

**FIRST AMENDMENT TO AGREEMENT  
FOR  
DOWNTOWN MOBILITY HUB STREETSCAPE IMPROVEMENTS**

This First Amendment to the Downtown Mobility Hub Streetscape Improvements Agreement, ("Agreement") by and between the City of Fort Lauderdale, a Florida municipal corporation, ("City"), whose address is 100 North Andrews Avenue, Fort Lauderdale, FL 33301 and Continental Construction USA, LLC, ("Contractor"), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

WHEREAS, an Agreement between the City and Contractor for Downtown Mobility Hub Streetscape Improvements was approved by the City Commission of the City of Fort Lauderdale, Florida, at its meeting of September 3, 2019, for execution by the parties; and

WHEREAS, since November 5, 2019, the City has hosted weekly progress meetings with the Broward Metropolitan Planning Organization, the City's consultant, and the Contractor to discuss the construction progress, status, and future progress; and

WHEREAS, the Contractor demolished and damaged certain private properties adjacent to the City, that are owned by a private entity and which work was not authorized by the City; and

WHEREAS Streetscape Easement Agreements for N.W. 2<sup>nd</sup> Street have been negotiated between FLL Andrews Development LLC, FLL Flagler Development LLC ("Grantors") and the City for consideration and approval by the City Commission to allow for the construction, installation, inspection, maintenance and use of the Streetscape Improvements on a certain Easement Area;

WHEREAS, pursuant to Section 10.3, of the Agreement, the Contractor is required to provide and maintain adequate insurance coverage; and

WHEREAS, the parties desire to enter into this First Amendment to the Agreement to add additional insurance policies and coverage required by the Grantors.

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

1. The above recitals and representations are true and correct and are incorporated herein.
2. The Agreement is hereby amended to add Section 10.5 to the Agreement, which shall read as follows:

The following additional insurance policies and coverage are required:

10.5 Additional Insurance Requirements.

Contractor shall procure and maintain, at no cost to City, the following insurance as of the effective date of this First Amendment:

- (a) Commercial General Liability Insurance coverage with respect to the Easement Area, which insurance shall be a minimum of \$1,000,000 per occurrence, \$2,000,000 general aggregate and \$2,000,000 products and completed operations.
- (b) Workers' Compensation Insurance at the statutory limits, if applicable;
- (c) Employer's liability insurance with limits of at least \$1,000,000, if applicable;
- (d) Automobile Liability Insurance, written to cover all owned, hired and non-owned automobiles with a \$1,000,000 combined single limit; and
- (e) Umbrella/Excess Insurance with minimum limits of Five Million and No/100 Dollars (\$5,000,000) each occurrence and aggregate.
- (f) Name FLL Andrews Development LLC, and FLL Flagler Development LLC as additional insureds on the Commercial General Liability and Automobile Liability insurance policies for the work performed on the property owned by those corporations.

All insurance required to be maintained in this Section 10.5 shall (i) be issued by an insurance company licensed to do business in the State of Florida, (ii) provide for a 30-day notice of cancellation, expiration or modification to be given to all additional insureds thereunder, (iii) name City and its mortgagees, as additional insureds, (iv) provide renewal certificates to all additional insureds 10 days prior to expiration of the then current policies, (v) be issued as primary insurance and non-contributing with any insurance that may be carried by City; and (vi) insure the Contractor's performance of its indemnification obligations hereunder. Such insurance shall be maintained at all times during the Term of this Agreement with insurers currently rated at least "A-" Financial Strength Rating and "VIII" in Financial Size Category by A.M. Best. Subject to the terms and conditions hereof, the Contractor may self-insure, provided, however, that any self-insured retentions in excess of \$100,000 must be declared to and approved by City, and Contractor shall provide to City and City's mortgagee (if any) with

certificates of self-insurance specifying the extent of self-insurance coverage hereunder and containing a waiver of subrogation provision reasonably satisfactory to City. Contractor shall have the right to "self-insure" (as hereinafter defined) with respect to the insurance required of the Contractor provided the same does not thereby decrease the insurance coverage or limits set forth in this Section or adversely affect the protection afforded to City or any of the Indemnified Parties (as hereinafter defined) as would have been provided had such insurance been obtained from a licensed insurer authorized to do business in the State of Florida having the ability to perform its obligations under such insurance. Any self-insurance shall be deemed to contain all of the terms and conditions applicable to such insurance as required in this Section including, without limitation, a full waiver of subrogation. "Self-insure" shall mean that the Contractor is itself acting as though it were the insurance company providing the insurance required under the provisions hereof and Contractor shall pay any amounts due in lieu of insurance proceeds which would have been payable if the insurance policies had been carried, which amounts shall be treated as insurance proceeds for all purposes under this Agreement. All amounts which Contractor pays or is required to pay and all loss or damages resulting from risks for which Contractor has elected to self-insure shall be subject to the waiver of subrogation provisions of this Agreement and shall not limit Contractor's indemnification obligations set forth in this Agreement. In the event that Contractor elects to self-insure and an event or claim occurs for which a defense and/or coverage would have been available from the insurance company, Contractor shall: (x) undertake the defense of any such claim, including a defense of City, at Contractor's sole cost and expense, with counsel selected by Contractor and reasonably acceptable to City; and (y) use its own funds to pay any claim or replace property or otherwise provide the funding which would have been available from insurance proceeds but for such election by Contractor to self-insure. If Contractor elects to so self-insure, then, with respect to any claims which may result from incidents occurring during the term, such self insurance and Contractor's obligations with respect to such self-insurance shall survive the expiration or earlier termination of this Agreement.

Further, the Contractor shall require all subcontractors engaged by the Contractor to perform any work at or about the Easement Area, including any maintenance of Streetscape Improvements to carry the types of insurance set forth in Section 10.5(a) – (e) above, in at least the limits specified in said Section 10.5 (a) – (e) (which may be provided as a combination of primary and excess coverage).

It is agreed, however, that subcontractors working for a prime contractor may obtain insurance in accordance with industry standards rather than these limits and terms so long as the prime contractor maintains insurance in accordance with these limits and terms.

Evidence that the insurance coverage required hereunder is in place by contractors shall be furnished to City upon request prior to the commencement of any work on or about the Easement Area. In addition, renewal certificates shall be provided to City at least five (5) days prior to the expiration date of the then current policy. All such certificates shall state that City shall be notified in writing thirty (30) days prior to cancellation of any such insurance and that City is an additional insured thereunder.

City may, in the exercise of its reasonable discretion, from time to time (but not more frequently than once every five years), request that Contractor carry and require all subcontractors engaged by the Contractor to perform work at or about the Easement Area, including any maintenance of Streetscape Improvements to carry additional insurance and/or adjust insurance coverages and deductibles to meet those amounts that would be carried by a prudent user using the Easement Area for the same purpose as Contractor. Neither Contractor, nor its subcontractor shall do any work until the Contractor and the subcontractor have obtained the insurance coverages required by the City in accordance with this provision and provided evidence of such insurance coverages to City.

3. The terms and conditions and provisions of the Agreement shall remain unchanged and in full force and effect, except as specifically amended by this First Amendment.
4. In the event of any conflict or ambiguity by and between the terms and provisions of the Agreement, the terms and provision of this First Amendment to the Agreement shall control, to the extent of any such conflict or ambiguity.
5. This First Amendment may be fully executed in multiple copies by the parties each of which, bearing original signatures, shall have the force and effect of an original document.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals for this First Amendment to Agreement the day and year first written above.

CITY

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

By: \_\_\_\_\_  
CHRISTOPHER J. LAGERBLOOM  
City Manager

(CORPORATE SEAL)

ATTEST:

By: \_\_\_\_\_  
JEFFREY A. MODARELLI  
City Clerk

Approved as to Legal Form:  
Alain E. Boileau, City Attorney

By: \_\_\_\_\_  
Kimberly Cunningham Mosley  
Assistant City Attorney

CONTRACTOR

WITNESSES:

CONTINENTAL CONSTRUCTION USA, LLC

\_\_\_\_\_

By \_\_\_\_\_

Print Name

Print Name: Juan Carlos Jurado

Title: Manager

\_\_\_\_\_

Print Name

(CORPORATE SEAL)

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this \_\_\_\_ day of \_\_\_\_\_, **20**\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Continental Construction USA, LLC, a Florida limited liability company.

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary Public-State of Florida

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

My Commission Expires:  
Personally Known \_\_\_\_\_ OR Produced  
Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_