO	\$6,800 MO
ADMIN / SECRETARY	\$7,084 MO	\$4,269 MO
TIME KEEPER / CHECKER	\$5,664 MO	\$3,178 MO
JOB SITE ACCOUNTANT	\$7,364 MO	\$4,484 MO
TBD	\$1,523 MO	\$0 MO

Note: Loaded wage includes, base wage, workers comp., payroll taxes, medical insurance, and Qualified Retirement. Does not include vehicle or fuel.

**LOAD GENERAL INFORMATION HERE:**

PROJECT:	FLAC Aquatic Center	Yearly Increase :	5.00%	Salary
LOCATION:	Ft. Lauderdale, F	Yearly Increase :	5.00%	Medical Cost
DURATION:	27 MO	Qualified Retirement :	15.00%	Supt's, PM, PE, FE's, Safety, & QC
START DATE:	8/1/2018	WC Field :	0.87%	OM, DM, OE's, Interns, etc
END DATE:	11/1/2020	WC Office :	0.11%	
		FICA :	7.65%	
		FED. Unemp. :	0.60%	Taxable Base Wage \$7,000.00
		State Unemp. :	0.55%	Taxable Base Wage \$7,000.00
		Sal. Insurance :	\$1,213.82	
		Hourly Insurance :	\$1,480.27	
	\$1.34 per MH	IT Network Cost :	\$231.82	
		Auto Allow. :	\$700.00	PE, Safety Mgr, Lead CQC/Est/VDC, Sched.
		Phone Allow. :	\$75.00	Safety/VDC Eng. CQC Assist, OE, FE, Rodman, Est

COLA if Applicable	Oper Mgr :	\$1,100.00	CQC Lead :	\$900.00	VDC Eng :	\$800.00
Delete subdist. here if not req.	Gen Supt :	\$1,100.00	CQC Asst :	\$600.00	Senior Est :	\$1,000.00
	Proj Mgr :	\$1,000.00	Off Eng :	\$800.00	Lead Est :	\$1,000.00
	Proj Supt :	\$1,000.00	Field Eng :	\$600.00	Estimator :	\$600.00
	Area Supt :	\$1,000.00	Rodman :	\$0.00	Scheduler :	\$1,000.00
	Proj Engr :	\$900.00	Intern :	\$0.00	Office Mgr :	\$0.00
	Safety Mgr :	\$800.00	Dsgn Mgr :	\$1,000.00	Admin/Sec :	\$0.00
	Safety Eng :	\$800.00	MEP Coord :	\$1,000.00	Timekeeper :	\$0.00
	CQC Mgr :	\$1,000.00	VDC Mgr :	\$1,000.00	Job Acct :	\$0.00
			Lead VDC :	\$1,000.00	TBD :	\$0.00

Job Durations months per period: 5 MO 12 MO 10 MO 0 MO 0 MO

Wage Period	From:	1/1/2018	1/1/2019	1/1/2020	1/1/2021	1/1/2022
	to:	12/31/2018	12/31/2019	12/31/2020	12/31/2021	12/31/2022

**STAFF POSITION:** OPERATIONS MANAGER  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		11,575	11,575	11,575	11,575	11,575	11,575
Yearly Increase 5.00%		0	579	1,186	1,825	2,494	697
Qualified Retirement		1,736	1,823	1,914	2,010	2,110	1,841
WC Office		14	15	15	16	17	15
FICA		970	1,014	1,060	1,109	1,160	1,023
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		1,100	1,100	1,100	1,100	1,100	1,100
<b>TAXABLE BASE</b>		16,857 x	17,618 x	18,429 x	19,278 x	20,171 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
Wage Period Total		84,283	211,420	184,900	0	0	= 480,603 /
33%							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$17,778 MO

**STAFF POSITION:** GENERAL SUPERINTENDENT  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		11,460	11,460	11,460	11,460	11,460	11,460
Yearly Increase 5.00%		0	573	1,175	1,806	2,470	690
Qualified Retirement		1,719	1,805	1,895	1,990	2,089	1,823
WC Field		109	114	119	125	131	115
FICA		961	1,005	1,051	1,099	1,150	1,014
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		1,100	1,100	1,100	1,100	1,100	1,100
<b>TAXABLE BASE</b>		16,811 x	17,570 x	18,378 x	19,224 x	20,114 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
Wage Period Total		84,054	210,839	184,386	0	0	= 479,279 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$17,729 MO

**STAFF POSITION:** PROJECT MANAGER  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		9,250	9,250	9,250	9,250	9,250	9,250
Yearly Increase 5.00%		0	463	948	1,458	1,993	557
Qualified Retirement		1,388	1,457	1,530	1,606	1,687	1,471
WC Field		89	93	97	102	107	94
FICA		784	820	857	896	937	827
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		1,000	1,000	1,000	1,000	1,000	1,000
<b>TAXABLE BASE</b>		13,973 x	14,595 x	15,260 x	15,955 x	16,687 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
<b>Wage Period Total</b>		69,863	175,141	153,102	0	0	= 398,106 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$14,727 MO

**STAFF POSITION:** PROJECT SUPERINTENDENT  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		9,475	9,475	9,475	9,475	9,475	9,475
Yearly Increase 5.00%		0	474	971	1,493	2,042	571
Qualified Retirement		1,421	1,492	1,567	1,645	1,728	1,507
WC Field		91	95	100	104	109	96
FICA		801	838	876	916	958	845
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		1,000	1,000	1,000	1,000	1,000	1,000
<b>TAXABLE BASE</b>		14,250 x	14,887 x	15,566 x	16,277 x	17,025 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
<b>Wage Period Total</b>		71,252	178,643	156,176	0	0	= 406,072 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$15,021 MO

**STAFF POSITION:** AREA SUPERINTENDENT  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		7,525	7,525	7,525	7,525	7,525	7,525
Yearly Increase 5.00%		0	376	771	1,186	1,622	453
Qualified Retirement		1,129	1,185	1,244	1,307	1,372	1,197
WC Field		74	77	81	84	88	78
FICA		652	681	711	743	776	687
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		1,000	1,000	1,000	1,000	1,000	1,000
<b>TAXABLE BASE</b>		11,842 x	12,358 x	12,911 x	13,489 x	14,097 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
<b>Wage Period Total</b>		59,209	148,294	129,534	0	0	= 337,037 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$12,468 MO

**STAFF POSITION:** PROJECT ENGINEER  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		6,350	6,350	6,350	6,350	6,350	6,350
Yearly Increase 5.00%		0	318	651	1,001	1,368	383
Qualified Retirement		953	1,000	1,050	1,103	1,158	1,010
WC Field		69	72	75	78	81	72
FICA		608	632	658	685	713	637
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,347
Car Allowance		700	700	700	700	700	700
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		900	900	900	900	900	900
<b>TAXABLE BASE</b>		11,042 x	11,485 x	11,962 x	12,460 x	12,984 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
<b>Wage Period Total</b>		55,208	137,821	120,012	0	0	= 313,041 /
							Total Job Duration 27.03 MO
							AVG. MONTHLY WAGE \$11,580 MO

**STAFF POSITION:** SAFETY MANAGER  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		8,128	8,128	8,128	8,128	8,128	8,128
Yearly Increase	5.00%	0	406	833	1,281	1,752	490
Qualified Retirement		1,219	1,280	1,344	1,411	1,482	1,293
WC Field		84	87	91	95	99	88
FICA		737	768	800	835	871	774
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
Car Allowance		700	700	700	700	700	700
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		800	800	800	800	800	800
TAXABLE BASE		13,129 x	13,683 x	14,275 x	14,894 x	15,545 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
Wage Period Total		65,646	164,190	143,216	0	0	= 373,053 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$13,800 MO

**STAFF POSITION:** SAFETY ENGINEER  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		6,048	6,048	6,048	6,048	6,048	6,048
Yearly Increase	5.00%	0	302	620	953	1,303	364
Qualified Retirement		907	953	1,000	1,050	1,103	962
WC Field		60	63	66	69	72	63
FICA		530	553	577	603	629	557
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
Phone Allowance		75	75	75	75	75	75
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		800	800	800	800	800	800
TAXABLE BASE		9,882 x	10,307 x	10,764 x	11,241 x	11,744 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
Wage Period Total		49,409	123,679	107,993	0	0	= 281,081 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$10,398 MO

**STAFF POSITION:** CQC MANAGER (PM RATE)  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		8,925	8,925	8,925	8,925	8,925	8,925
Yearly Increase 5.00%		0	446	915	1,407	1,923	538
Qualified Retirement		1,339	1,406	1,476	1,550	1,627	1,419
WC Field		86	90	94	99	103	91
FICA		759	793	829	867	906	800
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		1,000	1,000	1,000	1,000	1,000	1,000
		13,571 x	14,174 x	14,817 x	15,491 x	16,199 x	
		5 MO	12 MO	10 MO	0 MO	0 MO	
<b>TAXABLE BASE</b>		67,856	170,083	148,662	0	0	= 386,600 /
Job Duration/Period							Total Job Duration 27 MO
Wage Period Total							AVG. MONTHLY WAGE \$14,301 MO

**STAFF POSITION:** CQC LEAD (PE RATE)  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		6,575	6,575	6,575	6,575	6,575	6,575
Yearly Increase 5.00%		0	329	674	1,036	1,417	396
Qualified Retirement		986	1,036	1,087	1,142	1,199	1,046
WC Field		71	74	77	80	83	75
FICA		625	651	677	705	734	656
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,347
Car Allowance		700	700	700	700	700	700
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		900	900	900	900	900	900
		11,320 x	11,777 x	12,268 x	12,782 x	13,322 x	
		5 MO	12 MO	10 MO	0 MO	0 MO	
<b>TAXABLE BASE</b>		56,598	141,322	123,086	0	0	= 321,006 /
Job Duration/Period							Total Job Duration 27 MO
Wage Period Total							AVG. MONTHLY WAGE \$11,875 MO

**STAFF POSITION:** CQC ASSISTANT  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		6,073	6,073	6,073	6,073	6,073	6,073
Yearly Increase	5.00%	0	304	622	957	1,309	366
Qualified Retirement		911	956	1,004	1,055	1,107	966
WC Field		59	61	64	67	70	62
FICA		516	539	564	589	616	544
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
Phone Allowance		75	75	75	75	75	75
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		600	600	600	600	600	600
TAXABLE BASE		9,696 x	10,122 x	10,581 x	11,060 x	11,564 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
Wage Period Total		48,478	121,464	106,157	0	0	= 276,099 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$10,213 MO

**STAFF POSITION:** OFFICE ENGINEER  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		6,275	6,275	6,275	6,275	6,275	6,275
Yearly Increase	5.00%	0	314	643	989	1,352	378
Qualified Retirement		941	988	1,038	1,090	1,144	998
WC Office		8	8	9	9	9	8
FICA		547	571	596	623	650	576
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
Phone Allowance		75	75	75	75	75	75
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		800	800	800	800	800	800
TAXABLE BASE		10,108 x	10,544 x	11,014 x	11,504 x	12,020 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
Wage Period Total		50,539	126,531	110,500	0	0	= 287,570 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$10,638 MO

**STAFF POSITION:** FIELD ENGINEER  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		5,995	5,995	5,995	5,995	5,995	5,995
Yearly Increase	5.00%	0	300	614	945	1,292	361
Qualified Retirement		899	944	991	1,041	1,093	953
WC Field		58	61	63	66	69	61
FICA		510	533	557	583	609	538
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
Phone Allowance		75	75	75	75	75	75
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		600	600	600	600	600	600
TAXABLE BASE		9,599 x	10,021 x	10,475 x	10,948 x	11,447 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
Wage Period Total		47,996	120,250	105,091	0	0	= 273,337 /
Total Job Duration							27 MO
AVG. MONTHLY WAGE							\$10,111 MO

**STAFF POSITION:** ROD MAN & HELPER  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		5,023	5,023	5,023	5,023	5,023	5,023
Yearly Increase	5.00%	0	251	515	792	1,082	303
Qualified Retirement		753	791	831	872	916	799
WC Field		44	47	49	51	54	47
FICA		390	409	429	451	473	413
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
Phone Allowance		75	75	75	75	75	75
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		0	0	0	0	0	0
TAXABLE BASE		7,748 x	8,109 x	8,500 x	8,907 x	9,337 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
Wage Period Total		38,738	97,309	85,278	0	0	= 221,324 /
Total Job Duration							27 MO
AVG. MONTHLY WAGE							\$8,187 MO

**STAFF POSITION:** INTERN  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		3,810	3,810	3,810	3,810	3,810	3,810
Yearly Increase 5.00%		0	191	391	601	821	230
Qualified Retirement		0	0	0	0	0	0
WC Office		4	4	5	5	5	4
FICA		291	306	321	337	354	309
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		0	0	0	0	0	0
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		0	0	0	0	0	0
<b>TAXABLE BASE</b>		4,354 x	4,549 x	4,766 x	4,991 x	5,229 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
<b>Wage Period Total</b>		21,768	54,594	47,820	0	0	= 124,182 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$4,594 MO

**STAFF POSITION:** DESIGN MANAGER  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		10,145	10,145	10,145	10,145	10,145	10,145
Yearly Increase 5.00%		0	507	1,040	1,599	2,186	611
Qualified Retirement		1,522	1,598	1,678	1,762	1,850	1,613
WC Office		12	13	13	14	15	13
FICA		853	891	932	975	1,020	899
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		1,000	1,000	1,000	1,000	1,000	1,000
<b>TAXABLE BASE</b>		14,993 x	15,667 x	16,386 x	17,138 x	17,929 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
<b>Wage Period Total</b>		74,967	188,008	164,401	0	0	= 427,376 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$15,809 MO

**STAFF POSITION:** MEP COORDINATOR  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		8,159	8,159	8,159	8,159	8,159	8,159
Yearly Increase 5.00%		0	408	836	1,286	1,758	491
Qualified Retirement		1,224	1,285	1,349	1,417	1,488	1,298
WC Office		10	11	11	11	12	11
FICA		701	732	765	799	835	738
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		1,000	1,000	1,000	1,000	1,000	1,000
<b>TAXABLE BASE</b>		12,555 x	13,107 x	13,698 x	14,316 x	14,966 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
<b>Wage Period Total</b>		62,777	157,289	137,434	0	0	= 357,499 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$13,225 MO

**STAFF POSITION:** VDC MANAGER  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		7,150	7,150	7,150	7,150	7,150	7,150
Yearly Increase 5.00%		0	358	733	1,127	1,541	431
Qualified Retirement		1,073	1,126	1,182	1,242	1,304	1,137
WC Office		9	9	10	10	11	9
FICA		623	651	680	710	741	656
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,347
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		1,000	1,000	1,000	1,000	1,000	1,000
<b>TAXABLE BASE</b>		11,317 x	11,807 x	12,333 x	12,882 x	13,460 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
<b>Wage Period Total</b>		56,583	141,682	123,733	0	0	= 321,998 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$11,911 MO

**STAFF POSITION:** LEAD VDC ENGINEER  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		6,370	6,370	6,370	6,370	6,370	6,370
Yearly Increase	5.00%	0	319	653	1,004	1,373	384
Qualified Retirement		956	1,003	1,053	1,106	1,161	1,013
WC Office		9	9	10	10	10	9
FICA		617	642	667	694	722	647
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
Car Allowance		700	700	700	700	700	700
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		1,000	1,000	1,000	1,000	1,000	1,000
TAXABLE BASE		11,113 x	11,556 x	12,031 x	12,528 x	13,051 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
Wage Period Total		55,567	138,669	120,709	0	0	= 314,946 /
Total Job Duration							27 MO
AVG. MONTHLY WAGE							\$11,650 MO

**STAFF POSITION:** VDC ENGINEER  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		5,950	5,950	5,950	5,950	5,950	5,950
Yearly Increase	5.00%	0	298	610	938	1,282	358
Qualified Retirement		893	937	984	1,033	1,085	946
WC Office		8	8	8	9	9	8
FICA		522	545	569	594	620	550
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
Phone Allowance		75	75	75	75	75	75
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		800	800	800	800	800	800
TAXABLE BASE		9,709 x	10,125 x	10,574 x	11,042 x	11,535 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
Wage Period Total		48,544	121,504	106,087	0	0	= 276,135 /
Total Job Duration							27 MO
AVG. MONTHLY WAGE							\$10,215 MO

**STAFF POSITION:** SENIOR ESTIMATOR  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		9,814	9,814	9,814	9,814	9,814	9,814
Yearly Increase	5.00%	0	491	1,006	1,547	2,115	591
Qualified Retirement		1,472	1,546	1,623	1,704	1,789	1,561
WC Office		12	12	13	14	14	13
FICA		827	865	904	946	989	872
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		1,000	1,000	1,000	1,000	1,000	1,000
<b>TAXABLE BASE</b>		14,587 x	15,241 x	15,938 x	16,668 x	17,436 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
<b>Wage Period Total</b>		72,935	182,888	159,907	0	0	= 415,730 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$15,379 MO

**STAFF POSITION:** LEAD ESTIMATOR  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		7,703	7,703	7,703	7,703	7,703	7,703
Yearly Increase	5.00%	0	385	790	1,214	1,660	464
Qualified Retirement		1,155	1,213	1,274	1,338	1,404	1,225
WC Office		10	11	11	12	12	11
FICA		719	749	780	812	846	755
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,347
Car Allowance		700	700	700	700	700	700
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		1,000	1,000	1,000	1,000	1,000	1,000
<b>TAXABLE BASE</b>		12,750 x	13,274 x	13,835 x	14,422 x	15,040 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
<b>Wage Period Total</b>		63,749	159,288	138,810	0	0	= 361,847 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$13,385 MO

**STAFF POSITION:** ESTIMATOR  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		6,248	6,248	6,248	6,248	6,248	6,248
Yearly Increase 5.00%		0	312	640	985	1,346	376
Qualified Retirement		937	984	1,033	1,085	1,139	994
WC Office		8	8	8	9	9	8
FICA		530	554	579	605	633	558
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
Phone Allowance		75	75	75	75	75	75
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		600	600	600	600	600	600
TAXABLE BASE		9,859 x	10,294 x	10,762 x	11,250 x	11,764 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
Wage Period Total		49,296	123,528	107,971	0	0	= 280,794 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$10,387 MO

**STAFF POSITION:** SCHEDULER  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		9,575	9,575	9,575	9,575	9,575	9,575
Yearly Increase 5.00%		0	479	981	1,509	2,063	577
Qualified Retirement		1,436	1,508	1,583	1,663	1,746	1,523
WC Office		12	13	13	14	15	13
FICA		863	899	938	978	1,020	907
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,347
Car Allowance		700	700	700	700	700	700
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		1,000	1,000	1,000	1,000	1,000	1,000
TAXABLE BASE		15,048 x	15,687 x	16,369 x	17,083 x	17,833 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
Wage Period Total		75,240	188,243	164,229	0	0	= 427,712 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$15,822 MO

**STAFF POSITION:** OFFICE MANAGER  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		6,800	6,800	6,800	6,800	6,800	6,800
Yearly Increase	5.00%	0	340	697	1,072	1,465	410
Qualified Retirement		1,020	1,071	1,125	1,181	1,240	1,081
WC Office		7	8	8	9	9	8
FICA		520	546	574	602	632	552
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		0	0	0	0	0	0
<b>TAXABLE BASE</b>		9,809 x	10,278 x	10,781 x	11,307 x	11,861 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
<b>Wage Period Total</b>		49,047	123,337	108,169	0	0	= 280,553 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$10,378 MO

**STAFF POSITION:** ADMIN / SECRETARY  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		4,269	4,269	4,269	4,269	4,269	4,269
Yearly Increase	5.00%	0	213	438	673	920	257
Qualified Retirement		640	672	706	741	778	679
WC Office		5	5	5	5	6	5
FICA		327	343	360	378	397	346
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		0	0	0	0	0	0
<b>TAXABLE BASE</b>		6,702 x	7,016 x	7,356 x	7,710 x	8,084 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
<b>Wage Period Total</b>		33,512	84,188	73,801	0	0	= 191,501 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$7,084 MO

**STAFF POSITION:** TIME KEEPER / CHECKER  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		3,178	3,178	3,178	3,178	3,178	3,178
Yearly Increase 5.00%		0	159	326	501	685	191
Qualified Retirement		477	501	526	552	579	505
WC Office		3	4	4	4	4	4
FICA		243	255	268	281	296	258
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		0	0	0	0	0	0
<b>TAXABLE BASE</b>		5,363 x	5,609 x	5,879 x	6,160 x	6,456 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
<b>Wage Period Total</b>		26,815	67,313	58,986	0	0	= 153,114 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$5,664 MO

**STAFF POSITION:** JOB SITE ACCOUNTANT  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		4,484	4,484	4,484	4,484	4,484	4,484
Yearly Increase 5.00%		0	224	460	707	966	270
Qualified Retirement		673	706	742	779	818	713
WC Office		5	5	5	6	6	5
FICA		343	360	378	397	417	364
FED. Unemployment		8	4	4	4	4	5
State Unemployment		8	3	4	3	3	4
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		0	0	0	0	0	0
<b>TAXABLE BASE</b>		6,966 x	7,293 x	7,647 x	8,016 x	8,405 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
<b>Wage Period Total</b>		34,831	87,514	76,720	0	0	= 199,065 /
							Total Job Duration 27 MO
							AVG. MONTHLY WAGE \$7,364 MO

**STAFF POSITION:** TBD  
**PROJECT:** FLAC Aquatic Center  
**LOCATION:** Ft. Lauderdale, FL  
**DURATION:** 27 MO  
**START DATE:** 8/1/2018

Wage Period	From: to:	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021	1/1/2022 12/31/2022	WEIGHTED AVERAGE
<b>TAXABLE WAGE</b>							
Base		0	0	0	0	0	0
Yearly Increase	5.00%	0	0	0	0	0	0
Qualified Retirement		0	0	0	0	0	0
WC/PRT Field		0	0	0	0	0	0
FICA		0	0	0	0	0	0
FED. Unemployment		8	4	4	4	4	5
State Unemployment		0	0	0	3	3	0
Insurance		1,214	1,275	1,338	1,405	1,475	1,287
IT Network Charges		232	232	232	232	232	232
Other		0	0	0	0	0	0
COLA if applicable		0	0	0	0	0	0
<b>TAXABLE BASE</b>		1,454 x	1,510 x	1,574 x	1,644 x	1,714 x	
Job Duration/Period		5 MO	12 MO	10 MO	0 MO	0 MO	
<b>Wage Period Total</b>		7,270	18,118	15,794	0	0	
							=
							41,182 /
							27 MO
							<b>AVG. MONTHLY WAGE</b>
							<b>\$1,523 MO</b>

# EXHIBIT 4



# Fort Lauderdale Aquatic Complex

## Contingency Use Matrix

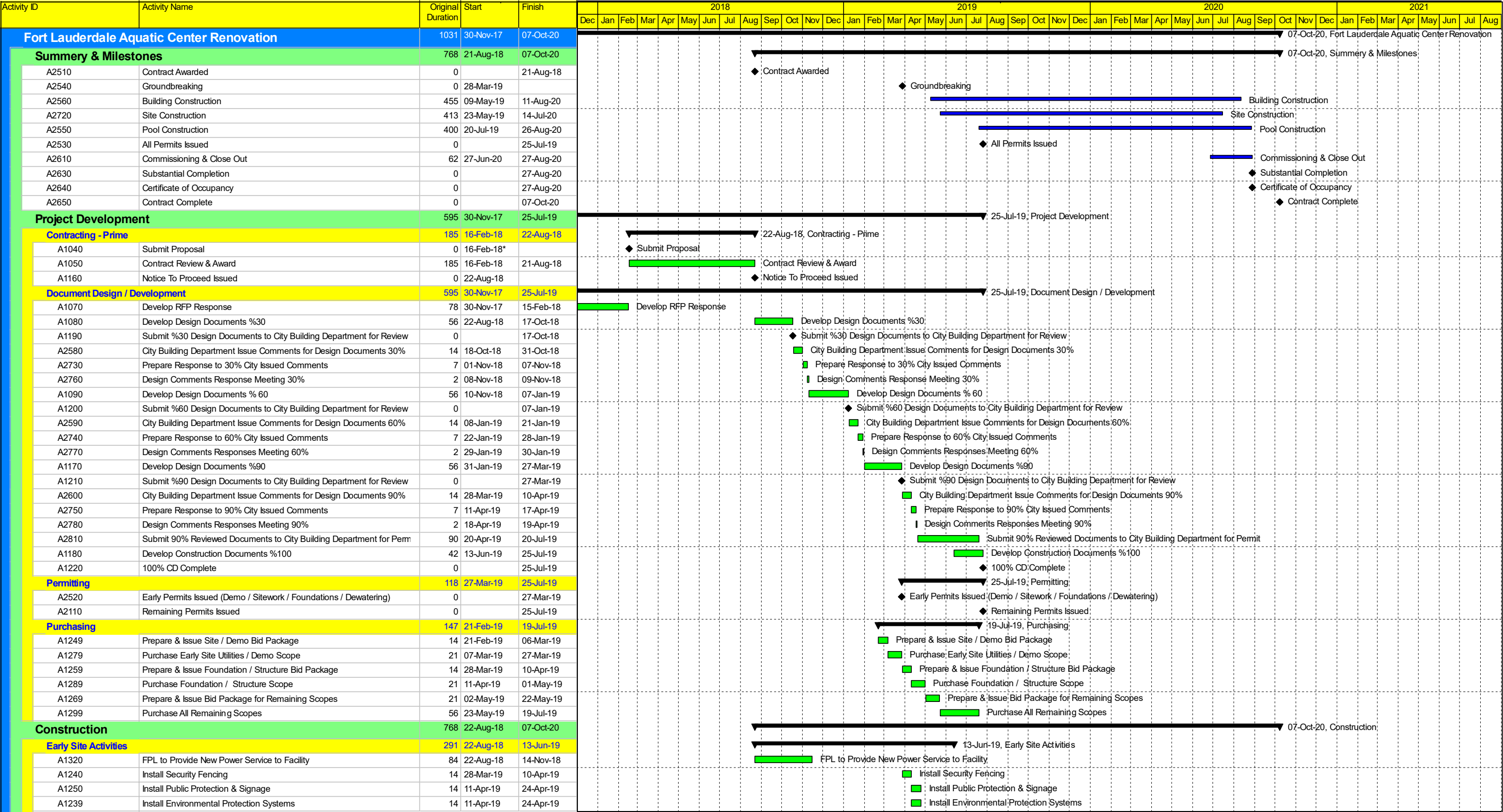


Item	Owner Contingency	Unknown Differing Site Conditions Contingency	Contractor Contingency	Purchasing Savings	Contractor's Fee	Notes
Owner directed changes	X					
Owner allowance overrun	X					
Builders Risk deductible	X					
Hurricane Prep Costs			X			
Hurricane Damage Costs	X					
Changes in codes after RFP Stage	X					
Material Escalation			X			
Scope gaps after contract purchasing			X	X		
Cost of Work budget overrun			X	X		
Design changes - errors in the documents			X			
Unidentified trade damage during construction			X			
Document Coordination			X			
Mitigation of schedule impacts - Acceleration			X			
Vandalism / theft			X			
Replace or repair of defective existing equipment re-used per RFP that is not functionally adequate	X					
Base Contract Cost of Work overruns after contingency is depleted					X	
Liquidated damages					X	
Quality deficiency / rework					X	
Contract Non-allowable					X	
<b>Schedule Delay Cost</b>						
Approval / Delivery Delays Caused by Owner Team	X					
Schedule delays associated with Unforeseen Conditions	X	X				
City Permitting delays beyond published durations	X					
Production Delays					X	
Approval / Delivery Delays Caused by HP Team					X	
Weather days beyond NOAA 10 year average						Time only
<b>Unknown, unforeseen and differing site conditions - on and off site</b>						
Hazardous Materials	X					
Differences in grades / elevations from survey provided in RFP	X	X				
Unsuitable Soils	X	X				
Underground conditions varying from RFP Geotechnical Report	X	X				
Existing underground utilities not identified on any plans or as-builts	X	X				
Abnormal Tidal conditions	X	X				

### Notes:

- Any item not identified in this matrix will require a change order to increase the GMP if no funds remain in the Owner or Unforeseen Unknown Differing Site Conditions Contingencies to fund overruns.
- Contractor Contingency shall be controlled by the Design Builder and overruns in this budget will be paid for out of the Design Builder's Fee.
- After purchasing is complete remaining funds in the Purchasing Savings budget will be combined with the Contractor Contingency. Any shortfall in Purchasing Savings shall be paid for out of Contractor's Contingency.
- After Final Completion, all remaining funds in Owner Contingency and Contractor Contingency budgets shall be combined into one final contingency account. Design / Builder shall retain from the combined final contingency account as additional fee an amount equal to the fee value negotiated in the original contract. Any remaining funds in the final combined contingency budget will then be split equally between the Design/Builder and City.

# EXHIBIT 5



Remaining Level of Effort

Actual Level of Effort

Actual Work

Remaining Work

Critical Remaining Work

◆

 Milestone

➤

 Summary

Ft. Lauderdale Aquatic Center Renovation

Contract Schedule

HP

HENSEL PHELPS

Plan. Build. Manage.









# EXHIBIT 6

## DIRECT PURCHASE

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The City of Fort Lauderdale (herein referred to as the "City") is exempt from sales and use taxes. As such, it is exempt from the payment of sales and use taxes on purchases of tangible property, materials, etc., necessary for the performance of work under construction contracts, provided the City determines it is to its best interest to do so, and provided the purchase of such properties, materials, etc., are handled in the manner hereinafter described and under the provisions of Florida Administrative Code, Paragraph 12A-1.094. The Sales and Use Tax on Construction Improvements, Installations and Repair, provided in Direct Purchase Exhibit A, contains additional Florida Department of Revenue documentation regarding tax exempt purchases.

The City has determined it is in its best interest to provide the opportunity to eliminate the payments of sales tax for tangible property, material, etc., to be used in the construction of this project, and notifies Hensel Phelps Construction (herein referred to as the "Construction Manager") of its intent to do so.

The Construction Manager shall submit its proposal for the Guaranteed Maximum Price ("GMP") with the inclusion of all required taxes including applicable sales and use tax, the same as if tax were to be paid in the normal manner. The sales and use tax savings will be affected during the performance of the GMP contract.

The Construction Manager, subcontractors, and all material dealers are hereby made aware of the intent of the City to reduce the construction costs of the project by the purchase of properties, materials, etc. in the manner hereinafter described and the Construction Manager shall not withhold its consent to the arrangement.

Administrative costs incurred by the Construction Manager administering the purchases in the name of the Owner shall be considered to be included in the GMP.. No addition shall be added to the GMP amount because of the service provided by the Construction Manager in the purchase of property, materials, etc., in the name of the Owner.

All sales and use tax savings of purchase of property, materials, etc., shall be credited to the Owner and the amount of the City Contingency shall be increased in the full amount of savings which are affected by the omission of payment of sales and use taxes. For the purposes of this Agreement, the estimated tax savings shall be calculated at a flat rate of 6%.

The City affirms that if the Florida Department of Revenue determines that the materials sold pursuant to the Certificate of Entitlement do not qualify for the exemption under Florida Statutes § 212.08(6) the City will be liable for any tax, penalty, and interest determined to be due.

By virtue of its payment of material invoices, the Owner further intends to benefit from any discounts offered for timely payment.

The administration for the sales and use tax savings will be in accordance with the agreements and forms bound herein and the procedure will be administered by the City.

The Construction Manager, notwithstanding this special purchase arrangement, shall, describe, order, obtain approvals, submit samples, coordinate, process, prepare shop drawings, pursue, receive, inspect, store, protect, insure, guarantee and otherwise be responsible for all materials, the same as would have been the case if the tax saving procedures were not implemented.

The City shall take title upon delivery and shall retain title to all materials it purchases and assumes liability for the materials when they are delivered to the job site. The Construction Manager shall act as bailee as to all materials when they are delivered to the job site. The Construction Manager shall have the obligation of receiving, storing, and safekeeping all goods and materials purchased on behalf of the City pursuant to an Agreement. Further, the Contractor shall be responsible for processing all warranty claims for defective goods and materials, but the City shall be responsible for the cost of replacing any goods and materials.

## **TAX SAVINGS AGREEMENT PROCEDURES**

- A. The Construction Manager, prior to initiating a request for Owner Direct Purchase Order, will prepare and submit to the City a deductive change to the GMP contract for the amount of materials to be purchased through the Owner Direct Purchase Order Program. This deductive change will allow the Construction Manager to adjust the Sub's contract which will account for the value of the material and the sales tax as it pertains to the Sub's contract. The deductive change (and backup) and the request for Owner Direct Purchase Orders can be submitted at the same time; however the Owner Direct Purchase Orders will not be processed until deductive changes has been completed.
- B. The Construction Manager will issue Tax Savings Procedure and instructions (Direct Purchase Exhibit B) to the subcontractor.
- C. The Construction Manager will issue a request for a Owner Direct Purchase Order to the City and provide the necessary back-up as shown on the Owner Direct Purchase Checklist and the samples provided in Direct Purchase Exhibit C.
- D. The City will then process the Owner Direct Purchase Order and forward directly to the vendor within fifteen (15) business days. The PO must be issued to the actual vendor, not the Subcontractor. The originating department will be responsible for providing a copy of the PO to the Vendor and the Construction Manager for record purposes.
- E. The City will complete a Certificate of Entitlement to the Vendor to affirm that the tangible personal property purchased will go into or become a part of a public work. The City's PO must be attached to the Certificate of Entitlement. There must be a separate Certificate of Entitlement for each purchase order. Copies of the Certificate are acceptable.
- F. The City is responsible for providing copies of the Certificate of Entitlement, PO and tax exempt certificate to the Vendor and/or the Construction Manager.
- G. The vendor's invoice must be issued to the City, rather than to the Construction Manager. The City must make payment directly to the vendor.
- H. The City assumes title to the materials from the vendor at the time of purchase or delivery by the vendor.
- I. The City and Construction Manager will verify that all invoiced materials and/or equipment were delivered and that the invoice is for the correct amount.
- J. The City will process invoices and forward them to the accounting department for payment.

- K. It is the responsibility of the Construction Manager to maintain all paperwork pertaining to the agreement.
- L. The Construction Manager and the City shall keep track of all purchase orders issued and invoices paid.

## **OWNER DIRECT PURCHASE CHECKLIST**

**The City of Fort Lauderdale requires the following items prior to a purchase order being processed:**

- A. Purchase Order Request Form
  - 1. Includes reference to project
  - 2. Includes line item pricing
  - 3. Includes separate line item for tax (for tracking purposes only)
- B. Vendor Registration Form
- C. Vendor's current Form W-9
- D. Letter from Hensel Phelps, recognizing the Vendor and Vendor quote or proposal as acceptable for this project.
- E. Copy of accepted and approved submittal/shop drawing

**The Vendor in turn will receive the following items when the purchase order is processed:**

- A. City Purchase Order
- B. Terms and Conditions
- C. Certificate of Entitlement
- D. City's Tax Exempt Certificate

## **OWNER DIRECT PURCHASE EXHIBITS**

**The attached/included exhibits include the following:**

- A. Direct Purchase Exhibit A – Florida Department of Revenue Document # GT-800067 Titled Sales and Use Tax on Construction, Improvements, Installations, and Repairs
- B. Direct Purchase Exhibit B – Owner Direct Purchase Order Program Instructions to Subcontractors and Suppliers/Vendors
- C. Direct Purchase Exhibit C – Purchase Order Request Documents which include: Sample Purchase Order Request Form, City Vendor Registration Form, and W-9 Form.

# **DIRECT PURCHASE EXHIBIT A**

**FLORIDA DEPARTMENT OF REVENUE**

**Document Number GT-800067**

**Titled**

**SALES AND USE TAX ON CONSTRUCTION, IMPROVEMENTS, INSTALLATIONS  
AND REPAIRS**



# Sales and Use Tax on Construction, Improvements, Installations and Repairs

GT-800067  
R.09/14

In Florida, the taxing of property improvements, installation, and repairs varies according to the exact nature of the transaction.

This publication can help you determine:

- If you need to pay sales and use tax when you buy parts and materials.
- If you need to charge tax to your customers.

It will also explain what documentation you need to buy parts and materials tax-exempt.

## Definitions

**Real property** — The land, its improvements, and fixtures; also called "realty" and "real estate."

**Improvements to real property** — include the activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property.

**Fixture** — An item that is permanently attached to the realty, building, other structure, or land, that keeps its separate identity after installation. All repairs are treated as repairs to real property. The term "fixture" does not include titled property, machinery, or equipment.

**Tangible personal property** — Personal property that you can see, weigh, measure, touch, or is in any manner perceptible to the senses, but not permanently attached to real property.

**Fabricated cost** — The cost to a real property contractor to fabricate an item. This includes direct materials, labor, and other costs that are allocated to production.

**Fabricated items** — Items contractors manufacture, produce, process, compound, or fabricate for their own use in performing contracts for improvements to real property.

## Real Property

Generally, transactions that involve items that are permanently installed into a structure, where they cannot be removed without destroying them, are classified as real property and are not subject to sales tax. You should also consider the pricing arrangement in the contract when determining whether to charge tax.

### Examples of Real Property

- Carpeting (permanent)
- Carpentry
- Dock, pier, seawall
- Driveway
- Electrical system
- Elevator, escalator
- Landscaping
- Masonry work
- Roofing
- Tile

## Types of Contracts

Under lump sum, cost plus, fixed fee, guaranteed price, or time-and-materials real property contracts, the contractor is the final consumer of materials and supplies and:

- Must pay sales tax to suppliers on all purchases, including those made for the contractor's own use.
- Should not charge tax to the customer.

Contractors who perform taxable fabrication must pay use tax on the fabricated cost of the items fabricated. When calculating use tax on the cost of items of tangible personal property manufactured, produced, compounded, processed, or fabricated, the contractor should:

- Include the cost of the direct materials used to fabricate an item if the contractor did not pay tax to the materials vendor on the purchase of the materials.
- Exclude the cost of the direct materials if the contractor paid tax when it purchased the materials.

**Retail sale plus installation contracts** are contracts for improvements to real property where the contractor or subcontractor lists and prices in the contract **all materials** to be used **before** the work begins. The contractor or subcontractor also must agree to:

- Sell specifically described and listed materials and supplies at an agreed price or regular retail price, and
- Complete the work for either an additional agreed price or based on time used.

Since the sale of the materials is a separate transaction from the installation, the customer must assume title and risk the loss of the materials and supplies as delivered, rather than accepting only title to the completed work.

A contractor who performs retail sale plus installation contracts:

- Should buy the materials tax-exempt for resale.
- Should charge the customer tax on all materials.

## Use of Materials

Tax is due on the use of goods by the contractor. The contractor is responsible for the tax if sales tax was not paid at the time of purchase.

Contractors may manufacture or fabricate a finished product from raw materials for use in a contract. Contractors owe tax on the manufactured cost of such products. For example, a cabinet maker/installer must pay sales tax on the manufactured cost of the cabinet.

If a contractor fabricates a product at the job site, fabrication labor is exempt from tax. Only the cost of the materials is subject to tax.

## Construction for Tax-Exempt Entities

The contractor cannot use an entity's tax-exempt status to purchase materials used under a construction contract for the entity. Contractors owe tax on these purchases. However, the tax-exempt entity may buy the materials directly from the materials vendor and pay no tax when certain conditions are met:

- The tax-exempt entity must issue its purchase order and a copy of its exemption certificate, and make payment directly to the materials vendor.
- The vendor must directly invoice the tax-exempt entity.
- The tax-exempt entity must take title to the materials upon delivery to the jobsite; it must assume the risk of loss of the materials at the time of purchase.
- The seller of the materials or supplies must receive a purchase order and a copy of an exemption certificate issued directly from the tax-exempt entity **before** shipment or delivery. If the vendor does not receive this documentation, the vendor must collect sales tax from the contractor who placed the order.

Governmental entities (excluding the federal government) must issue a Certificate of Entitlement to each vendor and contractor to purchase supplies and materials tax-exempt for use in public works contracts. The Certificate of Entitlement certifies that:

- The materials and supplies purchased will become part of a public facility.
- The governmental entity will be liable for any tax, penalty, or interest due if the Department later determines that the items purchased do not qualify for exemption.
- The criteria established in Rule 12A-1.094, F.A.C., are being followed.

### **Tangible Personal Property**

Generally, when installing or repairing tangible personal property, parts and labor are taxable. If the job is "labor only" it is not taxable, but the repairer must document that no parts or other items were incorporated into or attached to the repaired item.

#### **Examples of Tangible Personal Property**

- Carpets (except those that become real property) and rugs
- Drapes, curtains, blinds, shades, or slipcovers
- Equipment used to provide communications services installed on a customer's premises
- Garbage can receptacles
- Household appliances (except "built-in" appliances)
- Lawn markers
- Mail boxes
- Mirrors, except those that become real property
- Portable ice machines and refrigerators
- Precast clothesline poles
- Radio and television antennas
- Stepping stones
- Window air-conditioning units

Sometimes, the method of installation is a factor in determining taxability. For example, a mailbox that is bricked into a post beside the road is an improvement to real property. But if the mailbox is attached to the house or screwed into a wooden post in the ground, it is tangible personal property.

#### **Taxes on Installation of Tangible Personal Property**

Contractors and manufacturers who provide and install items of tangible personal property are considered to be retail dealers and:

- Should buy the materials tax-exempt for resale.
- Should charge sales tax on the full price, including installation, materials and any other charges.

#### **Taxes on Repairs and Improvements to Tangible Personal Property**

When repairing or improving tangible personal property, the repair person:

- Should buy the repair materials tax-exempt for resale.
- Should charge the customer tax on labor and materials, if parts are used in the repair.

## **Parts and Materials**

A repair person may buy materials and parts tax-exempt if the materials and parts become part of the tangible personal property being repaired. These include items such as welding rods, solder, paint, thinner, oil, bolts, or nuts. Materials used to make the repair that **do not** become a part of the property are taxable to the repairer as overhead items. These include items such as tools, sandpaper, steel wool, flux, or detergents.

## **Repair Labor Only**

Charges for repairs of tangible personal property needing only labor or service are not taxable. The repair person must keep documentation to prove no tangible personal property was joined with or attached to the repaired item. Sales tax applies even if the parts are provided at no charge.

Charges for fabrication are taxable. Fabrication occurs when material is cut, threaded, shaped, bent, welded, sheared, punched, drilled, machined, or is changed from its original state, because of work performed on the material.

## **Repairs Shipped In/Out of State**

When tangible personal property is shipped into Florida, repaired, and then shipped back to its owner outside the state by common carrier or mail, the amount charged for the repair is exempt. If the tangible personal property is sent out of Florida to be repaired and then returned to Florida, the transaction is taxable.

## **Maintenance or Service Warranty Contracts**

Maintenance or service warranty contracts covering taxable, tangible personal property are taxable. A service warranty is defined as any contract or agreement for the cost of maintaining, repairing, or replacing tangible personal property. This does not include contracts or agreements covering tangible personal property that becomes a part of real property. The sale of an extended warranty for the maintenance, repair, or replacement of tangible personal property that is not incorporated into real property is subject to sales tax.

## **Commercial vs. Residential Appliances**

**Commercial appliances** (such as dishwashers, stoves, and refrigerators) are considered machinery and equipment when used in a business. The contractor should charge the customer tax on the appliance and labor.

**Free-standing residential appliances** are tangible personal property. The contractor should charge the customer tax on the appliance and labor.

**Hard-wired/permanently installed residential appliances** become real property. The contractor should pay tax when buying the appliance and should not charge the customer tax on the appliance or labor.

## **Fixtures**

When installing fixtures, the contractor:

- Should pay sales tax when buying the materials.
- Should not charge the customer tax on materials or labor.

Types of fixtures include:

- Built-in cabinets, counters, or lockers
- Central air-conditioning units
- Elevators and escalators
- Furnaces
- Kitchen and bathroom sinks
- Wired lighting

When deciding whether an item is a fixture, consider:

- Method of attachment
- Intent of the parties
- Real property law
- Customization
- Permits and licensing
- Legal agreements

## **Mobile Home Repairs and Improvements**

The contractor needs to look at the actual repair job to determine if the repair is to real property or tangible personal property. To determine how sales or use tax applies to a job, check the decal that is on the home.

- If the mobile home has an "RP" (real property) decal, it is considered real property.
  - ▢ Repairs to the actual mobile home or permanent attachments, including built-in appliances, are treated as the repair of real property.
  - ▢ The repair person should pay tax on all materials used to complete the repair. The customer should not be charged tax.
- If the mobile home has an "MH" (mobile home) decal, all repairs, permanent attachments, and built-in appliances are treated as the repair of tangible personal property. This includes repairs to the roof, plumbing, and central air-conditioning system.
  - ▢ The repair person should buy the materials tax-exempt for resale and charge tax to the customer on the entire repair bill (including labor) unless the repair invoice shows no parts were used (job is labor only).
- A mobile home with no MH or RP decal is treated as tangible personal property.
  - ▢ The repair person should buy the materials tax-exempt for resale and charge tax to the customer on the entire repair bill (including labor) unless the repair invoice shows no parts were used (job is labor only).

## **Who Must Register to Collect Sales Tax?**

Persons who are in the business of repairing tangible personal property should register as a dealer to collect sales and use tax and discretionary sales surtax. Discretionary sales surtax is imposed by most Florida counties.

Contractors should not register unless they must pay tax on the cost of items made (fabricated) for use in fulfilling contracts. However, a contractor who performs real property contracts and sells tangible personal property at retail must register as a dealer.

You can register to collect and/or report tax through our website. The website will guide you through an application interview that will help you determine your tax obligations. If you do not have Internet access, you can complete a paper *Florida Business Tax Application* (Form DR-1).

After we approve your registration application, you will receive a *Certificate of Registration* (Form DR-11), a *Florida Annual Resale Certificate* (Form DR-13), and your tax return forms.

## **Buying Materials and Parts Tax-Exempt**

The *Florida Annual Resale Certificate* allows you to buy materials and parts tax-exempt that you intend to resell or incorporate into the finished product. Provide a copy of your current *Florida Annual Resale Certificate* to your supplier to make tax-exempt purchases for resale.

If materials bought for resale are later used (not resold), you must report and pay use tax on those items, plus any applicable discretionary sales surtax. There are additional liabilities for intentional misuse of a resale certificate.

If a contractor purchases materials from an out-of-state business that is not registered to collect Florida sales tax, the contractor is liable for use tax and surtax when the materials are imported into Florida.

## **What Is The Tax Rate?**

Florida's sales tax rate is six percent; however, there is a "bracket system" for collecting sales tax on any part of a sale that is less than a whole dollar. Most Florida counties levy a discretionary sales surtax on transactions that are subject to sales and use tax. Dealers must collect the surtax along with the sales tax.

## **Discretionary Sales Surtax**

The discretionary sales surtax rate depends on the county.

- When making a repair, calculate the surtax using the tax rate of the county where the repair is done.
- When making real property improvements, calculate the tax using the tax rate of the county in which the consumer, usually the contractor, takes delivery of the tangible personal property.
- For retail sale plus installation contracts, calculate the tax using the tax rate of the county in which the improvements or repairs take place.
- If a contractor pays use tax for using materials to fabricate items at the contractor's shop, calculate the tax using the tax rate of the county in which the fabrication occurs.

You can get a *Discretionary Sales Surtax* brochure (Form GT-800019) and a list of surtax counties and rates (Form DR-15DSS) from our website at [www.myflorida.com/dor](http://www.myflorida.com/dor).

## **For More Information**

Visit our website at [www.myflorida.com/dor](http://www.myflorida.com/dor) to learn more.

Read these brochures:

- *Florida's Sales and Use Tax (GT-800013)*
- *Florida's Discretionary Sales Surtax (GT-800019)*
- *Sales and Use Tax on Repair of Tangible Personal Property (GT-800010)*
- *Sales and Use Tax on Mobile and Prefabricated Home Repair, Remodeling, and Additions (GT-800069)*

View tutorials on filing and paying sales tax.

Visit our online Revenue Law Library to read:

- Rule 12A-1.006, Florida Administrative Code; *Charges by Dealers Who Adjust, Apply, Alter, Install, Maintain, Remodel, or Repair Tangible Personal Property.*
- Rule 12A-1.051(2),(17),(18), F.A.C.; *Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property.*
- Rule 12A-1.016 (3)(b), F.A.C.; *Sales; Installation Charges.*
- Rule 12A-1.043, F.A.C.; *Manufacturing* (includes fabrication)
- Rule 12A-1.105, F.A.C., *Service Warranties.*
- Rule 12A-1.094, F.A.C., *Public Works Contracts.*

**DIRECT PURCHASE EXHIBIT B**  
**OWNER DIRECT PURCHASE ORDER PROGRAM**  
**INSTRUCTIONS TO SUBCONTRACTOR(S) AND**  
**SUPPLIER(S)**

## **EXHIBIT 'PS-1'**

Attachment to Subcontract/Purchase Order, by and between Subcontractor/Seller and Hensel Phelps Construction at City of Fort Lauderdale Aquatic Center Renovation Project

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### **Owner Direct Purchase Order Program**

The *Exhibit 'PS1'* to the Subcontract outlines the process known as the, Owner Direct Purchase Order Program ("ODP Program") for all subcontractors and suppliers on this project. This program will be referenced as such through this Exhibit.

In order for the Owner to take advantage of the sales tax exemption status, all subcontractors are required to participate in the ODP program. All vendor material orders shall be processed through the ODP program.

#### **ODP Submission of Vendor Information:**

Subcontractors typically have an ongoing relationship with their vendors; however, vendors may not directly deal with the Owner. Therefore, each subcontractor is required to prepare and submit a list of vendors and estimated ODP Program target values for each vendor at the time of subcontract execution. The vendor list should include the following information:

- Name, address, phone number, fax numbers, contact name and special delivery/shipping requirements for each vendor.

#### **ODP Value Establishment**

Upon selection of the material vendor, Subcontractor will provide Contractor with a finalized quotation from their vendor, which will detail all materials to be purchased and their costs.

It is Subcontractor's responsibility to ensure vendors are informed that the Owner encourages that all vendors accept the payment method of using the Owner's Visa-Card or ePayables. This cost must be included in their overall product cost quotation.

Once a quote has been established, each quotation submitted to Contractor must exclude sales tax, this should ensure that all vendor contact information is correct (proper mailing address, contact name, phone number and fax numbers) and provide required delivery dates that will later be added to the ODP Program to ensure proper material order and delivery. This information is vital and needed for the Owner to be able to issue their Purchase Order.

#### **ODP Preparation**

Once the vendor's material value has been established, the Subcontractor will submit an executed ODP Program Order Form requisition to Contractor for processing.

The Order Form must be signed by the Subcontractor and Contractor and include the following back-up documentation:

- Copy of the vendor material quotation
- New vendor setup form, completed W9 and signed Diversity Form and;
- Purchase Order request directly from the Subcontractor made out to Contractor per the values on the quotation.

Contractor will submit the fully executed ODP Program order to the Owner. The Owner will then process the Owner Direct Purchase Order and forward directly to the vendor within ten (10) business days or less.

The Owner will forward a copy of the purchase order to Contractor for record purposes. Contractor will forward a copy to the Subcontractor for confirmation.

This becomes the responsibility of the Subcontractor to track all vendor purchases.

## **EXHIBIT 'PS-1'**

Attachment to **Subcontract/Purchase Order**, by and between **Subcontractor/Seller** and **Hensel Phelps Construction at City of Fort Lauderdale Aquatic Center Renovation Project**.

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### **Deduction of Subcontractor Change Order:**

Once the Owner issues a vendor purchase order, Contractor will issue the Subcontractor a deductive change order. This deductive change order will formally remove the value from the Subcontract and will be issued for the value of the ODP Program plus the associated sales tax value.

Sales tax values will be calculated per invoice, at six percent (6%) sales tax . Thereafter, Contractor will generate a deductive change order(s) to the Subcontractor on a monthly basis as purchase orders are requested and issued.

### **The ODP Program and Material Delivery Processing:**

All subcontractors and vendors are to fully understand that the only role the Owner plays in the ODP Program process is in the issuance of the Owner purchaser order and in the payment of vendor invoices. It is the complete responsibility of the Subcontractor to coordinate and track all material deliveries for this Project and to ensure that all orders are properly placed with their vendors. No deliveries will be accepted by Owner and any deliveries made to Owner outside of the Project jobsite will be turned away. The Subcontractor must carefully monitor and handle delivery of all ODP Program materials. FOB Destination will only be accepted.

It is the responsibility of the Subcontractor to review and verify all delivery tickets for all received materials. These delivery tickets must be submitted as back-up to the vendor invoices in order to substantiate that the materials have been received and accepted on site and approve prompt processing of payment.

### **Submission of Vendor Invoices:**

All vendors are required to submit all invoices for payment through this program to Owner; however, copies MUST be sent directly to their respective subcontractors for invoice payment approvals.

Invoices that are sent directly to Owner without proper Subcontractor and Contractor approval and back up will not be paid. Therefore, it is critical that copies of the invoices be sent directly to the Subcontractor, as this copy will be what generates payment from the Owner. By following the proper routing of invoices, the vendor can ensure that payments will be processed in a timely manner.

Vendor invoices must include all proper delivery ticket back-up for processing. Subcontractors shall review all vendor invoices carefully and forward these invoices to Contractor for processing. Contractor will review the invoices for approval and forward them on to Owner for payment.

### **Invoicing and Payment**

1. Vendor sends material invoice with signed delivery back up to Owner, the City's Accounts Payable, and a copy to Subcontractor.
2. Subcontractor will verify each invoice per the initial ODP Program order form that was submitted. It is imperative that each material being invoiced matches the originally submitted order form and quote (line item by line item). The Owner will hold payment for materials that do not match the original order form line item submission.
3. Subcontractor must initial each invoice and forward each approved invoice with proper back up to Contractor. Please note that invoices that are not signed and do not have the proper delivery ticket back up attached, will not be approved by Contractor.
4. Contractor will verify, initial and forward each invoice to Owner and the City's Accounts Payable for processing and payment.
5. Owner will pay approved vendor invoices within thirty (30) days of acceptance and receipt by Owner.

Contractor will meet with each awarded subcontractor to review their schedule of values and review the pay application process for the Owner's Project so as to abide by the requirements of Owner when it comes to the billing of ODP Program materials. It is critical that Contractor and Subcontractor have this meeting and an understanding of the payment system to ensure timely payment to Contractor and Subcontractor.

The City of Fort Lauderdale, Florida  
Owner Direct Material/Equipment Purchase Program

1. It is assumed, unless otherwise noted, that the Subcontractor has included Florida State Sales and other applicable taxes in his bid for material, supplies and equipment. The Owner, being exempt from sales tax, reserves the right to make direct purchases of various construction equipment, materials or supplies included in the Subcontractor's bid and/or contract, substantially in accordance with the form of Purchase Order attached herewith.

Any equipment, materials or supplies directly purchased by the Owner that are included in the Subcontractor's contract shall be referred to as Owner-Purchased Materials and the responsibilities of both Owner and Subcontractor relating to such Owner-Purchased Materials shall be governed by the terms and conditions of the procedures. The Owner will own and hold full title to all Owner-Purchased Materials.

2. Material suppliers shall be selected by the Subcontractor awarded the subcontract.

The Subcontractor has included the price for all construction materials in his bid. Owner purchasing of construction materials, if selected, will be administered on a deductive Change Order basis.

3. Subcontractor shall provide The Construction Manager a list of all intended suppliers, vendors, and material men for consideration as Owner-Purchased Materials. This list shall be submitted to the Construction Manager at the same time as the Subcontractor's preliminary schedule of values. The Subcontractor shall submit a description of the materials to be supplied, estimated quantities and prices.
4. Upon request from The Construction Manager, and in a timely manner, Subcontractor shall prepare a standard Purchase Order Requisition Form in a form acceptable to the Owner and The Construction Manager, to specifically identify the materials which Owner had, at its sole option, elected to purchase directly. The Purchase Order Requisition Form shall include:

- A. The name, address, telephone number and contact person for the material supplier.
- B. Manufacturer or brand, model or specification number of the item.
- C. Quantity needed as estimated by the Subcontractor.
- D. The price quoted by the supplier for the materials identified therein.
- E. Any sales tax associated, with such quote.
- F. Delivery dates as established by Subcontractor.

Subcontractor shall include reference to any terms and conditions which have been negotiated with the vendors; i.e., payment terms, warranties, retainage, etc.

The City of Fort Lauderdale, Florida  
Owner Direct Material/Equipment Purchase Program

Such Purchase Order Requisition Forms are to be submitted to The Construction Manager's designated representative no less than ten (10) business days prior to the need for ordering such Owner-Purchased Materials, in order to provide sufficient time for Owner review and approval and to assure that, such Directly Purchased Materials may be directly purchased by Owner and delivered to the Project site so as to avoid any delay to the Project.

5. After receipt of the Purchase Order Requisition Form, Owner shall prepare its Purchase Orders for equipment, materials or supplies which the Owner chooses to purchase directly. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the Subcontractor, less any sales tax associated with such price. Owner's Procurement Manager or his designated representative shall be the approving authority for the Owner on Purchase Orders in conjunction with Owner-Purchased Materials. The Purchase Order shall require that the supplier provide the required shipping and handling. The Purchase Order shall also require the delivery of the Owner-Purchased Materials on the delivery dates provided by the Subcontractor in the Purchase Order Requisition Form and shall indicate F.O.B. jobsite.
6. In conjunction with the execution of the Purchase Orders by the suppliers, the Subcontractor shall execute and deliver to the Owner, through ThePage 2 of 4 Construction Manager, one or more deductive Change Orders, referencing the full value of all Owner-Purchased Materials to be provided by each supplier from whom the Owner elected to purchase material directly, including all sales tax associated with such materials in Subcontractor's bid to The Construction Manager. Sales tax shall be identified separately on all deductive Change Orders.
7. All shop drawings and submittals shall be made by the Subcontractor in accordance with the Project Specifications.
8. Subcontractor shall be fully responsible for all matters relating to the receipt of materials furnished by Owner in accordance with these Procedures, including, but not limited to, verifying correct quantities, verifying documentation of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss, or damage to equipment and materials following acceptance of items by the Owner due to the negligence of the Subcontractor. The Subcontractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Subcontractor for the particular materials furnished. The Subcontractor agrees to indemnify and hold harmless the Owner and The Construction Manager from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions or directions of Subcontractor. Owner purchased materials shall be stored at the construction site or in insured and bonded warehouse.

The City of Fort Lauderdale, Florida  
Owner Direct Material/Equipment Purchase Program

9. As Owner-Purchased Materials are delivered to the Project Site, the Subcontractor and The Construction Manager, as City's Representative, shall visually inspect all shipments from the suppliers, and approve the vendor's invoice of material delivered. The Subcontractor shall assure that each delivery of Owner-Purchased materials is accompanied by adequate documentation to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order, together with such additional information as the Owner or The Construction Manager may require. The Construction Manager, as Owner's Representative, shall verify in writing to the Owner the accuracy of the delivery ticket. The Subcontractor will then forward copies of the invoice to the Owner through The Construction Manager for payment. The original invoice shall be furnished by Vendor to the Finance Department for processing and payment in the manner as all other City of Fort Lauderdale invoices are processed. The Owner shall have the right to assign personnel to verify and audit the accuracy of all Director Purchase Documents.
10. The Subcontractor shall insure that Owner-Purchased Materials conform to the Specifications, and determine prior to incorporation into the Work if such materials are patently defective, and whether such materials are identical to the material ordered and match the description on the bill of lading. If the Subcontractor discovers defective or non-conformities in the Owner-Purchased Material upon such visual inspection, the Subcontractor shall not utilize such non-conforming or defective materials in the Work and instead shall promptly notify the vendor of the defective or non-conforming condition in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally, the Subcontractor shall notify the Owner, through The Construction Manager, of such occurrence. If the Subcontractor fails to perform such inspection and otherwise incorporates Owner-Purchased Materials, the condition of which it either knew or should have known by performance of an inspection, Subcontractor shall be responsible for all damages to Owner and/or The Construction Manager resulting from Subcontractor's incorporation of such materials into the Project, including liquidated damages. In the event that materials furnished are found to be defective or nonconforming, the Subcontractor shall promptly take action to remedy the defect or non-conformance so as not to delay the work.
11. The Subcontractor shall maintain records of all Owner-Purchased Materials it incorporates into the work from the stock of Owner-Purchased Materials in its possession. The Subcontractor shall account monthly to the Owner, through The Construction Manager, for any Owner-Purchased Materials delivered into the Subcontractor's possession, including portions of all such materials which have been incorporated into the work.
12. The Subcontractor, as the Owner's agent, shall be responsible for obtaining and managing all warranties and guarantees for all material and products as required by the Contract Documents. All repair, maintenance or damage-repair calls shall be forwarded to the Subcontractor for resolution with the appropriate supplier or vendor.
13. Notwithstanding the transfer of Owner-Purchased Materials by the Owner to the Subcontractor's possession, the Owner shall retain title and assume risk to any and all Owner-Purchased Materials.

The City of Fort Lauderdale, Florida  
Owner Direct Material/Equipment Purchase Program

14. The transfer of possession of Owner-Purchased Materials from the Owner to the Subcontractor shall constitute a bailment for the mutual benefit of the Owner and the Subcontractor. The Owner shall be considered the bailor and the Subcontractor the bailee of the Owner-Purchased Materials. Owner-Purchased Materials shall be considered returned to the Owner for the purposes of its bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project. All Owner Purchased Materials shall be stored at the construction site or in insured and bonded warehouse.
15. The Owner shall in no way be liable for interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs or time resulting from delay in the delivery of, or defects in, Owner Purchased Materials when such delay is a result of the failure of the Subcontractor's performance.
16. On a monthly basis, Subcontractor shall be required to review invoices submitted by all suppliers of Owner-Purchased Materials delivered to the Project site during that month and either concur or object to the Owner's issuance of payment to the suppliers, based upon Subcontractor's records of material delivered to the site and any defects in such materials.
17. In order to arrange for the prompt payment to the supplier, the Subcontractor shall provide to the Owner, through The Construction Manager, a list indicating the acceptance of the goods or materials in accordance with the established monthly Payment Request Schedule. The list shall include a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt and verification of the appropriate documentation, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be released, delivered, and remitted directly to the supplier. Subcontractor agrees to assist the Owner and The Construction Manager to immediately obtain a partial or final release of lien waiver as appropriate.
18. The Salvage materials shall be the property of the Owner and stored or removed from the site by the Subcontractor at the Owner's direction.
19. The Owner's direct purchase of equipment, materials or supplies, as provided herein does not relieve The Construction Manager or any Subcontractor of any obligation required pursuant to the contract or subcontract pertaining to the performance of work, except as to the Owner's obligation to make direct payments to such vendors and may reduce the bonds to the extent permitted by Section 255.05, Florida Statutes.
20. All obligations and duties imposed on The Construction Manager contained in the Agreement are incorporated herein by reference.

DIRECT PURCHASE EXHIBIT C  
PURCHASE ORDER REQUEST DOCUMENTS

### Direct Purchase Program

Potential Sales Tax Savings (this amount will be reconciled at contract end for final credit)

(6% Sales Tax) NOTE: \*\* Each PO will only estimate one invoice, therefore, potential sales tax savings may change. \*\*

CAM 18-0856  
Revised EXHIBIT 1



City of Fort Lauderdale • Procurement Services Division  
100 N. Andrews Avenue, Room 619 • Fort Lauderdale, Florida 33301

To City of Fort Lauderdale Vendor:

The City of Fort Lauderdale Procurement Services Division is currently updating our vendor database. Please complete and return either by fax: (954) 828-5576, Email: [sgordon@fortlauderdale.gov](mailto:sgordon@fortlauderdale.gov) or mail: 100 North Andrews Avenue, Room 619, Fort Lauderdale, FL 33301. **A current W-9 must be submitted with this form.** It would be beneficial to complete and return in a timely manner.

Vendor Name: \_\_\_\_\_  
(Name that is registered with the State of Incorporation. If an Individual, please provide full name)

DBA: (if applicable) \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Country \_\_\_\_\_

Remit to Address: \_\_\_\_\_  
(if different from mailing)  
\_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Country \_\_\_\_\_

Contact Person: \_\_\_\_\_ Ext. \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax \* \_\_\_\_\_

Toll Free: \_\_\_\_\_ Cell: \_\_\_\_\_

Email: \_\_\_\_\_

Federal ID #: \_\_\_\_\_ or SS# \_\_\_\_\_

Will your firm accept P-Card payments via: VISA, Yes \_\_\_\_\_ No \_\_\_\_\_

MasterCard, Yes \_\_\_\_\_ No \_\_\_\_\_

**\*THE PREFERRED METHOD OF NOTIFICATION IS BY FAX.  
FAILURE TO PROVIDE THIS INFORMATION MAY DELAY YOUR ORDER AND/OR  
PAYMENT.**

06/11/14

# Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

Print or type See Specific Instructions on page 2.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ <b>Note.</b> For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶	
	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>	
	5 Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number											
				-				-			
or											
Employer identification number											
				-							

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at [www.irs.gov/fw9](http://www.irs.gov/fw9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II Instructions on page 3 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* above.

## What is FATCA reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the Instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; do not leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account, list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note.** ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C Corporation, or S Corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

**Line 2**

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

**Line 3**

Check the appropriate box in line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box in line 3.

**Limited Liability Company (LLC).** If the name on line 1 is an LLC treated as a partnership for U.S. federal tax purposes, check the "Limited Liability Company" box and enter "P" in the space provided. If the LLC has filed Form 8832 or 2553 to be taxed as a corporation, check the "Limited Liability Company" box and in the space provided enter "C" for C corporation or "S" for S corporation. If it is a single-member LLC that is a disregarded entity, do not check the "Limited Liability Company" box; instead check the first box in line 3 "Individual/sole proprietor or single-member LLC."

**Line 4, Exemptions**

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space in line 4 any code(s) that may apply to you.

**Exempt payee code.**

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

**Note.** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

**Line 5**

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns.

**Line 6**

Enter your city, state, and ZIP code.

**Part I. Taxpayer Identification Number (TIN)**

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on this page), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [IRS.gov](http://IRS.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

establish to the withholding agent that you are a U.S. person, or resident alien, in Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code* earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.

1. **Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

2. **Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. **Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

4. **Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. **Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

## What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>2</sup>
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor <sup>*</sup>
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 2.

<sup>\*</sup>Note. Grantor also must provide a Form W-9 to trustee of trust.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-IDTHEFT (1-877-438-4338).

Visit [IRS.gov](http://IRS.gov) to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

**CITY OF FORT LAUDERDALE  
GENERAL CONDITIONS**

These instructions are standard for all contracts for commodities or services issued through the City of Fort Lauderdale Procurement Services Division. The City may delete, supersede, or modify any of these standard instructions for a particular contract by indicating such change in the Invitation to Bid (ITB) Special Conditions, Technical Specifications, Instructions, Proposal Pages, Addenda, and Legal Advertisement. In this general conditions document, Invitation to Bid (ITB), Request for Qualifications (RFQ), and Request for Proposal (RFP) are interchangeable.

**PART I BIDDER PROPOSAL PAGE(S) CONDITIONS:**

- 1.01 BIDDER ADDRESS:** The City maintains automated vendor address lists that have been generated for each specific Commodity Class item through our bid issuing service, BidSync. Notices of Invitations to Bid (ITB'S) are sent by e-mail to the selection of bidders who have fully registered with BidSync or faxed (if applicable) to every vendor on those lists, who may then view the bid documents online. Bidders who have been informed of a bid's availability in any other manner are responsible for registering with BidSync in order to view the bid documents. There is no fee for doing so. If you wish bid notifications be provided to another e-mail address or fax, please contact BidSync. If you wish purchase orders sent to a different address, please so indicate in your bid response. If you wish payments sent to a different address, please so indicate on your invoice.
- 1.02 DELIVERY:** Time will be of the essence for any orders placed as a result of this ITB. The City reserves the right to cancel any orders, or part thereof, without obligation if delivery is not made in accordance with the schedule specified by the Bidder and accepted by the City.
- 1.03 PACKING SLIPS:** It will be the responsibility of the awarded Contractor, to attach all packing slips to the OUTSIDE of each shipment. Packing slips must provide a detailed description of what is to be received and reference the City of Fort Lauderdale purchase order number that is associated with the shipment. Failure to provide a detailed packing slip attached to the outside of shipment may result in refusal of shipment at Contractor's expense.
- 1.04 PAYMENT TERMS AND CASH DISCOUNTS:** Payment terms, unless otherwise stated in this ITB, will be considered to be net 45 days after the date of satisfactory delivery at the place of acceptance and receipt of correct invoice at the office specified, whichever occurs last. Bidder may offer cash discounts for prompt payment but they will not be considered in determination of award. If a Bidder offers a discount, it is understood that the discount time will be computed from the date of satisfactory delivery, at the place of acceptance, and receipt of correct invoice, at the office specified, whichever occurs last.
- 1.05 TOTAL BID DISCOUNT:** If Bidder offers a discount for award of all items listed in the bid, such discount shall be deducted from the total of the firm net unit prices bid and shall be considered in tabulation and award of bid.
- 1.06 BIDS FIRM FOR ACCEPTANCE:** Bidder warrants, by virtue of bidding, that the bid and the prices quoted in the bid will be firm for acceptance by the City for a period of one hundred twenty (120) days from the date of bid opening unless otherwise stated in the ITB.
- 1.07 VARIANCES:** For purposes of bid evaluation, Bidder's must indicate any variances, no matter how slight, from ITB General Conditions, Special Conditions, Specifications or Addenda in the space provided in the ITB. No variations or exceptions by a Bidder will be considered or deemed a part of the bid submitted unless such variances or exceptions are listed in the bid and referenced in the space provided on the bidder proposal pages. If variances are not stated, or referenced as required, it will be assumed that the product or service fully complies with the City's terms, conditions, and specifications.
- By receiving a bid, City does not necessarily accept any variances contained in the bid. All variances submitted are subject to review and approval by the City. If any bid contains material variances that, in the City's sole opinion, make that bid conditional in nature, the City reserves the right to reject the bid or part of the bid that is declared, by the City as conditional.
- 1.08 NO BIDS:** If you do not intend to bid please indicate the reason, such as insufficient time to respond, do not offer product or service, unable to meet specifications, schedule would not permit, or any other reason, in the space provided in this ITB. Failure to bid or return no bid comments prior to the bid due and opening date and time,

indicated in this ITB, may result in your firm being deleted from our Bidder's registration list for the Commodity Class Item requested in this ITB.

**1.09 MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION AND BUSINESS DEFINITIONS:** The City of Fort Lauderdale wants to increase the participation of Minority Business Enterprises (MBE), Women Business Enterprises (WBE), and Small Business Enterprises (SBE) in its procurement activities. If your firm qualifies in accordance with the below definitions please indicate in the space provided in this ITB.

Minority Business Enterprise (MBE) "A Minority Business" is a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to: Blacks, Hispanics, Asian Americans, and Native Americans.

The term "Minority Business Enterprise" means a business at least 51 percent of which is owned by minority group members or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by minority group members. For the purpose of the preceding sentence, minority group members are citizens of the United States who include, but are not limited to: Blacks, Hispanics, Asian Americans, and Native Americans.

Women Business Enterprise (WBE) a "Women Owned or Controlled Business" is a business enterprise at least 51 percent of which is owned by females or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by females.

Small Business Enterprise (SBE) "Small Business" means a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than \$1,000,000 in annual gross receipts.

BLACK, which includes persons having origins in any of the Black racial groups of Africa.

WHITE, which includes persons whose origins are Anglo-Saxon and Europeans and persons of Indo-European decent including Pakistani and East Indian.

HISPANIC, which includes persons of Mexican, Puerto Rican, Cuban, Central and South American, or other Spanish culture or origin, regardless of race.

NATIVE AMERICAN, which includes persons whose origins are American Indians, Eskimos, Aleuts, or Native Hawaiians.

ASIAN AMERICAN, which includes persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

**1.10 MINORITY-WOMEN BUSINESS ENTERPRISE PARTICIPATION**

It is the desire of the City of Fort Lauderdale to increase the participation of minority (MBE) and women-owned (WBE) businesses in its contracting and procurement programs. While the City does not have any preference or set aside programs in place, it is committed to a policy of equitable participation for these firms. Proposers are requested to include in their proposals a narrative describing their past accomplishments and intended actions in this area. If proposers are considering minority or women owned enterprise participation in their proposal, those firms, and their specific duties have to be identified in the proposal. If a proposer is considered for award, he or she will be asked to meet with City staff so that the intended MBE/WBE participation can be formalized and included in the subsequent contract.

**1.11 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), as may be amended or revised, and 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), as may be amended or revised, 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.

**1.12 DEBARRED OR SUSPENDED BIDDERS OR PROPOSERS**

The bidder or proposer certifies, by submission of a response to this solicitation, that neither it nor its principals and subcontractors are presently debarred or suspended by any Federal department or agency.

**Part II DEFINITIONS/ORDER OF PRECEDENCE:**

**2.01 BIDDING DEFINITIONS** The City will use the following definitions in its general conditions, special conditions, technical specifications, instructions to bidders, addenda and any other document used in the bidding process:

INVITATION TO BID (ITB) The solicitation document used for soliciting competitive sealed bids for goods or services.

INVITATION TO NEGOTIATE (ITN) All solicitation documents, regardless of medium, whether attached to or incorporated by reference in solicitations for responses from firms that invite proposals from interested and qualified firms so the city may enter into negotiations with the firm(s) determined most capable of providing the required goods or services.

REQUEST FOR PROPOSALS (RFP) A solicitation method used for soliciting competitive sealed proposals to determine the best value among proposals for goods or services for which price may not be the prevailing factor in award of the contract, or the scope of work, specifications or contract terms and conditions may be difficult to define. Such solicitation will consider the qualifications of the proposers along with evaluation of each proposal using identified and generally weighted evaluation criteria. RFPs may include price criteria whenever feasible, at the discretion of the city.

REQUEST FOR QUALIFICATIONS (RFQ) A solicitation method used for requesting statements of qualifications in order to determine the most qualified proposer for professional services.

BID – a price and terms quote received in response to an ITB.

PROPOSAL – a proposal received in response to an RFP.

BIDDER – Person or firm submitting a Bid.

PROPOSER – Person or firm submitting a Proposal.

RESPONSIVE BIDDER – A firm who has submitted a bid, offer, quote, or response which conforms in all material respects to the competitive solicitation document and all of its requirements.

RESPONSIBLE BIDDER – A firm who is fully capable of meeting all requirements of the solicitation and subsequent contract. The respondent must possess the full capability, including financial and technical, ability, business judgment, experience, qualifications, facilities, equipment, integrity, capability, and reliability, in all respects to perform fully the contract requirements and assure good faith performance as determined by the city.

FIRST RANKED PROPOSER – That Proposer, responding to a City RFP, whose Proposal is deemed by the City, the most advantageous to the City after applying the evaluation criteria contained in the RFP.

SELLER – Successful Bidder or Proposer who is awarded a Purchase Order or Contract to provide goods or services to the City.

CONTRACTOR – Any firm having a contract with the city. Also referred to as a "Vendor".

CONTRACT – All types of agreements, including purchase orders, for procurement of supplies, services, and construction, regardless of what these agreements may be called.

CONSULTANT – A firm providing professional services for the city.

**2.02 SPECIAL CONDITIONS:** Any and all Special Conditions contained in this ITB that may be in variance or conflict with these General Conditions shall have precedence over these General Conditions. If no changes or deletions to General Conditions are made in the Special Conditions, then the General Conditions shall prevail in their entirety,

**PART III BIDDING AND AWARD PROCEDURES:**

**3.01 SUBMISSION AND RECEIPT OF BIDS:** To receive consideration, bids must be received prior to the bid opening date and time. Unless otherwise specified, Bidders should use the proposal forms provided by the City. These forms may be duplicated, but failure to use the forms may cause the bid to be rejected. Any erasures or corrections on the bid must be made in ink and initialed by Bidder in ink. All information submitted by the Bidder shall be printed, typewritten or filled in with pen and ink. Bids shall be signed in ink. Separate bids must be submitted for each ITB issued by the City in separate sealed envelopes properly marked. When a particular ITB or RFP requires multiple copies of bids or proposals they may be included in a single envelope or package properly

sealed and identified. Only send bids via facsimile transmission (FAX) if the ITB specifically states that bids sent via FAX will be considered. If such a statement is not included in the ITB, bids sent via FAX will be rejected. Bids will be publicly opened in the Procurement Office, or other designated area, in the presence of Bidders, the public, and City staff. Bidders and the public are invited and encouraged to attend bid openings. Bids will be tabulated and made available for review by Bidder's and the public in accordance with applicable regulations.

- 3.02 MODEL NUMBER CORRECTIONS:** If the model number for the make specified in this ITB is incorrect, or no longer available and replaced with an updated model with new specifications, the Bidder shall enter the correct model number on the bidder proposal page. In the case of an updated model with new specifications, Bidder shall provide adequate information to allow the City to determine if the model bid meets the City's requirements.
- 3.03 PRICES QUOTED:** Deduct trade discounts, and quote firm net prices. Give both unit price and extended total. In the case of a discrepancy in computing the amount of the bid, the unit price quoted will govern. All prices quoted shall be F.O.B. destination, freight prepaid (Bidder pays and bears freight charges, Bidder owns goods in transit and files any claims), unless otherwise stated in Special Conditions. Each item must be bid separately. No attempt shall be made to tie any item or items contained in the ITB with any other business with the City.
- 3.04 TAXES:** The City of Fort Lauderdale is exempt from Federal Excise and Florida Sales taxes on direct purchase of tangible property. Exemption **number for EIN is 59-6000319, and State Sales tax exemption number is 85-8013875578C-1.**
- 3.05 WARRANTIES OF USAGE:** Any quantities listed in this ITB as estimated or projected are provided for tabulation and information purposes only. No warranty or guarantee of quantities is given or implied. It is understood that the Contractor will furnish the City's needs as they arise.
- 3.06 APPROVED EQUAL:** When the technical specifications call for a brand name, manufacturer, make, model, or vendor catalog number with acceptance of APPROVED EQUAL, it shall be for the purpose of establishing a level of quality and features desired and acceptable to the City. In such cases, the City will be receptive to any unit that would be considered by qualified City personnel as an approved equal. In that the specified make and model represent a level of quality and features desired by the City, the Bidder must state clearly in the bid any variance from those specifications. It is the Bidder's responsibility to provide adequate information, in the bid, to enable the City to ensure that the bid meets the required criteria. If adequate information is not submitted with the bid, it may be rejected. The City will be the sole judge in determining if the item bid qualifies as an approved equal.
- 3.07 MINIMUM AND MANDATORY TECHNICAL SPECIFICATIONS:** The technical specifications may include items that are considered minimum, mandatory, or required. If any Bidder is unable to meet or exceed these items, and feels that the technical specifications are overly restrictive, the bidder must notify the Procurement Services Division immediately. Such notification must be received by the Procurement Services Division prior to the deadline contained in the ITB, for questions of a material nature, or prior to five (5) days before bid due and open date, whichever occurs first. If no such notification is received prior to that deadline, the City will consider the technical specifications to be acceptable to all bidders.
- 3.08 MISTAKES:** Bidders are cautioned to examine all terms, conditions, specifications, drawings, exhibits, addenda, delivery instructions and special conditions pertaining to the ITB. Failure of the Bidder to examine all pertinent documents shall not entitle the bidder to any relief from the conditions imposed in the contract.
- 3.09 SAMPLES AND DEMONSTRATIONS:** Samples or inspection of product may be requested to determine suitability. Unless otherwise specified in Special Conditions, samples shall be requested after the date of bid opening, and if requested should be received by the City within seven (7) working days of request. Samples, when requested, must be furnished free of expense to the City and if not used in testing or destroyed, will upon request of the Bidder, be returned within thirty (30) days of bid award at Bidder's expense. When required, the City may request full demonstrations of units prior to award. When such demonstrations are requested, the Bidder shall respond promptly and arrange a demonstration at a convenient location. Failure to provide samples or demonstrations as specified by the City may result in rejection of a bid.
- 3.10 LIFE CYCLE COSTING:** If so specified in the ITB, the City may elect to evaluate equipment proposed on the basis of total cost of ownership. In using Life Cycle Costing, factors such as the following may be considered: estimated useful life, maintenance costs, cost of supplies, labor intensity, energy usage, environmental impact, and

residual value. The City reserves the right to use those or other applicable criteria, in its sole opinion that will most accurately estimate total cost of use and ownership.

- 3.11 BIDDING ITEMS WITH RECYCLED CONTENT:** In addressing environmental concerns, the City of Fort Lauderdale encourages Bidders to submit bids or alternate bids containing items with recycled content. When submitting bids containing items with recycled content, Bidder shall provide documentation adequate for the City to verify the recycled content. The City prefers packaging consisting of materials that are degradable or able to be recycled. When specifically stated in the ITB, the City may give preference to bids containing items manufactured with recycled material or packaging that is able to be recycled.
- 3.12 USE OF OTHER GOVERNMENTAL CONTRACTS:** The City reserves the right to reject any part or all of any bids received and utilize other available governmental contracts, if such action is in its best interest.
- 3.13 QUALIFICATIONS/INSPECTION:** Bids will only be considered from firms normally engaged in providing the types of commodities/services specified herein. The City reserves the right to inspect the Bidder's facilities, equipment, personnel, and organization at any time, or to take any other action necessary to determine Bidder's ability to perform. The Procurement Director reserves the right to reject bids where evidence or evaluation is determined to indicate inability to perform.
- 3.14 BID SURETY:** If Special Conditions require a bid security, it shall be submitted in the amount stated. A bid security can be in the form of a bid bond or cashier's check. Bid security will be returned to the unsuccessful bidders as soon as practicable after opening of bids. Bid security will be returned to the successful bidder after acceptance of the performance bond, if required; acceptance of insurance coverage, if required; and full execution of contract documents, if required; or conditions as stated in Special Conditions.
- 3.15 PUBLIC RECORDS/TRADE SECRETS/COPYRIGHT:** The Proposer's response to the RFP is a public record pursuant to Florida law, which is subject to disclosure by the City under the State of Florida Public Records Law, Florida Statutes Chapter 119.07 ("Public Records Law"). The City shall permit public access to all documents, papers, letters or other material submitted in connection with this RFP and the Contract to be executed for this RFP, subject to the provisions of Chapter 119.07 of the Florida Statutes.

Any language contained in the Proposer's response to the RFP purporting to require confidentiality of any portion of the Proposer's response to the RFP, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Florida law, shall be void. If a Proposer submits any documents or other information to the City which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 ("Public Records Laws"), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Proposer's response to the RFP constitutes a Trade Secret. The city's determination of whether an exemption applies shall be final, and the proposer agrees to defend, indemnify, and hold harmless the city and the city's officers, employees, and agent, against any loss or damages incurred by any person or entity as a result of the city's treatment of records as public records. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK YOUR RESPONSE TO THE RFP AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR RESPONSE TO THE RFP OR ANY PART THEREOF AS COPYRIGHTED.

- 3.16 PROHIBITION OF INTEREST:** No contract will be awarded to a bidding firm who has City elected officials, officers or employees affiliated with it, unless the bidding firm has fully complied with current Florida State Statutes and City Ordinances relating to this issue. Bidders must disclose any such affiliation. Failure to disclose any such affiliation will result in disqualification of the Bidder and removal of the Bidder from the City's bidder lists and prohibition from engaging in any business with the City.
- 3.17 RESERVATIONS FOR AWARD AND REJECTION OF BIDS:** The City reserves the right to accept or reject any or all bids, part of bids, and to waive minor irregularities or variations to specifications contained in bids, and minor irregularities in the bidding process. The City also reserves the right to award the contract on a split order basis, lump sum basis, individual item basis, or such combination as shall best serve the interest of the City. The City reserves the right to make an award to the responsive and responsible bidder whose product or service meets the terms, conditions, and specifications of the ITB and whose bid is considered to best serve the City's interest. In

determining the responsiveness of the offer and the responsibility of the Bidder, the following shall be considered when applicable: the ability, capacity and skill of the Bidder to perform as required; whether the Bidder can perform promptly, or within the time specified, without delay or interference; the character, integrity, reputation, judgment, experience and efficiency of the Bidder; the quality of past performance by the Bidder; the previous and existing compliance by the Bidder with related laws and ordinances; the sufficiency of the Bidder's financial resources; the availability, quality and adaptability of the Bidder's supplies or services to the required use; the ability of the Bidder to provide future maintenance, service or parts; the number and scope of conditions attached to the bid.

If the ITB provides for a contract trial period, the City reserves the right, in the event the selected bidder does not perform satisfactorily, to award a trial period to the next ranked bidder or to award a contract to the next ranked bidder, if that bidder has successfully provided services to the City in the past. This procedure to continue until a bidder is selected or the contract is re-bid, at the sole option of the City.

**3.18 LEGAL REQUIREMENTS:** Applicable provisions of all federal, state, county laws, and local ordinances, rules and regulations, shall govern development, submittal and evaluation of all bids received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a bid response hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any bidder shall not constitute a cognizable defense against the legal effect thereof.

**3.19 BID PROTEST PROCEDURE: ANY PROPOSER OR BIDDER WHO IS NOT RECOMMENDED FOR AWARD OF A CONTRACT AND WHO ALLEGES A FAILURE BY THE CITY TO FOLLOW THE CITY'S PROCUREMENT ORDINANCE OR ANY APPLICABLE LAW MAY PROTEST TO THE CHIEF PROCUREMENT OFFICER, BY DELIVERING A LETTER OF PROTEST TO THE DIRECTOR OF FINANCE WITHIN FIVE (5) DAYS AFTER A NOTICE OF INTENT TO AWARD IS POSTED ON THE CITY'S WEB SITE AT THE FOLLOWING URL:**

**<https://www.fortlauderdale.gov/departments/finance/procurement-services/notices-of-intent-to-award>**

**THE COMPLETE PROTEST ORDINANCE MAY BE FOUND ON THE CITY'S WEB SITE AT THE FOLLOWING URL:**

**[https://library.municode.com/fl/fort\\_lauderdale/codes/code\\_of\\_ordinances?nodeId=COOR\\_CH2AD\\_ARTVFI\\_DIV2PR\\_S2-182DIREPR](https://library.municode.com/fl/fort_lauderdale/codes/code_of_ordinances?nodeId=COOR_CH2AD_ARTVFI_DIV2PR_S2-182DIREPR)**

#### **PART IV BONDS AND INSURANCE**

**4.01 PERFORMANCE BOND:** If a performance bond is required in Special Conditions, the Contractor shall within fifteen (15) working days after notification of award, furnish to the City a Performance Bond, payable to the City of Fort Lauderdale, Florida, in the face amount specified in Special Conditions as surety for faithful performance under the terms and conditions of the contract. If the bond is on an annual coverage basis, renewal for each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing Performance Bond. The Performance Bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida and having a resident agent.

Acknowledgement and agreement is given by both parties that the amount herein set for the Performance Bond is not intended to be nor shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Contractor to the City in the event of a material breach of this Agreement by the Contractor.

**4.02 INSURANCE:** If the Contractor is required to go on to City property to perform work or services as a result of ITB award, the Contractor shall assume full responsibility and expense to obtain all necessary insurance as required by City or specified in Special Conditions.

The Contractor shall provide to the Procurement Services Division original certificates of coverage and receive notification of approval of those certificates by the City's Risk Manager prior to engaging in any activities under this contract. The Contractor's insurance is subject to the approval of the City's Risk Manager. The certificates must list the City as an ADDITIONAL INSURED for General Liability Insurance, and shall have no less than thirty (30) days written notice of cancellation or material change. Further modification of the insurance requirements may be made at the sole discretion of the City's Risk Manager if circumstances change or adequate protection of the City is not presented. Bidder, by submitting the bid, agrees to abide by such modifications.

## **PART V PURCHASE ORDER AND CONTRACT TERMS:**

- 5.01 COMPLIANCE TO SPECIFICATIONS, LATE DELIVERIES/PENALTIES:** Items offered may be tested for compliance to bid specifications. Items delivered which do not conform to bid specifications may be rejected and returned at Contractor's expense. Any violation resulting in contract termination for cause or delivery of items not conforming to specifications, or late delivery may also result in:
- Bidders name being removed from the City's bidder's mailing list for a specified period and Bidder will not be recommended for any award during that period.
  - All City Departments being advised to refrain from doing business with the Bidder.
  - All other remedies in law or equity.
- 5.02 ACCEPTANCE, CONDITION, AND PACKAGING:** The material delivered in response to ITB award shall remain the property of the Seller until a physical inspection is made and the material accepted to the satisfaction of the City. The material must comply fully with the terms of the ITB, be of the required quality, new, and the latest model. All containers shall be suitable for storage and shipment by common carrier, and all prices shall include standard commercial packaging. The City will not accept substitutes of any kind. Any substitutes or material not meeting specifications will be returned at the Bidder's expense. Payment will be made only after City receipt and acceptance of materials or services.
- 5.03 SAFETY STANDARDS:** All manufactured items and fabricated assemblies shall comply with applicable requirements of the Occupation Safety and Health Act of 1970 as amended, and be in compliance with Chapter 442, Florida Statutes. Any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a result of this order must be accompanied by a completed Safety Data Sheet (SDS).
- 5.04 ASBESTOS STATEMENT:** All material supplied must be 100% asbestos free. Bidder, by virtue of bidding, certifies that if awarded any portion of the ITB the bidder will supply only material or equipment that is 100% asbestos free.
- 5.05 OTHER GOVERNMENTAL ENTITIES:** If the Bidder is awarded a contract as a result of this ITB, the bidder may, if the bidder has sufficient capacity or quantities available, provide to other governmental agencies, so requesting, the products or services awarded in accordance with the terms and conditions of the ITB and resulting contract. Prices shall be F.O.B. delivered to the requesting agency.
- 5.06 VERBAL INSTRUCTIONS PROCEDURE:** No negotiations, decisions, or actions shall be initiated or executed by the Contractor as a result of any discussions with any City employee. Only those communications which are in writing from an authorized City representative may be considered. Only written communications from Contractors, which are assigned by a person designated as authorized to bind the Contractor, will be recognized by the City as duly authorized expressions on behalf of Contractors.
- 5.07 INDEPENDENT CONTRACTOR:** The Contractor is an independent contractor under this Agreement. Personal services provided by the Proposer shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, procurement policies unless otherwise stated in this ITB, and other similar administrative procedures applicable to services rendered under this contract shall be those of the Contractor.
- 5.08 INDEMNITY/HOLD HARMLESS AGREEMENT:** The Contractor agrees to protect, defend, indemnify, and hold harmless the City of Fort Lauderdale and its officers, employees and agents from and against any and all losses, penalties, damages, settlements, claims, costs, charges for other expenses, or liabilities of every and any kind including attorney's fees, in connection with or arising directly or indirectly out of the work agreed to or performed by Contractor under the terms of any agreement that may arise due to the bidding process. Without limiting the foregoing, any and all such claims, suits, or other actions relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged violations of any applicable Statute, ordinance, administrative order, rule or regulation, or decree of any court shall be included in the indemnity hereunder.
- 5.09 TERMINATION FOR CAUSE:** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the provisions of this Agreement, the City may upon written notice to the Contractor terminate the right of the Contractor to proceed under this Agreement, or with such part or parts of the Agreement as to which there has been default, and may hold the Contractor liable for any damages caused to the City by reason of such default and termination. In the event of

such termination, any completed services performed by the Contractor under this Agreement shall, at the option of the City, become the City's property and the Contractor shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of setoff until such time as the amount of damages due to the City from the Contractor can be determined.

- 5.10 TERMINATION FOR CONVENIENCE:** The City reserves the right, in its best interest as determined by the City, to cancel contract by giving written notice to the Contractor thirty (30) days prior to the effective date of such cancellation.
- 5.11 CANCELLATION FOR UNAPPROPRIATED FUNDS:** The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.
- 5.12 RECORDS/AUDIT:** The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The Contractor agrees to make available to the City Auditor or designee, during normal business hours and in Broward, Miami-Dade or Palm Beach Counties, all books of account, reports and records relating to this contract should be retained for the duration of the contract and for three years after the final payment under this Agreement, or until all pending audits, investigations or litigation matters relating to the contract are closed, whichever is later.
- 5.13 PERMITS, TAXES, LICENSES:** The successful Contractor shall, at their own expense, obtain all necessary permits, pay all licenses, fees and taxes, required to comply with all local ordinances, state and federal laws, rules and regulations applicable to business to be carried out under this contract.
- 5.14 LAWS/ORDINANCES:** The Contractor shall observe and comply with all Federal, state, local and municipal laws, ordinances rules and regulations that would apply to this contract.
- 5.15 NON-DISCRIMINATION:** There shall be no discrimination as to race, sex, color, creed, age or national origin in the operations conducted under this contract. The following applies to contracts with values over \$100,000: The Contractor certifies and represents that it will comply with Section 2-187, Code of Ordinances of the City of Fort Lauderdale, Florida, ("Section 2-187"), by not discriminating against the Contractor's 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, during the entire term of the contract that arises out of this ITB. The failure of the Contractor to comply with Section 2-187 shall be deemed to be a material breach of the contract, entitling the City to pursue any of the following remedies or any remedy provided under applicable law: (a) The City may terminate the contract if the Contractor fails to comply with Section 2-187; and (b) The City may retain all monies due or to become due until the Contractor complies with Section 2-187; and (c) The Contractor may be subject to debarment or suspension proceedings consistent with the procedures in Section 2-183, Code of Ordinances of the City of Fort Lauderdale, Florida.
- 5.16 UNUSUAL CIRCUMSTANCES:** If during a contract term where costs to the City are to remain firm or adjustments are restricted by a percentage or CPI cap, unusual circumstances that could not have been foreseen by either party of the contract occur, and those circumstances significantly affect the Contractor's cost in providing the required prior items or services, then the Contractor may request adjustments to the costs to the City to reflect the changed circumstances. The circumstances must be beyond the control of the Contractor, and the requested adjustments must be fully documented. The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the City will reserve the following options:
1. The contract can be canceled by the City upon giving thirty (30) days written notice to the Contractor with no penalty to the City or Contractor. The Contractor shall fill all City requirements submitted to the Contractor until the termination date contained in the notice.
  2. The City requires the Contractor to continue to provide the items and services at the firm fixed (non-adjusted) cost until the termination of the contract term then in effect.

3. If the City, in its interest and in its sole opinion, determines that the Contractor in a capricious manner attempted to use this section of the contract to relieve them of a legitimate obligation under the contract, and no unusual circumstances had occurred, the City reserves the right to take any and all action under law or equity. Such action shall include, but not be limited to, declaring the Contractor in default and disqualifying him for receiving any business from the City for a stated period of time.

If the City does agree to adjusted costs, these adjusted costs shall not be invoiced to the City until the Contractor receives notice in writing signed by a person authorized to bind the City in such matters.

- 5.17 **ELIGIBILITY:** If applicable, the Contractor must first register with the Department of State of the State of Florida, in accordance with Florida State Statutes, prior to entering into a contract with the City.
- 5.18 **PATENTS AND ROYALTIES:** The Contractor, without exception, shall indemnify and save harmless the City and its employees from liability of any nature and kind, including cost and expenses for or on account of any copyrighted, patented or un-patented invention, process, or article manufactured or used in the performance of the contract, including its use by the City. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.
- 5.19 **ASSIGNMENT:** Contractor shall not transfer or assign the performance required by this ITB without the prior written consent of the City. Any award issued pursuant to this ITB, and the monies, which may become due hereunder, are not assignable except with the prior written approval of the City Commission or the City Manager or City Manager's designee, depending on original award approval.
- 5.20 **LITIGATION VENUE:** The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place in Broward County, Florida and that all litigation between them in the federal courts shall take place in the Southern District in and for the State of Florida.
- 5.21 **LOCATION OF UNDERGROUND FACILITIES:** If the Contractor, for the purpose of responding to this solicitation, requests the location of underground facilities through the Sunshine State One-Call of Florida, Inc. notification system or through any person or entity providing a facility locating service, and underground facilities are marked with paint, stakes or other markings within the City pursuant to such a request, then the Contractor, shall be deemed non-responsive to this solicitation in accordance with Section 2-184(5) of the City of Fort Lauderdale Code of Ordinances.
- 5.22 **PUBLIC RECORDS**

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

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.