

COMPREHENSIVE AGREEMENT

This Comprehensive Agreement is entered into this 3 day of June 2021, by and between the **CITY OF FORT LAUDERDALE, FLORIDA**, a Florida municipal corporation ("CITY"), and **HENSEL PHELPS CONSTRUCTION CO., GP**, a Delaware General Partnership authorized to transact business in the State of Florida, d/b/a/ **HENSEL PHELPS CONSTRUCTION** ("HENSEL PHELPS"), collectively as "Party" or "Parties," pursuant to Section 255.065(7), Florida Statutes:

RECITALS

WHEREAS, the CITY holds all right, title or interest in the real property at 501 Seabreeze Boulevard and described as Fort Lauderdale Aquatic Complex ("Property") and located in the City of Fort Lauderdale, Florida, commonly known as the site of the Aquatic Center, and which is more legally described as follows:

PARCEL "A", INTERNATIONAL SWIMMING HALL OF FAME
COMPLEX PLAT, ACCORDING TO THE PLAT THEREOF,
RECORDED IN PLAT BOOK 138, PAGE 19 OF THE PUBLIC
RECORDS OF BROWARD COUNTY, FLORIDA

WHEREAS, HENSEL PHELPS is the Design-Builder currently operating at the Fort Lauderdale Aquatic Complex under a Design-Build Interim Agreement dated August 18, 2020; and

WHEREAS, on October 22, 2019, the CITY received an unsolicited proposal from HENSEL PHELPS pursuant to Section 255.065, Florida Statutes, to design and construct a South Building Locker Room Facility ("FLAC South Building") at the Fort Lauderdale Aquatic Complex, as more particularly described in its unsolicited proposal; and

WHEREAS, pursuant to Resolution No. 19-227, the City Commission, at its meeting on November 5, 2019, determined that the unsolicited proposal submitted by HENSEL PHELPS serves a public purpose as a recreational, sporting, and cultural facility which will be used by the public at large or in support of an accepted public purpose or activity, and as proposed, constitutes a qualifying project pursuant to Section 255.065, Florida Statutes; and

WHEREAS, after the November 5, 2019 Regular Commission meeting, the CITY publicly advertised the unsolicited proposal and requested alternate proposals from November 15, 2019 through November 21, 2019, and did not receive alternate proposals by December 6, 2019, a period of 21 days, in accordance with Section 255.065(5)(c), Florida Statutes, the CITY was authorized to commence negotiations for a Comprehensive Agreement with HENSEL PHELPS, encompassing therein the development, improvement, design, and construction of portions of the Property; and

WHEREAS, the CITY has determined that Qualifying Project shall serve a public purpose, insofar as the benefits to the local community of having a state-of-the-art FLAC South Building at the Fort Lauderdale Aquatic Complex is in the public's interest, including, but not limited to, the creation of new jobs, increased tourist trade and promotional opportunities, direct and indirect tax revenues, the enhancement of the community's image, and the creation of facilities for public use; and

WHEREAS, the CITY has determined that it is in the public's best interest to expand the Fort Lauderdale Aquatic Complex by replacing the existing South Locker Room Building, to expand the recreational opportunities afforded to the greater Fort Lauderdale community, with the proposed FLAC South Building; and

WHEREAS, because of the aforementioned benefits to the community, the CITY and HENSEL PHELPS have agreed to undertake development of the FLAC South Building to complement and facilitate the aforementioned uses of the Property as more particularly described in this Comprehensive Agreement ("Qualified Project"); and

WHEREAS, at its regular meeting of May 18, 2021, the City Commission unanimously approved the Qualified Project and this Comprehensive Agreement in accordance with Section 255.065(5)(c), Florida Statutes; and

WHEREAS, the CITY and HENSEL PHELPS desire to enter into this Comprehensive Agreement to supersede and replace all agreements now existing between them, both oral and written, effective as of the Effective Date;

COVENANTS

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable considerations, the adequacy and receipt of which are hereby acknowledged, the CITY and HENSEL PHELPS agree as follows:

ARTICLE 1. DEFINITIONS

1.1 "Agreement" means this Comprehensive Agreement as modified, amendments, exhibits, addenda, and attachments made part of this Agreement upon its execution.

- 1.1.1 EXHIBIT A: Permit Plans and Specifications
- 1.1.2 EXHIBIT B: Clarifications & Assumptions
- 1.1.3 EXHIBIT C: Schedule of Values
- 1.1.4 EXHIBIT D: Owner Direct Purchase

1.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

1.3 A "Change Order" is a written order signed by Owner and Design-Builder after execution of this Agreement, indicating changes in the scope of the Work or Contract Time, including substitutions proposed by Design-Builder and accepted by Owner.

1.4 "Comprehensive Agreement" means this Comprehensive Agreement between Hensel Phelps and the City, including all of the attached Exhibits.

1.5 "Construction Schedule" is the document prepared by Design-Builder that specifies the dates on which Design-Builder plans to begin and complete various parts of the construction phase services Work, and the Project, including dates on which information and approvals are required from Owner.

1.6 The "Contract Documents" consist of those documents identified in ARTICLE 16.

1.7 The "Contract Time" is the period between the Date of Commencement and total time authorized to achieve Final Completion.

1.8 "Day" means calendar day.

1.9 "Date of Commencement" is as provided for in Section 2.

1.10 "Defective Work" is any portion of the Work not in conformance to the requirements of the Contract Documents.

1.11 "Final Completion" occurs on the date when Design-Builder's obligations under this Agreement are complete and accepted by Owner and final payment becomes due and payable.

1.12 A "Hazardous Material" is any substance or material identified now as hazardous under any Laws or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal or clean-up.

1.13 "Construction Directive" is any written order containing Work instructions that is signed by Owner after execution this Agreement and before Substantial Completion to the Work directed by Owner.

1.14 "Error" shall mean a mistake in design, plans and/or specifications that incorporates into those documents an element that is incorrect and is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes mistakes in design, plans, specifications and/or shop drawings review that lead to materials and/or equipment being ordered and/or delivered where additional costs are incurred.

1.15 "Law" means a federal, state or local law, ordinance, code, rule, or regulation applicable to the Work with which Design-Builder must comply that are enacted as of the Agreement date.

1.16 "Omission" shall mean a scope of work missed by the Design Builder that is necessary for the Project, including a quantity miscalculation, which was later discovered

and added by Change Order and which is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes design that was wrong, but was corrected after award to the Design Builder, but before the construction process was materially affected.

1.17 "Others" means Owner's other: (a) contractors, (b) suppliers, (c) subcontractors, sub-subcontractors, or suppliers of (a) and (b); and others employed directly or indirectly by (a), (b), or (c) or any by any of them or for whose acts any of them may be liable.

1.18 "Overhead" shall mean (a) payroll costs and other compensation of Design-Builder's employees in Design-Builder's principal and branch offices; (b) general and administrative expenses of Design-Builder's principal and branch offices including charges against Design-Builder for delinquent payments; and (c) Design-Builder's capital expenses, including interest on capital used for the Work.

1.19 The "Owner" is the City of Fort Lauderdale.

1.20 The "Owner's Program" shall consist of the Permit Set of Plans and Specifications.

1.21 The "Parties" are collectively the Owner and Design-Builder.

1.22 The "Project," as identified in RECITALS, is the building, facility, or other improvements for which Design-Builder is to perform the Work under this Agreement.

1.23 "Project schedule" A schedule that shows the timing and sequencing of the design and construction required to meet the time criteria set forth in Owner's Program. The Project includes the Construction Schedule and is coordinated with design phase service activities.

1.24 "Qualified Project" shall mean the design and construction of the FLAC South Building located within the Site, and as more particularly described in the RECITALS, and as depicted in Exhibit A, attached hereto and incorporated herein.

1.25 A "Subcontractor" is a person or entity retained by Design-Builder as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Design Professional or any separate contractor employed by Owner or any separate contractor's subcontractors. The term Subcontractor does not include Design Professional or any separate contractor employed by Owner or any separate contractor's subcontractors.

1.26 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unscheduled disruption. The issuance of, at minimum, of a temporary certificate of occupancy is a prerequisite for Substantial

Completion. This date shall be confirmed by a certificate of Substantial Completion signed by the Parties.

1.27 A "Sub-subcontractor" is a party or entity who has an agreement with a Subcontractor or other Sub-subcontractor, or Supplier to perform any portion of the Work or to supply material or equipment.

1.28 A "Supplier" is a person or entity retained by Design-Builder to provide material and equipment for the Work.

1.29 "Value Engineering" means the detailed analysis of systems, equipment, materials, services, facilities and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions at the lowest cost consistent with required and necessary performance, reliability, quality and safety through the elimination or modification of those features which add cost without contributing to the facility's required function or design value.

1.30 The "Work" is the design services procured in accordance with Section 4.2, the construction services provided in accordance with Section 4.9, additional services in accordance with Section 4.16, and other services which are necessary to complete the Project in accordance with the Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by Owner or Others.

1.31 "Worksite" means the geographical area of the Project location mentioned in Recitals where the Work is to be performed

ARTICLE 2. TERM AND EFFECTIVE DATE

2.1 EFFECTIVE DATE: This Comprehensive Agreement shall be effective and binding upon City and Hensel Phelps beginning on the date it is signed by both Parties (the "Effective Date").

2.2 TERM: The Term of this Comprehensive Agreement shall commence on the Effective Date and will expire 554 days thereafter.

ARTICLE 3. GENERAL PROVISIONS

3.1. TEAM RELATIONSHIP. Each Party agrees to act on the basis of trust, good faith, and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner. The Parties shall each endeavor to promote harmony and cooperation among all Project participants

3.1.1 Neither Design-Builder nor any of its agents or employees shall act on behalf of or in the name of Owner unless authorized in writing by Owner's Representative.

3.2. ETHICS. Each Party shall perform with integrity. Each shall: (a) avoid conflicts of interest; (b) promptly disclose to the other Party any conflicts of interest which may arise. Each Party warrants it has not and shall not pay or receive any contingent fees or

gratuities to or from the other Party, including its agents, officers and employees, Design Professional, Subcontractors, Sub-subcontractors, Suppliers or Others, to secure preferential treatment.

3.3. **DESIGN PROFESSIONAL.** Architectural and engineering services shall be procured from Florida licensed, independent design professionals retained by Design-Builder. The person or entity providing architectural and engineering services shall be referred to as Design Professional. Design Professional is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between Design Builder and Design Professional.

3.3. **STANDARD OF CARE** Design Professional shall furnish and provide the architectural and engineering services necessary to design the Project in accordance with Owner's requirements, as outlined in Owner's Program and other relevant data defining the Project. The architectural and engineering services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, scope, and complexity, during the time in which the services are provided.

ARTICLE 4. DESIGN-BUILDER'S RESPONSIBILITIES

4.1 Design-Builder shall manage and oversee the construction of the Qualified Project.

4.2 **DESIGN SERVICES.** Pursuant to a mutually agreeable schedule, Design-Builder shall submit for Owner's written approval, as applicable, Design Development Documents or Construction Documents, based on the Contract Documents in existence at the time of the execution of this Agreement or any further development of Contract Documents that have been approved in writing by Owner.

4.2.1 If required, the Design Development Documents shall further define the Project, including drawings and outline specifications describing the Project size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, mechanical, and electrical systems. When Design-Builder submits the Design Development Documents, Design-Builder shall identify in writing all material changes and deviations that have taken place from the Contract Documents in existence at the time of the execution of this Agreement. Any changes in the Work contained in the Design Development Documents approved by Owner shall result in a Change Order pursuant to ARTICLE 9.

4.2.2 The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall be based upon codes, laws, or regulations enacted at the time the Building Permit application is submitted in accordance with the Florida Building Code. When Design-Builder submits the Construction Documents, Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design Development Documents or the Contract Documents in existence at the time of the execution of this Agreement. Any changes in the Work contained in the Construction Documents approved by

Owner shall result in a Change Order pursuant to ARTICLE 9. One set of approved construction documents shall be furnished to Owner before commencing construction.

4.3 OWNERSHIP OF DOCUMENTS

4.3.1 OWNERSHIP OF TANGIBLE DOCUMENTS. Owner shall receive ownership of the property rights, of all documents, drawings, specifications, electronic data, and information (hereinafter "Documents") prepared, provided or procured by Design- Builder, its Design Professional, Subcontractors, or consultants and distributed to Owner for this Project, upon the making of final payment to Design-Builder or in the event of termination under ARTICLE 13, upon payment for all sums due to Design-Builder pursuant to ARTICLE 10. Owner's acquisition of the Tangible Documents shall be subject to Owner's making of all payments required by this Agreement.

4.4 COPYRIGHT. The Parties agree that Owner shall obtain ownership of the copyright of all Documents.

4.5 USE OF DOCUMENTS IN EVENT OF TERMINATION. In the event of a termination of this Agreement pursuant to ARTICLE 13, Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright.

4.6 OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT. After completion of the Project, Owner may reuse, reproduce, or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling, or expanding the Project at the Worksite. Owner's use of the Documents without Design-Builder's involvement or on other projects is at Owner's sole risk and without liability to the Design-Builder.

4.7 DESIGN-BUILDER'S USE OF DOCUMENTS Where Design-Builder has transferred its copyright interest in the Documents, Design-Builder may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

4.8 Design-Builder shall obtain from its Design Professional, Subcontractors, and Consultants rights and rights of use that correspond to the rights given by Design-Builder to Owner in this Agreement.

4.9 CONSTRUCTION SERVICES

Subject to the terms and conditions of this Comprehensive Agreement, Design-Builder in performing the construction of the Qualified Project shall:

- a. Exercise good faith commercially reasonable efforts to complete the Qualified

- Project in a safe, good and workmanlike manner within the time established in the Comprehensive Agreement and in the most expeditious manner;
- b. Be responsible for the completion of all work necessary to complete the Qualified Project, and be fully responsible for the payment of all monies due to any contractor or subcontractor performing the Work;
 - c. Comply with all applicable federal, state and local rules and regulations, including the City's ULDR's, in completing the Qualified Project. Design-Builder acknowledges and agrees that this requirement includes compliance with all federal, state, and local health and safety rules and regulations, including, but not limited to (i) the Occupational Safety and Health Act, 29 CFR 1910 and 1926, respectively, General Industry Standards and Construction Industry Standards, including regulations regarding Trenching and Shoring; (ii) the Florida Workers' Compensation Law, Chapter 440, Florida Statutes; (iii) Rules 38F and 38I, Florida Administrative Code; and (iv) Florida Department of Transportation Manual of Traffic Control and Safe Practices;
 - d. In accordance with Section 255.065(5)(b)(1) and (7)(a)(1), Florida Statutes, provide City with (i) guarantee by Hensel Phelps, of the performance of its obligations under this Comprehensive Agreement and the payment of all subcontractors. Such bond(s) shall be written by a surety licensed to do business in the state of Florida and otherwise acceptable to City; provided, however, that the surety shall be rated as "A-1" or better as to the general policy holders rating as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. Such bond(s) shall be recorded in the Public Records of Broward County, Florida by said subcontractors prior to the commencement of any construction work on the Qualified Project;
 - e. Require that all contractors and subcontractors for the Qualified Project maintain commercially reasonable insurance and cause City and Hensel Phelps to be named as additional insureds on all required policies, except workers' compensation;
 - f. Require all contractors and subcontractors to indemnify and hold harmless City and Hensel Phelps and its officers, agents, directors, and employees;
 - g. Obtain prior City approval for any Change Orders that would materially amend the scop or quality of the Qualifying Project;
 - h. Plan, organize, supervise, monitor, direct, and control the work on the Qualified Project to ensure that it is done competently and efficiently and in accordance with the design and budget and protect the work from loss due to weather, theft, or other cause. Neither City nor City funds shall be used to pay any Qualified Project costs to the extent that they directly arise from the negligence or willful misconduct of Hensel Phelps after the Effective Date;
 - i. Employ adequate safety precautions to prevent damage, injury or loss to personnel, the Work, the Qualified Project, and the Property;
 - j. Provide the City with copies of all reports, warranties, design documents and as-builts and assign all warranties to City;
 - k. Allow City reasonable access to the Qualified Project for observation, inspection, monitoring, and testing as contemplated in Section 255.065(7)(a)(3), Florida Statutes; and

- I. Manage the appropriately licensed contractors to ensure that any work not conforming to the Qualified Project designs and requirements is corrected or removed and replaced.

4.9.1 Construction will commence upon the issuance by Owner of a written notice to proceed.

4.9.2 In order to complete the Work, Design-Builder shall provide all necessary construction supervision, inspection, construction equipment, construction labor, materials, tools, and subcontracted items.

4.9.3 **COMPLIANCE WITH LAW.** Design-Builder shall give all notices and comply with all Laws at its own costs. Design-Builder shall be liable to Owner for all loss, cost, and expense attributable to any acts or omissions by Design-Builder, its employees, subcontractors, and agents resulting from the failure to comply with Laws, including fines, penalties, or corrective measures.

4.9.4 **CHANGES IN LAW.** The Contract Price or Contract Time, or both shall be equitably adjusted by Change Order for additional costs or time needed resulting from any change in Law, including increased taxes, enacted after the date of this Agreement.

4.9.5 Design-Builder shall maintain the Schedule of Work. This schedule shall indicate the dates for the start and completion of the various stages of the construction, including the dates when information and approvals are required from Owner. It shall be revised as required by the conditions of the Work.

4.9.6 Design-Builder shall obtain, and Owner shall pay, in addition to the Contract Price, for the building permits necessary for the construction of the Project.

4.9.7 Design-Builder shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. Owner shall be afforded access to all Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to Change Order work performed on the basis of actual cost.

4.9.8 Design-Builder shall provide periodic written reports to Owner on the progress of the Work in such detail as is required by Owner and as agreed to by the Parties.

4.9.9 Design-Builder shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Design-Builder shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Design-Builder shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Design-Builder shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

4.9.10 Design-Builder shall prepare and submit to Owner either:

- ☐ final marked up as-built drawings
- ☒ updated electronic data

that generally document how the various elements of the Work including changes were actually constructed or installed, or as defined by the Parties by attachment to this Agreement.

4.10 CONSTRUCTION SCHEDULE. Design-Builder shall prepare and submit a Schedule of Work for Owner's acceptance and written approval. This schedule shall indicate the commencement and completion dates of the various stages of the Work, including the dates when information and approvals are required from Owner. The Schedule shall be revised on a monthly basis or as mutually agreed by the Parties.

4.11 SAFETY OF PERSONS AND PROPERTY

4.11.1 SAFETY PRECAUTIONS AND PROGRAMS Design-Builder shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of Laws.

4.11.2 Design-Builder shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect:

4.11.2.1 its employees and other persons at the Worksite;

4.11.2.2 materials, supplies, and equipment stored at the Worksite for use in performance of the Work; and

4.11.2.3 the Project and all property located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

4.11.3 DESIGN-BUILDER'S SAFETY REPRESENTATIVE. Design-Builder shall designate an individual at the Worksite in the employ of Design-Builder who shall act as Design-Builder's designated safety representative with a duty to implement a safety program. Unless otherwise identified by Design-Builder in writing to Owner, the designated safety representative shall be Design-Builder's project superintendent. Design-Builder will report immediately in writing all accidents and injuries occurring at the Worksite to Owner. When Design-Builder is required to file an accident report with a public authority, Design-Builder shall furnish a copy of the report to Owner.

4.11.3 Design-Builder shall provide Owner with copies of all notices required of Design-Builder by Law. Design-Builder's safety program shall comply with the

requirements of governmental and quasi-governmental authorities having jurisdiction over the Work.

4.11.4 Damage or loss not insured under property insurance which may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of Design-Builder, or anyone for whose acts Design-Builder may be liable, shall be promptly remedied by Design-Builder.

4.11.5 If Owner deems any part of the Work or Worksite unsafe, Owner, without assuming responsibility for Design-Builder's safety program, may require Design-Builder to stop performance of the Work or take corrective measures satisfactory to Owner, or both. If Design-Builder does not promptly adopt corrective measures, Owner may perform them and reduce the amount of the Contract Price by the costs of the corrective measures. Design-Builder agrees to make no claim for damages, for an adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion based on Design-Builder's compliance with Owner's reasonable request.

4.12 EMERGENCIES. In any emergency affecting the safety of persons or property, Design-Builder shall act in a reasonable manner to prevent threatened damage, injury, or loss. Any change in the Contract Price, the Date of Substantial Completion, or the Date of Final Completion, on account of emergency work shall be determined as a Change Order, if applicable.

4.13 HAZARDOUS MATERIAL

4.13.1 Design-Builder shall not be obligated to commence or continue Work until all Hazardous Material discovered at the Worksite has been removed, rendered, or determined to be harmless by Owner as certified by an independent testing laboratory and, if applicable, approved by the appropriate government agency.

4.13.2 If after commencing the Work, Hazardous Material is discovered at the Project, Design-Builder shall be entitled to immediately stop Work in the affected area. Design-Builder shall report the condition to Owner and, if required, the government agency with jurisdiction.

4.13.3 Design-Builder shall not resume nor be required to continue any Work affected by any Hazardous Material without written mutual agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction. Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures or remedial action. Such measures shall be the sole responsibility of Owner and shall be performed in a manner minimizing any adverse effect upon the Work or the Project Schedule.

4.13.4 If Design-Builder incurs additional costs or is delayed due to the presence

or remediation of Hazardous Material, Design-Builder shall be entitled to an equitable adjustment in the Contract Price or a change order amending the date of Substantial Completion.

4.13.5 Safety Data Sheets (SDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Design-Builder, Subcontractors, Owner or Others, shall be maintained at the Project by Design-Builder and made available to Owner and Subcontractors.

4.13.6 During Design-Builder's performance of the Work, Design-Builder shall be responsible for the proper handling, application, storage, removal, and disposal of all materials brought to the Worksite by Design-Builder.

4.14 WARRANTY

4.14.1 Design-Builder warrants that all materials and equipment furnished under this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of Substantial Completion of the Work .

4.14.2 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face thereof. ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

4.14.3 Design-Builder shall secure required certificates of inspection, testing, or approval and deliver them to Owner.

4.14.4 Design-Builder shall collect all written warranties and equipment manuals and deliver them to Owner in a format directed by Owner.

4.14.5 With the assistance of Owner's maintenance personnel, Design-Builder shall direct the checkout of utilities and start-up operations and adjusting and balancing of systems and equipment for readiness.

4.15 CORRECTION OF WORK WITHIN ONE YEAR

4.15.1 Before Substantial Completion and within one year after the date of Substantial Completion of the Work or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents, if any Defective Work is found, Owner shall promptly notify Design-Builder in writing. Unless Owner provides written acceptance of the condition, Design-Builder shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period Owner discovers and does not promptly notify Design-Builder or

give Design- Builder an opportunity to test or correct Defective Work as reasonably requested by Design-Builder, Owner waives Design-Builder's obligation to correct that Defective Work as well as Owner's right to claim a breach of the warranty with respect to that Defective Work.

4.15.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall commence when that portion of Work is complete. Correction periods shall not be extended by corrective work performed by Design-Builder.

4.15.3 If Design-Builder fails to correct Defective Work within 21 days after receipt of written notice from Owner before final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due Design-Builder. If payments then or thereafter due Design-Builder are not sufficient to cover such amounts, Design-Builder shall pay the difference to Owner.

4.15.4 Design-Builder's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined under Florida law. If, after the one-year correction period but before the expiration of applicable statutes of limitations or repose periods have expired, Owner discovers any Work which Owner considers Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify Design-Builder and allow Design-Builder an opportunity to correct the Work if Design-Builder elects to do so. If Design-Builder elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from Owner and shall complete the correction of Work within a mutually agreed timeframe. If Design-Builder does not elect to correct the Work, Owner may have the Work corrected by itself or Others, and, if Owner intends to seek recovery of those costs from Design-Builder, Owner shall promptly provide Design-Builder with an accounting of the correction costs it incurs.

4.15.5 If Design-Builder's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, Design-Builder shall be responsible for the cost of correcting the destroyed or damaged property.

4.15.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Design-Builder's other obligations under the Contract Documents.

4.15.7 Before final payment, at Owner's option, Owner may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

4.16 ADDITIONAL SERVICES. Design-Builder shall provide or procure the following Additional services upon the request of Owner. A written agreement between the Parties

shall define the extent of such Additional services. Such Additional services shall be considered a Change in the Work.

4.16.1 Assisting in the developing Owner's Program, establishing the Project budget, investigating sources of financing, general business planning, and other information and documentation as may be required to establish the feasibility of the Project

4.16.2 Consultations, negotiations, and documentation supporting the procurement of Project financing;

4.16.3 Surveys, site evaluations, legal descriptions, and aerial photographs;

4.16.4 Appraisals of existing equipment, existing properties, new equipment, and developed properties;

4.16.5 Soils, subsurface, and environmental studies, reports, and investigations required for submission to governmental authorities or others having jurisdiction over the Project;

4.16.6 Consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits;

4.16.7 Artistic renderings, models, and mockups of the Project or any part of the Project or the Work;

4.16.8 Inventories of existing furniture, fixtures, furnishings, and equipment which might be under consideration for incorporation into the Project;

4.16.9 Interior design and related services including procurement and placement of furniture, furnishings, artwork, and decorations;

4.16.10 Design, coordination, management, expediting, and other services supporting the procurement of materials to be obtained, or work to be performed, by Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems, and other specialty systems which are not a part of this Agreement;

4.16.11 Estimates, proposals, appraisals, consultations, negotiations, and services in connection with the repair or replacement of an insured loss, provided such repair or replacement did not result from the negligence of Design-Builder;

4.16.12 The premium portion of overtime work ordered by Owner including productivity impact costs, other than that required by Design-Builder to maintain the Schedule of Work;

4.16.13 Out-of-town travel by Design Professional in connection with the Work, except between Design Professional's office, Design-Builder's office, Owner's office, and the Project site;

4.16.14 Obtaining service contractors and training maintenance personnel; assisting and consulting in the use of systems and equipment after the initial startup;

4.16.15 Services for tenant or rental spaces if required by this Owner;

4.16.16 Except when Design Professional or Design-Builder is a party to the proceeding, serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project;

4.16.17 Acting as a Green Building Facilitator as identified in the Agreement Green Building Addendum or separate addenda, which, at a minimum, shall include: (a) coordinating and facilitating the achievement of elected green measures and green status, such as achieving Leadership in Energy and Environmental Design "LEED" certification; (b) identifying, preparing, and submitting necessary documentation for elected green status; and (c) identifying project participants responsible to complete physical and procedural green measures;

4.16.18 Providing services relating to Hazardous Materials discovered at the worksite.

4.16.19 Performing formal Commissioning Services.

4.16.20 Other services as agreed to by the Parties and identified in an attached exhibit.

4.17 DESIGN-BUILDER'S REPRESENTATIVE. Design-Builder shall designate a person who shall be Design-Builder's authorized representative.

ARTICLE 5. OWNER'S RESPONSIBILITIES

5.1 INFORMATION AND SERVICES PROVIDED BY OWNER. Owner's responsibilities under this article shall be provided with reasonable detail and in a timely manner so as not to delay the Work.

5.2 WORKSITE INFORMATION. To the extent Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, Owner shall provide at Owner's expense and with reasonable promptness:

5.2.1 Information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, data, or drawings depicting existing

conditions, subsurface conditions, and environmental studies, reports, and investigations;

5.2.2 Tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by Law;

5.2.3 City shall render decisions under this Agreement in a timely manner.

5.3 RESPONSIBILITIES DURING DESIGN

5.3.1 Owner shall review and approve further development of the drawings and specifications as set forth in ARTICLE 5.

5.4 RESPONSIBILITIES DURING CONSTRUCTION

5.4.1 Owner shall review the Construction Schedule, timely approve milestone dates set forth, and timely respond to its obligations.

5.4.2 If Owner becomes aware of any error, omission, or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, Owner shall give prompt written notice to Design-Builder. The failure of Owner to give such notice shall not relieve Design-Builder of its obligations to fulfill the requirements of the Contract Documents.

5.4.3 Owner shall communicate with Design-Builder's Subcontractors, Suppliers and Design-Professional only through or in the presence of Design-Builder.

5.4.4 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 7:00 pm, Monday through Saturday, and between 10:00 am and 7:00 pm on Sunday. The Design-Builder 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-Builder 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-Builder and no extra payment shall be made to the Design-Builder for overtime work. The cost to the Design-Builder 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-Builder at the actual rate accrued.

City Inspector Hours: 8:00 am to 4:30 pm
Overtime: 4:31 pm to 7:59 am
Inspection Overtime Cost: \$100/hr.

5.4.5 Design-Builder's requests to work during other than regular hours that conform to the standard hours listed in the City Noise Ordinance Section 17-8 (1) must be submitted to the City's Project Manager within six (6) business days in advance of scheduled work. Request shall include the following information:

- Cover page with Design-Builder name, project name, and location;
- Description of work to be performed outside of normal work hours;
- Site plan and location map;
- Legal description;
- Justification for work and why extended work hours are being requested;
- Commencement date and duration of work;
- List of Design-Builder contacts, including those on site;
- Details on type of equipment to be used during extended work hours;
- Details on noise levels that may be produced by range of decibels, including current ambient levels at site and levels predicted from proposed construction impacts;
- Details on vibratory control measures to be implemented;
- Details on how neighbors in vicinity of work area will be notified;
- Details on how complaints will be resolved and/or mitigated; and
- MOT (define) plans approved by City's Transportation and Mobility Department (TAM) and any other agencies (if applicable).

5.4.6 If no lane closure or traffic impacts are necessary, the Design-Builder request must be submitted seven (7) business days in advance of scheduled work. If the work requires lane closures, request should be submitted at least ten (10) business days in advance, along with MOT plans approved by City's Transportation and Mobility Department, and any other agencies if necessary, to allow time for City Manager consideration and approval, City's MOT permit issuance, and notification to the public.

5.4.7 The Design-Builder will not be permitted overtime work or the performance of work on Saturday, Sunday or any legal holiday (designated by the City of Fort Lauderdale) without the City Manager's written consent at least seventy-two (72) hours in advance of the period proposed for such overtime work. Hours of work shall conform to the requirements of the City's Noise Ordinance.

5.4.8 If the Design-Build Firm requests to work outside regular hours that require a special exemption from the provisions of City Noise Ordinance Section 17-7.4, it shall follow the City's Department of Sustainable Development's process for "Requesting Exemption from the Noise Ordinance," located at <https://www.fortlauderdale.gov/departments/sustainable-development/building-services/building-permit-general-info>.

5.5 Upon issuance of a Hurricane Watch by the National Weather Service, Design-Builder 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-Builder 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-Builder 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-Builder to any additional compensation. Design-Builder shall be entitled to request an extension of time for completion of the Work, in accordance with the provision of Article 7 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.

5.6 OWNER'S REPRESENTATIVE. Owner's Representative is Thomas Green. Owner's representative shall: (a) be fully acquainted with the Project; (b) agree to furnish the information and services required of Owner in a timely manner; and (c). If Owner changes its representative or the representative's authority as listed above, Owner shall notify Design-Builder in writing.

ARTICLE 6. SUBCONTRACTS

6.1 BINDING OF SUBCONTRACTORS AND SUPPLIERS. Design-Builder agrees to bind every Subcontractor and Supplier (and require every Subcontractor to so bind its Sub-subcontractors and significant Suppliers) to all the provisions of this Agreement and the Contract Documents' applicable provisions to that portion of the Work.

ARTICLE 7. CONTRACT TIME

7.1 SUBSTANTIAL COMPLETION/FINAL COMPLETION

7.1.1 Substantial Completion of the Work shall be achieved in 460 Calendar Days from the Date of Commencement. Unless otherwise specified, the Work shall be finally complete within 94 Calendar Days after the date of Substantial Completion, subject to adjustments as provided for in the Contract Documents.

7.1.2 Time is of the essence with regards to the obligations of this Agreement and the Contract Documents.

7.2 DELAYS AND EXTENSIONS OF TIME

7.2.1 If Design-Builder is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Design-Builder, Design-Builder may be entitled to an equitable extension of the Date of Substantial Completion or the Date of Final Completion. Examples of causes beyond the control of Design-Builder include, but are not limited to, the following: (a) acts or omissions of Owner or Others; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under ARTICLE 13; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Design-Builder; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions, (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Design-Builder shall process any requests for equitable extensions of the Date of Substantial Completion or the Date of Final Completion in accordance with the provisions of ARTICLE 7.

7.2.2 In addition, if Design-Builder incurs additional costs as a result of a delay that is caused by acts or omissions of Owner or Others, changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work, encountering Hazardous Materials unanticipated by Design-Builder or concealed or unknown conditions, delay authorized by Owner pending dispute resolution, and suspension by Owner under Section 7.2, Section 10.1, Design-Builder shall be entitled to an equitable adjustment in the Contract Price subject to ARTICLE 9.

7.2.3 In the event delays to the project are encountered for any reason, the Parties agree to undertake reasonable steps to mitigate the effect of such delays.

7.3 LIQUIDATED DAMAGES

7.3.1 In the event of failure of the Design-Builder to substantially complete the Project, Design-Builder shall pay to the City the sum of One Thousand and 00/100 (\$1,000.00) for each calendar day after the time specified herein (plus any approved time extensions at the sole discretion of the City).

7.3.2 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-Builder. The Design-Builder 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 Design-Builder to complete the Agreement on time. The Liquidated Damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by Owner which are occasioned by any delay in achieving the date of Substantial Completion. Liquidated damages shall apply separately to each portion of the Work for which a time of completion is given.

7.3.3 The City shall have the right to deduct from or retain any compensation which may due or which may become due and payable to the Design-Builder the amount of liquidated damages, and if the amount retained by the City is insufficient to pay in full such liquidated damages, or other damages for delay, for all cost of engineering fees and inspection and other costs incurred in administering the construction of the Project beyond the completion day specified or beyond an approved extension of time granted to the Design-Builder, whichever is later.

7.3.4 City is authorized to deduct liquidated damages from monies withheld due to Design-Builder for the Work under this Agreement or as much thereof as City may, in its sole discretion, deem just and reasonable.

ARTICLE 8. CONTRACT PRICE

The Lump Sum Contract Price is Nine Million Eight Hundred and Fifty Thousand Dollars (\$9,850,000).

ARTICLE 9. CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished by Change Order, Construction Directive, or a minor change in the Work, subject to the limitations stated in the Contract Documents.

9.1 CHANGE ORDER

9.1.1 Design-Builder may request or Owner may order changes in the Work within the general scope of the Contract Documents consisting of adjustment to the Contract Price or the Date of Substantial Completion or the Date of Final Completion. All such changes in the Work shall be authorized by applicable Change Order and processed in accordance with this article. Each adjustment in the Contract Price resulting from a Change Order shall clearly separate the amount attributable to Design services.

9.1.2 The Parties shall negotiate an appropriate adjustment to Contract Price or the Date of Substantial Completion or the Date of Final Completion in good faith and conclude negotiations as expeditiously as possible.

9.1.3 NO OBLIGATION TO PERFORM Design-Builder shall not be obligated to

perform changes in the Work until a Change Order has been executed or a written Construction Directive has been issued.

9.2 CONSTRUCTION DIRECTIVE

9.2.1 Owner may issue a Construction Directive directing a change in the Work before agreeing on an adjustment, if any, in the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design services or directing Design-Builder to perform Work that Owner believes is not a change. If the Parties disagree that the Construction Directed work is within the scope of the Work, Design-Builder shall perform the disputed Work and furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

9.2.2 The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design services, arising out of a Construction Directive. As the changed work is completed, the Design Builder shall submit its costs for such work with its Application for Payment beginning with the next Application for Payment within thirty (30) Days of the issuance of the Construction Directive. Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work

9.2.3 If the Parties agree upon the adjustments in the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design services, for a change in the Work directed by a Construction Directive, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Construction Directives issued since the last Change Order.

9.3 CONCEALED OR UNKNOWN SITE CONDITIONS. If a condition encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Design-Builder shall stop affected Work after the concealed or unknown condition is first observed and give prompt written notice of the condition to Owner. Owner shall investigate and then issue a Construction Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Design-Builder is to proceed. Design-Builder shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or Contract Time as a result of the condition, including any dispute about its existence or nature, shall be determined as provided in this ARTICLE 9.

9.4 DETERMINATION OF COST

9.4.1 An increase or decrease in the Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

9.4.1.1 unit prices set forth in this Agreement or as subsequently agreed;

9.4.1.2 a mutually accepted, itemized lump sum; or

9.4.1.3 **COST OF THE WORK.** Cost of the Work as defined by this Section 9.4.1.3 plus 2.5% for Overhead and 7.5% for profit. "Cost of the Work" shall include the following costs reasonably incurred to perform a change in the Work:

9.4.1.3.1 Labor wages directly employed by Design-Builder performing the Work;

9.4.1.3.2 Salaries of Design-Builder's employees when stationed at the field office to the extent necessary to complete the applicable Work, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office as mutually agreed by the Parties in writing;

9.4.1.3.3 Cost of applicable employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under Design-Builder's standard personnel policy, insofar as such costs are paid to employees of Design-Builder what are included in the Cost of the Work;

9.4.1.3.4 Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Owner, transportation, storage, and handling;

9.4.1.3.5 Payments made by Design-Builder to Subcontractors for performed Work;

9.4.1.3.6 Fees and expenses for design services procured or furnished by Design- Builder;

9.4.1.3.7 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value of such items used, but not consumed that remain the property of Design-Builder;

9.4.1.3.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Design- Builder or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from Design-Builder or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment;

9.4.1.3.9 Cost of the premiums for all insurance and surety bonds which Design- Builder is required to procure or deems necessary, including any additional premium incurred as a result of any increase in the cost of the Work;

9.4.1.3.10 Sales, use, gross receipts or other taxes, tariffs, or duties related to the Work for which Design-Builder is liable;

9.4.1.3.11 Permits, fees, licenses, tests, and royalties for which the Design-Builder is not responsible as set forth in this Agreement.

9.4.1.3.12 Expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work, provided that such did not arise from Design-Builder's negligence;

9.4.1.3.13 Water, power, and fuel costs necessary for the changed Work;

9.4.1.3.14 Cost of removal of all nonhazardous substances, debris, and waste materials;

9.4.1.3.15 Costs directly incurred to perform a change in the Work which are reasonably inferable from the Contract Documents as necessary to produce the intended result for the changed Work;

9.4.1.3.16 DISCOUNTS. All discounts for prompt payment shall accrue to Owner to the extent such payments are made directly by Owner. To the extent payments are made with funds of Design-Builder, all cash discounts shall accrue to Design-Builder. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work; and

9.4.1.3.17 Cost of the Work is determined net of savings from the change. Design-Builder's Overhead and profit shall be added to any net increase in Cost of the Work. No Overhead and profit shall be applied to any net decrease in the Cost of the Work that is less than ten (10) percent of the Contract Price. Overhead and profit shall be applied to any net decrease ten (10) percent or more. Design- Builder shall maintain a documented, itemized accounting evidencing expenses and savings.

9.5 CHANGES NOTICE. For any claim for an increase in the Contract Price or an extension in the Date of Substantial Completion or the Date of Final Completion, Design-Builder shall give Owner written notice of the claim within twenty-one (21) Days after the occurrence giving rise to the claim or within twenty-one (21) Days after Design-Builder first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by Owner, but which do not proceed, shall be made within twenty-one (21) days after the decision is made not to proceed. Thereafter, Design-Builder shall submit written documentation of its claim, including appropriate supporting documentation, within sixty (60) Days after giving notice, unless the Parties mutually agree upon a longer period of time. Owner shall respond in writing denying or approving Design-Builder's claim no later than twenty-one (21) days after receipt of Design-Builder's documentation of claim. Any change in Contract Price or the Date of Substantial Completion or the Date of Final Completion resulting from such claim shall be authorized by Change Order.

9.6 INCIDENTAL CHANGES. Owner may direct Design-Builder to perform incidental changes in the Work upon concurrence with Design-Builder that such changes do not involve adjustments in the Cost of the Work or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Owner shall initiate an incidental change in the Work by issuing a written directive to Design-Builder. Contractor shall be allowed twenty-one (21) calendar days to acknowledge item as incidental and provide written acceptance as such. Such written Owner directive shall then be carried out promptly and is binding on the Parties.

9.7 VALUE ENGINEERING. The Contract Price was generated at the sixty percent (60%) Design Drawing milestone. Any value engineering savings generated while the sixty percent (60%) Design Drawings advanced to the Permit Drawings will accrue to the City's Owner Contingency Budget. Any value engineering savings after the Permit Drawings are issued will be a 50/50 split between the City and Hensel Phelps and will accrue equally to the Owner Contingency budget and the Contractor Contingency Budget. Savings generated from scope reduction will accrue to the City's Owner Contingency Budget.

ARTICLE 10. PAYMENT

10.1 The Contract Price is the Firm Fixed Price/Lump Sum Price agreed to by the

Design-Builder and the City under this Agreement, payable to complete the Work in accordance with the Agreement, and, to the extent permitted by this Agreement, as may be increased or decreased by Change Order.

10.2 The Contract Price for the Project, which is also the Firm Fixed Price/Lump Sum Price is \$9,850,000. This includes bonds, allowances and material change with the exception of Permit fees. The City is paying or will reimburse actual cost of permit(s) upon submission of paid permit receipts.

10.3 In the event that the Design-Builder's total approved expenditures for the Project exceed the Firm Fixed Price/Lump Sum, the Design-Builder shall pay such excess from its own funds. City shall not be required to pay any amount that exceeds the Firm Fixed Price/Lump Sum, as it may be increased or decreased by change order, and the Design-Builder shall have no claim against the City on account thereof.

10.4 METHOD OF BILLING AND PAYMENT

10.4.1 During the Construction Documents Phase, Design-Builder may submit a request for payment monthly based upon percentage of completion of the (final construction) Plans and Specifications. During the Construction Phase, Design-Builder 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-Builder'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 Project Manager.

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 Design-Builder 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-Builder; aerials 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-Builder 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, Florida Statutes, but not more frequently than once a month. The Project Manager 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-Builder shall include a written plan demonstrating how the Final

Completion date shall be maintained.

Material Purchases can be invoiced to the City, upon receipt of invoice and documentation of order placement must be accompanied by a bill of sale from the manufacturer or supplier. The City will endeavor to pay material invoices earlier, albeit not later than 30 days of receipt of a valid invoice. Any invoices that are not considered valid will be returned immediately for correction or additional documentation. No more than eight percent (8%) contractor's mark-up will be allowed for materials.

10.4.2 City agrees that it will pay Design-Builder in accordance with the Florida Prompt Payment Act, within twenty-five (25) business days of receipt of Design-Builder's proper requisition for payment, as provided above.

The Design-Builder 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-Builder in performance of the Work.

10.4.3 Design-Builder 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.

10.4.4 Undisputed amounts remaining unpaid thirty (30) calendar days after City's request of Design-Builder's proper requisition for payment for conforming Work shall bear interest at the rate 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.

10.4.5 Ten percent (10%) of all monies earned by Design-Builder 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 Project Manager 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 Project Manager, upon written request of the Design-Builder 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.

10.4.6 If, after the Project has been substantially completed, full completion thereof is delayed through no fault of Design-Builder, or by issuance of Change Orders affecting final completion, and the Project Manager so certifies, the City shall, upon certification by 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.

10.4.7 Upon receipt of written notice from Design-Builder that the Project site is restored, and Project is ready for final inspection and acceptance, the Project Manager shall, within seven (7) calendar days, make an inspection thereof. If the Project Manager finds the Project acceptable under the Contract Documents and the Project fully performed, a Final Certificate of Payment shall be issued by the Project Manager 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.

10.4.8 Before issuance of the Final Certificate for Payment, Design-Builder shall deliver to the Project Manager 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, extended warranties, guarantees, operational manuals, and instructions in operation must be delivered to City at this time. The warranties provided after the initial warranty period of year one will be covered under the warranty bond attached as an Exhibit to this contract. Design-Builder 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.

10.4.9 City may withhold final payment or any progress payment to such extent as maybe 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-Builder.
- C. Failure of Design-Builder 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-Builder, its agents, servants, employees, Design-Builder, Consultant, Subconsultants, Subcontractors, sub-Subcontractors, sub-Subconsultants, material person

and suppliers.

E. Liquidated damages pursuant to Section 7.3 herein.

F. As-built drawings not being in a current and acceptable state.

10.4.10 When the above grounds are removed or resolved, or Design-Builder provides a surety bond or a 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.

10.4.11 If the Project Manager, in his/her reasonable judgment, determines that the portion of the Firm Fixed Price/Lump Sum Price then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, no additional payments will be due to the Design-Builder hereunder unless and until the Design/Builder, at its sole cost, performs a sufficient portion of the Work so that such portion of the Firm Fixed Price/Lump Sum Price then remaining unpaid is determined by the Project Manager to be sufficient to so complete the Work.

10.4.12 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-Builder, except those previously made in writing and identified by Design-Builder as unsettled at the time of the final application for payment.

10.4.13 The Design-Builder 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. Any warranties that are extended to the City beyond the standard warranty are to be in writing with the servicing firm information attached as an Exhibit. All Work not conforming to these requirements, including substitutions not properly approved and authorized by Project Manager, may be considered defective. If required by the City, the Design-Builder shall furnish satisfactory evidence as to the origin, nature and quality of materials and equipment used for the Project. Design-Builder 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-Builder's warranty excludes for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

10.5 OWNER OCCUPANCY OR USE OF COMPLETED OR PARTIALLY COMPLETED WORK

Portions of the Work that are completed or partially completed may be used or occupied by Owner when (a) the portion of the Work is designated in a Certificate of Substantial Completion, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work.

ARTICLE 11. INDEMNITY

11.1 INDEMNITY

11.1.1 Design-Builder shall protect, defend, indemnify and hold harmless the City, its officials, officers, employees and agents from and against any and all claims, demands, causes of action, lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses, including reasonable attorney's fees and costs through trial and the appellate level, or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of Design-Builder under this Comprehensive Agreement, or the breach or default by Design-Builder, its agents, servants, employees or contractors of any covenant or provision of this Comprehensive Agreement, the negligent acts or omission or willful misconduct of Design-Builder or its agents, servants, employees or contractors, except for any occurrence arising out of or result from the intentional torts or negligence of City, its officers and employees. Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of any of the Property by Design-Builder, its agents, servants, employees or contractors, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right by Design-Builder, its agents, servants, employees or contractors or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court by Design-Builder, its agents, servants, employees or consultants is included in the indemnity.

Design-Builder further agrees that upon proper and timely notice to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by City, Design-Builder shall assume and defend not only itself but also the City in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to the City, provided that the City and Design-Builder mutually agree upon counsel. This indemnification shall survive termination, revocation or expiration of this Comprehensive Agreement and shall cover any acts or omissions occurring during the Term of the Comprehensive Agreement, including any period after termination, revocation, or expiration of the Comprehensive Agreement while any curative acts are undertaken and is not limited by insurance coverage. Notwithstanding the foregoing, in no event shall the discovery by Design-Builder of contamination at the Property alone be considered damage to property, resulting

from Design-Builder' or its agents, servants, employees or contractors' use of or access to the Property which is subject to the indemnity covenants of Design-Builder contained herein.

11.1.2 Except as prohibited by the Florida Constitution or by the laws of the State of Florida, and subject to the limitations contained in Section 768.28, Florida Statutes (2020) as may be amended or revised, City agrees to indemnify and hold harmless Hensel Phelps against a judgment entered by a court of competent jurisdiction in the State of Florida against Design-Builder for damages or injuries caused by City's negligence in City's use of the Project. The foregoing sentence shall not serve as a waiver of the City's sovereign immunity or of any other legal defense available to the City. Such indemnity shall be limited by the extent to which such costs are caused or contributed to by Design Builder or Design-Builder' directors, officers, employees, agents, guests, invitees, licensees, attendees, or those for whom Design Builder are at law responsible (whether by reason of comparative negligence or otherwise) or by other third parties.

11.1.3 Procedure Regarding Indemnification:

a. Notice of Claim. The Indemnified Party shall provide the Indemnifying Party with written notice whenever the Indemnified Party receives notice of a claim that would invoke an indemnification provision contained in this Comprehensive Agreement. Such written notice of the claim or is served with process in connection with the claim. In the case of service of process of the initial pleading in a lawsuit, the Indemnified Party shall provide its written notice to the Indemnifying Party within such time as may be necessary to give the Indemnifying Party a reasonable opportunity to respond to such process. The Indemnified Party's written notice to the Indemnifying Party of any claim shall include a statement of information pertaining to the claim then in the possession of the Indemnified Party. Any failure or delay of the Indemnified Party to notify the Indemnifying Party as required by this Section shall not relieve the Indemnifying Party of its obligation to provide indemnification, unless and to the extent that such failure or delay materially and adversely affects the Indemnifying Party's ability to defend against, settle, or satisfy the claim.

b. Defense of Claims; Notice of Intent to Defend. After receiving notice of a claim, the Indemnifying Party shall defend the claim at its own expense, through attorneys, accountants, and others selected by the Indemnifying Party with the reasonable concurrence of the Indemnified Party. The Indemnifying Party shall notify the Indemnified Party in writing of its intent to contest or defend the claim. Such notice shall be provided not later than twenty (20) days after the Indemnifying Party receives notice of the claim from the Indemnified Party. If the Indemnifying Party fails to provide the Indemnified Party with written notice of its intention to defend the claim, the

Indemnified Party shall have the right: (a) to authorize attorneys satisfactory to it to represent it in connection with the claim; and/or (b) to defend, settle or compromise the claim. If the Indemnified Party exercises either or both of its rights under this Section, it shall be indemnified by the Indemnifying Party to the same extent as if the Indemnifying Party had defended or settled the claim.

c. Cooperation with Defense. If and so long as the Indemnifying Party is actively contesting or defending a claim in accordance with this Section, the Indemnified Party shall cooperate with the Indemnifying Party and its counsel in such contest or defense, shall join in making any appropriate and meritorious counterclaim or cross-claim in connection with the claim, except that in City's case, such joinder in a counterclaim or cross-claim shall be subject to City's prior approval and shall provide such access to the books and records of the Indemnified Party as shall be necessary in connection with such defense or contest, all at the sole cost and expense of the Indemnifying Party.

d. Settlement of Claims by Indemnified Party. The Indemnified Party shall have the right at any time to settle, compromise or pay any claim with or without the consent of the Indemnifying Party, but (a) taking such action without the Indemnifying Party's consent shall be deemed a waiver and nullification by the Indemnified Party of all indemnification obligations that the Indemnifying Party would otherwise have with respect to the claim under this Section, and (b) such settlement or compromise shall not cause the Indemnifying Party to incur any present or future cost, expense, obligation or liability of any kind or nature, or otherwise adversely affect the rights of the Indemnifying Party.

e. Settlement of Claims by Indemnifying Party. Any claim may be settled or compromised by the Indemnifying Party without the Indemnified Party's consent, so long as: (i) the Indemnifying Party gives the Indemnified Party reasonable prior written notice of its intention to settle or compromise the claim; and (ii) such settlement or compromise does not cause the Indemnified Party to incur any present or future cost, expense, obligation or liability of any kind or nature, or otherwise adversely affect rights of the Indemnified Party.

f. Claims Involving Matters Not Subject to Indemnification. If a claim involves matters partly within and partly outside the scope of the Indemnifying Party's obligation to indemnify as provided in this Section, the attorneys' fees, costs, and expenses of contesting or defending such a claim shall be allocated equitably between the Indemnified Party and the Indemnifying Party, in a manner agreed upon in writing by the parties, and subject to the limitations of Section 768.28, Florida Statutes.

ARTICLE 12. INSURANCE AND BONDS

Design/Builder 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)

12.1 The Design-Builder 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 Design/Builder'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.

Insurance Requirements

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

12.3 The coverages, limits, and/or endorsements required herein protect the interests of the City, and these coverages, limits, and/or endorsements shall in no way be required to be relied upon by the Design-Builder for assessing the extent or determining appropriate types and limits of coverage to protect the Design-Builder against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Design-Builder under this Agreement. The following insurance policies and coverages are required:

COMMERCIAL GENERAL LIABILITY

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

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

Policy must include coverage for Contractual Liability and Independent Design-Builder, independent contractors, and contain no exclusions for explosion, collapse, or underground.

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

BUSINESS AUTOMOBILE LIABILITY

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

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

WORKER'S COMPENSATION and EMPLOYER'S LIABILITY

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

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

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

PROFESSIONAL LIABILITY AND/OR ERRORS AND OMISSIONS

Coverage must be afforded for Wrongful Acts in an amount not less than \$5,000,000 each claim and \$5,000,000 aggregate.

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

Insurance Certificate Requirements

- a. The Design-Builder shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- b. The Design-Builder shall provide a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Design-Builder to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, the Design-Builder shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-

made form, the certificate will show a retroactive date, which should be the same date of the initial contractor prior.

f. The City shall be named as an Additional Insured on all general liability policy and professional liability policy.

g. The City shall be granted a Waiver of Subrogation on the Design-Builder's Workers' Compensation insurance policy.

h. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the certificate.

The Certificate Holder should read as follows:

City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

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

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

The Design-Builder's insurance coverage shall be primary insurance as respects to the City, a political subdivision of the State of Florida, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers shall be excess of Design/Builder's insurance and shall be non-contributory.

Any exclusions or provisions in the insurance maintained by the Design-Builder that excludes coverage for work contemplated in this Agreement shall be deemed unacceptable and shall be considered breach of this Agreement.

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

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

It is the Design-Builder's responsibility to ensure that all independent Contractors and subconsultants/subcontractors that have design scope shall comply with these insurance requirements. All coverages for independent contractors, subconsultants/subcontractors, sub-subconsultants/sub-subcontractors, shall be subject to all of the requirements stated herein. Any and all deficiencies are the responsibility of the Design-Builder.

12.4 All deductibles for insurance required in this Agreement are the responsibility of the Design-Builder. 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 North Andrews Avenue, Fort Lauderdale, Florida 33301. Compliance with the foregoing requirements shall not relieve the Design-Builder of its liability and obligation under this section or under any other section of this Agreement.

12.5 The Design-Builder 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-Builder 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 Design-Builder in conjunction with the violation of the terms and conditions of the Agreement.

ARTICLE 13. SUSPENSION, NOTICE TO CURE, AND TERMINATION

13.1 If Design-Builder 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-Builder 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-Builder and its surety of such delay, neglect or default, specifying the same. If Design-Builder within a period of ten (10) calendar days after such notice, has

not cured or commenced to cure in accordance therewith, then City may, upon written notice from the Project Manager of the fact of such delay, neglect or default and Design-Builder's failure to comply with such notice, terminate the services of Design-Builder, exclude Design-Builder from the Project site, and take the prosecution of the Project out of the hands of Design-Builder, as appropriate, or use any or all materials on the Project site as may be suitable and acceptable, in the City's reasonable discretion. In such case, Design-Builder 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-Builder. 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-Builder, then Design-Builder shall be entitled to receive the difference. If such damages and costs exceed the unpaid balance, then Design-Builder shall be liable and shall pay to City the amount of said excess.

13.2 If, after Notice of Termination of Design-Builder's right to proceed, it is determined for any reason that Design-Builder was not in default, the rights and obligations of City and Design-Builder 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.

13.3 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-Builder's receipt of the written notice to Design-Builder of intent to terminate and the date on which such termination becomes effective. In such case, Design-Builder 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.

13.4 Upon receipt of Notice of Termination pursuant to this Article, Design-Builder 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.

13.5 DESIGN-BUILDER'S RIGHT TO STOP WORK OR TERMINATE CONTRACT. 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-Builder or of anyone employed by Design-Builder, 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 thirty (30) calendar days after it is presented; or if City fails to pay Design-Builder within thirty (30) calendar days after submittal of a proper requisition for payment, as approved by the Project Manager, then Design-Builder may give written notice to City, of such delay, neglect or default, specifying same. If City, within a period of fourteen (14) calendar days after such written notice, shall not remedy the delay, neglect, or default upon which notice is based, then Design-Builder 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 14. DISPUTE MITIGATION OR RESOLUTION

14.1 WORK CONTINUANCE AND PAYMENT. Unless otherwise agreed in writing, Design-Builder shall continue the Work and maintain the approved schedules during any dispute mitigation or resolution proceedings. If Design-Builder continues to perform, Owner shall continue to make payments in accordance with the Agreement.

14.2 DIRECT DISCUSSIONS. If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who will record the date of first discussions. If the Parties' representatives are not able to resolve such matter within ten (10) days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that a resolution could not be reached. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected below.

14.3 MEDIATION. If direct discussions pursuant to Section 14.2 do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within 90 days of the matter first being discussed. The costs of the mediation shall be shared equally by the Parties.

14.4 MULTIPARTY PROCEEDING. The Parties agree that all Parties necessary to resolve a matter shall be Parties to the same dispute resolution procedure, if possible. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution proceedings.

ARTICLE 15. MISCELLANEOUS PROVISIONS

15.1 EXTENT OF AGREEMENT. Except as expressly provided, this Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Parties and not for the benefit of any third party.

15.2 ASSIGNMENT. Neither Owner nor Design-Builder shall assign its interest in this Agreement without the prior written consent of the other. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives.

15.3 Design-Builder shall be entitled to an increase in the Contract Price for only direct costs and expenses arising because of an act or omission of the City causing a delay, disruption, interference or hindrance and Design-Builder shall also be entitled to a day for day extension of the Contract Time equal to the period of delay caused by the Owner's act or omission.

15.4 GOVERNING LAW, VENUE AND WAIVER OF JURY TRIAL. 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. **EACH PARTY HEREBY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY SUCH LITIGATION. DESIGN-BUILDER SHALL SPECIFICALLY BIND ITS PROJECT TEAM MEMBERS AND ANY AND ALL SUBCONTRACTORS TO THE PROVISIONS OF THIS AGREEMENT.**

15.5 SEVERABILITY. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

15.6 NO WAIVER OF PERFORMANCE. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

15.7 JOINT DRAFTING. The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms before execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party but shall be construed in a neutral manner.

15.8 RIGHTS AND REMEDIES. The Parties' rights, remedies, liabilities and responsibilities with respect to this Agreement, whether in contract, tort, negligence or otherwise shall be exclusively those expressly set forth in this Agreement.

15.9 AUDIT RIGHT AND RETENTION OF RECORDS. City shall have the right to audit the books, records, and accounts of Design-Builder that are related to this Project. Design-Builder shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. Design-Builder 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. 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-Builder's records, Design-Builder shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Design-Builder. 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.

15.10 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT. DESIGN-BUILDER 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-Builder'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-Builder 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-Builder 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-Builder 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.

15.11 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.

15.12 TAXES. Design-Builder shall pay all applicable sales, consumer, use and other taxes as required by law. Design-Builder 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 Firm Fixed Price/Lump Sum Price.

15.13 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 Design-Builder 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 (2020), 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 (2020), as may be amended or revised. The City may terminate this Agreement at the City's option if the Design-Builder is found to have submitted a false certification as provided under subsection (5) of Section 287.135, Florida Statutes (2020), 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 (2020), 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 (2020), as may be amended or revised.

15.14 PUBLIC RECORDS

IF THE DESIGN-BUILDER FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESIGN-BUILDER FIRM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA, 33301, PHONE: (954) 828-5002; EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV.

DESIGN-BUILDER FIRM shall:

Keep and maintain public records required by the City in order to perform the service. 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 (2020), as may be amended or revised, or as otherwise provided by law.

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 Design-Builder does not transfer the records to the City. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Design-Builder or keep and maintain public records required by the City to perform the service. If the Design-Builder transfers all public records to the City upon completion of this Agreement, the Design-Builder shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

If the Design-Builder keeps and maintains public records upon completion of this Contract, the Design-Builder 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.

ARTICLE 16. CONTRACT DOCUMENTS

16.1 CONTRACT DOCUMENTS. The Contract Documents are as follows:

- (a) This Agreement;
- (b) Basis of Design/Owner's Program;
- (c) Clarifications and Assumptions;
- (d) Owner-provided information pursuant to Section 1.20 and other Owner information identified as intended to be a contract document;
- (e) The Schematic Design Documents upon Owner approval pursuant to

Section 5.3.1;

(f) The Design Development Documents upon Owner approval pursuant to Section 5.3.1;

(g) The Construction Documents upon Owner approval under Section 5.3.1;

(h) Change Order, Construction Directives, and amendments issued in accordance with this Agreement.

ORDER OF PRECEDENCE. In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement, including Amendment 1; (b) this Agreement; (c) design documents approved by Owner pursuant to Section 5.3.1 in order of the most recently approved; (d) information furnished by Owner pursuant to Section 1.20 or designated as a contract document in ARTICLE 16; (e) other documents listed in this Agreement. Except as otherwise provided, among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Where figures are given, they shall be preferred to scaled dimensions. Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

ARTICLE 17. NOTICES

17.1 Notice. Whenever any Party desires to give notice to any other party, it must be given by written notice sent by electronic mail, followed by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the place designated below and the place so designated shall remain such until they have been changed by written notice in compliance with the provisions of this Section. For the present, the Parties designate the following as the respective places for giving notice:

CITY:

City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301
Attn: City Manager (CLagerbloom@fortlauderdale.gov)

With a copy to:

City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301
Attn: City Attorney (ABoileau@fortlauderdale.gov)

HENSEL PHELPS:

Hensel Phelps Construction Co.
888 SE 3rd Avenue, Suite 200
Fort Lauderdale, FL 33316

With a copy to:

Stephanie J. Toothaker, Esq. (stephanie@toothaker.org)
901 Ponce de Leon Drive
Fort Lauderdale, FL 33316
Telephone: (954) 648-9376

[THIS SPACE WAS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representatives, have executed this Comprehensive Agreement to be effective as of the day and year first set forth above.

ATTEST:



JEFFREY A. MODARELLI
City Clerk



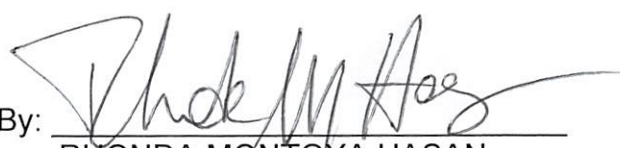
CITY OF FORT LAUDERDALE, a
Florida municipal corporation of the
State of Florida

By: 

CHRISTOPHER J. LAGERBLOOM
City Manager

Date: June 17, 2021

Approved as to form:
ALAIN E. BOILEAU, City Attorney

By: 

RHONDA MONTOYA HASAN
Assistant City Attorney

WITNESSES:

[Signature]

Joe Garcia

[Witness print/type name]

[Signature]

Deen Lui

[Witness print/type name]

HENSEL PHELPS CONSTRUCTION CO, GP,
a Delaware General Partnership authorized to
transact business in the State of Florida d/b/a
HENSEL PHELPS CONSTRUCTION

By: [Signature]

Kirk J. Hazen, Vice President
Southeast District

ATTEST:

By: [Signature]

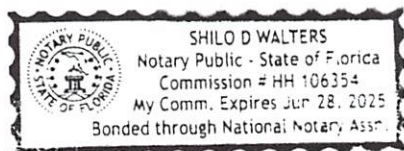
Secretary

CORPORATE SEAL

STATE OF FLORIDA :
COUNTY OF ORANGE :

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this 3rd day of June, 2021, by Kirk J. Hazen as Vice President, Southeast District of HENSEL PHELPS CONSTRUCTION CO, GP, a Delaware General Partnership authorized to transact business in the State of Florida d/b/a HENSEL PHELPS CONSTRUCTION.

(NOTARY SEAL)



[Signature]
(Signature of Notary Public – State of Florida)

Shilo Walters

Print, Type or Stamp Commissioned Name of
Notary Public)

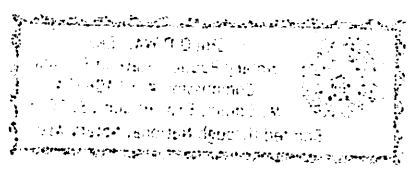
Personally Known X OR Produced Identification _____
Type of Identification Produced _____

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Handwritten signature or name in the upper middle section.

Handwritten text in the lower middle section, possibly a date or reference.

Handwritten signature or name in the lower middle section.





PARKS AND RECREATION

Public Works Department Route Form

Commission Approval Required

Jun 33

IL 6/1/21

CAM 21-0597

Part 1:			
Check One:			
☐ Task Order	☐ Amendment	☐ Change Order	☐ Piggy Back
☐ Ordinance	☐ Master Blanket PO	☐ Master Agreement	☐ Resolution
☐ State, County or Federal Contract		☒ Other: Comprehensive Agreement	

Originator:	Tom Green -- Beach CRA/Parks & Rec	Phone #:	954-828-4008
Document Title/ Description Info:	Comprehensive Agreement for final design and construction of the Aquatic Center South Building. Approved by Commission on 6/1/21 (21-0597).		
Vendor Name:	Hensel Phelps Construction Co.		
Project Number:	12582	Number of Originals:	3

Part 2:			
Capital Investment / Community Improvement Projects: Defined as having a life of in excess of 10 years, a value of at least \$50,000, and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. The term "Real Property" includes: land, real estate, realty, or real.			
CIP Funded:	☒ Yes	☐ No	☐ N/A (Advertising)
Amount Required:	\$8,388,926		
Index/Sub-Object Code:	353-P12582.353-6599		
Strategic Support Finance Approval Signature: (For Public Works Finance Use Only)	X Vedasha Roopnarine	Date:	6/9/2021

PARKS AND RECREATION

Part 3: Approval Path					
	Approved	Returned	Initials	Date	Not Applicable
Fill here Click here to enter title.	☐	☐			☐
Fill here Click here to enter title.	☐	☐			☐
Fill here Click here to enter title.	☐	☐			☐
Fill here Click here to enter title.	☐	☐			☐
Fill here Click here to enter title.	☐	☐			☐
Fill here Click here to enter title.	☐	☐			☐

Part 4: External Routing					
	Signature	Date	Returned By:	Date	
Procurement/Finance	James Hemphill	6/11/21			☐ N/A
City Attorney	[Signature]	6.17			☐ N/A
City Clerk	[Signature]	6/17/21	[Signature]	6/17/21	☐ N/A
City Manager					☐ N/A

Please return executed documents to Engineering Routing Liaison, extension 7818, City Hall 4th Floor.