



**AGREEMENT BETWEEN THE**  
**CITY OF PEMBROKE PINES AND**  
**MOHAWK CARPET DISTRIBUTION, INC.**

THIS IS AN AGREEMENT ("Agreement"), dated the 9th day of June, 2020, by and between:

**CITY OF PEMBROKE PINES**, a municipal corporation of the State of Florida with a business address of 601 City Center Way, Pembroke Pines, Florida 33025 hereinafter referred to as "CITY",

and

**MOHAWK CARPET DISTRIBUTION, INC.**, a corporation, authorized to do business in the State of Florida, and with a business address of 160 S. Industrial Blvd., Calhoun, Georgia 30701(hereinafter referred to as the "CONTRACTOR"). CITY and CONTRACTOR may hereinafter be referred to collectively as the "Parties."

**W I T N E S S E T H:**

**WHEREAS**, CITY desires to obtain flooring services, materials, and supplies from CONTRACTOR for various CITY Charter School locations; and

**WHEREAS**, on June 13, 2019 Sourcewell, a State of Minnesota local government agency and service cooperative publically advertised RFP#0808819, and on October 16, 2019 awarded Contract #080819-MCD to CONTRACTOR; and,

**WHEREAS**, the State of Florida, Department of Management Services entered into Alternate Contract Source No. 30161700-20-ACS on February 11, 2020 utilizing the terms and conditions of Sourcewell Contract #080819-MCD; and,

**WHEREAS**, pursuant to CITY's Code of Ordinances §35.18(C)(5), CITY desires to retain the services of CONTRACTOR utilizing the State of Florida Alternate Contract Source No. 30161700-20-ACS and Sourcewell Contract #080819-MCD, attached hereto and made a part hereof as **Composite Exhibit "A"**; and

**WHEREAS**, the Parties wish to incorporate and supplement the terms and conditions of **Composite Exhibit "A"**, with the terms and conditions agreed to by the Parties herein; and

**WHEREAS**, the CITY has reviewed the scope of services of the competitively bid Sourcewell Contract #080819-MCD and State of Florida Alternate Contract Source No. 30161700-20-ACS, and has determined such terms and conditions may be used by CITY to obtain flooring services, materials, and supplies, pursuant to CITY Code of Ordinances §35.18(C)(5); and



**WHEREAS**, at its meeting of \_\_\_\_\_, 2020 the CITY Commission approved and authorized the proper CITY officials to execute this Agreement;

**NOW, THEREFORE**, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, the Parties agree as follows:

**ARTICLE I**  
**SERVICES AND RESPONSIBILITIES**

1.1 CONTRACTOR hereby agrees to provide flooring services, materials, and supplies for various CITY Charter School locations identified in the table below, and in accordance with **Composite Exhibit "A"**, attached hereto and by reference made a part hereof, and CONTRACTOR's proposal attached hereto and by this reference made a part hereof as **Composite Exhibit "B"**. CONTRACTOR agrees to perform all services required pursuant to this Agreement and in accordance rates and prices more particularly described in **Composite Exhibit "B"**.

CITY LOCATIONS	
ADDRESS	AREA
Academic Village 17195 Sheridan Street, Pembroke Pines, FL 33331	Building U - 107 Building U - 121 Building U - 122 Building C - 201 Building C - 202 Building C - 203 Building C - 217 Building D - 209
Central Campus 12350 Sheridan Street, Pembroke Pines, FL 33026	Building M - 127
FSU Campus 601 SW 172nd Avenue Pembroke Pines, FL 33029	Room - 123 A Room - 129 Room - 215

1.2 CONTRACTOR shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner.

1.3 CONTRACTOR shall provide CITY with seventy-two (72) hours written notice prior to the beginning of work under this Agreement and prior to any schedule change with the exception of changes caused by inclement weather.



1.4 CONTRACTOR hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONTRACTOR, that CONTRACTOR has the professional expertise, experience and manpower to perform the services to be provided by CONTRACTOR pursuant to the terms of this Agreement.

1.5 CONTRACTOR hereby represents to CITY that CONTRACTOR is properly licensed by the applicable federal, state, and local agencies to provide the services under this Agreement. Furthermore, CONTRACTOR agrees to maintain such licenses during the term of this Agreement. If CONTRACTOR's license is revoked, suspended, or terminated for any reason by any governmental agency, CONTRACTOR shall notify the CITY immediately.

1.6 CONTRACTOR shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to CONTRACTOR, its employees, agents or subcontractors, if any, with respect to the work and services described herein. A violation of any federal, state, or local law or regulation may be cause for breach, allowing the CITY to terminate this Agreement.

1.7 **Return of Keys.** Upon completion of services rendered or termination of this agreement, CONTRACTOR must promptly return to CITY all CITY keys and/or access cards. By agreeing herein, CONTRACTOR understands that any loss or failure to return a CITY key shall subject CONTRACTOR to the costs associated with key replacement and/or re-keying. For keys unlocking several doors, replacement and re-keying costs can be substantial. In case of failure to return a key and failure to pay for key replacement and/or lock re-keying, CONTRACTOR understands that CITY shall enforce by all legal means its right to repayment for all costs incident to key replacement and/or lock re-keying.

## ARTICLE 2

### **TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

2.1 The work to be performed under this Agreement shall be commenced after CITY's execution of this Agreement and not later than ten (10) days after the date that CONTRACTOR receives CITY's Notice to Proceed. The services more particularly described in **Composite Exhibit "B"**, shall be completed by CONTRACTOR within thirty (30) calendar days from each Notice to Proceed issued by CITY, subject to any permitted extensions of time pursuant to this Agreement and any amendments and/or addenda thereto. For the purposes of this Agreement, the term "completion" shall mean the satisfactory completion and final inspection of the Property by the CITY.

2.2 In the event that CONTRACTOR abandons this Agreement or causes it to be terminated, CONTRACTOR shall indemnify CITY against any loss pertaining to this termination up to a maximum of the full contracted fee amount. All finished or unfinished documents, data, studies, surveys, and reports prepared by CONTRACTOR shall become the property of CITY and shall be delivered by CONTRACTOR to CITY.



### ARTICLE 3

#### **COMPENSATION AND METHOD OF PAYMENT**

3.1 CITY agrees to compensate CONTRACTOR for all services performed under this Agreement monthly for work that has been completed, inspected and properly invoiced. The total compensation for all services shall **NOT EXCEED SEVENTY FOUR THOUSAND SEVEN HUNDRED SIXTYTEEN DOLLARS AND SEVENTY TWO CENTS (\$74,716.72)** which includes a ten (10%) owner's contingency fee of **SIX THOUSAND SEVEN HUNDRED NINTY TWO DOLLARS AND FOURTY THREE CENTS (\$6,792.43)**.

3.2 This contingency authorizes CITY to execute change orders up to the amount of the contingency without the need to obtain additional Commission approval. **It is hereby understood and agreed that the CONTRACTOR shall not expend any dollars in connection with the owner's contingency without the expressed prior written approval of the CITY's authorized representative.** Any owner's contingency funds that have not been utilized at the end of the project will remain with the CITY, the CONTRACTOR shall only be paid for the proposed project cost as approved by the City Commission along with any owner contingency expenses or allowances that were approved by the CITY's authorized representative.

3.3 The total compensation amount may not be exceeded without a written amendment to this Agreement. Invoices must bear the project name, project number, bid number and purchase order number. CITY has up to thirty (30) days to review, approve and pay all invoices after receipt. CONTRACTOR shall invoice CITY and the one (1) year warranty period shall commence after work has been completed, inspected and invoices have been paid. All necessary Releases and Affidavits and approval of final payments shall be processed before the warranty period begins.

3.4 All materials, supplies, or services provided herein shall be in accordance with **Composite Exhibit "A"** and **Composite Exhibit "B"**, attached hereto. The total costs associated with the services to be provided herein are more particularly described by CONTRACTOR's proposals for various CITY locations attached hereto as **Composite Exhibit "B"**.

3.5 **Prompt Payment Act.** All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

3.6 **Method of Billing and Payment.** The CITY shall, within thirty (30) days, from the date the CITY's Public Service Director approves the Application for Payment, pay the CONTRACTOR the amount approved by the CITY's Public Services Director or his or her assignees. Payment will be made to CONTRACTOR at:

**Mohawk Carpet Distribution, Inc.**  
**160 S. Industrial Blvd.**  
**Calhoun, GA 30701**



## **ARTICLE 4** **WAIVER OF LIENS**

Prior to final payment of the amount due under the terms of this Agreement, a final waiver of lien shall be submitted by the CONTRACTOR as well as all suppliers and subcontractors who worked on the project that is the subject of this Agreement. Payment of the invoice and acceptance of such payment by CONTRACTOR shall release CITY from all claims of liability by CONTRACTOR in connection with this Agreement.

## **ARTICLE 5** **CHANGES IN SCOPE OF WORK**

5.1 CITY or CONTRACTOR may request changes that would increase, decrease, or otherwise modify the scope of services to be provided under this Agreement, as more particularly described in **Composite Exhibit "B"**. These changes may affect the monthly compensation accordingly. Such changes or additional services must be in accordance with the provisions of the Code of Ordinances of the CITY, and must be contained in a written amendment or purchase order executed by the Parties hereto, prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work.

5.2 CONTRACTOR shall continue work when seeking change order unless work has not been authorized herein, or by written amendment or change order, executed by the Parties hereto, with the same formality, equality, and dignity herewith.

5.3 In no event will the CONTRACTOR be compensated for any work which has not been described either herein or in a separate written agreement executed by the Parties hereto.

## **ARTICLE 6** **INDEMNIFICATION**

6.1 CONTRACTOR shall indemnify and hold harmless the CITY, its trustees, elected and appointed officers, agents, servants, assigns, employees, consultants, separate contractors, any of their subcontractors, sub-subcontractors, agents and employees from and against claims, demands, or causes of action whatsoever, and the resulting losses, damages, costs and expenses, including but not limited to attorneys' fees, including paralegal expenses, liabilities, damages, orders, judgments, or decrees, sustained by the CITY arising out of or resulting from performance of the work or the failure of the CONTRACTOR to take out and maintain insurance as required under this Agreement.

6.2 CONTRACTOR's aggregate liability shall not exceed the proceeds of insurance required to be placed pursuant to this Agreement, plus the compensation received by CONTRACTOR.

6.3 Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

6.4 CITY reserves the right to select its own legal counsel to conduct any defense.



6.5 Nothing contained herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or Section 768.28, Florida Statutes, as may be amended from time to time.

## **ARTICLE 7** **INSURANCE**

7.1 The CONTRACTOR shall indemnify, defend 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 attorneys' 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.

7.2 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 any subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

7.3 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.

7.4 Certificates of Insurance shall provide for thirty (30) days' prior written notice to the CITY in case of cancellation or material changes in the policy limits or coverage states. If the carrier cannot provide thirty (30) days' notice of cancellation, either the CONTRACTOR or their insurance broker must agree to provide notice.

7.5 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, the CONTRACTOR shall furnish, at least ten (10) 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 neither 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.

## 7.6 REQUIRED INSURANCE

CONTRACTOR shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any work pursuant to this Agreement:

Yes No

✓  7.6.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. 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 - \$1,000,000

Limits are satisfied by combination of primary and umbrella/excess limits. Products & Completed Operations Coverage shall be maintained for the later of ten (10) years after the delivery of goods/services or final payment under the Agreement.

The City of Pembroke Pines must be included additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein. The COI must state that the CITY is an additional insured.

Yes No

✓  7.6.2 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 all 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:

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.



Yes No

✓  7.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired 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 the latest version of the ISO pollution liability broadened endorsement for auto and the latest version of the ISO Motor Carrier Act endorsement, equivalents or broader language.

Yes No

✗ 7.6.3.1 If CONTRACTOR requests reduced limits under a Personal Auto Liability Policy and it is agreed to by the CITY, coverage shall include Bodily Injury limits of \$100,000 per person/\$300,000 per occurrence and Property Damage limits of \$300,000 per occurrence

Yes No

✓  7.6.4 Umbrella/Excess Liability Insurance in the amount of \$2,000,000 as determined appropriate by the CITY depending on the type of job and exposures contemplated. Coverage must be follow form of the General Liability, Auto Liability and Employer's Liability. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement.

**The City of Pembroke Pines must be included as additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

✓  7.6.5 Professional Liability/Errors & Omissions Insurance with a limit of liability no less than \$1,000,000 per wrongful or negligent act. This coverage shall be maintained for a period of no less than ten (10) years after the delivery of goods/services final payment pursuant to this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY.

Yes No

✗ 7.6.6 Environmental/Pollution Liability insurance shall be required with a limit of no less than \$1,000,000 per wrongful act. Coverage shall include: CONTRACTOR's completed operations, sudden, accidental and gradual pollution conditions. This coverage shall be maintained for a period of no less than the later of ten (10) years after the delivery of



goods/services or final payment pursuant to this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY.

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

Yes No

7.6.7 Crime Coverage shall include employee dishonesty, forgery or alteration, and computer fraud in an amount of no less than \$1,000,000 per loss. If CONTRACTOR is physically located on CITY's premises, a third-party fidelity coverage extension shall apply.

Yes No

7.6.8 Garage Liability & Garage-keepers Legal Liability for those that manage parking lots for the CITY or service CITY vehicles. Coverage must be written on an occurrence basis, with limits of liability no less than \$1,000,000 per Occurrence, including products & completed operations. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment of this Agreement.

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

Yes No

7.6.9 Sexual Abuse & Molestation for any agreement involving a vulnerable population. Limits shall be no less than \$500,000 per occurrence. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment of this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY.

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

Yes No

7.6.10 Builder's Risk Insurance shall be "All Risk" for one hundred percent (100%) of the completed value of the project that is the subject of this Agreement with a deductible of not more than five percent (5%) for Named Windstorm and \$20,000 per claim for all other perils. The Builder's Risk Insurance shall include the interests of the CITY, the CONTRACTOR and subcontractors on the project. The CONTRACTOR shall include a separate line item for all costs associated with the Builder's Risk Insurance Coverage for the project. The CITY reserves the right, at its sole discretion to utilize the CONTRACTOR's Builder's Risk Insurance or for the CITY to purchase its own Builder's Risk Insurance for the Project. Prior to the CONTRACTOR purchasing the Builder's



Risk insurance for the project, the CONTRACTOR shall allow the CITY the opportunity to analyze the CONTRACTOR's coverage and determine who shall purchase the coverage. Should the CITY utilize the CONTRACTOR's Builder's Risk Insurance, the CONTRACTOR shall be responsible for all deductibles. If the CITY chooses to purchase the Builder's Risk Coverage on the project, the CONTRACTOR shall provide the CITY with a change order deduct for all premiums and costs associated with the Builder's Risk insurance in their schedule. Should the CITY choose to utilize the CITY's Builder's Risk Program, the CITY shall be responsible for the Named Windstorm Deductible and the CONTRACTOR shall be responsible for the All Other Perils Deductible.

If and when 100% is not available or reasonable, the CITY Risk Manager is to make the determination as to what limits are appropriate for the given project.

#### 7.7 REQUIRED ENDORSEMENTS

- 7.7.1 The City of Pembroke Pines shall be included as an Additional Insured on each of the Liability Policies required herein.
- 7.7.2 Waiver of all Rights of Subrogation against the CITY.
- 7.7.3 Thirty (30) Day Notice of Cancellation or Non-Renewal to the CITY.
- 7.7.4 CONTRACTOR's policies shall be Primary & Non-Contributory.

7.8 Any and all 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 that 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.

7.9 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 Agreement.

7.10 The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the CONTRACTOR.

### **ARTICLE 8** **NON-DISCRIMINATION & EQUAL OPPORTUNITY EMPLOYMENT**

During the performance of the Agreement, neither the CONTRACTOR nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, 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. CONTRACTOR further agrees that CONTRACTOR will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

## ARTICLE 9 INDEPENDENT CONTRACTOR

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the CONTRACTOR is an independent contractor under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR, which policies of CONTRACTOR shall not conflict with CITY, State, H.U.D., or United States policies, rules or regulations relating to the use of CONTRACTOR's funds provided for herein. The CONTRACTOR agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

## ARTICLE 10 TERMINATION

10.1 **Termination for Convenience.** This Agreement may be terminated by CITY at any time for convenience, upon **thirty (30) business days** of written notice by the CITY to the CONTRACTOR for such termination in which event CONTRACTOR shall be paid its compensation for services performed to the termination date, including services reasonably related to the termination. In the event that CONTRACTOR abandons this Agreement or causes it to be terminated, CONTRACTOR shall indemnify CITY against loss pertaining to this termination.

10.2 **Default by CONTRACTOR.** In addition to all other remedies available to CITY, this Agreement shall be subject to cancellation by CITY for cause, should CONTRACTOR neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by CONTRACTOR of written notice of such neglect or failure.



## **ARTICLE 11** **AGREEMENT SUBJECT TO FUNDING**

This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Pembroke Pines in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

## **ARTICLE 12** **UNCONTROLLABLE FORCES**

12.1 Neither CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing Party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a Party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming Party. It includes, but is not limited to, fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

12.2 Neither Party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming Party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming Party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other Party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

## **ARTICLE 13** **GOVERNING LAW AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as now and hereafter in force. The venue for any and all actions or claims arising out of or related to this Agreement shall be in Broward County, Florida.

## **ARTICLE 14** **MERGER; AMENDMENT**

This Agreement, **Composite Exhibit "A"** and **Composite Exhibit "B"**, constitute the entire Agreement between CONTRACTOR and CITY, and all negotiations and oral understandings between the Parties are merged herein. This Agreement can be supplemented or amended only by a written document executed by both CONTRACTOR and CITY with the same formality and equal dignity herewith.

## **ARTICLE 15** **DISPUTE RESOLUTION**

15.1 **Arbitration.** In addition to any other remedy provided hereunder, CITY, at its option, may use arbitration to resolve any controversy or claim arising out of or relating to this Agreement if arbitration is elected by CITY. Any controversy or claim arising out of or relating to this



Agreement, or breach thereof, may be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered into by any court having jurisdiction thereof. In the event arbitration is elected by CITY, such controversy or claim shall be submitted to one arbitrator selected from the National Panel of The American Arbitration Association.

**15.2 Operations During Dispute.** In the event that a dispute, if any, arises between CITY and CONTRACTOR relating to this Agreement, performance or compensation hereunder, CONTRACTOR shall continue to render service in full compliance with all terms and conditions of this Agreement as interpreted by CITY regardless of such dispute.

## **ARTICLE 16** **PUBLIC RECORDS**

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

16.1.1 Keep and maintain public records required by the CITY to perform the service;

16.1.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat., or as otherwise provided by law;

16.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, CONTRACTOR shall destroy all copies of such confidential and exempt records remaining in its possession after the CONTRACTOR transfers the records in its possession to the CITY; and

16.1.4 Upon completion of the Agreement, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by the CONTRACTOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

16.2 The failure of CONTRACTOR to comply with the provisions set forth in this Article shall constitute a default and breach of this Agreement.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**



**CITY CLERK**  
**601 CITY CENTER WAY, 4<sup>th</sup> FLOOR**  
**PEMBROKE PINES, FL 33025**  
**(954) 450-1050**  
**[mgraham@ppines.com](mailto:mgraham@ppines.com)**

**ARTICLE 17**  
**MISCELLANEOUS**

17.1 **Ownership of Documents.** Reports, surveys, studies, and other data provided in connection with this Agreement are and shall remain the property of CITY, whether or not the project for which they are made is completed.

17.2 **Legal Representation.** It is acknowledged that each Party to this agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the rule that a contract shall be interpreted strictly against the Party preparing same shall not apply herein due to the joint contributions of both Parties.

17.3 **Records.** CONTRACTOR shall keep such records and accounts and require any and all subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONTRACTOR expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of ten (10) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries.

17.4 **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONTRACTOR shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns.

17.5 **No Contingent Fees.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

17.6 **Notice.** Whenever any Party desires to give notice to any other Party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the



Party for whom it is intended and the remaining Party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CONTRACTOR and CITY designate the following as the respective places for giving of notice:

CITY: Charles F. Dodge, City Manager  
City of Pembroke Pines  
601 City Center Way  
Pembroke Pines, Florida 33025  
Telephone No. (954) 450-1040

Copy To: Samuel S. Goren, City Attorney  
Goren, Chero, Doody & Ezrol, P.A.  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308  
Telephone No. (954) 771-4500  
Facsimile No. (954) 771-4923

CONTRACTOR: Attn: Michael Gallman,  
Mohawk Carpet Distribution, Inc.  
160 S. Industrial Blvd.  
Calhoun, GA 30701  
Phone/Email/Fax:  
Copy to General Counsel:

17.7 **Binding Authority.** Each person signing this Agreement on behalf of either Party individually warrants that he or she has full legal power to execute this Agreement on behalf of the Party for whom he or she is signing, and to bind and obligate such Party with respect to all provisions contained in this Agreement.

17.8 **Headings.** Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

17.9 **Exhibits.** Each exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

17.10 **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.



17.11 **Extent of Agreement.** This Agreement and all incorporated Exhibits, set forth the entire understanding of the Parties and supersedes any and all prior agreements. All Exhibits attached hereto or listed below are incorporated herein in their entirety, and shall form part of this Agreement. In the event of a conflict, the following order of precedence will apply: Agreement, State of Florida Alternate Contract Source No. 30161700-20-ACS, Sourcewell Contract #080819-MCD, and Sourcewell RFP#0808819.

17.12 **Waiver.** Failure of CITY to insist upon strict performance of any provision or condition of this Agreement, or to execute any right therein contained, shall not be construed as a waiver or relinquishment for the future of any such provision, condition, or right, but the same shall remain in full force and effect.

17.13 **Attorney's Fees.** In the event that either Party brings suit for enforcement of this Agreement, each Party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

17.14 **Protection of City Property.** At all times during the performance of this Agreement, CONTRACTOR shall protect CITY's property from all damage whatsoever on account of the work being carried on under this Agreement.

17.15 **Counterparts and Execution.** This Agreement may be executed electronically or by hand in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other Party through facsimile transmission, email, or other electronic delivery.

17.16 **Compliance with Statutes.** It shall be the CONTRACTOR's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, city, state, and federal agencies as applicable.

17.17 **Compliance with Jessica Lunsford Act.** CONTRACTOR shall comply with Chapter 1012, Florida Statutes, which requires Level II background screening for individuals whom are vendors performing services at a Florida public school or for a public school district.

17.17 **Scrutinized Companies.** CONTRACTOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services if:

17.17.1 Any amount of, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes or is engaged in a boycott of Israel; or



17.17.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

17.17.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or

17.17.2.2 Is engaged in business operations in Syria.

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

**CITY:**

**CITY OF PEMBROKE PINES, FLORIDA**

ATTEST:

MARLENE D. GRAHAM, CITY CLERK

Signed By: CHARLES F. DODGE, CITY MANAGER

APPROVED AS TO FORM:

Name: \_\_\_\_\_  
OFFICE OF THE CITY ATTORNEY

**CONTRACTOR:**

**MOHAWK CARPET DISTRIBUTION, INC.**

Signed By: Mike Gallman

Name: M. Gallman

Title: President Mohawk Commercial