



**DESIGN-BUILD
AGREEMENT**

THIS AGREEMENT (this "Agreement"), made and entered into the ~~10th~~^{3rd} day of ~~November~~^{December} 2014 by and between:

CITY OF PEMBROKE PINES, FLORIDA
a municipal corporation
10100 Pines Boulevard
Pembroke Pines, Florida 33026
(hereinafter referred to as "CITY"), and Assigns

AND

HYPOWER, INC.
5913 NW 31st Avenue
Fort Lauderdale, FL. 33309
(hereinafter referred to as "CONTRACTOR")

WHEREAS, on May 14, 2014, via **RFQ # TS-14-05** (the "RFQ"), CITY advertised its notice to bidders of the CITY'S desire to hire a firm to perform the following:

Design Build Services for the Installation of Fiber Optic Conduit, cabling, and Materials.

WHEREAS, the CITY, as outlined above, has identified certain parcels of real property located in the City and which it intends to install fiber optic conduit, cabling and materials and possibly certain additional work and improvements as may be documented in an approved Change Order[s], all as provided by law, including certain related amenities (the real property is more particularly described on **Exhibit A** attached hereto and made a part hereof,);and

WHEREAS, CITY and CONTRACTOR, in reliance on the proposals set forth in the **RFQ** and as later approved and ratified by the CITY as herein above described, now desire to enter into this Agreement respecting the Project; and

WHEREAS, CITY has determined that it is interested in funding the construction of the Project; and

WHEREAS, CITY has determined that entering into this Agreement with CONTRACTOR for the design and construction of the Project contemplated by this Agreement is in the best interests of the health, safety, and welfare of the citizens and residents of Broward County and of the CITY of Pembroke Pines, Florida; and

WHEREAS, because there will be inherent efficiencies and economies achieved by the CITY which will be in the best interest of the health, safety and welfare of the citizens and



residents of Broward County and the CITY of Pembroke Pines, Florida, the CITY has determined it is appropriate to enter into this Agreement embracing the design and construction of the Project, all as more fully set forth below;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and undertakings and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties do mutually covenant and agree as follows:

ARTICLE 1 - DEFINITIONS

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

- 1.1 **Agency Representative** – Public Services Director or Designee, who shall have such duties and responsibilities as provided herein and by law. If he shall cease to hold the position, it shall be the person so designated by the CITY.
- 1.2 **Agreement**- The written agreement between the CITY and CONTRACTOR covering the Work to be performed including other Contract Documents that are attached to the Agreement or made a part thereof.
- 1.3 **Building Department** - The Building Department of the CITY of Pembroke Pines, Florida, or its authorized agency.
- 1.4 **Change Order** - A document which is signed by CONTRACTOR and CITY and authorizes an addition, deletion or revision in the Work within the general scope of this Agreement, or an adjustment in the Guaranteed Maximum Price or the Contract Time, issued on or after the Effective Date of the Agreement.
- 1.5 **CITY** - The CITY Commission of the CITY of Pembroke Pines, Florida and its assigns, with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.
- 1.6 **Contract Documents** - The Contract Documents consist of the Drawings, Plans and Specifications, Non-Collusive Affidavit, Public Entity Crimes Form, this Agreement, Notice of Award, Notice to Proceed, Certificate(s) of Insurance, Payment and Performance Bonds and any additional documents which are required to be submitted under this Agreement, and all Written Amendments, modifications and supplements, Field Orders, Change Orders and Work Change Directives issued on or after the effective date of the Contract.
- 1.7 **Defective** - An adjective which when modifying the Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to final payment.



- 1.8 Drawings - The drawings which show the character and scope of the Work to be performed and which are referred to in the Contract Documents.
- 1.9 Effective Date of the Agreement - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
- 1.10 Public Services Director - The Public Services Director of the CITY of Pembroke Pines, Florida, or his authorized employees.
- 1.11 Field Order - A written order issued by Public Services Director which orders minor changes in the work but which does not involve a change in the Guaranteed Maximum Price or the Contract Time.
- 1.12 Notice of Award - The written notice by CITY to the CONTRACTOR stating that upon compliance by the CONTRACTOR with the conditions precedent enumerated herein, within the time specified CITY will sign and deliver the Agreement.
- 1.13 Notice to Proceed - A written notice given by CITY to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR'S obligations under the Contract Documents.
- 1.14 Specifications - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
- 1.15 Subcontractor - An individual, firm or corporation having a direct Contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.
- 1.16 Supplier - A manufacturer, fabricator, supplier, distributor, material man or vendor.
- 1.17 Work - Work is the result of performing services, specifically, including but not limited to, professional design services and construction, furnishing labor, soil borings, equipment and materials used or incorporated in the design and construction of the entire project as required by the Contract Documents.
- 1.18 Work Change Directive - A written directive to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by CITY and recommended by Public Services Director ordering an addition, deletion or revision in the Work. A Work Change Directive shall not change the Guaranteed Maximum Price or Time, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Guaranteed Maximum Price or Contract Time.



1.19 Written Amendment - A written amendment of the Contract Documents, signed by CITY and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the non-engineering, non-architectural, or non-technical aspects rather than strictly Work related aspects of the Contract Documents.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 Enumeration of Contract Documents:

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

2.1.1 This Agreement

2.1.2 **RFQ # TS-14-05 – Design Build Services for the Installation of Fiber Optic Conduit, Cabling, and Materials**, attached hereto and incorporated herein as **Exhibit A** to this Agreement.

2.1.3 Firms Proposal to **RFQ # TS-14-05** to include the Schedule of Values and Plans, attached hereto and incorporated herein as **Exhibit B** to this Agreement.

2.1.4 Construction performance bond.

2.1.5 Construction payment bond.

2.1.6 Drawings and Outline Specifications.

2.1.7 Insurance certificate.

2.1.8 Notice of Award and Notice to Proceed.

2.1.9 Clarifications and Exclusions.

2.1.10 All applicable provisions of State, Federal or local law.

2.1.11 Any modification, including all Change Orders, Written Amendments and Work Change Directive duly delivered after execution of Agreement.

2.2 Entire Agreement:

The Contract Documents comprise the entire agreement between CITY and CONTRACTOR concerning the Work. The Contract Documents are complimentary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the State of Florida.



2.3 Intent: It is the intent of the Contract Documents to describe a functionally complete project consisting of total design performed by the design professional and construction to be completed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well known technical or trade meaning are used to describe Work, materials or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of contract award, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of CITY, CONTRACTOR, or any of their consultants, agents or employees from those set forth in the Contract Documents.

2.4 Amending and Supplementing Contract Documents:

The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

2.4.1 A Change Order, subject to 2.5.4, below;

2.4.2 A Written Amendment; or

2.4.3 Work Change Directive.

2.5 Supplements, Minor Variations or Deviations:

2.5.1 CITY will not authorize any change orders to the Contract Documents, except in a manner allowed by law. CONTRACTOR covenants and agrees that CITY shall not be responsible for the costs above those set forth herein unless the same are set forth in a Change Order or Written Amendment. Any and all change orders issued by the authority of an entity not a party to this Agreement shall not be compensated by CITY, and shall not constitute a Change Order.

2.5.2 The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized in one or more of the following ways:

2.5.3 Public Services Director's approval of a shop drawing or sample; or

2.5.4 Public Services Director's written interpretation or clarification; or

2.5.5 A Field Order.

2.6 Representation of Contractor:



Execution of the Contract by the CONTRACTOR is a representation that CONTRACTOR has visited the site and become familiar with the local conditions under which the Work is to be performed.

2.7 Before Commencing Operations:

Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon. CONTRACTOR shall promptly report in writing to CITY and Public Services Director any conflict, error or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from Public Services Director before proceeding with any Work affected thereby.

ARTICLE 3 - SCOPE OF WORK

3.1 CONTRACTOR shall provide services for the designing and construction of the Project as described in the Contract Documents with all required minimum standards of construction as required by the Contract Documents.

ARTICLE 4 - CONTRACT TIME

4.1 Time is of the Essence of this Contract The Work shall be commenced upon the date of Contract Commencement specified in the Notice to Proceed and, subject to authorized adjustments, shall be completed no later than 180 days upon receipt of all permits from the date of the Notice to Proceed. CONTRACTOR agrees that all Work shall be prosecuted regularly, diligently and uninterrupted at such rate of progress as will ensure full completion thereof within the time specified. Failure to achieve timely, substantial and/or final completion shall be regarded as a breach of this Agreement and subject to liquidated damages in accordance with Paragraph 12.3 herein.

ARTICLE 5 CONTRACT SUM

5.1 CITY shall pay CONTRACTOR in current funds as full compensation for the performance of all the Work, but subject to additions and deductions by Change Order or Written Amendment as provided in this Agreement, and subject further to possible reductions as set forth in Article 6.2.1 below, the sum of **ONE MILLION SEVEN HUNDRED FORTY EIGHT THOUSAND SEVEN HUNDRED AND FIVE DOLLARS (\$1,748,705.00)**, which does not include owners' contingency (the "Guaranteed Maximum Price"). This Article is subject to the terms and conditions of Article 20 hereof.

ARTICLE 6 CONTRACTOR'S RESPONSIBILITIES

6.1 Responsibilities - Preconstruction Phase

6.1.1 Preliminary Evaluation: CONTRACTOR shall provide preliminary evaluation of the CITY's program and Project budget requirements, each in terms of the other.



6.1.2 Consultation: CONTRACTOR will schedule and attend regular meetings and will consult with CITY regarding site use and improvements, and the selection of materials, building systems, and equipment.

6.1.3 Subcontractors and Suppliers: CONTRACTOR shall develop subcontractor interest in the Project and shall furnish to the CITY, a list of subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design. The receipt of such list shall not require the CITY to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the CITY later to object to or reject any proposed subcontractor or supplier, and is furnished by CONTRACTOR to CITY for informational purposes only.

6.1.4 Extent of Responsibility: CONTRACTOR shall be responsible for the architecture, engineering, construction and completion of the Project.

6.2 Guaranteed Maximum Price:

6.2.1 The Guaranteed Maximum Price does not include a separate owner's contingency line item for CITY'S sole use and control. The Guaranteed Maximum Price may be modified only as herein provided, including possible changes as a result of additional work and improvements as may be documented in an approved Change Order[s], including procurement for furniture, fixture and equipment for such improvements and others related thereto.

6.2.2 Included within the Guaranteed Maximum Price is the CONTRACTOR'S Fee. The CONTRACTOR'S Fee is hereby established as **Four Hundred Twenty-Four Thousand, Fifty-Eight Dollars and Seventy-Five Cents (\$424,058.75)**. The CONTRACTOR'S Fee shall constitute CONTRACTOR'S total compensation for profit and all home office overhead (excluding cost of home office staff utilized for project services); the CONTRACTOR'S Fee shall not be reduced by virtue of any changes to the Guaranteed Maximum Price resulting from application of the provisions of 6.2.1 above, or other provisions hereof.

6.2.3 Prior to the execution of this Agreement, CONTRACTOR has been authorized to undertake certain services by the CITY; the costs charged by CONTRACTOR to CITY for those services is included within the Guaranteed Maximum Price.

6.2.4 The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

6.2.5 The Guaranteed Maximum Price shall include in the Cost of Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

6.2.6 The Guaranteed Maximum Price shall include all preconstruction costs.

6.3 Administration:



6.3.1 Those portions of the Work that the CONTRACTOR does not customarily perform with the CONTRACTOR's own personnel shall be performed under subcontracts or by other appropriate agreements with the CONTRACTOR. CITY may not prohibit the CONTRACTOR from obtaining bids from any qualified bidders. The CONTRACTOR shall not be required to contract with anyone to whom the CONTRACTOR has reasonable objection, and the CONTRACTOR shall not contract with anyone to whom the CITY has reasonable objection.

6.3.2 If a specific bidder, whose bid delivered by the CONTRACTOR to the CITY and/or his designees (1) is recommended to the CITY by the CONTRACTOR; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the contract Documents without reservations or exceptions, but the CITY requires that another bid (which is mutually acceptable to both parties) be accepted, then the CONTRACTOR may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the CITY by the CONTRACTOR and the amount of the subcontract or other agreement actually signed with the person or entity designated by the owner.

6.3.3 The CONTRACTOR shall schedule and conduct weekly meetings at which the CITY and CONTRACTOR, and appropriate Subcontractors can discuss the status of the Work. The CONTRACTOR shall prepare and promptly distribute meeting minutes.

6.3.4 The CONTRACTOR shall provide monthly written reports to the CITY and designated consultants on the progress of the entire Work. The CONTRACTOR shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered, and other similar relevant data as the CITY designated consultants may reasonably require. The log shall be available to the CITY and designated consultants.

6.4 Design Responsibilities:

6.4.1 CONTRACTOR shall determine the general scope, extent and character of the Work. CONTRACTOR shall prepare preliminary design documents consisting of preliminary drawings, specifications and other documents to fix and describe the size, quality and characters of the work, its architectural, structural, mechanical and electrical systems and the materials and other elements of the work. CONTRACTOR shall submit the preliminary design documents to CITY for review and authorization to proceed with the final design preparation. Upon written authorization from CITY to proceed with the final design, CONTRACTOR shall prepare final drawings, plans, schedules, specifications, technical criteria, written descriptions, design data, construction documents and diagrams setting forth in detail the requirements for construction of the work and submit the same to CITY for approval by the Director of Public Services prior to commencing construction of the Work; upon approval the same shall become part of the Contract Documents, and shall supersede the preliminary Drawings and Specifications. All final design documents, plans, reports, studies and other data prepared by CONTRACTOR shall bear the endorsement of a person duly registered in the appropriate professional category.



6.4.2 After CITY'S acceptance of the final design documents, the original **set** of CONTRACTOR'S drawings and specifications shall be provided to CITY **along** with **three (3)** record sets and **three (3)** working sets of full size prints (including specifications.) CONTRACTOR shall signify, by affixing an endorsement (seal/signature, as appropriate) on every sheet of the record set, that the Work shown on the endorsed sheets was produced by CONTRACTOR. With the record set of prints, CONTRACTOR shall submit a final **set** of design computations. The computations shall be bound in an 8 1/2" by 11" format and **shall** be endorsed (seal/signature as appropriate) by CONTRACTOR.

6.4.3 All tracings, plans, drawings, diagrams, specifications, maps, reports and other **design** documents prepared or obtained under this Agreement shall be considered as instruments of service and shall remain the exclusive property of CONTRACTOR, and **shall** not be used by CITY without CONTRACTOR's prior written consent.

6.4.4 All services shall be performed by CONTRACTOR in conformance with the **Contract** Documents, and CONTRACTOR shall follow generally accepted engineering standards **in** so doing. If the parties disagree as to whether CONTRACTOR has met **that** obligation, the provisions of Article 16.4 shall apply.

6.4.5 Design shall be performed by qualified architects, engineers and other **professionals** duly licensed by the State of Florida and holding current certificates of registration under the **laws** of the State of Florida to practice architectural and/or engineering and who are **selected** and **paid** by the CONTRACTOR.

6.5 Liability for use of Work for Intended Purpose:

As an inducement for CITY to enter into this Agreement, CONTRACTOR **has** represented an expertise in professional design services and the construction of public construction projects by qualified and licensed general construction contractors. In reliance upon **those** representations, CITY hired CONTRACTOR to provide professional design services and **complete** construction services. CONTRACTOR shall be liable for any defective or negligent **design**, whether **patent** or latent, and/or any negligence, strict liability or breach of other legal duty to **the** extent and **in** the manner as hereafter set forth.

6.6 Shop Drawings and Samples:

6.6.1 CONTRACTOR shall prepare and submit any submittals or shop drawings required for permitting to the authority having jurisdiction, and shall furnish a copy to **the** Public Services Director.

6.6.2 CONTRACTOR shall prepare and maintain shop drawings and submittals referenced in Paragraph 6.6.1 and make them available for review by CITY.

6.6.3 Review of the shop drawings by CITY shall be general and **shall** not relieve the CONTRACTOR of the responsibility for the accuracy of such drawings, **nor** for the **proper**



fitting and construction of the work, nor for the furnishing of material or work required by the Agreement and not indicated on the drawings.

6.7 Supervision and Superintendence:

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying CONTRACTOR'S best skill, attention and expertise. CONTRACTOR shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall be responsible to see that the finished Work complies with the Contract Documents.

6.8 Project Management:

6.8.1 During the progress of on-site construction, CONTRACTOR shall provide full time competent project supervision and any necessary assistants who shall not be replaced without written notice to CITY unless the superintendent proves to be unsatisfactory to CONTRACTOR and ceases to be in his employ. The superintendent will be CONTRACTOR'S representative at the site. The CONTRACTOR may, with the permission of the Public Services Director, schedule prosecution of the Work during times not otherwise allowable for construction within the CITY.

6.8.2 The day to day management of the Project's subcontractors and vendors contracts, schedules and requests for payment shall be by a competent project manager to whom the superintendent shall report. The project manager will conduct regularly scheduled project meetings for the purpose of project coordination and communication. The project manager shall be included in the cost of the Work.

6.9 Labor:

6.9.1 Construction services shall be performed by qualified construction contractors licensed to do business in the State of Florida and suppliers, selected and paid by the CONTRACTOR.

6.9.2 CONTRACTOR shall provide and pay for competent, suitably qualified personnel to perform the work as required by the Contract Documents. CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. CONTRACTOR shall at all times maintain good discipline and order at the site.

6.10 Materials:

6.10.1 Unless otherwise specified herein, CONTRACTOR shall furnish, pay for and assume full responsibility for all materials, equipment, transportation, machinery, tools, appliances, water, heat, utilities and all other facilities and services necessary for the furnishing, performance, testing, start-up and proper completion of the Work.

6.10.2 CONTRACTOR warrants that all materials and equipment shall be of good quality and new, unless otherwise provided in the Contract Documents and that the work will be free from



defects whether patent or latent in nature. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents.

6.11 Concerning Subcontractors, Suppliers, and Others

6.11.1 Prior to the commencement of each phase of the Work hereunder, CONTRACTOR shall furnish, in writing to CITY, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the relevant phase of the work. CITY shall advise CONTRACTOR, in writing, of any proposed person or entity to which CITY has a reasonable objection. Failure of CITY to reply within two (2) business days shall constitute notice of no reasonable objection. CONTRACTOR shall not contract with a proposed person or entity to whom CITY has made a reasonable and timely objection. If CITY has reasonable objection to a person or entity proposed by CONTRACTOR, CONTRACTOR shall propose another to whom CITY has no reasonable objection. CONTRACTOR shall not change a subcontractor, person or entity previously selected if CITY makes reasonable objection to such change.

6.11.2 CONTRACTOR shall be fully responsible to CITY for all acts and omissions of the CONTRACTOR'S employees, Subcontractors, Suppliers and other persons directly or indirectly employed by his Subcontractors, suppliers and of persons for whose acts any of them may be liable and any other persons and organizations performing or furnishing of the Work under a direct or indirect Contract with CONTRACTOR. Nothing in the Contract Documents shall create any Contractual relationship between CITY and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of CITY to pay or to see to the payment of any moneys due any such Subcontractor, supplier or other person or organization except as may otherwise be required by laws and regulations.

6.11.3 All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of CITY.

6.12 Patent Fees and Royalties:

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

6.13 Permits:

CONTRACTOR shall obtain and pay for all permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees.



6.14 Laws and Regulations:

CONTRACTOR shall comply with and give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to the performance of the Work. CITY shall not be responsible for monitoring CONTRACTOR'S compliance with any laws and regulations. CONTRACTOR shall promptly notify CITY if the Contract Documents are observed by CONTRACTOR to be at variance therewith.

6.15 Risk of Loss; Title:

The risk of loss, injury or destruction shall be on CONTRACTOR until acceptance of the work by CITY. Title to the Work shall pass to CITY upon acceptance of the Work by CITY.

6.16 Taxes:

CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the laws and regulations of the State of Florida and its political subdivisions. CONTRACTOR is responsible for reviewing the pertinent state statutes involving such taxes and complying with all requirements.

6.17 Use of Premises:

6.17.1 CONTRACTOR shall confine equipment, the storage of materials and equipment and the operations of workers to the project site and areas identified in and permitted by the Contract Documents and shall not unreasonably encumber the premises with equipment or other materials. CONTRACTOR acknowledges that it must use CITY'S waste hauler franchisee for waste hauling services. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against CITY by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim. The general indemnification provided elsewhere in this Contract specifically applies to claims arising out of CONTRACTOR'S use of the premises.

6.17.2 During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by CITY. To the extent reasonably feasible, CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.17.3 CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.



6.18 Access to Work

CONTRACTOR shall provide CITY, CITY'S consultants, representatives and personnel, independent testing laboratories and governmental agencies with jurisdictional interests with access to the work at reasonable times for their observation, inspection and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR'S site safety procedures and programs so that they may comply therewith.

6.19 Safety and Protection:

6.19.1 CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to prevent damage, injury or loss to all employees on the work site and other persons and organizations who may be affected thereby; all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and other property at the site or adjacent thereto.

6.19.2 CONTRACTOR shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

6.20 Indemnification:

GENERAL INDEMNIFICATION: The parties agree that one percent (1%) of the total compensation paid to CONTRACTOR for the Work under this Agreement shall constitute specific consideration to CONTRACTOR for the indemnification to be provided under this Agreement. CONTRACTOR shall indemnify, defend, save and hold harmless the CITY and the CITY's elected officials, public employees, consultants and separate contractors, any of their subcontractors, sub-subcontractors, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work. These indemnification obligations shall be limited to claims, damages, losses or expenses (1) that are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, and (2) to the extent such claims, damages, losses or expenses are caused in whole or in part by negligent acts or omissions of the contractors, anyone directly or indirectly employed by either or anyone for whose acts either may be liable, regardless of whether or not they are caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article.

In claims against the CITY or its consultants and its contractors, their subcontractors, sub-subcontractors, agents or employees by an employee of the CONTRACTOR, its contractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article 19.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Cost, or a CONTRACTOR's contractor, under workers' or workmen's compensation acts, disability benefits acts or other employee benefit acts.



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

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

6.21.2 CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith including any costs or fees of an appeal shall be the responsibility of CONTRACTOR under the indemnification agreement. Nothing contained herein is intended nor shall it be construed to waive CITY'S rights and immunities under the common law or Florida Statute 768.28 as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party described in this Paragraph and its subparts.

6.22 Survival of Obligations:

All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the work and termination or completion of this Agreement.

6.23 Correction or Removal of Defective Work

If required by CITY, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by CITY, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct costs of such correction or removal (including but not limited to fees and charges of engineers, architects and other professionals) made necessary thereby.

ARTICLE 7 - CITY'S RESPONSIBILITIES

7.1 CITY shall furnish data required of CITY under the Contract Documents promptly.

7.2 Except for permits and fees which are the responsibility of CONTRACTOR, CITY shall secure and pay for necessary approvals, easements, assessments, and charges required for construction, use, or occupancy of permanent structures or permanent changes in existing facilities.



7.3 If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of CONTRACTOR or any other party.

ARTICLE 8 - PUBLIC SERVICES DIRECTOR'S RESPONSIBILITIES ARTICLE

8.1 Public Services Director will be CITY'S contact person during the construction period and until final payment is due to CONTRACTOR.

8.2 Visits to Site: Public Services Director will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Public Services Director's efforts will be directed toward providing for CITY a greater degree of confidence that the completed work will conform to the Contract Documents. On the basis of such visits and on-site inspections, Public Services Director shall keep CITY informed of the progress of the work and shall endeavor to guard CITY against defects and deficiencies in the work.

8.3 Technical Clarifications and Interpretations:

8.3.1 Public Services Director will issue, with reasonable promptness, such written clarifications or interpretations of the technical requirements of the Contract Documents as Public Services Director may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Should CONTRACTOR fail to request interpretation of questionable items in the Contract Documents neither CITY nor Public Services Director will thereafter entertain any excuse for failure to execute the Work in a satisfactory manner.

8.3.2 Public Services Director will interpret and decide matters concerning performance under the requirements of the Contract Documents upon written request of either CITY or CONTRACTOR. Public Services Director will make initial decisions on all claims, disputes or other matters in question between CITY and CONTRACTOR.

Written notice of each such claim, dispute or other matter will be delivered by claimant to Public Services Director and the other party but in no event later than ten (10) days after the occurrence of the event giving rise thereto, together with written supporting data.

8.3.3 In the event CITY and CONTRACTOR disagree upon whether CONTRACTOR is entitled to be paid for work required by CITY under 8.3.2, or in the event of any other disagreements over the scope of Work included within the Guaranteed Maximum Price, CITY and CONTRACTOR agree to negotiate in good faith to resolve the issue amicably. As part of the negotiation process, CONTRACTOR shall furnish CITY with a good faith estimate of the costs to perform the disputed work in accordance with CITY' interpretations. If the parties are unable to agree, and CITY expects CONTRACTOR to perform the work in accordance with



CITY's interpretations, CONTRACTOR shall proceed to perform the disputed work, conditioned upon CITY issuing a written order to CONTRACTOR. CONTRACTOR to proceed and specifying CITY's interpretation of the work that is to be performed. In such event, CONTRACTOR shall be entitled to submit in its payment applications an amount equal to fifty percent (50%) of its estimated cost to perform the work, and CITY agrees to pay such amounts, with the express understanding that such payment by CITY does not prejudice CITY's right to argue that it has no responsibility to pay for such work and that receipt of such payment by CONTRACTOR does not prejudice CONTRACTOR's right to seek full payment of the disputed work under the applicable terms of the Agreement in the event the CITY's order is deemed to be a change to the Work.

8.4 Authorized Variations in Work

Public Services Director may authorize minor variations in the Work from the technical requirements of the Contract Documents which do not involve an adjustment in the Guaranteed Maximum Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on CITY and on CONTRACTOR who shall perform the work involved promptly. If the parties disagree as to whether it is within the scope of the Work, the provisions of 8.3.3 shall apply.

8.5 Rejecting Defective Work:

If Public Services Director becomes aware of any fault or default in the Work, he shall give proper written notice thereof to CONTRACTOR.

ARTICLE 9 - INSPECTION RESPONSIBILITIES

9.1 Representatives of the designated Building Official will serve as the inspecting authorities and will provide inspection of the finished work herein as it pertains to compliance with the Florida Building Code 2001 with 2002 amendments.

ARTICLE 10 - BONDS AND INSURANCE

10.1 Payment and Performance Bonds:

10.1.1 Within fifteen (15) calendar days after Notice of Award and in any event prior to commencing work, the CONTRACTOR shall execute and furnish to CITY a performance bond and a payment bond, each written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety shall hold a current certificate of authority from the Secretary of Treasury of the United States as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular No. 570. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular and the excess risks must be protected by coinsurance, reinsurance, or other methods, in accordance with Treasury Circular 297, revised September 1, 1978 (31 DFR, Section 223.10, Section 223.11). Further, the surety



company shall provide CITY with evidence satisfactory to CITY, that such excess risk has been protected in an acceptable manner. The surety company shall have at least the following minimum qualification in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858: A to A+.

10.1.2 Two (2) separate bonds are required and both must be approved by the CITY. The penal sum stated in each bond shall be the amount equal to the total amount payable under the terms of the contract. The performance bond shall be conditioned that the CONTRACTOR perform the contract in the time and manner prescribed in the contract. The payment bond shall be conditioned that the CONTRACTOR promptly make payments to all persons who supply the CONTRACTOR with labor, materials and supplies used directly or indirectly by the CONTRACTOR in the prosecution of the work provided for in the Contract and shall provide that the surety shall pay the same in the amount not exceeding the sum provided in such bonds, together with interest at the maximum rate allowed by law; and that they shall indemnify and save harmless the CITY to the extent of any and all payments in connection with the carrying out of said Contract which the CITY may be required to make under the law.

10.1.3 Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, it shall be the duty of the CONTRACTOR to record the aforesaid payment and performance bonds in the public records of Broward County, with the CONTRACTOR to pay all recording costs.

10.2 Bonds, Reduction After Final Payment:

Such bonds shall continue in effect for one (1) year after final payment becomes due except as otherwise provided by law or regulation or by the Contract Documents with the final sum of said bonds reduced after final payment to an amount equal to twenty five percent (25%) of the Guaranteed Maximum Price, or an additional bond shall be conditioned that CONTRACTOR shall correct any defective or faulty Work or material which appears within one (1) year after final completion of the Contract, upon notification by the CITY.

10.3 Duty to Substitute Surety:

If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other applicable laws or regulations, CONTRACTOR shall within seven (7) days thereafter substitute another bond and surety, both of which must be acceptable to CITY.

10.4 Insurance:

10.4.1 The CONTRACTOR shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the CONTRACTOR or its employees, agents, servants, partners principals or



subcontractors. The CONTRACTOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The CONTRACTOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONTRACTOR shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

10.4.2 **CERTIFICATES OF INSURANCE**, reflecting evidence of the required insurance, shall be filed with the City's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

Policies shall be endorsed to provide the CITY thirty (30) days notice of cancellation, material change or non-renewal of policies required under the contract. If the carrier will not agree to this notification, the CONTRACTOR or its insurance broker shall notify the CITY of any cancellation or reduction in coverage within seven days of receipt of insurer's notification of cancellation or reduction in coverage.

Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the CONTRACTOR shall furnish, at least fifteen (15) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONTRACTOR shall not commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

10.4.3 The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the CONTRACTOR has assumed in the indemnification/hold harmless section(s) of this Agreement.

The CONTRACTOR shall procure and maintain at its own expense and keep in effect during the full term of the Contract a policy or policies of insurance which must include the following coverage and minimum limits of liability:



10.4.3.1 **PROFESSIONAL LIABILITY/ERRORS & OMISSIONS INSURANCE**, when applicable, with a limit of liability no less than \$1,000,000 per wrongful act with a deductible (if applicable) not to exceed \$35,000.00 per claim. This coverage shall be maintained for a period of no less than ten (10) years after final payment of the contract.

10.4.3.2 **WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE** covering all employees, and/or volunteers of the CONTRACTOR engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONTRACTOR shall require the subcontractors similarly to provide Workers Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Coverage for the CONTRACTOR and his subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation : Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident
 - \$500,000 Disease – Policy Limit
 - \$500,000 Disease – Each Employee

If CONTRACTOR claims to be exempt from this requirement, CONTRACTOR shall provide CITY proof of such exemption along with a written request for CITY to exempt CONTRACTOR, written on CONTRACTOR letterhead.

Coverage shall be included for injuries or claims under the USL&H or Jones Act, when applicable.

10.4.3.3 **AUTO LIABILITY INSURANCE** covering all owned, leased, hired, non-owned and employee non-owned vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)
Combined Single Limit (Each Accident) - \$1,000,000

If work under this Agreement includes transportation of hazardous materials, policy shall include pollution liability coverage equivalent to that provided by ISO pollution liability-broadened coverage for auto endorsement CA9948 and the Motor Carrier Act endorsement MCS90.

10.4.3.4 **COMMERCIAL GENERAL LIABILITY INSURANCE** including, but not limited to: coverage for premises & operations, personal & advertising injury, products & completed operations, Liability assumed under an Insured Contract (including tort liability of another



assumed in a business contract), and independent contractors. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000
5. Products & Completed Operations Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for ten (10) years after the final payment under this contract. Designated Construction Project(s) General Aggregate Limit)

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. City's Additional Insured status shall extend to any coverage beyond the minimum requirements for limits of liability found herein.

10.4.3.5 Builder's Risk Insurance in an amount not less than THE REPLACEMENT COST for the construction of the work. Coverage shall include testing and be "All Risk" coverage for one hundred percent (100%) of the completed value with a deductible of not more than five percent (5%) for Named Windstorm and five thousand and 00/100 dollars (\$5,000.00) per claim for all other perils.

10.4.3.6 **ENVIRONMENTAL/POLLUTION LIABILITY** shall be required with a limit of no less than \$1,000,000 per wrongful act whenever work under this Agreement involves potential losses caused by pollution conditions. Coverage shall include: Contractor's completed operations as well as sudden and gradual pollution conditions. If coverage is written on a claims-made basis, coverage shall be maintained for a period of no less than three (3) years after final payment of the contract. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage.** Furthermore, the CITY'S Additional Insured status shall extend to any coverage beyond the minimum requirements for limits of liability found herein.

10.4.4 **REQUIRED ENDORSEMENTS**

1. The City of Pembroke Pines shall be named as an Additional Insured on each of the General Liability policies required herein
2. Waiver of all Rights of Subrogation against the CITY
3. 30 Day Notice of Cancellation or Non-Renewal to the CITY
4. CONTRACTORS' policies shall be Primary & Non-Contributory
5. All policies shall contain a "severability of interest" or "cross liability" liability clause without obligation for premium payment of the CITY
6. The City of Pembroke Pines shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

10.4.5 CONTRACTOR shall name the CITY, as an additional insured on each of the General Liability policies required herein and shall hold the CITY, its agents, officers and employees



harmless on account of claims for damages to persons, property or premises arising out of the services provided hereunder. Any insurance required of the CONTRACTOR pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work is subcontracted unless such subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement and CONTRACTOR shall provide verification thereof to CITY upon request of CITY.

10.4.6 The CITY reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Contract.

10.4.7 The CONTRACTOR agrees to perform the work under the Contract as an independent CONTRACTOR, and not as a sub-contractor, agent or employee of CITY.

10.4.8 Violation of the terms of this Article and its subparts shall constitute a breach of the Contract and CITY, at its sole discretion, may cancel the Contract and all rights, title and interest of the CONTRACTOR shall thereupon cease and terminate.

10.5 CITY'S Liability and Insurance:

CITY shall not be responsible for purchasing and maintaining any insurance to protect the interests of CONTRACTOR, subcontractors or others on the Work. CITY specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Section 768.28, Florida Statutes and Section 95.11, Florida Statutes.

ARTICLE 11 - WARRANTIES; TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK

11.1 Warranty of Title:

The CONTRACTOR warrants to the CITY that it possesses good, clear and marketable title to all equipment and materials provided hereunder and there are no pending liens, claims or encumbrances whatsoever against said equipment and materials.

11.2 Warranty of Specifications:

The CONTRACTOR warrants that all equipment, materials and workmanship furnished, whether furnished by the CONTRACTOR or its sub-contractors and suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted and that all services will be performed in a workmanlike manner.

11.3 Warranty of Merchantability:



CONTRACTOR warrants that any and all equipment to be supplied pursuant to the Agreement is merchantable, free from defects, whether patent or latent in material or workmanship and fit for the ordinary purposes for which it is intended.

11.4 Correction Period:

CONTRACTOR warrants all material and workmanship for a minimum of one (1) year from the date that CITY accepts the completed project. If within one (1) year after the date of final completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents, any work is found to be defective, whether observed before or after acceptance by CITY, CONTRACTOR shall promptly, without cost to CITY and in accordance with CITY'S written instructions, either correct such defective work, or, if it has been rejected by CITY, remove it from the site and replace it with work that is not defective and satisfactorily correct and remove and replace any damage to other work or the work of others resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, CITY may have the defective workmanship corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR.

11.4.1 Where defective Work (and damage to other work resulting therefrom) has been corrected, removed or replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.

11.4.2 Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations which CONTRACTOR might have under the Contract Documents. Establishment of the time period of one (1) year as described in Paragraph 10.4.1 relates only to the specific obligation of the CONTRACTOR to correct the work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish CONTRACTOR'S liability with respect to the CONTRACTOR'S obligation other than specifically to correct the work.

11.4.3 CONTRACTOR warrants to the CITY that it will comply with all applicable federal, state and local laws, regulations and orders in carrying out its obligations under the Contract.

11.4.4 CONTRACTOR warrants to the CITY that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the Contract.

11.4.5 CONTRACTOR warrants to the CITY that the consummation of the work provided for in the Contract Documents will not result in the breach of any term or provision of, or constitute a



default under any indenture, mortgage, contract, or agreement to which the CONTRACTOR is a party.

11.4.6 CONTRACTOR warrants that there has been no violation or copyrights of patent rights either in the United States of America or in foreign countries in connection with the work of the Contract.

11.4.7 No warranty, either express or implied, may be modified, excluded or disclaimed in any way by CONTRACTOR. All warranties shall remain in full force and effect, notwithstanding acceptance and payment by CITY.

11.5 Tests and Inspections:

11.5.1 CONTRACTOR shall give CITY timely notice of readiness of the work for all required inspections, tests or approvals. CONTRACTOR shall assume full responsibility, pay all costs in connection therewith and furnish CITY the required certificates of inspection, testing or approval for all materials, equipment or the Work or any part thereof unless otherwise specified herein.

11.5.2 Inspectors shall have no authority to permit deviations from nor to relax any of the provisions of the Contract Documents, nor to delay the Agreement by failure to inspect the materials and work with reasonable promptness.

11.5.3 The payment of any compensation whatever may be its character or form, or the giving of any gratuity or the granting of any favor by the CONTRACTOR to any inspectors, directly or indirectly is strictly prohibited and any such action on the part of the CONTRACTOR will constitute a breach of this Agreement.

ARTICLE 12 - CONTRACT TIME

12.1 Change of Contract Time

ALL TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THE AGREEMENT. EXCEPT AS PROVIDED HEREIN, NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE CITY BY REASON OF ANY DELAYS. CONTRACTOR shall not be entitled to an increase in the construction cost or payment or compensation of any kind from CITY for direct, indirect, consequential, impact or other costs, expenses or damages including but no limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by CONTRACTOR for hindrances or delays due solely to fraud, bad faith or active interference on the part of CITY or its agents. In addition, if CONTRACTOR is delayed at any time in the progress of the Work by an act or neglect of the CITY's employees, or separate contractors employed by the CITY, or by changes ordered in the Work, or by delay authorized by the CITY pending arbitration, then the Contract Time shall be reasonably extended



13.2 Change Orders which decrease the cost of the work to CITY or increase the cost of the work by an amount not in excess of twenty five thousand and xx/100 dollars (\$25,000.00) must be authorized and approved by CITY'S Manager or his authorized designee prior to their issuance. All Change Orders which, individually or when cumulatively added to amounts authorized pursuant to prior Change Orders for this project, increase the cost of the work to CITY by an amount which exceeds the greater of either Twenty Five Thousand and xx/100 dollars (\$25,000.00), or five percent (5%) of the original Guaranteed Maximum Price, or which extend the time for completion, must be formally authorized and approved by the CITY'S Commission prior to their issuance and before work may begin. No claim against CITY for extra work in furtherance of such Change Order shall be allowed unless prior approval has been obtained.

13.3 The Guaranteed Maximum Price and Contract Time shall be changed only by Change Order or Written Amendment.

13.4 Proposed Change Orders shall be prepared by the CONTRACTOR.

13.5 If CITY and CONTRACTOR are unable to agree as to the extent, if any, of an adjustment in the Guaranteed Maximum Price or an adjustment of the Contract times that should be allowed as a result of a Work Change Directive, a claim may be made therefor.

13.6 CONTRACTOR shall not be entitled to an increase in the Guaranteed Maximum Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents as amended, modified and supplemented.

13.7 If notice of any change affecting the general scope of the work or the provisions of the Contract Documents is required by the provisions of any bond to be given to a surety, the giving of any such notice will be CONTRACTOR'S responsibility and the amount of each applicable bond shall be adjusted accordingly.

13.8 Any claim for adjustment in the Guaranteed Maximum Price or time shall be based upon written notice delivered by the party making the claim to the other parties and to Public Services Director not later than ten (10) business days after the occurrence or event giving rise to the claims and stating the general nature of the claim. No claim for an adjustment in the Guaranteed Maximum Price or an extension of the contract time will be valid if not submitted in accordance with this Paragraph.

13.9 The cost or credit to CITY from a change in the Work shall be determined in accordance with the provisions hereof.

13.10 If conditions are encountered which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, CONTRACTOR shall notify CITY immediately. The CONTRACTOR shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of or time required for performance of any part of the work, CONTRACTOR



shall recommend an equitable adjustment in the Guaranteed Maximum Price or Contract Time or both and submit said documentation for approval by CITY.

ARTICLE 14 - CHANGE IN GUARANTEED MAXIMUM PRICE

14.1 The Guaranteed Maximum Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Guaranteed Maximum Price.

14.2 The Guaranteed Maximum Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Guaranteed Maximum Price shall be based on written notice delivered to Public Services Director promptly (but in no event later than ten (10) days) after the occurrence of the event giving rise to the amount of the claim with supporting data shall be delivered within twenty (20) days and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. No resolution of a claim for adjustment in the Guaranteed Maximum Price shall be effective until approved by CITY in writing. No claim for an adjustment in the Guaranteed Maximum Price will be valid if not submitted in accordance with this Paragraph.

14.3 The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Guaranteed Maximum Price shall be determined in one of the following ways:

14.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved including overhead and profit per 14.6.1.

14.3.2 By mutual acceptance of a lump sum (which may include an allowance for overhead and profit including any subcontractor fees). If the negotiated lump sum change order exceeds the percentages set forth for "Cost of Work," it must be accompanied by a detailed explanation justifying the increase.

14.3.3 On the basis of the Cost of the Work (determined as provided in Paragraphs 14.4 and 14.5) plus a CONTRACTOR'S fee for overhead and profit (determined as provided in Paragraph 14.6.

14.4 Cost of the Work:

The term "Cost of the Work" used to compute Change Orders means the sum of all direct costs necessarily incurred and paid by CONTRACTOR in the proper performance of the changed Work. Except as otherwise may be agreed to in writing by CITY, such costs shall be in amounts no higher than those prevailing in the locality of the project, shall include only the following items and shall not include any of the costs itemized in Paragraph 14.5:



14.4.1 Payroll costs for employees (including architects and engineers) in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by CITY and CONTRACTOR. Payroll costs for employees not employed full time on the work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. For purposes of computing costs, the payroll cost of architects and engineers shall be multiplied by a factor of 1.1. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall not be included in the above unless authorized in writing by CITY. The amounts paid to Subcontractors by CONTRACTORS shall be included in CONTRACTOR's costs.

14.4.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and suppliers field services required in connection therewith.

14.4.3 Supplemental costs including the following:

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

14.4.3.2 Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by CITY with the advice of Public Services Director, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof - all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

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

14.4.3.4 Royalty payments and fees for permits and licenses.

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

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

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

14.4.3.8 Cost for professional design fees.



14.5 Not included in the Cost of the Work:

The term Cost of the Work shall not include any of the following:

14.5.1 Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR'S principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 14.4.1 - all of which are to be considered administrative costs covered by CONTRACTOR'S fee.

14.5.2 Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site.

14.5.3 Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the Work and charges against CONTRACTOR for delinquent payments.

14.5.4 Except as to costs under 14.4.3.7, cost of premiums for all bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same.

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

14.5.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 14.4.

14.6 CONTRACTOR'S Fee:

CONTRACTOR'S fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

14.6.1 For costs incurred under Paragraphs 14.4.1 and 14.4.2, CONTRACTOR'S fee shall be five percent (5%) for overhead and five percent (5%) for profit for those changes.

14.6.2 No fee shall be payable to the CONTRACTOR on the basis of costs itemized under Paragraphs 14.4.3.1, 14.4.3.2, 14.4.3.3, 14.4.3.4, 14.4.3.5, 14.4.3.6, 14.4.3.7, 14.5, 14.5.1, 14.5.2, 14.5.3, 14.5.4, 14.5.5 and 14.5.6.

14.6.3 The amount of credit to be allowed by CONTRACTOR to CITY for any such change which results in a net decrease plus a deduction in CONTRACTOR'S fee by an amount equal to ten percent (10%) for the net decrease.



14.6.4 When both additions and credits are involved in any one change the combined overhead and profit shall be figured on the basis of net increase if any, however, profit will not be paid on any Work not performed.

14.7 Cost Breakdown Required:

Whenever the cost of any Work is to be determined pursuant to Paragraphs 13.4 or 13.5, CONTRACTOR will submit in form acceptable to Public Services Director an itemized cost breakdown together with supporting data. Whenever a change in the work is to be based upon mutual acceptance of a lump sum, whether the amount is an addition, credit, or no-change-in-cost, the CONTRACTOR shall submit an estimate substantiated by a complete itemized breakdown:

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

14.7.2 Whenever a change involves the CONTRACTOR and one (1) or more subcontractors and the change is an increase in the Guaranteed Maximum Price, the overhead and profit percentage for the CONTRACTOR and each subcontractor shall be itemized separately, and no higher as set for the CONTRACTOR in 14.6.1.

14.8 Savings:

In the event the actual cost of the Work is less than the Guaranteed Maximum Price, as such Guaranteed Maximum Price may have been adjusted over the course of the Project, the difference shall be referred to as "Savings." Savings shall be calculated and paid upon final completion of the Work, with the understanding that to the extent the CONTRACTOR incurs costs after final completion which would have been payable as part of the Cost of the Work, the CONTRACTOR shall be entitled to payment from CITY for that portion of such costs that have been distributed to the CITY as Savings. One hundred percent of the Savings shall be paid to CITY inclusive of left over Owner's Contingency, tax savings program and mutual value engineering.

ARTICLE 15 - PAYMENTS TO CONTRACTOR AND COMPLETION OF WORK

15.1 Progress Payments:

15.1.1 CONTRACTOR may requisition payments for Work completed during the project at intervals of not more than once a month. The CONTRACTOR'S requisition shall show a complete breakdown of the project components, the quantities completed and the amount due, together with a certification by the CONTRACTOR that the CONTRACTOR has disbursed to all subcontractors and suppliers their pro-rata shares of the payment out of previous progress payments received by the CONTRACTOR for all work completed and materials furnished in the previous period or properly executed releases of liens by all subcontractors, suppliers and material men who were included in the CONTRACTOR'S previous applications for payment,



and any other supporting documentation as may be required by the Public Services Director or Contract Documents. Each requisition shall be submitted in triplicate to the Public Services Director for approval; CITY shall have fifteen (15) days to approve or disapprove the requisition. If the requisition is not approved, the reasons therefor shall be stated with particularity. The CITY shall make payment to the CONTRACTOR within fifteen (15) calendar days after approval by the Public Services Director of the CONTRACTOR'S requisition for payment.

15.1.2 Ten percent (10%) of all monies earned by the CONTRACTOR shall be retained by the CITY. Retainage may be reduced to 5% if approved by CITY after construction is 50% complete per approved payment applications.

15.2 Final Inspection:

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, CITY will make a final inspection and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is not in accordance with the Contract Documents. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

15.3 Final Application for Payment:

After CONTRACTOR has completed all such corrections to the satisfaction of Public Services Director and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection and other documents required by the Contract Documents, and after Public Services Director has indicated that the work is acceptable, CONTRACTOR may make application for final payment. The final application for payment shall be accompanied by (1) complete and legally effective releases or waivers of all liens arising out of or filed in connection with the work; or (2) CONTRACTOR'S receipts in full covering all labor, materials and equipment for which a lien could be filed; or (3) a final affidavit stating that all laborers, materialmen, suppliers and subcontractors who worked for CONTRACTOR under this Contract have been paid in full or if the fact be otherwise, identifying the name of each lienor who has not been paid in full and the amount due or to become due each for labor, services or materials furnished. If any subcontractor or supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a bond satisfactory to CITY to indemnify CITY against any lien.

CONTRACTOR shall submit to CITY within forty-five days of the date of issuance of the certificate of occupancy for the applicable portion of the Work the completed set of "As-Built" drawings for the applicable project for review and approval. The "As-Built" drawings shall be prepared, sealed and certified by the appropriate professional licensed by the State of Florida. Prior to approval, if necessary, the drawings may be returned to CONTRACTOR for changes or modifications if in the opinion of Public Services Director they do not represent correct or accurate "As-built" drawings.

15.4 Final Payment and Acceptance:



15.4.1 If, on the basis of Public Services Director's observation of the Work during construction and final inspection, and Public Services Director's review of the final Application for Payment and accompanying documentation, Public Services Director is satisfied that the Work has been completed in accordance with the Contract Documents and CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, Public Services Director will, within ten (10) days after receipt of the final Application for Payment, indicate in writing Public Services Director's recommendation of payment and present the Application to CITY for payment. Thereupon Public Services Director will give written notice to CITY and CONTRACTOR that the Work is acceptable. Otherwise, Public Services Director will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Fifteen (15) days after presentation to CITY of the Application and accompanying documentation, in appropriate form and substance, and with engineer's recommendation and notice of acceptability, the amount recommended by Public Services Director will become due and will be paid by CITY to CONTRACTOR. Payment shall be wire transferred as set forth above.

15.4.2 If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if Public Services Director so confirms, CITY shall, upon receipt of CONTRACTOR'S final Application for Payment and recommendation of Public Services Director, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by CITY for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to Public Services Director with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

15.5 Final payment, constituting the entire unpaid balance of the Guaranteed Maximum Price, shall be paid by the CITY to the CONTRACTOR when the Work has been completed in accordance with the Contract Documents, this Agreement fully performed, and a final certificate for payment has been issued by the Public Services Director. The making of final payment shall constitute a waiver of claims by CITY except those arising from:

15.5.1 Liens, claims, security interests or encumbrances arising out of this Agreement and unsettled.

15.5.2 Faulty or defective work and latent defects discovered after acceptance.

15.5.3 Failure of the work to comply with the requirements of the Contract Documents.

15.5.4 Terms of special warranties required by the Contract Documents.

15.5.5 Any of CONTRACTOR'S continuing obligations under this Agreement.



The acceptance of final payment by CONTRACTOR or the Subcontractor for materials and supplies shall constitute a waiver of claims by that payee except those previously made in writing and identified by payee as unsettled at the time of final application for payment.

15.6 CITY'S Right to Withhold Payment:

The CITY may withhold in whole or in part, final payment or any progress payment to such extent as may be necessary to protect itself from loss on account of:

15.6.1 Defective work not remedied.

15.6.2 Claims filed or reasonable evidence indicating the probable filing of claims by other parties against the CONTRACTOR.

15.6.3 Failure of the CONTRACTOR to make payment to Subcontractors or Suppliers for materials or labor.

15.6.4 Damage to another contractor not remedied.

15.6.5 Liability for liquidated damages has been incurred by the CONTRACTOR.

15.6.6 Reasonable evidence that the work cannot be completed for the unpaid balance of the contract sum.

15.6.7 Reasonable evidence that the work will not be completed within the Contract time.

15.6.8 Failure to carry out the work in accordance with the Contract Documents.

When the above grounds are removed or resolved or the CONTRACTOR provides a surety bond or a consent of surety satisfactory to the CITY which will protect the CITY in the amount withheld, payment may be made in whole or in part.

ARTICLE 16 - TERMINATION OF THE CONTRACT

16.1 CITY'S Right to Terminate:

Upon the occurrence of any one or more of the following events:

16.1.1 If CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.

16.1.2 If a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent



or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency.

16.1.3 If CONTRACTOR makes a general assignment for the benefit of creditors.

16.1.4 If a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under Contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR'S creditors.

16.1.5 If CONTRACTOR admits in writing an inability to pay its debts generally as they become due.

16.1.6 If CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including but not limited to, failure to supply sufficient skilled Workers or suitable materials or equipment or failure to adhere to the progress schedule as same may be revised from time to time).

16.1.7 If CONTRACTOR disregards laws or regulations of any public body having jurisdiction.

16.1.8 If CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents.

CITY may, after giving CONTRACTOR seven (7) days written notice and to the extent permitted by laws and regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and use the same to full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which CITY has paid CONTRACTOR but which are stored elsewhere, and finish the Work as CITY may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished.

16.2 Termination for Convenience of CITY:

16.2.1 Upon seven (7) days written notice to CONTRACTOR, CITY may, without cause and without prejudice to any other right or remedy, terminate this agreement for CITY'S convenience whenever CITY determines that such termination is in the best interests of CITY. Where the agreement is terminated for the convenience of CITY, the notice of termination to CONTRACTOR must state that the Contract is being terminated for the convenience of the CITY under the termination clause, the effective date of the termination and the extent of termination. Upon receipt of the notice of termination for convenience, CONTRACTOR shall promptly discontinue all Work at the time and to the extent indicated on the notice of termination, terminate all outstanding Subcontractors and purchase orders to the extent that they relate to the terminated portion of the Contract, and refrain from placing further orders and Subcontracts. Except as set forth below, CONTRACTOR shall not be paid on account of loss of



anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

In such event, CITY shall pay CONTRACTOR for (i) all Work executed and for proven loss, cost or expense in connection with the Work, (ii) reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and design professionals, and (iii) fair and reasonable sums for overhead and profit on items (i) and (ii) above. In addition, if the CITY terminates the Agreement after commencement of the construction, the CONTRACTOR shall be paid two percent (2%) of the remaining balance of the Guaranteed Maximum Price.

16.2.2 In the event CITY terminates the Agreement pursuant to 16.2.1 above and proceeds to design and construct the Project through its employees, agents or third parties, CONTRACTOR shall grant CITY a limited license to use the Specifications and Drawings to complete the Project, conditioned on the following:

(a) Use by CITY of the work product is at CITY's sole risk and without liability or legal exposure to CONTRACTOR. To the fullest extent permitted by law, CITY does hereby waive all rights and claims it may have against CONTRACTOR if it terminates this Agreement but elects to use the Drawings and Specifications. Subject to limits imposed by law, CITY shall defend, indemnify and hold harmless the CONTRACTOR from any and all claims, damages, losses and expenses, including attorneys' fees arising out of or resulting from the Specifications and Drawings.

(b) CONTRACTOR is paid by CITY all monies due under paragraph 16.2.1 above.

(c) Such limited license shall not be granted in the event CITY terminates the Agreement after abandoning the Project.

16.3 Termination by CONTRACTOR:

If CITY fails to make payment thereon for a period of thirty (30) calendar days, CONTRACTOR may, upon seven (7) additional days written notice to CITY, terminate the Contract and recover from the CITY payment for work executed and for proven loss with respect to materials, equipment, tools and construction equipment and machinery.

Mediation

16.4.1 Binding Decision. Unless the parties agree in writing at the conclusion of the mediation, any decision reached under this section 16.4 shall not be final and binding upon the parties participating in it. Unless otherwise agreed in writing, the parties shall continue and proceed diligently to complete portions of the Project not affected by the claim(s) during dispute resolution proceedings.

16.4.2 Scope of Dispute Review. Any controversy or claim arising out of or relating to this Agreement or any breach of it shall be, at the election of either party, subject to review under



these dispute resolution procedures.

16.4.3 **Mediator.** At the election of either party, the parties agree that any dispute or claim arising out of or relating to performance of this Agreement shall be submitted to Perry S. Itkin, 2200 NE 33rd Avenue, Suite 8G, Fort Lauderdale, FL 33305-1889; phone (954) 567-9746 for nonbinding mediation in accordance with the rules then in effect unless otherwise mutually agreed by the parties in writing.

16.4.4 **Time of Claim.** Claims must be brought within the applicable statute of limitations by notice of a claim to the other party or parties affected thereby. Failure to bring the claim within the specified time shall constitute a waiver of the party's right to assert the claim. The statute of limitations shall be tolled during the mediation process. The notice of claim shall provide reasonably sufficient detail of the nature of the claim and the basis for it. The mediator shall be selected by the parties in accordance with the rules of and from a list supplied by within twenty (20) days following the date that a party requests that the selection process commence. Each mediation hearing shall be held at a location mutually approved by the parties. Unless the parties otherwise agree in writing, mediation may be commenced on or after the thirtieth (30th) calendar day after the mediator is selected. Each party agrees that it will designate a representative, having authority to negotiate for that party, who will attend all mediation hearings. Both parties acknowledge that only the CITY Commission may approve, authorize, and ultimately bind the CITY regarding any settlements on the CITY's behalf. Both parties shall endeavor, in good faith, to reach a resolution of the claim during the mediation. The mediator shall submit a sworn affidavit to both parties indicating that the mediator has no past or present affiliation with either the CONTRACTOR or the CITY.

16.4.5 If the parties cannot agree on the production of documents or exchange of other information (including rules relating thereto), then the mediator shall make a determination as to the scope and nature of the exchange at the initial hearing or at such later time as a party may request, but in no event later than fifteen days before the mediation.

16.4.6 **Proceeding Costs and Fees.** All parties participating in the mediation shall be responsible for their own costs, expenses and attorney fees necessary to pursue or defend against claim(s) raised under these provisions; however, the parties shall equally share the costs of any meeting or hearing place and the fees of the mediator.

16.4.7 **Enforceability and Form of Decision.** The decision resulting from mediation is not binding on any party participating in the mediation unless and until the parties agree to it in writing. If any party is not satisfied with the outcome of the mediation, it must convey a written notice to the other party or parties within ten (10) calendar days.

16.4.8 **Litigation.** If informal settlement discussions are unsuccessful, and the parties cannot reach an agreement through mediation with respect to a claim or dispute, the parties agree that thereafter the dispute or claim shall be resolved by litigation.

ARTICLE 17 - NOTICE, COMPUTATION OF TIME



17.1 Giving Notice:

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

CONTRACTOR:

Bernard Paul-Hus, President
5913 NW 31st Ave
Fort Lauderdale, FL 33309

CITY:

CITY Manager
CITY of Pembroke Pines
10100 Pines Boulevard
Pembroke Pines, Florida 33026

COPIES TO:

Director of Public Services
City of Pembroke Pines
13975 Pembroke Road
Pembroke Pines, Florida 33026

Samuel S. Goren, City Attorney
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308

17.2 Computation of Time:

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation. A calendar day of twenty-four (24) hours measured from midnight to the next midnight shall constitute a day.

ARTICLE 18 - MISCELLANEOUS

18.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guaranties and obligations imposed upon CONTRACTOR and all of the rights and remedies available to CITY thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available to any or all of them which are otherwise imposed or available by laws or



regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents, and the provisions of this Paragraph will survive final payment and termination or completion of the Agreement.

18.2 CONTRACTOR shall not assign or transfer the Contract or its rights, title or interests therein without CITY'S prior written approval. The obligations undertaken by CONTRACTOR pursuant to the Contract shall not be delegated or assigned to any other person or firm unless CITY shall first consent in writing to the assignment. Violation of the terms of this Paragraph shall constitute a breach of Contract by CONTRACTOR and the CITY may, at its discretion, cancel the Contract and all rights, title and interest of CONTRACTOR shall thereupon cease and terminate.

18.3 CONTRACTOR and its employees, volunteers and agents shall be and remain an independent contractors and not agents or employees of CITY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties hereto.

18.4 The remedies expressly provided in this Agreement to CITY shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of CITY now or hereafter existing at law or in equity.

18.5 The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. All claim and/or dispute resolution under this Agreement, whether by mediation, arbitration, litigation, or other method of dispute resolution, shall take place in Broward County, Florida. More specifically, any litigation between the parties to this Agreement shall be conducted in the Seventeenth Judicial Circuit, in and for Broward County, Florida.

18.6 Should any part, term or provision of this Agreement be by the courts decided to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portion or provision shall not be affected thereby.

ARTICLE 19 - NONDISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYMENT



19.1 During the performance of this Agreement, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, creed, color or national origin. Such action must include, but not be limited to the following: employment, upgrading; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

19.2 CONTRACTOR shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor Regulations (41 CFR Part 60).

19.3 CONTRACTOR shall comply with the Copeland Anti-Kickback Act (18 USC 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).

19.4 CONTRACTOR shall comply with the Contract Work Hours and Safety Standards Act (40 US 327-330) as supplemented by Department of Labor Regulations (29 CFR Part 5).

19.5 CONTRACTOR shall comply with the Florida Trench Safety Act.

19.6 CONTRACTOR shall comply with the OSHA Safety Act.

ARTICLE 20 - CONTINGENCY

20.1 The parties agree that Article 5 herein constitutes the Guaranteed Maximum Price that CITY will incur under this Agreement, and that CONTRACTOR shall incur the risk of any cost overruns not contemplated by Article 5.

ARTICLE 21 - PUBLIC RECORDS

21.1 The City of Pembroke Pines is public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

21.1.1 Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;

21.1.2 Provide the public with access to such public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed that provided in chapter 119, Fla. Stat., or as otherwise provided by law;

21.1.3 Ensure that public records that are exempt or that are confidential and



exempt from public record requirements are not disclosed **except** as authorized by law; and

21.1.4 Meet all requirements for retaining public records and transfer to ~~the~~ City, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate **public records that** are exempt or confidential and exempt. All records stored **electronically must** be provided to the City in a format that is compatible with the **information** technology systems of the agency.

21.2 The **failure** of Contractor to comply with the provisions set forth in this **agreement/contract** shall constitute a Default and Breach of this Agreement, for which, the **City** may **terminate** the Agreement.

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HAS BEEN INTENTIONALLY LEFT BLANK



IN WITNESS WHEREOF, CITY and CONTRACTOR have signed this Contract in triplicate.

ATTEST:

CITY OF PEMBROKE PINES, FLORIDA

For
Marlene Graham, City Clerk

Charles F. Dodge, City Manager

APPROVED AS TO FORM:

12/1/14
Office of the City Attorney

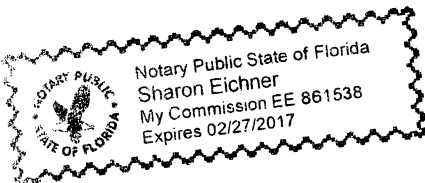
CONTRACTOR
HYPOWER, INC.

By:
Print Name Stephen Cassiron
Title: CFG

State of Florida)
County of Broward)ss:
)

On this, the 10th day of November 2014, before me, the undersigned Notary Public of the State of Florida, the foregoing instrument was acknowledged by Stephen K. (name of officer), CFG (title), of HYPOWER INC., a Florida corporation, on behalf of Cassiron the corporation, who is personally known to me.

Notary Public, State of Florida
My Commission Expires:



Printed, typed or stamped name
of Notary Public