



City of Pembroke Pines

**CONSTRUCTION AGREEMENT
BETWEEN THE CITY OF PEMBROKE PINES AND
SHADE AMERICA, INC.**

THIS AGREEMENT (“Agreement”), dated _____, is entered into by and between:

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

and

SHADE AMERICA, INC., a For Profit Corporation as listed with the Florida Division of Corporations, with a business address of **3604 Harbor Drive, St. Augustine, FL 32084**, hereinafter referred to as “CONTRACTOR”. “CITY” and “CONTRACTOR” may be collectively referred to herein as “Parties” and individually as “Party”.

W I T N E S S E T H:

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONTRACTOR agree as follows:

**ARTICLE 1
PREAMBLE**

In order to establish the background, context and form of reference for this Agreement, and to generally express the objectives and intentions of the respective Parties herein, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow, and may be relied upon by the Parties as essential elements of the mutual considerations upon which this Agreement is based.

1.1 On **August 14, 2024**, the CITY advertised its notice to bidders of the CITY’s desire to hire a firm to **provide and install shade structures at Maxwell Park and Josias Dog Park** as more particularly described in **Exhibit “A”** attached hereto and by this reference made a part hereof, for the said bid entitled:

**“Shade Structure at Maxwell Park and Josias Dog Park”
“Invitation for Bid (“IFB”) # RE-24-09”**

1.2 On **September 24, 2024**, the bids were opened at the offices of the City Clerk.



1.3 On _____, the CITY Commission awarded the bid to CONTRACTOR and authorized the proper CITY officials to enter into this Agreement with CONTRACTOR to govern the services more particularly described herein below.

1.4 Negotiations pertaining to the services to be performed by the CONTRACTOR were undertaken and this Agreement incorporates the results of such negotiation.

ARTICLE 2

SERVICES AND RESPONSIBILITIES

2.1 CONTRACTOR hereby agrees to perform the services required for the **provision and installation of shade structures at Maxwell Park and Josias Dog Park** ("Property"), in accordance with the scope of work outlined in the specifications of "**IFB # RE-24-09**", attached hereto and made a part hereof as **Exhibit "A"** and CONTRACTOR's response thereto, attached hereto and made a part hereof as **Exhibit "B"**. CONTRACTOR agrees to perform all services required pursuant to this Agreement, the Sealed Bid Package, Addenda to this Agreement, and Commission award complete with proposal form.

2.2 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.

2.3 CONTRACTOR shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. CONTRACTOR shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. CONTRACTOR shall at all times have a competent field supervisor available to enforce these policies and procedures at the CONTRACTOR's expense.

2.4 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.

2.5 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.

2.6 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.

2.7 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.

2.8 CONTRACTOR shall not subcontract any of its obligations under this Agreement without first obtaining the CITY's prior written consent. In the event the CITY does consent in writing to a subcontracting arrangement, CONTRACTOR shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Agreement. Any subcontract entered into by CONTRACTOR shall name the CITY as a third party beneficiary.

2.9 **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 3

TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The work to be performed pursuant to this Agreement shall be commenced after CITY execution of the Agreement and not later than ten (10) calendar days after the date that CONTRACTOR receives CITY's Notice to Proceed. The work herein required shall be completed within **one hundred twenty (120) calendar days** from issuance of CITY's Notice to Proceed, 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.

3.2 During the pre-construction portion of the work hereunder, the Parties agree to work diligently and in good faith in performing their obligations hereunder, so that all required permits for the construction portion of the work may be obtained. In the event that any delays in the pre-construction or construction portion of the work occur, despite the diligent efforts of the Parties hereto, and such delays are the result of force majeure or are otherwise outside of the control of either party hereto, then the Parties shall agree on an equitable extension of the time for substantial completion hereunder and any resulting increase in general condition costs.

3.3 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.



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ARTICLE 4 COMPENSATION AND METHOD OF PAYMENT

4.1 CITY agrees to compensate CONTRACTOR monthly for all services performed pursuant to this Agreement by CONTRACTOR for work that has been completed, inspected, and properly invoiced. The total amount of compensation paid to CONTRACTOR pursuant to this Agreement shall not exceed **FORTY-NINE THOUSAND, ONE HUNDRED THIRTY-SEVEN DOLLARS AND 00/100 CENTS (\$49,137.00)**, which includes an owner's contingency fee in the amount of **FOUR THOUSAND, FOUR HUNDRED SIXTY-SEVEN DOLLARS AND 00/100 CENTS (\$4,467.00)**.

4.1.1 This contingency authorizes the CITY to execute change orders up to the amount of the contingency without the need to obtain additional Commission approval. In addition, CITY shall utilize the owner's contingency to reimburse CONTRACTOR for the related permit, license, impact or inspection fees. Payments will be made to CONTRACTOR based on the actual cost of permits upon submission of paid permit receipts. **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 contingency expenses that were approved by the CITY's authorized representative. If the permit fees exceed the owner's contingency indicated, CITY will reimburse the contractor the actual amount of the permit fees required for project completion.

4.1.2 The total compensation amount may not be exceeded without a written amendment to this Agreement. A retainage of five percent (5%) will be deducted from monthly payments until the project is complete. Retainage monies will be released upon satisfactory completion and final inspection of the work. Invoices must bear the project name, project number, bid number and purchase order number. CITY has up to thirty (30) calendar days to review, approve and pay all invoices after receipt. CONTRACTOR shall invoice CITY and provide a written request to CITY to commence the one (1) year warranty period. All necessary Releases and Affidavits and approval of final payments shall be processed before the warranty period begins.

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

4.3 **Method of Billing and Payment.** The CITY shall within thirty (30) calendar days, from the date the CITY approves the Application for Payment, pay the CONTRACTOR the amount approved by the CITY.

Payment will be made to CONTRACTOR at:

**Shade America, Inc.
3604 Harbor Drive**



St. Augustine, FL 32084

ARTICLE 5
WAIVER OF LIENS

Prior to final payment of the amount due under the terms of this Agreement, to the extent permitted by law, a final waiver of lien shall be required to be submitted by the CONTRACTOR, as well as from all suppliers and subcontractors whom have 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 6
WARRANTY

6.1 CONTRACTOR warrants the work against defect for a period of one (1) year from the date of completion of work. In the event that defect occurs during this time, CONTRACTOR shall perform such steps as required to remedy the defects. CONTRACTOR shall be responsible for any damages caused by defect to affected area or to the structure. The one (1) year warranty period does not begin until substantial completion of the entire project.

6.2 CONTRACTOR further agrees to submit to CITY all warranty documents and information related to any warranty required by **Exhibit "A"**.

ARTICLE 7
CHANGES IN SCOPE OF WORK

7.1 CITY or CONTRACTOR may request changes that would increase, decrease, or otherwise modify the scope of work to be provided pursuant to this Agreement, as more particularly described in **Exhibit "A"**. 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, executed by the Parties hereto, with the same formality, equality and dignity herewith prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work.

7.2 While requesting changes that would increase, decrease, or otherwise modify the scope of services CONTRACTOR shall continue work, however, in no event will CONTRACTOR be compensated for any work that has not been described either herein, in a purchase order, or separate written agreement executed by the parties hereto.

ARTICLE 8
INDEMNIFICATION

8.1 CONTRACTOR shall indemnify and hold harmless the CITY, its elected and appointed officers, agents, employees, consultants, separate contractors, any of their subcontractors,



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 attorney's fees, including paralegal expenses, liabilities, damages, orders, judgments, or decrees, sustained by the CITY arising out of or result from the negligence, recklessness, and intentional misconduct of CONTRACTOR and its officers, employees, agents, and subcontractors during performance of this Agreement.

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

8.3 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.

8.4 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 shall be the responsibility of CONTRACTOR.

8.5 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 9

INSURANCE

9.1 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-contractors, 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. The CONTRACTOR expressly understand 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.

9.2 CONTRACTOR AND ALL SUBCONTRACTORS, SHALL NOT BE ALLOWED TO commence work under this AGREEMENT until the CONTRACTOR has obtained all insurance required by this Insurance Section, including the purchase of a Policy of Insurance naming the City of Pembroke Pines as an Additional Named Insured, which Insurance Policy and its terms must be agreed to and approved in writing by the Risk Manager for the City of Pembroke Pines, nor shall any SUBCONTRACTOR be allowed to commence work under this AGREEMENT until the SUBCONTRACTOR complies with the Insurance requirements required by this Insurance Section, including the duty to purchase a Policy of Insurance which names the City of Pembroke



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Pines as an Additional Named Insured, which Insurance Policy and its terms are agreed to and approved in writing by the Risk Manager for the City of Pembroke Pines.

9.3 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.

9.4 Certificates of Insurance shall provide for thirty (30) calendar 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) calendar days' notice of cancellation, either the CONTRACTOR or their Insurance Broker must agree to provide notice.

9.5 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 forty-five (45) calendar 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.

9.6 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

✓ ☐ 9.6.1 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 - \$2,000,000
5. Products & Completed Operations Aggregate Limit - \$2,000,000

Aggregate Reduction: CONTRACTOR shall advise the CITY in the event any aggregate limits are reduced below the required per-occurrence limit. At its own expense, the CONTRACTOR will reinstate the aggregate limits to comply with the minimum requirements and shall furnish the CITY with a new certificate of insurance showing such



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coverage is in force.

Products & Completed Operations Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the 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

- ✓ ☐ 9.6.2 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:

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 for CITY to exempt CONTRACTOR.

Yes No

- ✓ ☐ 9.6.3 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

- ✓ ☐ 9.6.4 Umbrella/Excess Liability Insurance in the amount of **\$2,000,000.00** as determined



appropriate by the CITY depending on the type of job and exposures contemplated. Coverage must 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 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.**

9.7 REQUIRED ENDORSEMENTS

- 9.7.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the Liability Policies required herein.
- 9.7.2 Waiver of all Rights of Subrogation against the CITY.
- 9.7.3 Thirty (30) calendar day Notice of Cancellation or Non-Renewal to the CITY.
- 9.7.4 CONTRACTOR's policies shall be Primary & Non-Contributory.
- 9.7.5 All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the CITY.
- 9.7.6 The City of Pembroke Pines shall be named as a Loss Payee on all Property Policies as their interest may appear.

9.8 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.

9.9 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.

9.10 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.

ARTICLE 10

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 11

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, Federal, 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 12

TERMINATION

12.1 **Termination for Convenience.** This Agreement may be terminated by CITY for convenience, upon providing **thirty (30) calendar days** of written notice to CONTRACTOR, in which event CONTRACTOR shall be paid its compensation for services performed to termination date, including services reasonably related to 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.

12.2 **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) calendar days after receipt by CONTRACTOR of written notice of such neglect or failure.



ARTICLE 13

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 14

UNCONTROLLABLE FORCES

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, pandemic, acts of God, war, riot, civil disturbance, sabotage, and governmental actions. 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 15

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 16

SIGNATORY AUTHORITY

Upon CITY's request, CONTRACTOR shall provide CITY with copies of requisite documentation evidencing that the signatory for CONTRACTOR has the authority to enter into this Agreement.

ARTICLE 17

DEFAULT OF CONTRACT & REMEDIES

17.1 **Liquidated Damages.** As a breach of the service provided by this Agreement would cause serious and substantial damage to CITY, and the nature of this Agreement would render it impracticable or extremely difficult to fix the actual damage sustained by CITY by such breach, it is agreed that, in case of breach of this Agreement wherein CONTRACTOR fails to maintain the



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Property, leaving the said property in disrepair, CITY may elect to collect liquidated damages for each day of such breach, and CONTRACTOR will pay CITY as liquidated damages, and not as penalty, **five hundred dollars and 00/100 cents (\$500.00)** for every day of such malfunction. This sum is the agreed upon amount by which CITY will be damaged by the breach of Agreement. An election to seek such remedies shall not be construed as a waiver of any legal remedies CITY may have as to any subsequent breach by CONTRACTOR pursuant to this Agreement.

17.2 **Correction of Work.** If, in the judgment of CITY, work provided by CONTRACTOR does not conform to the requirements of this Agreement, or if the work exhibits poor workmanship, CITY reserves the right to require that CONTRACTOR correct all deficiencies in the work to bring the work into conformance without additional cost to CITY, and replace any personnel who fail to perform in accordance with the requirements of this Agreement. CITY shall be the sole judge of non-conformance and the quality of workmanship.

17.3 **Default of Contract.** The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by CONTRACTOR:

17.3.1 The abandonment of the Property by CONTRACTOR for a period of more than seven (7) calendar days.

17.3.2 The abandonment, unnecessary delay, refusal of, or failure to comply with any of the terms of this Agreement or neglect, or refusal to comply with the instructions of the Public Services Director relative thereto.

17.3.3 The failure by CONTRACTOR to observe or perform any of the terms, covenants, or conditions of this Agreement to be observed or performed by CONTRACTOR, where such failure shall continue for a period of seven (7) calendar days after written notice thereof by CITY to CONTRACTOR; provided, however, that if the nature of CONTRACTOR's default is such that more than seven (7) calendar days are reasonably required for its cure, then CONTRACTOR shall not be deemed to be in default if CONTRACTOR commences such cure within said seven (7) calendar day period and thereafter diligently prosecutes such cure to completion.

17.3.4 The assignment and/or transfer of this Agreement or execution or attachment thereon by CONTRACTOR or any other party in a manner not expressly permitted hereunder.

17.3.5 The making by CONTRACTOR of any general assignment or general arrangement for the benefit of creditors, or the filing by or against CONTRACTOR of a petition to have CONTRACTOR adjudged a bankruptcy, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against CONTRACTOR, the same is dismissed within sixty (60) calendar days); or the appointment of a trustee or a receiver to take possession of substantially all of CONTRACTOR's assets, or for CONTRACTOR's interest in this Agreement, where possession is not restored to CONTRACTOR within thirty (30) calendar days; for attachment, execution or other judicial seizure of substantially all of CONTRACTOR's assets, or for CONTRACTOR's interest in this Agreement, where such seizure is not discharged within thirty (30) calendar days.



17.4 Remedies in Default. In case of default by CONTRACTOR, CITY shall notify CONTRACTOR, in writing, of such abandonment, delay, refusal, failure, neglect, or default and direct CONTRACTOR to comply with all provisions of the Agreement. A copy of such written notice shall be mailed to the Surety on the Performance Bond. If the abandonment, delay, refusal, failure, neglect or default is not cured within seven (7) calendar days of when notice was sent by CITY, CITY may declare a default of the Agreement and notify CONTRACTOR of such declaration of default and terminate the Agreement. The Surety on the Performance Bond shall within ten (10) calendar days of such declaration of default, rectify or cause to be rectified any mismanagement or breach of service in the Agreement and assume the work of CONTRACTOR and proceed to perform services under the Agreement, at its own cost and expense.

17.4.14 Upon such declaration of default, all payments remaining due CONTRACTOR at the time of default, less all sums due CITY for damages suffered, or expenses incurred by reason of default, shall be due and payable to Surety. Thereafter the Surety shall receive monthly payments equal to those that would have been paid by the CONTRACTOR had the CONTRACTOR continued to perform the services under the Agreement.

17.4.2 CITY may complete the Agreement, or any part thereof, either by day labor or re-letting a contract for the same, and procure the equipment and the facilities necessary for the completion of the Agreement, and charge the cost of same to CONTRACTOR and/or the Surety together with the costs incident thereto to such default.

17.4.3 In the event CITY completes the Agreement at a lesser cost than would have been payable to CONTRACTOR under this Agreement, if the same had been fulfilled by CONTRACTOR, CITY shall retain such differences. Should such cost to CITY be greater, CONTRACTOR shall pay the amount of such excess to the CITY.

17.4.4 Notwithstanding the other provisions in this Article, CITY reserves the right to terminate the Agreement at any time, whenever the service provided by CONTRACTOR fails to meet reasonable standards of the trade after CITY gives written notice to the CONTRACTOR of the deficiencies as set forth in the written notice within seven (7) calendar days of the receipt by CONTRACTOR of such notice from CITY.

ARTICLE 18 **BANKRUPTCY**

It is agreed that if CONTRACTOR is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective on the date and at the time the bankruptcy petition is filed.

ARTICLE 19 **MERGER; AMENDMENT**

This Agreement constitutes 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 20

DISPUTE RESOLUTION

20.1 Operations During Dispute.

20.1.1 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.

20.1.2 CONTRACTOR expressly recognizes the paramount right and duty of CITY to provide adequate maintenance of CITY's Property, and further agrees, in consideration for the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court, but will negotiate with CITY for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute, may present the matter to a court of competent jurisdiction in an appropriate suit therefore instituted by it or by CITY.

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 required by the CITY to perform the service;

21.1.2 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;

21.1.3 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

21.1.4 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.



21.2 The failure of CONTRACTOR to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement.

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

**CITY CLERK
601 CITY CENTER WAY, 4th FLOOR
PEMBROKE PINES, FL 33025
(954) 450-1050
drogers@ppines.com**

**ARTICLE 22
SCRUTINIZED COMPANIES**

22.1 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 Iran Terrorism Sectors List, or is 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 of:

22.1.1 Any amount if, 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

22.1.2 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:

22.1.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, created pursuant to Section 215.473, Florida Statutes; or

22.1.2.2 Is engaged in business operations in Syria.

**ARTICLE 23
EQUAL BENEFITS FOR EMPLOYEES**

23.1 CONTRACTOR certifies that it is aware of the requirements of Section 35.39 of the CITY's Code of Ordinances and certifies that CONTRACTOR currently complies with the requirements of Section 35.39 of the CITY's Code of Ordinances.



23.2 Except where federal or state law mandates to the contrary, a contractor awarded a contract pursuant to a competitive solicitation shall provide benefits to Domestic Partners and spouses of its employees, irrespective of gender, on the same basis as it provides benefits to employees' spouses in traditional marriages.

233 CONTRACTOR shall provide the City Manager and his/her designee, access to its records for the purpose of audits and/or investigations to ascertain compliance with the provisions of this Article, and upon request shall provide evidence that the CONTRACTOR is in compliance with the provisions of this Article upon the renewal of this Agreement or when the City Manager or his/her designee receives a complaint or has reason to believe CONTRACTOR may not be in compliance with the provisions of this Article. Records shall include but not be limited to providing the City Manager and his/her designee with certified copies of CONTRACTOR's records pertaining to its benefits policies and its employment policies and practices.

234.4 CONTRACTOR must conspicuously make available to all employees and applicants for employment the following statement:

“During the performance of a contract with the City of Pembroke Pines, Florida, the CONTRACTOR will provide Equal Benefits to its employees with spouses, as defined by Section 35.39 of the City of Pembroke Pines Code of Ordinances, and its employees with Domestic Partners and all Married Couples”.

If CONTRACTOR has questions regarding the application of Section 35.39 of the City of Pembroke Pines Code of Ordinances to CONTRACTOR's duties pursuant to this Agreement, contact Human Resources at (954) 392-2092 or cmaglio@ppines.com.

23.5 By executing this Agreement, CONTRACTOR certifies that it agrees to comply with the above and Section 35.39 of the City of Pembroke Pines Code of Ordinances, as may be amended from time to time.

ARTICLE 24

EMPLOYMENT ELIGIBILITY

24.1 **E-Verify.** CONTRACTOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

24.1.1 Definitions for this Section.

24.1.1.1 “Contractor” means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration.

24.1.1.2 “Contractor” includes, but is not limited to, a vendor or consultant.



City of Pembroke Pines

24.1.1.3 “Subcontractor” means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

24.1.1.4 “E-Verify system” means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

24.2 **Registration Requirement; Termination.** Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security’s E-Verify System to verify the employment eligibility of:

24.2.1 All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and

24.2.2 All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Pembroke Pines. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security’s E-Verify System during the term of the contract is a condition of the contract with the City of Pembroke Pines; and

24.2.3 The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

ARTICLE 25
MISCELLANEOUS

25.1 **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.



25.2 **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.

25.3 **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. All records shall be maintained and available for disclosure, as appropriate, in accordance with Chapter 119, Florida Statutes.

25.4 **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.

It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

25.5 **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.

25.6 **Notice.** Whenever any party desires to give notice unto 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, 4th Floor
Pembroke Pines, Florida 33025
Telephone No. (954) 450-1040



City of Pembroke Pines

Copy To: Samuel S. Goren, City Attorney
Goren, Cherof, 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 **Muller Otto - President**
Shade America, Inc.
3604 Harbor Drive,
St. Augustine, FL 32084
E-mail: motto@shadeamerica.us
Telephone No: (904) 217-0516

25.7 **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.

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

25.9 **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.

25.10 **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.

25.11 **Extent of Agreement and Conflicts.** This Agreement represents the entire and integrated agreement between CITY and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. In the event of a conflict between this Agreement, **Exhibit "A"**, and **Exhibit "B"**, this Agreement shall govern, then **Exhibit "A"**, and then **Exhibit "B"**.

25.12 **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.

25.13 **Attorneys' 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.



25.14 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.

25.15 Counterparts and Execution. This Agreement may be executed by hand or electronically 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.

25.16 Human Trafficking. Pursuant to Section 787.06(13), Fla. Stat., nongovernmental agencies contracting with CITY are required to provide an affidavit attesting that the nongovernmental agency does not use coercion for labor or services as defined within Section 787.06, Fla. Stat. By executing this First Amendment and submitting the executed required affidavit, the CONTRACTOR represents and warrants that it does not use coercion for labor or services as provided by state law.

25.17 Antitrust Violations. Pursuant to Section 287.137, Florida Statutes, as may be amended, a person or an affiliate who has been placed on the antitrust violator vendor list (electronically published and updated quarterly by the State of Florida) following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity. By entering into this First Amendment, CONTRACTOR certifies neither it nor its affiliate(s) are on the antitrust violator vendor list at the time of entering this First Amendment. False certification under this paragraph or being subsequently added to that list will result in termination of the Original Agreement, as amended, at the option of the CITY consistent with Section 287.137, Florida Statutes, as amended.

25.18 Public Entity Crimes. Pursuant to Section 287.133(2)(a), Fla. Stat., a person or affiliate, as defined in Section 287.1 33(1), Fla. Stat., who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of thirty-five thousand dollars (\$35,000.00) for a period of thirty-six (36) months following the date of being placed on the convicted vendor list. By executing this First Amendment, the CONTRACTOR represents and warrants that neither it nor any of its affiliates is currently on the convicted vendor list.



City of Pembroke Pines

25.19 **Discriminatory Vendor List**. Pursuant to Section 287.134(2)(a), Fla. Stat., an entity or affiliate, as defined in Section 287.134(1), who has been placed on the discriminatory vendor list may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity. By executing this Agreement, the CONTRACTOR represents and warrants that neither it nor any of its affiliates is currently on the discriminatory vendor list.

SIGNATURE PAGE AND AFFIDAVIT FOLLOWS



City of Pembroke Pines

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

APPROVED AS TO FORM:



Print Name: Paul Hernandez
OFFICE OF THE CITY ATTORNEY

BY: _____

MAYOR ANGELO CASTILLO

ATTEST:

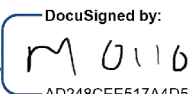
DEBRA E. ROGERS, CITY CLERK

BY: _____

CHARLES F. DODGE, CITY MANAGER

CONTRACTOR:

SHADE AMERICA, INC.

Signed By:  _____
DocuSigned by:
AD248CEE517A4D5...

Printed Name: Muller Otto

Title: President



City of Pembroke Pines

AFFIDAVIT OF COMPLIANCE WITH HUMAN TRAFFICKING LAWS

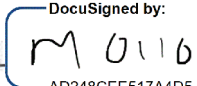
In accordance with section 787.06 (13), Florida Statutes, the undersigned, on behalf of the entity listed below ("Entity"), hereby attests under penalty of perjury that:

1. The Affiant is an officer or representative of the Entity entering into an agreement with the City of Pembroke Pines.
2. The Entity does not use coercion for labor or services as defined in Section 787.06, Florida Statutes, entitled "Human Trafficking".
3. The Affiant is authorized to execute this Affidavit on behalf of the Entity.
4. I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.
5. Pursuant to Sec. 92.525(2), Fla. Stat., under penalties of perjury, I declare that I have read the foregoing affidavit of compliance with Human Trafficking Laws and that the facts stated in it are true.

FURTHER AFFIANT SAYETH NAUGHT.

DATE: December 3, 2024

ENTITY: Shade America, Inc.

SIGNED BY:  _____
AD248CEE517A4D5...

NAME: Muller Otto

TITLE: President