

**CONTRACT BETWEEN THE MUNICIPALITY OF THE CITY OF PEMBROKE PINES AND  
WEEKLEY ASPHALT PAVING, INC. FOR JOHNSON STREET AND NW 202ND AVENUE  
REHABILITATION AND RESURFACING (SURTAX)**

BID/CONTRACT NO.: IFB# PSEN-23-01

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**CONTRACT BETWEEN THE MUNICIPALITY OF THE CITY OF PEMBROKE PINES AND  
WEEKLEY ASPHALT PAVING, INC. FOR JOHNSON STREET AND NW 202ND AVENUE  
REHABILITATION AND RESURFACING (SURTAX)**

BID/CONTRACT NO.: IFB# PSEN-23-01

<b>Project Title:</b>	Johnson Street and NW 202nd Avenue Rehabilitation and Resurfacing (Surtax)
<b>Location:</b>	1. Johnson Street from NW 196th Avenue to NW 208th Avenue 2. NW 202nd Avenue from Pines Boulevard to Johnson Street
<b>RLI Number:</b>	Invitation for Bids # PSEN-23-01
<b>Contract Number:</b>	
<b>Project Number:</b>	

**SUMMARY OF TERMS AND CONDITIONS**

<b>General Contractor:</b>	Weekley Asphalt Paving, Inc.
<b>Contractor Address:</b>	20701 Stirling Road Pembroke Pines, FL 33332
<b>Federal Identification No.:</b>	59-0753039

<b>Contract Administrator:</b>	Karl M. Kennedy, P.E.
<b>Contract Administrator Address:</b>	8300 S. Palm Drive Pembroke Pines, FL 33025

<b>Consultant:</b>	
<b>Consultant Address:</b>	

Article	Description	Unit
3.2	Substantial Completion	90 Days after the Project Initiation Date in NTP
3.2	Final Completion	45 Days after Substantial Completion
3.3	[If applicable] Liquidated Damages for each calendar day after time specified in Notice to Proceed	\$500.00 per day
3.3	Liquidated Damages for each calendar day after time specified for Substantial Completion	\$500.00 per day

Article	Description	Unit
3.3	Liquidated Damages for each calendar day after time specified for Final Completion	\$500.00 per day
3.3	<b>[If applicable]</b> Liquidated Damages for each calendar day after time specified for interim Milestones (or phase):  [Milestones 1, 2, 3, etc.: Division 1, Section _____]	Interim Milestone #1 \$_____ per day
		Interim Milestone #2 \$_____ per day
		Interim Milestone #3 \$_____ per day
8.4	The Parties designate the following as the respective places for giving of notice:	For Municipality: _____
		_____
		For Contractor: _____
42 (General Conditions)	Compensable Excusable Delay for each calendar day beyond the Contract Time.	\$_____ per day
54 (General Conditions)	✓ County Business Enterprise (CBE) or Small Business Enterprise (SBE) commitment	As awarded 13 %

## CONTRACT

This is a construction contract ("Contract") made and entered by and between the **CITY OF PEMBROKE PINES**, a municipality of the State of Florida with a business address of 601 City Center Way, Pembroke Pines, FL 33025 ("Municipality"), and **WEEKLEY ASPHALT PAVING, INC.**, a Florida For Profit Corporation with a business address of 20701 Stirling Road, Pembroke Pines, FL 33332 ("Contractor") (each a "Party" and collectively referred to as the "Parties").

## RECITALS

A. On November 6, 2018, Broward County voters approved by referendum the Transportation Surtax Program to fund statutorily-permissible transportation expenditures in accordance with section 212.055(1), Florida Statutes.

B. In order to ensure the efficient expenditure of Transportation Surtax proceeds, Broward County, the Broward Metropolitan Planning Organization ("MPO"), and municipalities in Broward County entered into an Interlocal Agreement establishing a process wherein municipalities were able to submit projects for evaluation and funding with Transportation Surtax proceeds.

C. The City of Pembroke Pines ("City") requested funding for "Johnson Street Rehabilitation and Resurfacing" (BC-PBRKPINES-FY2020-00001-C) ("project") in a total maximum not-to-exceed amount of FOUR HUNDRED NINETY-NINE THOUSAND, ONE HUNDRED FIFTY-THREE DOLLARS AND ZERO CENTS (\$499,153.00), and the City's project has been determined to be statutorily eligible for funding.

D. On August 8, 2023, the CITY advertised its notice to bidders of the City's desire to hire a firm to provide services for sidewalk addition, sidewalk ramp addition and modification and complete milling and resurfacing at the following locations: 1. Johnson Street from NW 196th Avenue to NW 208th Avenue and 2. NW 202nd Avenue from Pines Boulevard to Johnson Street as more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof, for the said bid entitled "Johnson Street and NW 202nd Avenue Rehabilitation and Resurfacing (Surtax)" Invitation for Bid ("IFB") # PSEN-23-01:

E. On September 12, 2023, the bids were opened at the offices of the City Clerk.

F. On \_\_\_\_\_, the City entered into an Interlocal Agreement with Broward County for Surtax-Funded municipal transportation project: Johnson Street Rehabilitation and Resurfacing (BC-PBRKPINES-FY2020-00001-C) for County to provide transportation surtax funding for said project.

G. 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.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE 1 DEFINITIONS

Whenever the following terms appear in the Contract Documents, the intent and meaning shall be interpreted as follows:

- 1.1. **Applicable Law** means all applicable laws, codes, advisory circulars, rules, regulations, or ordinances of any federal, state, county, municipal, or other governmental entity, including as may be amended from time to time.
- 1.2. **Bidder** means an entity or individual submitting a bid for this Project, acting directly or through a duly authorized representative.
- 1.3. **Board** means the governing body of Municipality, its successors and assigns.
- 1.4. **Change Order** means a written document ordering a change in the Contract Price or Contract Time or a material change in the Work.
- 1.5. **Consultant** means the architect or engineer who has contracted with Municipality or who is an employee of Municipality, and provides professional services for this Project.
- 1.6. **Contract Administrator** means Karl Kennedy, P.E. or such other person designated by the City of Pembroke Pines in writing.
- 1.7. **Contract Documents** means the official documents setting forth bidding information, requirements, and contractual obligations for the Project and includes Articles 1 through 8 of this Contract, the Contract Supplement, the General Conditions, the Supplemental General Conditions, the Scope of Work, Invitation to Bid, Addenda, Standard Instructions for Vendors, Special Instructions for Vendors, Plans, Drawings, Exhibits, General Requirements, Technical Specifications, Bid Forms, Record of Award by Board, Bonds, Notice of Award, Notice(s) to Proceed, Supplements, Representations and Certifications, Certificates, Project Forms, Closeout Forms, Purchase Order(s), Change Order(s), Field Order(s), Special Provisions, BIM and Electronic Media Submittal Requirements, and any additional documents the submission of which is required by this Project.
- 1.8. **Contract Price** means the amount established in the bid submittal and award by the Board, as may be amended by Change Order.
- 1.9. **Contract Time** means the time between commencement and completion of the Work, including any milestone dates thereof, established in Article 3 of this Contract, as may be amended by Change Order.
- 1.10. **Contractor** means the person, firm, or corporation with whom Municipality has contracted and who is responsible for the acceptable performance of the Work and for the payment of all legal debts or other obligations pertaining to the Work. All references in the Contract Documents to third parties under contract or control of Contractor shall be deemed to be a reference to Contractor.

1.11. **County** means Broward County, a political subdivision of the State of Florida and representatives authorized by the Board of County Commissioners or the Broward County Charter to act on behalf of County.

1.12. **County Business Enterprise** or **CBE** means a small business certified as meeting the applicable requirements of the Broward County Business Opportunity Act of 2012, Section 1-81, Broward County Code of Ordinances.

1.13. **Field Order** means a written order that orders minor changes in the Work but which does not involve a change in the Contract Price or Contract Time.

1.14. **Final Completion** means the date certified by Consultant in the Final Certificate of Payment upon which all conditions and requirements of any permits and regulatory agencies have been satisfied; any documents required by the Contract Documents have been received by Consultant; any other documents required to be provided by Contractor have been received by Consultant; and to the best of Consultant's knowledge, information and belief, the Work defined herein has been fully completed in accordance with the terms and conditions of the Contract Documents.

1.15. **Materials** means materials incorporated in this Project or used or consumed in the performance of the Work.

1.16. **Municipality Manager** means the official appointed by the Municipality who directs the administration of the Municipality.

1.17. **Notice(s) to Proceed** means a written notice to Contractor authorizing the commencement of the activities identified in the notice or as described in the Contract Documents.

1.18. **OESBD** means Broward County's Office of Economic and Small Business Development.

1.19. **Plans** or **Drawings** means the official graphic representations of this Project that are a part of the Contract Documents.

1.20. **Purchasing Director** means Municipality's Purchasing Specialist, Irene Muñarriz or designee authorized to execute Work Authorizations.

1.21. **Project** means the construction project described in the Contract Documents, including the Work described therein.

1.22. **Project Initiation Date** means the date upon which the Contract Time commences.

1.23. **Small Business Enterprise** or **SBE** means an entity certified as meeting the applicable requirements of the Broward County Business Opportunity Act of 2012, Section 1-81, Broward County Code of Ordinances.



1.24. **Subcontractor** means a person, firm or corporation having a direct contract with Contractor, including one who furnishes material worked to a special design according to the Contract Documents, but does not include one who merely furnishes Materials not so worked.

1.25. **Substantial Completion** means that date, as certified in writing by Consultant and as finally determined by Contract Administrator in its sole discretion, on which the Work, or a portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that all conditions of permits and regulatory agencies have been satisfied and Municipality or its designee can enjoy use or occupancy and can use or operate it in all respects for its intended purpose. A Certificate of Occupancy (or a Temporary Certificate of Occupancy (TCO) or other alternate municipal/county authorization for limited or conditional occupancy acceptable to the Contract Administrator) must be issued for Substantial Completion to be achieved; however, the issuance of a Certificate of Occupancy will not, by itself, constitute the achievement or date of Substantial Completion.

1.26. **Surety** means the surety company or individual that is bound by the performance bond and payment bond with and for Contractor who is primarily liable for satisfactory performance of the Work, and which surety company or individual is responsible for Contractor's satisfactory performance of the Work under this Contract and for the payment of all debts and other obligations pertaining thereto in accordance with Section 255.05, Florida Statutes.

1.27. **Work** means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a part of the Project.

## **ARTICLE 2     SCOPE OF WORK**

Contractor hereby agrees to furnish all of the labor, materials, equipment, services, and incidentals necessary to perform all of the Work described in the Contract Documents for the Project. Contractor hereby agrees to **provide services for sidewalk addition, sidewalk ramp addition and modification and complete milling and resurfacing at the following locations: 1. Johnson Street from NW 196th Avenue to NW 208th Avenue and 2. NW 202nd Avenue from Pines Boulevard to Johnson Street** (each the "Property" and collectively the "Properties"), in accordance with the Scope of Services outlined in the specifications of "IFB # PSEN-23-01", 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.

## **ARTICLE 3     CONTRACT TIME**

3.1. Contractor shall be instructed to commence the Work by written instruction in the form of a Purchase Order issued by Municipality's Purchasing Director and two or more Notices to Proceed issued by the Contract Administrator. The first Notice to Proceed and Purchase Order

will not be issued until Contractor's submission to Municipality of all required documents and after execution of this Contract by both Parties. Preliminary Work, including submission of a project schedule, schedule of values, submittals, submittal schedule, and other documents required for permitting, and performance of Work that does not require permits, shall commence within ten (10) days after the date of the first Notice to Proceed. Contractor shall have ten (10) days after receipt of signed and sealed contract Drawings from Consultant to apply for construction permits to the applicable permitting authority. Issuance of all permits by the permitting authority shall be a condition precedent to the issuance of a second Notice to Proceed for all additional Work. Except for the reimbursement of permit application fees, impact fees, and performance and payment bond premiums as may be provided in the Contract Documents, Contractor shall not be entitled to compensation of any kind during the permitting process. The Work to be performed pursuant to the second Notice to Proceed shall commence within ten (10) days after the Project Initiation Date specified in the second Notice to Proceed.

3.2. Time is of the essence throughout this Contract. Contractor must obtain Substantial Completion of the Work within ninety (90) calendar days after the Project Initiation Date specified in the Second Notice to Proceed, and Final Completion within forty-five (45) calendar days after the date of Substantial Completion.

3.3. Upon failure of Contractor to obtain Substantial Completion within the deadline stated in Section 3.2, as may be extended by any mutually approved time extensions, Contractor shall pay to Municipality the sum of Five Hundred Dollars and Zero Cents (\$500.00) for each day after the deadline for Substantial Completion, as may be extended by any mutually approved time extensions, until Substantial Completion is obtained. After Substantial Completion, should Contractor fail to complete the remaining Work within the deadline stated in Section 3.2, as may be extended by mutually approved time extensions thereof, Contractor shall pay to Municipality the sum of Five Hundred Dollars and Zero Cents (\$500.00) for each day after the deadline for Final Completion, as may be extended by any mutually approved extensions, until Final Completion is obtained. These amounts are not penalties but are liquidated damages to Municipality for its inability to obtain full beneficial occupancy and/or use of the Project. Liquidated damages are hereby fixed and agreed upon between the Parties based on (1) a mutual recognition of the impossibility of precisely ascertaining the amount of damages that will be sustained by Municipality as a consequence of Contractor's failure to timely obtain Substantial Completion; and (2) both Parties' desire to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of Contractor to complete this Contract on time. These liquidated damages shall apply separately to each portion of the Project for which a deadline for completion is given.

3.4. Municipality may deduct liquidated damages from monies due to Contractor for the Work under this Contract or as much thereof as Municipality may, in its sole discretion, deem just and reasonable.

3.5. Contractor shall reimburse Municipality, in addition to liquidated damages, for all costs incurred by Consultant in administering the construction of the Project beyond the completion

dates specified above, as extended by any approved time extensions. Consultant construction administration costs shall be in the amounts set forth in the contract between Municipality and Consultant, a copy of which is available upon request of the Contract Administrator. All such costs shall be deducted from the monies due Contractor for performance of Work under this Contract by means of unilateral credit Change Orders issued by Municipality as costs are incurred by Consultant and agreed to by Municipality.

#### **ARTICLE 4      CONTRACT SUM**

4.1.     ☐     This is a Unit Price Contract:\*

4.1.1.   Municipality shall pay to Contractor the amounts determined for the total number of each of the units of Work completed at the unit price stated in the Contract Price. The number of units contained in this schedule is an estimate only, and final payment shall be made for the actual number of units incorporated in or made necessary by the Work covered by the Contract Documents.

4.1.2.   Payment shall be made at the unit prices applicable to each integral part of the Work. These prices shall be full compensation for all costs, including overhead and profit, associated with completion of all the Work in full conformity with the requirements as stated or shown, or both, in the Contract Documents. The cost of any item of Work not covered by a specific Contract unit price shall be included in the Contract unit price or lump sum price to which the item is most applicable.

4.2.     ☒     This is a Lump Sum Contract:\*

4.2.1.   Municipality shall pay Contractor the Contract Price for the performance of the Work described in the Contract Documents.

4.2.2.   Payment shall be at the lump sum price stated in this Contract. This price shall be full compensation for all costs, including overhead and profit, associated with completion of all the Work in full conformity with the requirements as stated or shown, or both, in the Contract Documents. The cost of any item of Work not covered by a specific Contract lump sum should be included in the lump sum price to which the item is most applicable.

**\*Note:** Only the subsections corresponding to any checked box in this Article 4 will apply to this Contract. Some Projects include both unit prices and lump sums, in which case both subsections shall apply as appropriate depending upon the type of Work being performed by Contractor and approved by Municipality.

#### **ARTICLE 5      PROGRESS PAYMENTS**

5.1.     Contractor may make an application for payment ("Application for Payment"), at intervals of not more than once a month, for Work completed during the Project. Contractor shall, where the Project involves CBE or SBE Subcontractors, make Application for Payment, at monthly intervals, for Work completed by such Subcontractors during the Project. Contractor's

applications shall show a complete breakdown of the Project components, the quantities completed, and the amount of payment sought, together with such supporting evidence as may be required by Consultant or Contract Administrator. Contractor shall submit with each Application for Payment: an updated progress schedule acceptable to Consultant as required by the Contract Documents; a Certification of Payments to Subcontractors Form (Form 9); a statement indicating the cumulative amount of CBE or SBE participation to date; and a release of claims relative to the Work that was the subject of previous applications or consent of surety relative to the Work that is the subject of the Application for Payment. If Contractor has not made payment to a Subcontractor, the Certification of Payments to Subcontractors Form shall be accompanied by a copy of the notification sent to each Subcontractor (listed in Item 2 of the Form) to whom payment has not been made, explaining the good cause why payment was not made. When applicable, an Application for Payment shall be accompanied by a completed Statement of Wage Compliance Form (Form 8A or 8B). Each Application for Payment shall be submitted in triplicate to Consultant for approval as follows:

**Karl Kennedy, P.E.**

City Engineer

City of Pembroke Pines

8300 South Palm Drive

Pembroke Pines, FL 33025

All Applications for Payment shall be stamped as received on the date on which they are delivered in the manner specified above. Payments of Applications for Payment shall be subject to approval as specified hereinbefore, and if approved shall be due twenty-five (25) business days after the date on which the Application for Payment is stamped received. At the end of the twenty-five (25) business days, Contractor may send the Contract Administrator an overdue notice. If the Application for Payment is not rejected within four (4) business days after delivery of the overdue notice, the Application for Payment shall be deemed accepted, except for any portion of the Application for Payment that Municipality determines to be fraudulent or misleading. If the Application for Payment does not meet the requirements of this Contract, Municipality shall reject the Application for Payment within twenty (20) business days after the date stamped received and said rejection shall specify the deficiency and the action necessary to cure that deficiency. If Contractor submits a request that corrects the deficiency, the corrected Application for Payment must be paid or rejected within ten (10) business days after the corrected Application for Payment is stamped as received. Any dispute between Municipality and Contractor shall be resolved pursuant to the dispute resolution procedure set forth in Article 12 of the General Conditions.

5.2. Municipality may withhold retainage on each progress payment as set forth in Section 255.078, Florida Statutes, as may be amended during this Contract. Any reduction in retainage below the maximum amount set forth in Section 255.078, Florida Statutes, shall be at the sole discretion of the Contract Administrator, as may be recommended by Consultant. Any interest earned on retainage shall accrue to the benefit of Municipality.

5.3. Notwithstanding any provision of this Contract to the contrary, Municipality may withhold payment, in whole or in part, in accordance with Applicable Law, or to such extent as may be necessary to protect itself from loss on account of:

5.3.1 Inadequate or defective Work not remedied.

5.3.2 Claims filed or reasonable evidence indicating probable filing of claims by other parties against Contractor or Municipality relating to Contractor's performance.

5.3.3 Failure of Contractor to make payments properly to Subcontractors or for material or labor.

5.3.4 Damage to another contractor not remedied.

5.3.5 Liquidated damages and costs incurred by Consultant for extended construction administration.

5.3.6 Failure of Contractor to provide documents required by the Contract Documents.

When the above grounds are removed or resolved to the satisfaction of the Contract Administrator, any withheld payment shall be made to the extent otherwise due.

## **ARTICLE 6 ACCEPTANCE AND FINAL PAYMENT**

6.1. Upon receipt of written notice from Contractor that the Work is ready for final inspection and acceptance, Consultant shall conduct an inspection within ten (10) days. If Consultant and Contract Administrator find that the Work is acceptable; that the requisite documents have been submitted; that the requirements of the Contract Documents are fully satisfied; and that all conditions of the permits and regulatory agencies have been met, a Final Certificate of Payment (Form 11) shall be issued by Consultant, under its signature, stating that the requirements of the Contract Documents have been performed and that the Work is ready for acceptance under the terms and conditions of the Contract Documents.

6.2. Before issuance of the Final Certificate for Payment, Contractor shall deliver to Consultant the following Final Payment Package: a complete release of all claims arising out of this Contract, or receipts in full in lieu thereof; an affidavit certifying that all suppliers and Subcontractors have been paid in full and that all other indebtedness and financial obligations connected with the Work have been paid, or, in the alternative, a consent of the Surety to final payment on Contractor's behalf; the final corrected as-built Drawings; and the final bill of Materials, if required, and the final Application for Payment. This Final payment package must include the certification document titled Final List of Non-Certified Subcontractors and Suppliers (Form 13), which must be signed and notarized by Contractor. A list of all noncertified Subcontractors and suppliers used must be attached to this certified document.

6.3. If, after Substantial Completion, Final Completion is materially delayed through no fault of Contractor, and Consultant so certifies, Municipality shall, upon certification of Consultant,

and without terminating this Contract, make payment of the balance due for any portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, but it shall not constitute a waiver of claims.

6.4. Final payment shall be made only after the Board or Municipality's Purchasing Director, as applicable, has reviewed a written evaluation of the performance of Contractor prepared by the Contract Administrator and has approved the final payment. The acceptance of final payment shall constitute a waiver of all claims by Contractor, except those previously made in strict accordance with the provisions of the General Conditions and identified by Contractor as unsettled at the time of the application for final payment.

## **ARTICLE 7 REPRESENTATIONS AND WARRANTIES**

7.1. Representation of Authority. Contractor represents and warrants that this Contract constitutes the legal, valid, binding, and enforceable obligation of Contractor, and that neither the execution nor performance of this Contract constitutes a breach of any agreement that Contractor has with any third party or violates Applicable Law. Contractor further represents and warrants that execution of this Contract is within Contractor's legal powers, and each individual executing this Contract on behalf of Contractor is duly authorized by all necessary and appropriate action to do so on behalf of Contractor and does so with full legal authority.

7.2. Solicitation Representations. Contractor represents and warrants that all statements and representations made in Contractor's proposal, bid, or other supporting documents submitted to Municipality in connection with the solicitation, negotiation, or award of this Contract, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the date Contractor executes this Contract, unless otherwise expressly disclosed in writing by Contractor.

7.3. Contingency Fee. Contractor represents that it has not paid or agreed to pay any person or entity, 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 Contract.

7.4. Public Entity Crimes. Contractor represents that it is familiar with the requirements and prohibitions of the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Contract will not violate that Act. In addition to the foregoing, Contractor further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime," regardless of the amount of money involved or whether Contractor has been placed on the convicted vendor list.

7.5. Discriminatory Vendor and Scrutinized Companies List; Countries of Concern. Contractor represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes, and that it is not a "scrutinized company" pursuant to Sections 215.473 or 215.4725, Florida Statutes. Contractor further represents that it is not, and for the duration

of the Contract will not be, ineligible to contract with Municipality on any of the grounds stated in Section 287.135, Florida Statutes. Contractor represents that it is, and for the duration of this Contract will remain, in compliance with Section 286.101, Florida Statutes.

7.6. Claims Against Contractor. Contractor represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of Contractor, threatened against or affecting Contractor, the outcome of which may (a) affect the validity or enforceability of this Contract, (b) materially and adversely affect the authority or ability of Contractor to perform its obligations under this Contract, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Contractor or on the ability of Contractor to conduct its business as presently conducted or as proposed or contemplated to be conducted.

7.7. Verification of Employment Eligibility. Contractor represents that Contractor and each Subcontractor have registered with and use the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Contract will not violate that statute. If Contractor violates this section, Municipality may immediately terminate this Contract for cause and Contractor shall be liable for all costs incurred by Municipality due to the termination.

7.8. Warranty of Performance. Contractor represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Work and that each person and entity that will perform or provide Work is duly qualified to perform such Work by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render such Work. Contractor represents and warrants that the Work shall be performed in a skillful and respectful manner, and that the quality of all such Work shall equal or exceed prevailing industry standards for such Work.

7.9. Truth-In-Negotiation Representation. Contractor's compensation under this Contract is based upon its representations to Municipality, and Contractor certifies that the wage rates, factual unit costs, and other information supplied to substantiate Contractor's compensation, including without limitation those made by Contractor during the negotiation of this Contract, are accurate, complete, and current as of the date Contractor executes this Contract. Contractor's compensation will be reduced to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

7.10. Prohibited Telecommunications Equipment. Contractor represents and certifies that it and its Subcontractors do not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. Contractor represents and certifies that Contractor and its

Subcontractors shall not provide or use such covered telecommunications equipment, system, or services at any time during the term of this Contract.

7.11. Breach of Representations. Contractor acknowledges that Municipality is materially relying on the representations, warranties, and certifications of Contractor stated in this article. Municipality shall be entitled to exercise any or all of the following remedies if any such representation, warranty, or certification is untrue: (a) recovery of damages incurred; (b) termination of this Contract without any further liability to Contractor; (c) set off from any amounts due Contractor the full amount of any damage incurred; and (d) debarment of Contractor.

## **ARTICLE 8 MISCELLANEOUS**

8.1. Contract Documents and Priority of Provisions. In the event of any conflict between the terms contained in this Contract and those contained in a Contract Supplement, the terms of such Contract Supplement shall prevail. Furthermore, in the event of any conflict between the terms of the General Conditions included in this Contract and those contained in any General Supplemental Provisions, the terms of such General Supplemental Provisions shall prevail. In addition, anything shown on the drawings and not mentioned in the specifications or mentioned in the specifications and not shown on the drawings, shall have the same effect as if shown or mentioned respectively in both. In the event of a conflict among the Contract Documents, Contractor shall provide the latest, most stringent, and more technical requirement(s), including, but not limited to, the requirements setting forth the better quality or greater quantity.

8.2. Independent Contractor. Contractor is an independent contractor under this Contract. Work provided by Contractor pursuant to this Contract shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees, or agents of Municipality. This Contract shall not constitute or make the Parties a partnership or joint venture.

8.3. Third-Party Beneficiaries. Except for Broward County to the extent expressly identified herein, neither Contractor nor Municipality intends to directly or substantially benefit a third party by entering into this Contract. Therefore, the Parties agree that, other than Broward County, there are no third-party beneficiaries to this Contract (other than Consultant to the extent this Contract expressly provides Consultant with specific rights or remedies).

8.4. Notices. In order for a notice to a Party to be effective under this Contract, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Addresses may be changed by the applicable Party giving notice of such change in accordance with this section.

For Municipality:  
Charles F. Dodge, City Manager  
City of Pembroke Pines



601 City Center Way, 4<sup>th</sup> Floor  
Pembroke Pines, Florida 33025  
Telephone No. (954) 450-1040

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

For Contractor:  
Daniel Weekley, President  
20701 Stirling Road  
Pembroke Pines, FL 33332  
Telephone: (954) 680-8005  
Facsimile: (954) 680-8671  
E-mail: danweekley@weekleyasp.com

8.5. Assignment and Performance. Neither this Contract nor any interest herein or proceeds hereof shall be assigned, transferred, or encumbered without the written consent of the other party, and Contractor shall not subcontract any portion of the Work required by this Contract except as authorized by Article 28 of the General Conditions. Any attempted assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, and shall constitute a breach of this Contract. Municipality reserves the right to condition its approval of any assignment, transfer, encumbrance, or subcontract upon further due diligence and an additional fee paid to Municipality to reasonably compensate it for the performance of any such due diligence.

8.6. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Contract was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Contract and is, therefore, a material term.

8.7. No Waiver. Municipality's failure to enforce any provision of this Contract shall not be deemed a waiver of its right or power to enforce such provision or a modification of this Contract. The failure to assert a breach of a provision of this Contract shall not be deemed a waiver of such breach or of any subsequent breach, nor shall it be construed to be a modification of the terms of this Contract.

8.8. Severability. If any part of this Contract is found to be unenforceable by a court of competent jurisdiction, that part shall be deemed severed from this Contract and the balance of this Contract shall remain in full force and effect.

8.9. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Contract shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Jurisdiction of any controversies or legal problems arising out of this Contract, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Contract shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **EACH PARTY HEREBY EACH EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS CONTRACT. IF A PARTY FAILS TO WITHDRAW A DEMAND FOR A JURY TRIAL AFTER WRITTEN NOTICE BY THE OTHER PARTY, THE PARTY MAKING THE DEMAND FOR JURY TRIAL SHALL BE LIABLE FOR REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY TO CONTEST THE DEMAND FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION. CONTRACTOR, PURSUANT TO ARTICLE 28 OF THE GENERAL CONDITIONS, SHALL SPECIFICALLY BIND ALL SUBCONTRACTORS TO THE PROVISIONS OF THIS SECTION.**

8.10. Amendments. Unless otherwise expressly authorized herein, no modification, amendment, or alteration of any portion of this Contract shall be effective unless contained in a written document executed with the same or similar formality as this Contract by duly authorized representatives of Municipality and Contractor.

8.11. Prior Agreements. The Contract is the final and complete understanding of the Parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Contract or the Contract Documents are contained herein.

8.12. Compliance with Laws. Contractor and the Work must comply with all Applicable Law, including, but not limited to, the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements.

8.13. Living Wage Requirement. To the extent Contractor is a "covered employer" within the meaning of the Broward County Living Wage Ordinance, Sections 26-100 through 26-105, Broward County Code of Ordinances, Contractor agrees to and shall pay to all of its employees providing "covered services," as defined in the ordinance, a living wage as required by such ordinance, and shall fully comply with the requirements of such ordinance, and that Contractor shall ensure all of its Subcontractors that qualify as "covered employers" fully comply with the requirements of such ordinance.

8.14. Interpretation. The titles and headings in the Contract Documents are for reference purposes only and shall not in any way affect the meaning or interpretation of this Contract. All personal pronouns shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein" refer to the Contract as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article, such

reference is to the section or article as a whole, including the subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to “days” means calendar days, unless otherwise expressly stated.

8.15. Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Contract, nothing herein is intended to serve as a waiver of sovereign immunity by Municipality nor shall anything included herein be construed as consent by Municipality to be sued by third parties in any matter arising out of this Contract. Municipality is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement:  
MUNICIPALITY, CITY OF PEMBROKE PINES through its Board, signing by and through its Mayor or  
Vice-Mayor authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, and CONTRACTOR, signing by and through its President duly authorized to execute same.

MUNICIPALITY

ATTEST:

By: \_\_\_\_\_

MAYOR

\_\_\_\_\_  
MUNICIPALITY'S CLERK

\_\_\_\_\_  
Print Name

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

I HEREBY CERTIFY that I have approved  
this Agreement as to form and legal  
sufficiency subject to execution by the parties:

\_\_\_\_\_  
Municipality's Attorney

**CONTRACT BETWEEN THE MUNICIPALITY OF THE CITY OF PEMBROKE PINES AND  
WEEKLEY ASPHALT PAVING, INC. FOR JOHNSON STREET AND NW 202ND AVENUE  
REHABILITATION AND RESURFACING (SURTAX)  
BID/CONTRACT NO.: IFB# PSEN-23-01**

**FOR INDIVIDUAL:**

**CONTRACT OR WITNESSES:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print/Type Name

By \_\_\_\_\_

\_\_\_\_\_  
(Please Type Name)

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**FOR CORPORATION:**

**ATTEST:**

  
\_\_\_\_\_  
Secretary

Wayne D Weekley  
\_\_\_\_\_  
(Typed Name of Secretary)

**CORPORATE SEAL**

**CONTRACTOR**

Weekley Asphalt Paving, Inc.,  
\_\_\_\_\_  
(Typed Name of Contractor/Firm)

By \_\_\_\_\_  
President/Vice President

Daniel D Weekley - President  
\_\_\_\_\_  
(Typed Name and Title)

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CONTRACT SUPPLEMENT**

## **GENERAL CONDITIONS**

### **ARTICLE 1 CONTRACT DOCUMENTS**

1.1 The Contract Documents shall be followed in strict accordance as to Work, performance, material(s), and dimensions except when Consultant may authorize, in writing, an exception.

1.2 Dimensions given in figures shall predominate over scaled measurements from the Drawings; however, any discrepancies regarding figures shall be resolved by Consultant. Contractor shall not proceed when in doubt as to any dimension or measurement, but shall seek clarification from Consultant.

1.3 Contractor shall be furnished ten (10) copies of this Contract, free of charge, two (2) of which shall be preserved and always made accessible to Consultant and Consultant's authorized representatives. Additional copies of this Contract may be obtained from Municipality at the cost of reproduction.

### **ARTICLE 2 INTENTION OF MUNICIPALITY**

Municipality intends to describe in this Contract a functionally complete Project (or part thereof) to be constructed in accordance with this Contract and in accordance with all codes and regulations governing construction of the Project. The Work is a description of Contractor's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, as well as all labor, materials, equipment, and tasks, that are such an inseparable part of the Work described that exclusion of them from the Work would render performance by Contractor impractical, illogical, or unconscionable, and shall be supplied by Contractor whether or not specifically called for. When words that have a well-known technical or trade meaning are used to describe Work, materials, or equipment, such words shall be interpreted in accordance with that meaning, unless specified otherwise herein. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws, or regulations in effect at the time of opening of bids for the Project. Contractor shall comply with such specifications, manuals, codes, laws, or regulations. Municipality will have no duties other than those duties and obligations expressly set forth within this Contract.

### **ARTICLE 3 PRELIMINARY MATTERS**

3.1. At least five (5) days prior to the pre-construction meeting described in Section 3.2, Contractor shall submit to Consultant for Consultant's review and acceptance:

3.1.1. A progress schedule in the indicated form:

☒ Bar Chart

☐ Modified Critical Path Method ("CPM")

☐ CPM

☐ Computerized CPM

(CPM is interpreted to be generally as outlined in the Association of General Contractors ("AGC") publication, "The Use of CPM in Construction.")

The progress schedule shall indicate the start and completion dates of the various stages of the Work, and shall show an activity network for the planning and execution of the Work. Included with the progress schedule shall be a narrative description of the progress schedule. The progress schedule must be updated monthly by Contractor, submitted as part of each Application for Payment, and must be acceptable to Consultant.

3.1.2. A preliminary schedule of Shop Drawing submissions; and

3.1.3. In a lump sum contract or in a contract that includes lump sum bid items of Work, a preliminary schedule of values for all of the Work that includes quantities and prices of items aggregating the Contract Price and that subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during construction.

In addition, after award but prior to the submission of the progress schedule, Consultant, Contract Administrator, and Contractor shall meet with all utility owners and secure from them a schedule of utility relocation; provided, however, that neither Consultant nor Municipality shall be responsible for the nonperformance by the utility owners.

3.2. At a time specified by Consultant, but before Contractor starts the Work at the Project site, a conference attended by Contractor, Consultant, and others as deemed appropriate by Contract Administrator, will be held to discuss the schedules referred to in Section 3.1; to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment; and to establish a working understanding among the Parties as to the Work.

3.3. Within thirty-five (35) days after the Project Initiation Date set forth in the applicable Notice to Proceed, a conference attended by Contractor, Consultant, and others, as appropriate, will be held to finalize the schedules submitted in accordance with Section 3.1. Within forty-five (45) days after the Project Initiation Date set forth in the applicable Notice to Proceed, Contractor shall revise the original schedule submittal to address all review comments from the progress schedule review conference and resubmit a revised progress schedule to Consultant for review. Consultant's acceptance of the finalized progress schedule shall only be with respect to the orderly progression of the Work to completion within the Contract Time, but such acceptance shall not constitute acceptance by Municipality or Consultant of the means or methods of construction or of the sequencing or scheduling of the Work. Such acceptance will neither impose on Consultant or Municipality responsibility for the progress or scheduling of the Work, nor relieve Contractor from full responsibility therefor. The finalized schedule of Shop Drawing submissions must be acceptable to Consultant as providing a workable arrangement for



processing such submissions. The finalized schedule of values must be acceptable to Consultant as to form and substance.

#### **ARTICLE 4      PERFORMANCE BOND AND PAYMENT BOND**

4.1. Within ten (10) days after being notified of the award, Contractor shall furnish a Performance Bond and a Payment Bond containing all the provisions of the Performance Bond (Form 1) and Payment Bond (Form 2). Each Bond shall be in the amount of one hundred percent (100%) of the Contract Price guaranteeing to Municipality the completion and performance of the Work covered in such Contract as well as full payment of all suppliers, laborers, and Subcontractors employed pursuant to this Project. Each Bond shall be with a surety company that is qualified pursuant to Article 5. Each Bond must name "Broward County" as an additional obligee.

3.6. Each Bond shall continue in effect for one (1) year after Final Completion and acceptance of the Work with liability equal to one hundred percent (100%) of the Contract Price, or an additional bond provided to ensure that Contractor will, upon notification by Municipality, correct any defective or faulty Work or Materials that appear within one (1) year after Final Completion of this Contract.

4.2. Pursuant to the requirements of Section 255.05, Florida Statutes, Contractor shall ensure that the bond(s) referenced above shall be recorded in the Official Records of Broward County and provide Municipality with evidence of such recording.

4.3. In lieu of a Performance Bond and a Payment Bond, Contractor may furnish alternate forms of security in the form of cash, money order, certified check, cashier's check, or unconditional letter of credit. Such alternate forms of security shall be subject to the approval of Municipality and for same purpose, and shall be subject to the same conditions as those applicable above, and shall be held by Municipality for one (1) year after completion and acceptance of the Work.

#### **ARTICLE 5      QUALIFICATION OF SURETY**

5.1 For all Bid Bonds, Performance Bonds, and Payment Bonds over Five Hundred Thousand Dollars (\$500,000.00):

5.1.1. Each bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida as surety, having a resident agent in the State of Florida, and having been in business with a record of successful continuous operation for at least five (5) years.

5.1.2. The surety company shall hold a current Certificate of Authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify as a proper surety herein, the net retention of

the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised (31 C.F.R. §§ 223.10, 223.11). Further, the surety company shall provide Municipality with evidence satisfactory to Municipality that such excess risk has been protected in an acceptable manner.

5.1.3. A surety company that is rejected by Municipality may be substituted by the Bidder or proposer with a surety company acceptable to Municipality, but only if the bid amount does not increase.

5.1.4. All bonds shall be written through surety insurers authorized to do business in the State of Florida as surety, with the following qualifications as to management and financial strength according to the latest (1986 or later) edition of Best's Insurance Guide, published by AM Best Company, Oldwick, New Jersey:

<b>Amount of Bond</b>	<b>Policy Holder's Ratings</b>
<b>500,001 to 1,500,000</b>	<b>A- III</b>
<b>1,500,001 to 2,500,000</b>	<b>A, VI</b>
<b>2,500,001 to 5,000,000</b>	<b>A VII</b>
<b>5,000,001 to 10,000,000</b>	<b>A VIII</b>
<b>Over 10,000,001</b>	<b>A IX</b>

5.2. For projects that do not exceed Five Hundred Thousand Dollars (\$500,000.00), Municipality may accept a Bid Bond, Performance Bond, and Payment Bond from a surety company that has twice the minimum surplus and capital required by the Florida Office of Insurance Regulation at the time the solicitation is issued, if the surety company is otherwise in compliance with the provisions of the Florida Insurance Code, and if the surety company holds a currently valid Certificate of Authority issued by the United States Department of the Treasury under Sections 9304 to 9308 of Title 31 of the United States Code. The Certificate and Affidavit (Form 4) so certifying should be submitted with the Bid Bond, Performance Bond, and Payment Bond.

5.3. More stringent requirements of any grantor agency may be set forth within the Supplemental Conditions. If there are no more stringent requirements, the provisions of this article shall apply.

## **ARTICLE 6 INDEMNIFICATION**

Contractor shall indemnify and hold harmless Municipality and its current, past, and future officers and employees (collectively, "Indemnified Party"), from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees (collectively, a "Claim"), to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Contractor or persons employed or utilized by Contractor in the performance of this Contract. To the extent considered necessary by Contract Administrator and Municipality Attorney, any sums due Contractor under this Contract may be retained by Municipality until all of Municipality's claims

for indemnification pursuant to this Contract have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by Municipality. These indemnifications shall survive the term of this Contract.

## **ARTICLE 7      INSURANCE REQUIREMENTS**

7.1. The specific insurance coverage requirements for this project are identified in the Minimum Insurance Requirements Exhibit “C”, which is a part of the Contract Documents. For purposes of this article, the term “Municipality” shall include Municipality and its members, officials, officers, and employees.

7.2. For the duration of the Contract, Contractor shall, at its sole expense, maintain at least the minimum limits of insurance coverage designated in the Contract Documents (inclusive of any amount provided by an umbrella or excess policy) in accordance with the terms and conditions stated in this article. If Contractor maintains broader coverage or higher limits than the insurance requirements stated in Exhibit “C”, Municipality shall be entitled to all such broader coverages and higher limits. Municipality reserves the right at any time to review and adjust the limits and types of coverage required under this article.

7.3. Contractor shall maintain insurance coverage against claims relating to any act or omission by Contractor, its agents, representatives, employees, or Subcontractors in connection with the Contract. All required insurance under this article shall provide primary coverage, list Municipality as an additional insured, and shall not require contribution from any Municipality insurance, self-insurance or otherwise. All insurance held by Municipality, as well as Municipality’s self-insurance, shall be in excess of and shall not contribute to the required insurance provided by Contractor. Unless prohibited by the applicable policy, Contractor waives any right to subrogation that any of Contractor’s insurers may acquire against Municipality, and agrees to obtain same in an endorsement on all lines of insurance required of Contractor under this article including any excess or umbrella policies.

7.4. All required insurance policies must be issued by insurers: (1) assigned an AM Best rating of at least “A-” with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Section 626.917 or 626.918, Florida Statutes, with approval by Municipality’s Risk Management Division.

7.5. Contractor shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit “C”, and shall submit same to Municipality, at least fifteen (15) days prior to the effective date of the Contract or commencement of the Work for Municipality’s written approval of such retentions or deductibles. Contractor shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against Municipality. Municipality may, at any time, require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Contractor agrees that any deductible or self-insured

retention may be satisfied by either the named insured or Municipality, if so elected by Municipality, and Contractor agrees to obtain same in endorsements to the required policies.

7.6. To the extent insurance requirements are designated in the Minimum Insurance Requirements, the applicable policies shall comply with the following:

7.6.1. Commercial General Liability Insurance. Policy shall be no more restrictive than that provided by the latest edition of the standard Commercial General Liability Form (Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office (ISO), with the exception of endorsements specifically required by ISO or the State of Florida, and liability arising out of: Mold, fungus, or bacteria; Terrorism; Silica, asbestos or lead; Sexual molestation; and Architects and engineers professional liability, unless coverage for professional liability is specifically required by this Contract. Municipality, Consultant, and Broward County shall be included on the policy (and any excess or umbrella policy) as "Additional Insureds" on a form no more restrictive than ISO form CG 20 10 (Additional Insured – Owners, Lessees, or Contractor).

7.6.2. Contractor shall maintain products or completed work coverage for a minimum of three (3) years from the date of the final completion of the Work, unless otherwise stated in the Insurance Requirements Exhibit. In that case, the term specified in the Insurance Requirements shall govern the duration of the coverage required by this paragraph.

7.6.3. Business Automobile Liability Insurance. Policy shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of the standard Business Auto Policy (ISO Form CA 00 01) without any restrictive endorsements, including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of Work under this Contract. Municipality and Consultant shall be included on the policy (and any excess or umbrella policy) as "Additional Insureds."

7.6.4. Workers' Compensation/Employer's Liability Insurance. Such insurance shall be no more restrictive than that provided by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance (NCCI), with the exception of endorsements required by NCCI or the State of Florida. The policy must be endorsed to waive the insurer's right to subrogate against Municipality in the manner which would result from the attachment of the NCCI form "Waiver of our Right to Recover from Others Endorsement" (Advisory Form WC 00 03 13) with Municipality scheduled thereon. Where appropriate, coverage shall be included to the extent required by Applicable Law, including, but not limited to, the Federal Employer's Liability Act, the Jones Act, and the Longshoreman and Harbor Workers' Compensation Act.

If Contractor provides all or a portion of the Workers' Compensation/Employer's Liability insurance required herein via a professional employer organization ("PEO") or employee leasing company, any such Workers' Compensation/Employer's Liability insurance

provided will only be deemed acceptable solely for the purposes of insuring Contractor's enrolled employees. In addition, and notwithstanding the foregoing, in order to adequately protect Municipality against injuries to uninsured employees of Subcontractors and non-enrolled employees of Contractor, Contractor must still procure, maintain, and furnish Municipality with evidence of a stand-alone separate Workers' Compensation/Employer's Liability insurance policy issued with Contractor as an additional insured, and complying with all requirements for Contractor provided Workers' Compensation contained in the Contract Documents. It is permissible for Contractor to exclude payroll of leased employees from such separate Workers' Compensation/Employer's Liability insurance policy.

7.6.5. Professional Liability Insurance. Such insurance shall cover Contractor for those sources of liability arising out of the rendering or failure to render professional services in the performance of the services required in this Contract.

7.6.6. Cyber Liability, or Technology Errors and Omissions Insurance. Coverage is required for any system connected to, and, or accessible from the internet. Coverage may be included as part of the required Professional Liability Insurance. Such policy shall cover, at a minimum, the following: Data Loss and System Damage Liability; Security Liability; Privacy Liability; Privacy/Security Breach Response coverage, including Notification Expenses.

7.6.7. Environmental Pollution Liability. Such insurance shall include clean-up costs and provide coverage to Contractor for liability resulting from pollution or other environmental impairment arising out of, or in connection with, Work performed under this Contract, or which arises out of, or in connection with this Contract, including coverage for clean-up of pollution conditions and third-party bodily injury and property damage arising from pollution conditions. Such insurance shall also include Transportation Coverage and Non-Owned Disposal Sites coverage. Should policy provide coverage on a claims-made basis, the coverage shall be in force and effect to respond to all claims reported within at least three (3) years following the period for which coverage is required, unless a longer period is indicated in the Minimum Insurance Requirements, and which claims would have been covered had the coverage been provided on an occurrence basis.

7.6.8. Property Insurance, Builder's Risk, or Installation Floater. Such insurance shall be in force and evidenced to Municipality as a condition precedent to the Notice to Proceed for construction. Coverage shall be "All Risks," Completed Value form with a deductible not to exceed Ten Thousand Dollars (\$10,000) for each claim for all perils except wind and flood. For the perils of wind and flood, Contractor shall maintain a deductible that is commercially feasible but which does not exceed five percent (5%) of the "values at risk at the time of loss" unless otherwise approved by Municipality.

Sublimits: With respect to coverage for the peril of wind, the policy shall not be subject to any sublimit less than Fifty Million Dollars (\$50,000,000) per occurrence. With respect

to the peril of Flood, the policy shall not be subject to any sublimit less than Ten Million Dollars (\$10,000,000) per occurrence. Any sublimit for wind or flood lower than those identified in the foregoing must be approved by Municipality.

Waiver of Occupancy Clause or Warranty-Policy must be specifically endorsed to eliminate any "Occupancy Clause" or similar warranty or representation that the building(s), addition(s) or structure(s) in the course of construction shall not be occupied without specific endorsement of the policy. The policy must be endorsed to provide that the Builder's Risk coverage will continue to apply until final acceptance of the building(s), addition(s) or structure(s) by Municipality.

Municipality reserves the right to purchase or provide property insurance covering the materials, equipment and supplies that are intended for specific installation in the Project while such materials, equipment and supplies are located at the Project site (this coverage will be specifically to cover property under construction or similar coverage), in transit, and while temporarily located away from the Project site for the purpose of repair, adjustment or storage at the risk of one (1) of the insured parties. This coverage will not cover any of Contractor's or Subcontractors' tools, equipment, machinery or provide any business interruption or time element coverage to the contractors. If Municipality elects to purchase property insurance or provide for coverage under its existing insurance for this Project, then in that case, the insurance required to be carried by Contractor may be modified to account for the insurance being provided by Municipality, at Municipality's discretion. Such modification may also include execution of Waiver of Subrogation documentation. If a claim with respect to this Project is made upon Municipality's insurance policy, Contractor shall be responsible for up to the first Fifty Thousand Dollars (\$50,000) of the deductible amount for such claim.

7.7. On or before the effective date of the Contract, or at least fifteen (15) days prior to commencement of the Work, Contractor shall provide Municipality with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article.

7.8. Contractor shall ensure that all insurance coverages required by this article shall remain in full force and effect without any lapse in coverage for the duration of this Contract and until all performance required by Contractor has been completed, as determined by Contract Administrator. Contractor shall provide notice to Municipality of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide Municipality with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s).

7.9. If and to the extent requested by Municipality, Contractor shall provide to Municipality complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after Municipality's request.

7.10. Contractor shall ensure that “City of Pembroke Pines, 601 City Center Way, Pembroke Pines, FL 33025”, “Broward County, 115 S. Andrews Avenue, Fort Lauderdale, Florida 33301” and Consultant are listed and endorsed as additional insureds on all policies required under this article. Municipality shall be listed as Certificate Holder.

7.11. Contractor shall require each Subcontractor to maintain insurance coverage that adequately covers the Work provided by that Subcontractor on substantially the same insurance terms and conditions required of Contractor under this article. Contractor shall ensure that all such Subcontractors comply with these requirements and that Municipality, “Broward County,” and Consultant are named as additional insureds under the Subcontractors’ applicable insurance policies. If Contractor or any Subcontractor fails to maintain the insurance required by the Contract Documents, Municipality may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Contractor. Contractor shall not permit any Subcontractor to provide Work or any other services under the Contract unless and until the requirements of this section are satisfied. If requested by Municipality, Contractor shall provide, within one (1) business day, evidence of each Subcontractor’s compliance with this section.

7.12. If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the effective date of the Contract; (2) the required coverage must be maintained after termination or expiration of the Contract for at least the duration stated in Exhibit “C”; and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Contract, Contractor must obtain and maintain “extended reporting” coverage that applies after termination or expiration of the Contract for at least the duration stated in Exhibit “C”.

## **ARTICLE 8      LABOR AND MATERIALS**

8.1 Unless otherwise provided herein, Contractor shall provide and pay for all Materials, labor, water, tools, equipment, light, power, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

8.2 Contractor shall at all times enforce strict discipline and good order among its employees and Subcontractors at the Project site, and shall not employ on the Project any unfit person or anyone not skilled in the Work to which they are assigned.

## **ARTICLE 9      ROYALTIES AND PATENTS**

All fees, royalties, and claims for any invention, or pretended inventions, or patent of any article, material, arrangement, appliance, or method that may be used upon or in any manner be connected with the construction of the Work or appurtenances, are hereby included in the prices stipulated in this Contract for said Work.

## **ARTICLE 10 WEATHER**

Extensions to the Contract Time for delays caused by the effects of inclement weather shall be submitted as a request for a change in the Contract Time pursuant to Article 40. Time extensions are justified only when rain, other inclement weather conditions, or related adverse soil conditions result in Contractor being unable to work at least fifty percent (50%) of the normal workday on controlling items of Work identified on the accepted schedule or updates to that schedule.

## **ARTICLE 11 PERMITS, LICENSES, AND IMPACT FEES**

11.1. Except as otherwise provided within the Special Instructions for Vendors, Contractor shall secure and pay for all necessary permits and licenses required for the Work pursuant to by Applicable Law. Contractor shall be reimbursed for only the actual amount of the permit fees levied by the permitting authority and paid by the Contractor as evidenced by an invoice or other acceptable documentation issued by the permitting authority. Reimbursement to Contractor shall be on a pass-through basis and shall not include profit or overhead of Contractor. Contractor shall have and maintain appropriate Certificate(s) of Competency, valid for the Work to be performed and valid for the jurisdiction in which the Work is to be performed, for all persons working on the Project for whom a Certificate of Competency is required.

11.2. Municipality shall directly pay for all impact fees levied by any governmental entity with jurisdiction.

## **ARTICLE 12 RESOLUTION OF DISPUTES**

12.1. To prevent all disputes and litigation, the Parties agree that Consultant shall decide all questions, claims, difficulties, and disputes of whatever nature that may arise relative to the technical interpretation of the Contract Documents or fulfillment of the Contract as to the character, quality, amount, and value of any Work done or materials furnished, or proposed to be done or furnished, under or by reason of the Contract Documents, and Consultant's decisions of all claims, questions, difficulties, and disputes shall be final and binding to the extent provided in Section 12.2. Any claim, question, difficulty, or dispute that cannot be resolved by agreement of the Contract Administrator and Contractor shall be submitted to Consultant in writing within five (5) days after the date of impasse. Unless a different period of time is set forth in this Contract, Consultant shall notify the Contract Administrator and Contractor in writing of Consultant's decision within fourteen (14) days after the date of the receipt of the claim, question, difficulty, or dispute, unless Consultant requires additional time to gather information or allow the Parties to provide additional information. Except for disputes directly related to the promptness of payment as set forth in Section 5.1 of the Contract, all nontechnical administrative disputes shall be determined by the Contract Administrator pursuant to the time periods provided herein. During the pendency of any dispute and after a determination thereof, Contractor, Consultant, and Contract Administrator shall act in good faith to mitigate any potential damages, including utilization of construction schedule changes and alternative means of construction.



12.2. If the determination of a dispute under this article is unacceptable to either party, the party objecting to the determination must notify the other party in writing within ten (10) days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract Time or Contract Price adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) days after Final Completion of the Work, the Parties shall participate in mediation to address all objections to any determinations and to attempt to prevent litigation. Neither party shall commence litigation prior to the expiration of the sixty (60) day mediation period. The mediator shall be mutually agreed upon by the Parties. Should any objection not be resolved in mediation, the Parties retain all their legal rights and remedies provided under State law. **A PARTY SPECIFICALLY WAIVES ALL OF ITS RIGHTS, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR CONTRACT TIME AND CONTRACT PRICE ADJUSTMENTS PROVIDED IN THE CONTRACT, INCLUDING ITS RIGHTS AND REMEDIES UNDER STATE LAW, IF SAID PARTY FAILS TO COMPLY IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS ARTICLE.**

### **ARTICLE 13 INSPECTION OF WORK**

13.1. Consultant and Municipality shall at all times have access to the Work, and Contractor shall provide proper facilities for such access and for inspecting, measuring, and testing.

13.1.1. Should the Contract Documents, Consultant's instructions, or Applicable Law require any of the Work to be specially tested or approved, Contractor shall give Consultant timely notice of readiness of the Work for testing. If the testing or approval is to be made by an authority other than Municipality, timely notice shall be given of the date fixed for such testing. Testing shall be performed promptly, and, where practicable, at the source of supply. If any of the Work is covered up without approval or consent of Consultant, it must, if required by Consultant, be uncovered for examination and properly restored at Contractor's expense.

13.1.2. Reexamination of any of the Work may be ordered by Consultant with prior written approval by the Contract Administrator, and if so ordered, the Work must be uncovered by Contractor. If such Work is found to be in accordance with this Contract, Municipality shall pay the cost of reexamination and replacement by means of a Change Order. If such Work is not in accordance with this Contract, Contractor shall pay such cost.

13.2. Inspectors shall have no authority to permit deviations from, or to relax or waive, any of the provisions of the Contract Documents, or to delay the Project by failure to inspect the materials and Work with reasonable promptness, without the written permission or instruction of Consultant.

13.3. The payment of any compensation, the giving of any gratuity, or the granting of any favor, of any character or form, by Contractor to any inspector, directly or indirectly, is strictly prohibited, and any such act on the part of Contractor will constitute a breach of this Contract.

## **ARTICLE 14 SUPERINTENDENCE AND SUPERVISION**

14.1. Municipality's instructions are to be given through Consultant, which instructions Contractor must strictly and promptly follow in every case. Contractor shall keep on the Project a full-time, competent, English-speaking superintendent and any necessary assistants, all of whom must be satisfactory to Consultant. The superintendent shall not be changed except with the written consent of Consultant, unless the superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ. The superintendent shall represent Contractor; all instructions given to the superintendent shall be as binding as if given to Contractor, and will be confirmed in writing by Consultant upon the written request of Contractor. Contractor shall provide efficient supervision of the Work, using its best skill and attention.

14.2. On a daily basis, Contractor's superintendent shall record, at a minimum, the following information in a bound log: the day; date; weather conditions and how any weather condition affected progress of the Work; time of commencement of Work for the day; the Work being performed; materials, labor, personnel, equipment and Subcontractors at the Project site; visitors to the Project site, including representatives of Municipality, Consultant, or regulatory representatives; any event that caused or contributed a delay to the critical path of the Project; any special or unusual conditions or occurrences encountered; and the time of termination of Work for the day. All information shall be recorded in the daily log in ink, unless otherwise approved by Consultant. The daily log shall be kept on or accessible from the Project site and shall be available at all times for inspection and copying by Municipality and Consultant.

14.3. The Contract Administrator, Contractor, and Consultant shall meet at least every two (2) weeks (or as otherwise determined by the Contract Administrator) during the course of the Work to review and agree upon the Work performed to date and to establish the controlling items of Work for the next two (2) weeks. Consultant shall publish, keep, and distribute minutes and any comments thereto of each such meeting.

14.4. If Contractor, in the course of performing the Work, finds any discrepancy between this Contract and the physical conditions of the locality, or any errors, omissions, or discrepancies in this Contract, it shall be Contractor's duty to immediately inform Consultant, in writing, and Consultant will promptly review same. Any Work done after such discovery, until authorized, will be done at Contractor's sole risk, without entitlement to reimbursement or compensation.

14.5. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with this Contract. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

## **ARTICLE 15 MUNICIPALITY'S RIGHT TO TERMINATE CONTRACT**

15.1. The Contract Administrator may give notice in writing to Contractor and its Surety of delay, neglect, or default, specifying the same with a notice to cure, upon the occurrence of any of the following:

15.1.1. Contractor fails to begin the Work within fifteen (15) days after the Project Initiation Date;

15.1.2. Contractor fails to perform the Work with sufficient workers, equipment, or materials to ensure the prompt completion of the Work;

15.1.3. Contractor performs the Work unsuitably or causes it to be rejected as defective and unsuitable;

15.1.4. Contractor discontinues performance of the Work in contravention of the accepted schedule;

15.1.5. Contractor fails to perform any material term set forth in this Contract;

15.1.6. Contractor becomes insolvent or declared bankrupt, commits any act of bankruptcy or insolvency, or makes an assignment for the benefit of creditors; or

15.1.7. From any other cause whatsoever, Contractor fails to carry on the Work in an acceptable manner.

15.2. If Contractor, within a period of ten (10) days after such notice, does not proceed to cure in accordance therewith, then Municipality's awarding authority for this Contract may, upon written certification from Consultant of the fact of such delay, neglect, or default and Contractor's failure to comply with such notice, terminate the services of Contractor, exclude Contractor from the Project site and take the performance of the Work out of the hands of Contractor, and appropriate or use any or all materials and equipment on the Project site as may be suitable and acceptable. In such case, Contractor shall not be entitled to receive any further payment until the Project is completed. In addition, Municipality may enter into an agreement for the completion of the Project according to the terms and provisions of this Contract, use such other methods as in the Contract Administrator's sole opinion shall be required for the completion of the Project according to the terms and provisions of this Contract, or use such other methods as in the Contract Administrator's sole opinion shall be required for the completion of the Project in an acceptable manner. All damages, costs, and charges incurred by Municipality, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to Contractor. If the damages and expenses so incurred by Municipality shall exceed the unpaid balance, Contractor shall be liable and shall pay to Municipality the amount of said excess.

15.3. If Municipality erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience and the rights and obligations of Municipality and Contractor shall be the same as if the termination had been exercised pursuant to the Termination for Convenience clause as set forth in Section 15.4 below.

15.4. This Contract may be terminated for convenience, for any reason or no reason, in writing by Municipality upon ten (10) days written notice to Contractor (delivered by certified mail,

return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, Contractor shall be paid for all Work executed and actual expenses incurred prior to termination in addition to termination settlement costs reasonably incurred by Contractor relating to commitments that had become firm prior to the termination. Payment shall include reasonable profit for Work and services performed as limited by Article 39 hereof. All actual expenses incurred shall have sufficient back-up documentation to verify that such expenses were actually incurred by Contractor. No payment shall be made for profit for Work and services that Contractor has not performed. Contractor acknowledges that it has received good, valuable, and sufficient consideration for Municipality's right to terminate this Contract for convenience in the form of Municipality's obligation to provide advance notice to Contractor of such termination in accordance with this Section 15.4.

15.5. Upon receipt of a notice of termination pursuant to Sections 15.2, 15.4, or 15.6, Contractor shall promptly discontinue all affected Work unless the notice of termination directs otherwise, and shall deliver or otherwise make available to Municipality all data, drawings, specifications, reports, estimates, summaries, and such other information as may have been required by this Contract whether completed or in process.

15.6. This Contract may also be terminated by the Board:

15.6.1. Upon the disqualification of Contractor as a CBE or SBE firm by County's Director of the Office of Economic and Small Business Development ("OESBD") if Contractor's status as a CBE or SBE firm was a factor in the award of this Contract and such status was misrepresented by Contractor;

15.6.2. Upon the disqualification of Contractor by County's OESBD Director due to fraud, misrepresentation, or material misstatement by Contractor in the course of obtaining this Contract or attempting to meet the CBE or SBE contractual obligations;

15.6.3. Upon the disqualification of one or more of Contractor's CBE or SBE participants by County's OESBD Director if any such participant's status as a CBE or SBE firm was a factor in the award of this Contract and such status was misrepresented by Contractor or such participant;

15.6.4. Upon the disqualification of one or more of Contractor's CBE or SBE participants by County's OESBD Director if such CBE or SBE participant attempted to meet its CBE or SBE contractual obligations through fraud, misrepresentation, or material misstatement;

15.6.5. If Contractor is determined by County's OESBD Director to have been knowingly involved in any fraud, misrepresentation, or material misstatement concerning the CBE or SBE status of its disqualified CBE or SBE participant; or

15.6.6. If Contractor is a "scrutinized company" pursuant to Sections 215.473 or 215.4725, Florida Statutes, if Contractor is placed on a "discriminatory vendor list" pursuant to Section 287.134, Florida Statutes, or if Contractor is otherwise ineligible to

transact business with County or Municipality under Applicable Law or provides a false certification submitted pursuant to Section 287.135, Florida Statutes.

## **ARTICLE 16   SUSPENSION OF WORK**

Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with Municipality. No Work shall be delayed or postponed pending resolution of any disputes or disagreements except as Contractor and Municipality may otherwise agree in writing. Suspension of Work by Contractor during any dispute or disagreement with Municipality shall entitle Municipality to terminate this Contract for cause.

## **ARTICLE 17   PROJECT RECORDS AND RIGHT TO AUDIT**

17.1 Audit Rights and Retention of Records. Contractor shall preserve all Contract Records (as defined below) for a minimum period of three (3) years after expiration or termination of this Contract or until resolution of any audit findings, whichever is longer. Contract Records shall, upon reasonable notice, be open to inspection and subject to audit and reproduction during normal business hours. Audits and inspections pursuant to this article may be performed by any representative of Municipality and/or County (including any outside representative engaged by either entity). Municipality and County may conduct audits or inspections at any time during the term of this Contract and for a period of three (3) years after the expiration or termination of this Contract (or longer if required by Applicable Law, Municipality and/or County). County may, without limitation, verify information, payroll distribution, and amounts through interviews, written affirmations, and on-site inspection with Contractor's employees, Subcontractors, vendors, or other labor.

17.2 Municipality and County shall have the right to audit, review, examine, inspect, analyze, and make copies of all Contract Records at a location within Broward County, Florida. Contractor hereby grants Municipality and County the right to conduct such audit or review at Contractor's place of business, if deemed appropriate by Municipality or County, with seventy-two (72) hours' advance notice. Contractor agrees to provide adequate and appropriate workspace for such review. Contractor shall provide Municipality and County with reasonable access to Contractor's facilities, and Municipality and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract.

17.3 Contract Records include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, drawings, receipts, vouchers and memoranda, and any and all other documents that pertain to rights, duties, obligations, or performance under this Contract. Contract Records include hard copy and electronic records, written policies and procedures, time sheets, payroll records and registers, cancelled payroll checks, estimating work sheets, correspondence, invoices and related payment documentation, general ledgers, insurance rebates and dividends, and any other records pertaining to rights, duties, obligations or performance under this Contract,

whether by Contractor or Subcontractors, or otherwise necessary to adequately permit evaluation and verification of any or all of the following:

- a) Compliance with Contract
- b) Compliance with Municipality's code of ethics
- c) Compliance with Contract provisions regarding the pricing of Change Orders
- d) Accuracy of Contractor representations regarding the pricing of invoices
- e) Accuracy of Contractor representations related to claims submitted by Contractor including Subcontractors, or any of its other payees.

In addition to the normal documentation Contractor typically furnishes to Municipality, in order to facilitate efficient use of Municipality resources when reviewing or auditing Contractor's billings and related reimbursable cost records, Contractor agrees to furnish (upon request) the following types of information in the specified computer readable file format(s):

Type of Record	File format
Monthly Job Cost Detail	.pdf and Excel
Detailed Job Cost History to Date	.pdf and Excel
Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)	.pdf and Excel
Total Job to Date Labor Distribution detail (if not already included in the detailed Job Cost History to date)	.pdf and Excel
Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project	.pdf
Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project	.pdf
Daily Superintendent Reports	.pdf
Detailed Subcontract Status Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to Subcontractors, etc.	.pdf and Excel
Copies of Executed Subcontracts with all Subcontractors	.pdf
Copies of all executed Change Orders issued to Subcontractors	.pdf
Copies of all documentation supporting all reimbursable job costs (Subcontractor payment applications, vendor invoices, internal cost charges, etc.)	.pdf

17.4 Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for Municipality's disallowance and recovery of any payment reliant upon such entry.

17.5 If an audit inspection or examination in accordance with this article discloses overpricing or overcharges to Municipality of any nature by Contractor or its Subcontractors in excess of five percent (5%) of the total contract billings reviewed, in addition to making adjustments for the

overcharges, Contractor shall pay the actual cost of the audit or, if the actual cost is unreasonably high, the reasonable cost. Any adjustments or payments due as a result of any such audit or inspection shall be made within thirty (30) days after presentation of the audit findings to Contractor.

17.6 Contractor shall, by written contract, require its Subcontractors to agree to the requirements and obligations of this Article 17.

## **ARTICLE 18 RIGHTS OF VARIOUS INTERESTS**

Whenever work being done by Municipality's forces or by other contractors is contiguous to or within the limits of Work covered by this Contract, the respective rights of the various interests involved shall be established by the Contract Administrator to secure the completion of the various portions of the Work in general harmony.

## **ARTICLE 19 EXPLOSIVES**

When the use of explosives is necessary in performance of the Work, Contractor shall exercise the utmost care in the handling and usage of such explosives for the protection of life and property. All explosives shall be stored in a safe manner in storage clearly marked "Dangerous-Explosives," and shall be placed in the care of competent watchmen. When the use of explosives becomes necessary, Contractor shall furnish to Municipality proof of insurance coverage, adequately providing public liability and property damage insurance as a rider attached to its regular policies, unless otherwise included in the policies themselves.

## **ARTICLE 20 DIFFERING SITE CONDITIONS**

If during the course of the Work Contractor encounters (1) subsurface or concealed conditions at the Project site that differ materially from those shown in the Contract Documents and from those ordinarily encountered and generally recognized as inherent in work of the character called for in this Contract; or (2) unknown physical conditions of the Project site, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in this Contract, then Contractor, without disturbing the conditions and before performing any Work affected by such conditions, shall, within twenty-four (24) hours of their discovery, notify Contract Administrator and Consultant in writing of the existence of the aforesaid conditions. Consultant and Contract Administrator shall, within two (2) business days after receipt of Contractor's written notice, investigate the site conditions identified by Contractor. If, in the sole opinion of Contract Administrator, the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, the performance of any part of the Work, whether or not charged as a result of the conditions, Contract Administrator may recommend an equitable adjustment to the Contract Price, or the Contract Time, or both. If Contract Administrator and Contractor cannot agree on an adjustment in the Contract Price or Contract Time, the adjustment shall be referred to Consultant for determination in accordance with the provisions of Article 12. No request by Contractor for an equitable adjustment to this Contract under this provision shall be allowed

unless Contractor has given written notice to Contract Administrator in strict accordance with the provisions of this article. **No request for an equitable adjustment or change to the Contract Price or Contract Time for differing site conditions shall be allowed if made after the date certified by Contract Administrator as the date of Substantial Completion.**

## **ARTICLE 21 PLANS AND WORKING DRAWINGS**

Municipality, through Consultant, shall have the right to modify the details of the plans and specifications and to supplement the plans and specifications with additional plans, drawings, or additional information as the Work proceeds, all of which shall be considered as part of this Contract. In case of disagreement between the written and graphic portions of this Contract, the written portion shall govern.

## **ARTICLE 22 CONTRACTOR TO CHECK PLANS, SPECIFICATIONS, AND DATA**

Contractor shall verify all dimensions, quantities, and details shown on the plans, specifications or other data received from Consultant, and shall notify Consultant of all errors, omissions, or discrepancies found therein within three (3) days after discovery. Contractor will not be allowed to take advantage of any error, omission, or discrepancy to not stop or delay Work, because Consultant will advise Contractor how to proceed to avoid stoppage or delay of Work. Contractor shall not be liable for damages resulting from errors, omissions, or discrepancies in this Contract unless Contractor recognized such error, omission, or discrepancy, and failed to report it to Consultant.

## **ARTICLE 23 CONTRACTOR'S RESPONSIBILITY FOR DAMAGES AND ACCIDENTS**

23.1. Contractor shall accept full responsibility for the Work against all loss or damage of whatsoever nature sustained until final acceptance by Municipality, and shall promptly repair any damage done from any cause whatsoever, except as provided in Article 30.

23.2. Contractor shall be responsible for all Materials, equipment and supplies pertaining to the Project. If any such Materials, equipment or supplies are lost, stolen, damaged, or destroyed prior to final acceptance by Municipality, Contractor shall replace same without cost to Municipality, except as provided in Article 30.

## **ARTICLE 24 WARRANTY**

Contractor warrants to Municipality that all Materials and equipment furnished under this Contract will be new unless otherwise specified and that all of the Work will be of good quality, free from faults and defects, and in conformance with this Contract. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by Consultant, Contractor shall furnish satisfactory evidence as to the kind and quality of Materials and equipment. This warranty is not limited by the provisions of Article 26 herein.



## **ARTICLE 25    SUPPLEMENTARY DRAWINGS**

25.1. When, in the opinion of Consultant, it becomes necessary to explain the Work to be done more fully, or to illustrate the Work further, or to show any changes that may be required, supplementary drawings, with specifications pertaining thereto, will be prepared by Consultant.

25.2. The supplementary drawings shall be binding upon Contractor with the same force as this Contract. Where such supplementary drawings require either less or more than the original quantities of Work, appropriate adjustments shall be made by Change Order.

## **ARTICLE 26    DEFECTIVE WORK**

26.1. Consultant has the authority to reject or disapprove Work that Consultant finds to be defective. If required by Consultant, Contractor shall promptly either correct all defective Work or remove such defective Work and replace it with non-defective Work. Contractor shall bear all direct, indirect, and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

26.2. Should Contractor fail or refuse to remove or correct any defective Work or to make any necessary repairs in accordance with the requirements of this Contract within the time indicated in writing by Consultant, Municipality shall have the authority to cause the defective Work to be removed or corrected, or make such repairs as may be necessary, at Contractor's expense. Any expense incurred by Municipality in making such removals, corrections, or repairs, shall, at Municipality's election, be paid for out of any monies due or which may become due to Contractor or charged against the Performance Bond. In the event of failure of Contractor to make all necessary repairs promptly and fully, Municipality may declare Contractor in default.

26.3. If, within one (1) year after Substantial Completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by this Contract, or by any specific provision of this Contract, any of the Work is found to be defective or not in accordance with this Contract, Contractor, after receipt of written notice from Municipality, shall promptly correct such defective or nonconforming Work within the time specified by Municipality, without cost to Municipality. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation that Contractor might have under this Contract, including, but not limited to, Article 24 hereof and any claim regarding latent defects.

26.4. Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect is discovered, nor shall such failure obligate Municipality to final acceptance.

## **ARTICLE 27    TAXES**

Contractor shall pay all applicable sales, consumer, use, and other taxes required by Applicable Law. Contractor is responsible for reviewing the pertinent state statutes involving state taxes and complying with all their requirements.

## **ARTICLE 28 SUBCONTRACTS**

28.1. Each Subcontractor must possess certificates of competency and licenses required by Applicable Law. Contractor shall notify the Contract Administrator and Consultant of any change in Subcontractors.

28.2. Contractor shall not employ any Subcontractor against whom Municipality or Consultant may have a reasonable objection. Contractor shall not be required to employ any Subcontractor against whom Contractor has a reasonable objection.

28.3. Contractor shall be fully responsible for all acts and omissions of its Subcontractors, persons directly or indirectly employed by its Subcontractors, and persons for whose acts any of its Subcontractors may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract shall create any contractual relationship between any Subcontractor and Municipality or any obligation on the part of Municipality to pay or to see the payment of any monies due any Subcontractor. Municipality or Consultant may furnish to any Subcontractor evidence of amounts paid to Contractor on account of specific Work performed.

28.4. Contractor shall bind specifically every Subcontractor to the applicable terms and conditions of this Contract for the benefit of Municipality.

## **ARTICLE 29 SEPARATE CONTRACTS**

29.1. Municipality has the right to enter into contracts with other parties in connection with this Project. Contractor shall afford such other parties reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate this Work with theirs.

29.2. If any part of Contractor's Work depends for proper execution or results on the work of any third parties, Contractor shall inspect and promptly report to Consultant any defects in such work that render it unsuitable for such proper execution and results of Contractor's Work. Contractor's failure to so inspect and report shall constitute an acceptance of the third party's work as fit and proper for the performance of Contractor's Work, except as to defects which may develop in the third parties' work after the execution of Contractor's Work.

29.3. Contractor shall conduct its operations and take all reasonable steps to coordinate the prosecution of the Work so as to not interfere with or impact any other contractor on the site. Should such interference or impact occur, Contractor shall indemnify Municipality from any liability to the affected contractor related to such interference or impact.

29.4. To ensure the proper execution of subsequent Work, Contractor shall inspect the Work already in place and shall immediately report to Consultant any discrepancy between the executed Work and the requirements of this Contract.

## **ARTICLE 30    USE OF COMPLETED PORTIONS**

30.1. Municipality has the right at its sole option to take possession of and use any completed or partially completed portions of the Project ("Designated Area"). Such possession and use shall not be deemed an acceptance of any of the Work not completed in accordance with this Contract. If such possession and use increase the cost of or delays the Work, Contractor shall be entitled to reasonable extra compensation or reasonable extension of time or both, as recommended by Consultant and approved by Municipality.

30.2. If Municipality decides to take possession of any completed or partially completed portions of the Project, the following shall occur:

30.2.1. Municipality shall give notice to Contractor in writing at least thirty (30) days prior to Municipality's intended occupancy of a Designated Area.

30.2.2. Contractor shall complete to the point of Substantial Completion the Designated Area and request inspection and issuance of a Certificate of Substantial Completion (007600-1) from Consultant.

30.2.3. Upon Consultant's issuance of a Certificate of Substantial Completion for the Designated Area, Municipality will assume full responsibility for maintenance, utilities, subsequent damages of Municipality and public, adjustment of insurance coverages, and start of warranty for the Designated Area.

30.2.4. Contractor shall complete all items noted on the Certificate of Substantial Completion within the time specified by Consultant on the Certificate of Substantial Completion, and request final inspection and final acceptance of the portion of the Work occupied. Upon completion of final inspection and receipt of an application for final payment, Consultant shall issue a Final Certificate of Payment relative to the Designated Area.

30.2.5. If Municipality decides to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by Municipality and Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. Insurance on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. Consent of Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

## **ARTICLE 31    LANDS OF WORK**

31.1. Municipality shall provide, as may be indicated in this Contract, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands as are designated by Municipality for the use of Contractor.

31.2. Contractor shall obtain, at Contractor's own expense and without liability to Municipality, any additional rights to land and access thereto that may be required for temporary construction facilities, temporary easements, or for storage of materials. Contractor shall furnish to Municipality copies of written permission obtained by Contractor from the owners of such land.

## **ARTICLE 32    LEGAL RESTRICTIONS AND TRAFFIC PROVISIONS**

Contractor shall conform to and obey all Applicable Law with regard to labor, hours of work, and Contractor's operations. Contractor shall conduct its operations so as not to close any thoroughfare, nor interfere in any way with traffic on railway, highways, or water, without the written consent of the proper authorities.

## **ARTICLE 33    LOCATION AND DAMAGE TO EXISTING FACILITIES, EQUIPMENT, OR UTILITIES**

33.1. Utility lines in the Project area have been shown on the Plans. However, Municipality does not represent or warrant that all lines are shown, or that the ones indicated are in their true location. Contractor must identify and locate all underground and overhead utility lines or equipment affecting or affected by the Project. Contractor will not be entitled to any additional payment or extension of time due to discrepancies between actual location of utilities and Plan location of utilities.

33.2. Contractor shall notify each utility company with facilities in the Project site, at least thirty (30) days prior to the start of construction, to arrange for positive underground location, relocation, or support of its utility where that utility may be in conflict with or endangered by the Work. The cost of relocation of water mains or other utilities for the convenience of Contractor shall be paid by Contractor. All charges by utility companies for temporary support of its utilities shall be paid for by Contractor. All costs of permanent utility relocation to avoid conflict shall be the responsibility of the utility company involved. Contractor will not be entitled to any additional payment or extension of time for utility relocations, regardless of reason for relocation.

33.3. Contractor shall schedule the Work in such a manner that the Work is not delayed by the utility providers relocating or supporting their utilities. Contractor shall coordinate its activities with any and all public and private utility providers occupying the right-of-way. Contractor will not be entitled to any additional compensation or extension of time for any delay associated with utility relocation or support.

33.4. Contractor shall protect all overhead, surface, or underground structures and utilities from damage or displacement. Contractor will promptly and completely repair all damage to such structures within a reasonable time. All damaged utilities must be replaced or fully repaired to the satisfaction of the utility owner. All repairs are to be inspected by the utility owner prior to backfilling. Municipality reserves the right to remedy such damage by making such repairs or causing such repairs to be made at the expense of Contractor. Municipality's expense in causing such repairs shall be deducted from Contractor's next Application for Payment.

## **ARTICLE 34    VALUE ENGINEERING**

Contractor may request substitution of Materials, articles, pieces of equipment, or any changes that reduce the Contract Price by making such request to Consultant in writing. Consultant will be the sole judge of the acceptability of any proposed substitute, and no substitute will be ordered, installed, used, or initiated without Consultant's prior written acceptance by a Change Order or an approved Shop Drawing. In no event will any substitution accepted by Consultant result in an increase in the Contract Price or Contract Time. By making a request for substitution, Contractor agrees to pay directly to Consultant all Consultant's fees and charges related to Consultant's review of the request for substitution, regardless of whether the request for substitution is accepted by Consultant. Any substitution submitted by Contractor must meet the form, fit, function, and life cycle criteria of the item proposed to be replaced, and there must be a reduction in Contract Price including Consultant review fees and charges. If a substitution is approved, the net dollar savings shall be shared equally between Contractor and Municipality and shall be processed as a deductive Change Order. Municipality may require Contractor to furnish, at Contractor's expense, a special performance guarantee or other surety with respect to any substitute approved after award of this Contract.

## **ARTICLE 35    PAYMENT BY MUNICIPALITY FOR TESTS**

Except when otherwise specified in the Contract Documents, the expense of all tests shall be borne by Municipality and be performed by a testing firm selected by Municipality. Contractor shall reimburse Municipality the costs of any required test in which the tested Work fails. For road construction projects, the procedure for making tests required by Municipality will be in conformance with the most recent edition of the State of Florida, Department of Transportation Standard Specifications for Road and Bridge Construction.

## **ARTICLE 36    CHANGE IN THE WORK OR TERMS OF CONTRACT**

36.1. Without invalidating this Contract and without notice to any surety, Municipality has the right to make such increases, decreases, or other changes in the character or quantity of the Work as may be considered necessary or desirable by Municipality to fully and acceptably complete the proposed Work in a satisfactory manner. Any extra or additional Work within the scope of this Project must be accomplished by means of appropriate Field Orders and Supplemental Instructions or Change Orders.

36.2. Any changes to the terms of this Contract must be contained in a written document, executed by the Parties hereto, with the same formality and of equal dignity as this Contract prior to the initiation of any Work described in such change. This section shall not prohibit the issuance of Change Orders executed only by Municipality, as provided in this Contract.

## **ARTICLE 37    FIELD ORDERS AND SUPPLEMENTAL INSTRUCTIONS**

37.1. The Contract Administrator, through Consultant, shall have the right to approve and issue Field Orders setting forth written interpretations of the intent of this Contract and ordering minor changes in the Work. Field Orders may not change the Contract Price or the Contract Time.

37.2. Consultant shall have the right to approve and issue Supplemental Instructions setting forth written orders, instructions, or interpretations concerning the Contract Documents or performance of the Work. Supplemental Instructions may not change the Contract Price or the Contract Time.

## **ARTICLE 38    CHANGE ORDERS**

38.1. Changes in the quantity or character of the Work within the scope of the Project that cannot be accomplished by means of Field Orders or Supplemental Instructions, including all changes resulting in changes to the Contract Price or the Contract Time, shall be authorized only by Change Orders approved in advance and issued in accordance with the provisions of the Municipality's Procurement Code, as amended from time to time.

38.2. Contractor shall not start work on any changes requiring an increase in the Contract Price or the Contract Time until a Change Order setting forth the adjustments is approved by Municipality. Upon receipt of a Change Order, Contractor shall promptly proceed with the Work set forth in the Change Order.

38.3. If satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, Municipality may, at its sole option, either terminate this Contract as it applies to the items in question and make such arrangements as Municipality deems necessary to complete the work associated with the disputed item or submit the matter in dispute to Consultant as set forth in Article 12.

38.4. Under circumstances determined necessary by Municipality, Change Orders may be issued unilaterally by Municipality. During the pendency of the dispute, and upon receipt of a Change Order from Municipality, Contractor shall promptly proceed with the change in the Work involved and advise Consultant and Contract Administrator in writing within seven (7) days after receipt of the Change Order of Contractor's agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Price or Contract Time.

38.5. On approval of any Contract change increasing the Contract Price, Contractor shall promptly ensure that the performance bond and payment bond are increased so that each reflects the total Contract Price as increased. Contractor will promptly provide Municipality such updated bonds.

## **ARTICLE 39    VALUE OF CHANGE ORDER WORK**

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

39.1.1 If the Work involved is covered by unit prices contained in this Contract, by application of unit prices to the quantities of items involved, subject to the provisions of Section 39.7.

39.1.2 By mutual acceptance of a lump sum, which sum Contractor and Municipality acknowledge contains a component for overhead and profit.

39.1.3 On the basis of the "Cost of Work," determined as provided in Sections 39.2 and 39.3, plus a Contractor's fee for overhead and profit as determined in Section 39.4.

39.2. The term "Cost of Work" means the sum of all direct costs necessarily incurred and paid by Contractor (or, if applicable, Subcontractor) in the proper performance of the Work described in the Change Order. Except as otherwise may be agreed to in writing by Municipality, such costs shall be in amounts no higher than those prevailing in the locality of the Project; shall include only the following items; and shall not include any of the costs itemized in Section 39.3.

39.2.1 Payroll costs for employees in the direct employ of Contractor in the performance of the Work described in the Change Order under schedules of job classifications agreed upon by Municipality and Contractor. Payroll costs for employees not employed full time on the Work covered by the Change Order shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay application thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing the Work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent authorized in advance by Municipality.

39.2.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Municipality deposits funds with Contractor to make payments, in which case the cash discounts shall accrue to Municipality. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to Municipality, and Contractor shall make provisions so that they may be obtained. Rentals of all construction equipment and machinery, and the parts thereof, whether rented by Contractor, in accordance with rental agreements approved by Municipality with the advice of Consultant, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. Municipality

will not be responsible for the cost of the rental of any such equipment, machinery, or parts when the use thereof is no longer necessary for the Work.

39.2.3 If required by Municipality, Contractor shall obtain competitive bids from Subcontractors acceptable to Contractor, and shall deliver such bids to Municipality who will then determine, with the advice of Consultant, which bids will be accepted. If the subcontract provides that the Subcontractor is to be paid on the basis of Cost of Work plus a fee, the Subcontractor's Cost of Work shall be determined in the same manner as Contractor's Cost of Work. All Subcontractors shall be subject to the other provisions of this Contract insofar as applicable.

39.2.4 Cost of special consultants, including, but not limited to, engineers, architects, testing laboratories, and surveyors employed for services specifically related to the performance of the work described in the Change Order.

39.2.5 Supplemental costs including the following:

39.2.5.1 All materials, supplies, equipment, machinery, appliances, office and temporary facilities, including transportation and maintenance thereof, at the site and hand tools not owned by the workers used in the performance of the Work, less market value of such items used but not consumed, and which items remain the property of Contractor.

39.2.5.2 Sales, use, or similar taxes related to the Work, imposed by any governmental authority, for which Contractor is liable.

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

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

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

39.3.1 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, schedulers, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in its principal or a branch office, for general administration of the Work that are not specifically included in the agreed-upon schedule of job classifications referred to in subsection 39.2.1, all of which payroll costs and other compensation are to be considered administrative costs covered by Contractor's fee.

39.3.2 Expenses of Contractor's principal and branch offices other than Contractor's field office at the Project site.



39.3.3 Any part of Contractor's capital expenses, including but not limited to interest on Contractor's capital employed for the Work as well as charges against Contractor for delinquent payments.

39.3.4 Cost of premiums for all bonds and for all insurance, whether Contractor is required by this Contract to purchase and maintain the same, except for additional bonds and insurance required because of changes in the Work.

39.3.5 Costs due to the negligence or neglect of Contractor, any Subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and repairing or remedying any damage to property.

39.3.6 Other overhead or general expense costs of any kind.

39.4 Contractor's fee for overhead and profit shall be determined as follows:

39.4.1 A mutually acceptable fixed fee, or if no fixed fee can be agreed upon;

39.4.2 A fee based on the following percentages of the various portions of the cost of the Work:

39.4.2.1 For costs incurred under subsections 39.2.1 and 39.2.2, Contractor's fee shall not exceed ten percent (10%).

39.4.2.2 For costs incurred under subsection 39.2.3, Contractor's fee shall not exceed seven and one-half percent (7.5%); and if a subcontract is on the basis of cost of the work plus a fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall not exceed ten percent (10%); and

39.4.2.3 No fee shall be payable on the basis of costs itemized under subsections 39.2.4 and 39.2.5 (except subsection 39.2.5.3) and Section 39.3.

39.5 The amount of credit to Municipality for any change that results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any. Contractor shall not be entitled to claim lost profits for any Work not performed.

39.6 Whenever the cost of any Work is to be determined pursuant to Sections 39.2 and 39.3, Contractor will submit in a form acceptable to Consultant an itemized cost breakdown together with the supporting data.

39.7 If the quantity of any item of the Work covered by a unit price is increased or decreased by more than twenty percent (20%) from the quantity of such Work indicated in this Contract, an appropriate Change Order shall be issued to adjust the unit price, if warranted.

39.8 Whenever a change in the Work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, Contractor shall submit an initial cost estimate acceptable to Consultant and Contract Administrator.

39.8.1 Such cost estimate shall include a breakdown listing the quantities and unit prices for materials, labor, equipment, and other items of cost.

39.8.2 Whenever a change involves Contractor and one or more Subcontractors and the change is an increase in the Contract Price, overhead and profit percentage for Contractor and each Subcontractor shall be itemized separately.

39.9 Each Change Order must state within the body of the Change Order whether it is based upon unit price, negotiated lump sum, or "Cost of Work."

#### **ARTICLE 40 NOTIFICATION AND CLAIM FOR CHANGE OF CONTRACT TIME OR CONTRACT PRICE**

40.1 Any claim for a change in the Contract Time or Contract Price shall be made by written notice by Contractor to the Contract Administrator and to Consultant within five (5) days of the commencement of the event giving rise to the claim or Contractor's knowledge of the claim, and the notice shall state the general nature and cause of the claim. Thereafter, within twenty (20) days after the termination of the event giving rise to the claim or Contractor's knowledge of the claim, Contractor shall submit written notice of the extent of the claim with supporting information and documentation to the Contract Administrator and Consultant (hereinafter "Claim Notice"). The Claim Notice shall include Contractor's written notarized certification that the adjustment claimed is the entire adjustment to which Contractor has reason to believe it is entitled as a result of the occurrence the event giving rise to the claim. If the Contract Administrator and Contractor cannot resolve a claim for changes in the Contract Time or Contract Price within twenty (20) days after receipt of the Claim Notice by the Contract Administrator and Consultant, then Contractor shall submit the claim to Consultant within five (5) days after the date of impasse in accordance with Article 12 hereof. **IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE CONTRACT TIME OR CONTRACT PRICE SHALL BE WAIVED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.**

40.2 The Contract Time will be extended in an amount equal to time lost on critical Work items due to delays beyond the control of and through no fault or negligence of Contractor if a claim for an extension is made in accordance with Section 40.1. Such delays shall include, but not be limited to, acts, omissions, or neglect by any separate contractor employed by Municipality, fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

#### **ARTICLE 41 NO DAMAGES FOR DELAY**

No claim for damages or any claim, other than for an extension of time, shall be made or asserted against Municipality by reason of any delays except as provided herein. Contractor shall not be

entitled to an increase in the Contract Price or payment or compensation of any kind from Municipality for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising from delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above; provided, however, that this provision shall not preclude recovery of damages by Contractor for actual delays due solely to fraud, bad faith, or active interference on the part of Municipality or its Consultant.

#### **ARTICLE 42    EXCUSABLE DELAY; COMPENSABLE; NON-COMPENSABLE**

42.1    Excusable Delay. Delay that extends the completion of the Work and that is caused by circumstances beyond the control of Contractor or its Subcontractors, suppliers, or vendors are Excusable Delay. Contractor is entitled to a time extension of the Contract Time for each day the Work is delayed due to Excusable Delay. Contractor shall document its claim for any time extension as provided in Article 40 hereof. Failure of Contractor to comply with Article 40 hereof as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment, or relinquishment of any and all claims resulting from that particular event of delay. Excusable Delay may be compensable or non-compensable, as provided below.

42.1.1    Compensable Excusable Delay. Excusable Delay is compensable when (i) the delay extends the Contract Time; (ii) is caused by circumstances beyond the control of Contractor or its Subcontractors, suppliers, or vendor; and (iii) is caused solely by fraud, bad faith, or active interference on the part of Municipality or its agents. In no event shall Contractor be compensated for interim delays that do not extend the Contract Time. Contractor shall be entitled to direct and indirect costs for Compensable Excusable Delay. Direct costs recoverable by Contractor shall be limited to the actual additional costs allowed pursuant to Article 39 hereof.

Municipality and Contractor recognize and agree that the amount of Contractor's precise actual indirect costs for delay in the performance and completion of the Work is impossible to determine as of the date of execution of this Contract, and that proof of the precise amount will be difficult. Therefore, indirect costs recoverable by Contractor shall be liquidated on a daily basis for each day the Contract Time is delayed due to a Compensable Excusable Delay. These liquidated indirect costs shall be paid to compensate Contractor for all indirect costs caused by a Compensable Excusable Delay, and shall include, but not be limited to, lost profits, all profit on indirect costs, home office overhead, acceleration, loss of earnings, loss of productivity, loss of bonding capacity, loss of opportunity and all other indirect costs incurred by Contractor. The amount of liquidated indirect costs recoverable shall be Five Hundred Dollars and Zero Cents (\$500.00) per day for each day this Contract is delayed due to a Compensable Excusable Delay.

42.1.2 Non-Compensable Excusable Delay. When Excusable Delay is (i) caused by circumstances beyond the control of Contractor, its Subcontractors, suppliers, and vendors; (ii) caused by circumstances beyond the control of Municipality or Consultant; or (iii) caused jointly or concurrently by Contractor or its Subcontractors, suppliers, or vendors and by Municipality or Consultant, then Contractor shall be entitled only to a time extension and no further compensation for the delay.

#### **ARTICLE 43 SUBSTANTIAL COMPLETION**

When Contractor determines in good faith that the Work, or a portion thereof designated by Municipality pursuant to Article 30 hereof, has reached Substantial Completion, Contractor shall so notify the Contract Administrator and Consultant in writing. Consultant and the Contract Administrator shall then promptly inspect the Work. When Consultant, on the basis of such an inspection, determines that the Work or designated portion thereof is substantially complete, it will then prepare a Certificate of Substantial Completion (Form 10). The Contract Administrator shall affix its determination to the Certificate of Substantial Completion, which shall establish the Date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of Municipality and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance. Consultant and the Contract Administrator shall develop and Contractor shall review the list of all Work yet to be completed by Contractor to satisfy the requirements of this Contract for Final Completion and to make the Work satisfactory and acceptable. The list shall be provided to Contractor within five (5) days after final development and review. If the final list is not provided within the stated five (5) days, the Contract Time for completion shall be extended by the number of days exceeding the five (5) days. The failure to include any items of corrective Work on such list does not alter the responsibility of Contractor to complete all Work in accordance with this Contract. Warranties required by this Contract shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Contract Administrator and Contractor for their written acceptance of the responsibilities assigned to them in the Certificate of Substantial Completion.

#### **ARTICLE 44 NO INTEREST**

44.1 Unless prohibited by Applicable Law, Municipality shall not be liable to pay any interest to Contractor for any reason, whether as prejudgment interest or for any other purpose, and Contractor waives, rejects, disclaims and surrenders any and all entitlement to interest in connection with a dispute or claim arising from, related to, or in connection with this Contract.

44.2 If the preceding section is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by Municipality under this Contract, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under Applicable Law, one quarter of one percent (0.25%) simple interest (uncompounded).

## **ARTICLE 45 SHOP DRAWINGS**

45.1 Contractor shall submit Shop Drawings as required by the Technical Specifications. The purpose of the Shop Drawings is to show the suitability, efficiency, technique of manufacture, installation requirements, details of the item, and evidence of its compliance or noncompliance with this Contract.

45.2 Within thirty (30) days after the Project Initiation Date specified in the Notice to Proceed, Contractor shall submit to Consultant a complete list of preliminary data on items for which Shop Drawings are to be submitted and shall identify the critical items. Approval of this list by Consultant shall in no way relieve Contractor from submitting complete Shop Drawings and providing all materials and equipment in accordance with this Contract. This procedure is required in order to expedite final approval of Shop Drawings.

45.3 After the approval of the list of items required in Section 45.2 above, Contractor shall promptly request Shop Drawings from the various manufacturers, fabricators, and suppliers.

45.4 Contractor shall thoroughly review and check the Shop Drawings, and shall approve each and every copy by initialing same, and shall transit a letter of approval to Consultant and Municipality.

45.5 If the Shop Drawings show or indicate departures from the Contract requirements, Contractor shall specify such departures and make specific mention thereof in its letter of transmittal to Consultant and Municipality. Failure to point out such departures shall not relieve Contractor from its responsibility to comply with this Contract.

45.6 Consultant shall review and approve Shop Drawings within twenty-one (21) days after the date received, unless said Shop Drawings are rejected by Consultant for material reasons. Consultant's approval of Shop Drawings will be general and shall not relieve Contractor of responsibility for the accuracy of such Shop Drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or Work required by this Contract but not indicated on the Shop Drawings. No Work called for by Shop Drawings shall be performed until the said Shop Drawings have been approved by Consultant. Approval by Consultant shall not relieve Contractor from responsibility for errors or omissions of any sort on the Shop Drawings.

45.7 No approval will be given to partial submittals of Shop Drawings for items that interconnect or are interdependent where necessary to properly evaluate the design. It is Contractor's responsibility to assemble the Shop Drawings for all such interconnecting or interdependent items, check such items, and then make one submittal to Consultant along with Contractor's comments as to compliance, noncompliance, or features requiring special attention.

45.8 If catalog sheets or prints of manufacturers' standard drawings are submitted as Shop Drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink.

45.9 Contractor shall submit the number of copies of Shop Drawings required by Consultant. Resubmissions of Shop Drawings shall be made in the same quantity until final approval is obtained.

45.10 Contractor shall keep one set of Shop Drawings marked with Consultant's approval at the job site at all times.

#### **ARTICLE 46 FIELD LAYOUT OF THE WORK AND RECORD DRAWINGS**

46.1 The entire responsibility for establishing and maintaining line and grade in the field lies with Contractor. Contractor shall maintain an accurate and precise record of the location and elevation of all pipelines, conduits, structures, maintenance access structures, handholes, fittings and the like, and shall prepare record or "as-built" drawings of the same, which must be sealed by a Professional Surveyor. Contractor shall deliver these records in good order to Consultant as the Work is completed. The cost of all such field layout and recording work is included in the bid prices for the appropriate items. All record drawings shall be made on reproducible paper and shall be delivered to Consultant prior to, and as a condition of, final payment.

46.2 Contractor shall maintain in a safe place at the Project site one record copy of all Drawings, Plans, Specifications, Addenda, written amendments, Change Orders, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings shall be available at all times to Consultant for reference. Upon Final Completion of the Project and prior to Final Payment, these record documents, samples, and Shop Drawings shall be delivered to the Contract Administrator.

46.3 Prior to, and as a condition precedent to Final Payment, Contractor shall submit to Municipality Contractor's record drawings or as-built drawings acceptable to Consultant.

#### **ARTICLE 47 SAFETY AND PROTECTION**

47.1 Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Project. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

47.1.1 All employees on the work site and other persons who may be affected thereby;

47.1.2 All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Project site; and

47.1.3 Other property at the Project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

47.2 Contractor shall comply with all Applicable Law of any public body having jurisdiction for the safety of persons or property or to protect person or property from damage, injury, or loss, and Contractor shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utilities when performance of the Work may affect them. All damage, injury, or loss to any property referred to in subsections 47.1.2 and 47.1.3 above, caused directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be repaired or remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Consultant has issued a notice to Municipality and Contractor that the Work is acceptable except as otherwise provided in Article 30.

47.3 Contractor shall designate a responsible member of its organization at the Project site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Municipality.

#### **ARTICLE 48 FINAL BILL OF MATERIALS**

Contractor shall be required to submit to Municipality and Consultant a final bill of materials with unit costs for each bid item for supply of materials installed. This shall be an itemized list of all materials with a unit cost for each material, and the total cost shall be determined on the basis of the unit costs established for each Contract item. A Final Certificate for Payment will not be issued by Consultant until Contractor submits the final bill of materials and Consultant verifies the accuracy of the units of Work.

#### **ARTICLE 49 PROJECT SIGN**

Any requirements for a project sign shall be as set forth within the Technical Specifications section.

#### **ARTICLE 50 CLEANING UP; MUNICIPALITY'S RIGHT TO CLEAN UP**

Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Project, Contractor shall remove all its waste materials and rubbish from and about the Project as well as its tools, construction equipment, machinery, and surplus materials. If Contractor fails to clean up during the performance of the Work or at the completion of the Work, Municipality may do so and the cost thereof shall be charged to Contractor. If a dispute arises between Contractor and separate contractors of Municipality as to their responsibility for cleaning up, Municipality may clean up and charge the cost thereof to the contractors responsible as Consultant shall determine to be appropriate and equitable.

## **ARTICLE 51 HURRICANE PRECAUTIONS**

51.1 During such periods of time as are designated by the National Weather Services as being a hurricane watch or warning, Contractor, at no cost to Municipality, shall take all precautions necessary to secure the Project site from any damage that may be caused by all threatened storm events, regardless of whether Municipality or Consultant has given notice of same.

51.2 Compliance with any specific hurricane watch or warning precautions will not constitute additional work.

51.3 Suspension of the Work caused by a threatened or actual storm event, regardless of whether Municipality has directed such suspension, will entitle Contractor to additional Contract Time as noncompensable, excusable delay, and shall not give rise to a claim for compensable delay.

## **ARTICLE 52 REMOVAL OF EQUIPMENT**

In case of termination of this Contract before completion for any cause whatsoever, Contractor, if notified to do so by Municipality, shall promptly remove any part or all of Contractor's equipment and supplies from the property of Municipality, failing which Municipality shall have the right to remove such equipment and supplies at the expense of Contractor.

## **ARTICLE 53 DOMESTIC PARTNERSHIP REQUIREMENT**

Unless this Contract is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16½-157, Broward County Code of Ordinances ("Act"), Contractor certifies and represents that it will at all times comply with the provisions of the Act, and the contract language referenced in the Act is deemed incorporated in this Contract as though fully set forth in this section. The failure of Contractor to comply shall be a material breach of this Contract, entitling Municipality to pursue any and all remedies provided under Applicable Law including, but not limited to (1) retaining all monies due or to become due Contractor until Contractor complies; (2) termination of this Contract; and (3) suspension or debarment of Contractor.

## **ARTICLE 54 EQUAL EMPLOYMENT OPPORTUNITY AND CBE/SBE COMPLIANCE**

54.1 No party to this Contract may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Contract, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Part 26. Contractor shall include the foregoing or similar language in its contracts with any Subcontractors.

54.2 Contractor shall comply with all applicable requirements of Section 1-81, Broward County Code of Ordinances, in the award and administration of this Contract. Failure by Contractor to carry out any of the requirements of this article shall constitute a material breach of this Contract, which shall permit Municipality to terminate this Contract or exercise any other remedy provided



under this Contract, the Broward County Code of Ordinances, the Broward County Administrative Code, or under other Applicable Law, all such remedies being cumulative.

54.3 Contractor must meet or exceed the required CBE or SBE goal by utilizing the CBE or SBE firms listed in Exhibit "D" (or a CBE/SBE firm substituted for a listed firm, if permitted) for thirteen percent (13%) of total Work under this Contract (the "Commitment"). In performing the Work, Contractor shall utilize the CBE or SBE firms listed in Exhibit "D" for the scope of work and the percentage of work amounts identified on each Letter of Intent. Promptly upon execution of this Contract by Municipality, Contractor shall enter into formal contracts with the CBE or SBE firms listed in Exhibit "D" and, upon request, shall provide copies of the contracts to the Contract Administrator and OESBD.

54.4 Each CBE or SBE firm utilized by Contractor to meet the CBE or SBE goal must be certified by OESBD. Contractor shall inform Municipality immediately when a CBE or SBE firm is not able to perform or if Contractor believes the CBE or SBE firm should be replaced for any other reason, so that OESBD can review and verify the good faith efforts of Contractor to substitute the CBE or SBE firm with another CBE or SBE firm. Whenever a CBE or SBE firm is terminated for any reason, Contractor shall provide written notice to OESBD and, upon written approval of the Director of OESBD, shall substitute another CBE or SBE firm in order to meet the CBE or SBE goal, unless otherwise provided in this Contract or agreed to in writing by the Parties. Such substitution shall not be required if the termination results from modification of the scope of services and no CBE or SBE firm is available to perform the modified scope of services; in which event, Contractor shall notify OESBD, and OESBD may adjust the CBE or SBE goal by written notice to Contractor. Contractor shall not terminate a CBE or SBE firm for convenience without OESBD's prior written consent, which consent shall not be unreasonably withheld.

54.5 The Parties stipulate that if Contractor fails to meet the Commitment, the damages to Municipality arising from such failure are not readily ascertainable at the time of contracting. If Contractor fails to meet the Commitment and County determines, in the sole discretion of the OESBD Program Director, that Contractor failed to make Good Faith Efforts (as defined in Section 1-81, Broward County Code of Ordinances) to meet the Commitment, Contractor shall pay Municipality liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which Contractor failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total contract amount excluding costs and reimbursable expenses. An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. As elected by Municipality, such liquidated damages amount shall be either credited against any amounts due from Municipality, or must be paid to Municipality within thirty (30) days after written demand. These liquidated damages shall be Municipality's sole contractual remedy for Contractor's breach of the Commitment, but shall not affect the availability of administrative remedies under Section 1-81. Contractor acknowledges and agrees that the liquidated damages provided in this section are proportionate to an amount that might reasonably be expected to flow from a breach of the Commitment and are not a penalty. Any failure to meet the Commitment attributable solely to force majeure, changes to the Scope of Work by Municipality, or inability to substitute a CBE or SBE Subcontractor where the OESBD Program Director has

determined that such inability is due to no fault of Contractor, shall not be deemed a failure by Contractor to meet the Commitment.

54.6 Contractor acknowledges that County, may make minor administrative modifications to Section 1-81, Broward County Code of Ordinances, which shall become applicable to this Contract if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to Contractor and shall include a deadline for Contractor to notify Municipality in writing if Contractor concludes that the modification exceeds the authority under this section. Failure of Contractor to timely notify Municipality of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by Contractor.

54.7 OESBD may modify the Commitment in connection with any amendment, extension, modification, or change order to this Contract that, by itself or aggregated with previous amendments, extensions, modifications, or change orders, increases the initial Contract price by ten percent (10%) or more. Contractor shall make a good faith effort to include CBE or SBE firms in work resulting from any such amendment, extension, modification, or change order, and shall report such efforts, along with evidence thereof, to OESBD.

54.8 No later than ten (10) business days after the end of the month, Contractor shall provide written monthly reports to the Contract Administrator and to OESBD (in the form and in the manner requested by OESBD) attesting to Contractor's compliance with the Commitment. In addition, Contractor shall allow Municipality and OESBD to engage in onsite reviews to monitor Contractor's progress in achieving and maintaining the Commitment. The Contract Administrator in conjunction with OESBD shall perform such review and monitoring, unless otherwise determined by the County Administrator.

54.9 The Contract Administrator may withhold progress payments if Contractor fails to demonstrate timely payments of sums due to all Subcontractors and suppliers. The presence of a "pay when paid" provision in a Contractor's contract with a CBE or SBE firm shall not preclude Municipality or its representatives from inquiring into claims of nonpayment.

## **ARTICLE 55 PUBLIC RECORDS**

To the extent Contractor is acting on behalf of Municipality as provided in Section 119.0701, Florida Statutes, Contractor shall:

55.1.1 Keep and maintain public records required by Municipality to perform the services under this Contract;

55.1.2 Upon request from Municipality, provide Municipality with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by Applicable Law;

55.1.3 Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Law for the duration of this Contract and after completion or termination of this Contract if the records are not transferred to Municipality; and

55.1.4 Upon completion or termination of this Contract, transfer to Municipality, at no cost, all public records in possession of Contractor or keep and maintain public records required by Municipality to perform the services. If Contractor transfers the records to Municipality, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt. If Contractor keeps and maintains public records, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Municipality upon request in a format that is compatible with the information technology systems of Municipality.

The failure of Contractor to comply with the provisions of this article shall constitute a material breach of this Contract entitling Municipality to exercise any remedy provided in this Contract or under Applicable Law, all of such remedies being cumulative.

A request for public records regarding this Contract must be made directly to Municipality, who will be responsible for responding to any such public records requests. Contractor will provide any requested records to Municipality to enable Municipality to respond to the public records request.

Any material submitted to Municipality that Contractor contends constitutes or contains trade secrets or contends is otherwise exempt from production under Florida public records laws (including Florida Statutes Chapter 119) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET." In addition, Contractor must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Florida Statutes Section 688.002 and stating the factual basis for same. If a third party submits a request to Municipality for records designated by Contractor as Trade Secret Materials, Municipality shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Contractor. Contractor shall indemnify and defend Municipality and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the non-disclosure of any Trade Secret Materials in response to a records request by a third party.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF  
FLORIDA STATUTES CHAPTER 119 TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC  
RECORDS RELATING TO THIS CONTRACT, 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).

(The remainder of this page is intentionally left blank.)

## **SUPPLEMENTAL GENERAL CONDITIONS**

### **SUPPLEMENTAL WAGE REQUIREMENTS**

1.     ✓     Prevailing Wage Rate Ordinance - This Project is not federally funded. If the price of this Contract is in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00), the following sections shall apply.

1.1.     The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as the most recently published in the Federal Register.

1.2.     All mechanics, laborers, and apprentices, employed or working on the site of the Work, shall be paid in accordance with the above referenced wage rates. Contractor shall post this section of the Contract (Supplemental Wage Requirements) at the site of the Work in a prominent place where it can be easily seen by the workers.

1.3.     If the Parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices that will be used on the Work site, the Contract Administrator shall submit the question, together with its recommendation, to the Municipality Manager for final determination, which shall be binding.

1.4.     If the Contract Administrator determines that any laborer or mechanic or apprentice employed by Contractor or any Subcontractor on the site of the Work has been or is being paid wages less than the rate of wages required by the Prevailing Wage Ordinance, Section 26-5 of the Broward County of Ordinances, as amended, the Contract Administrator may (1) by written notice to Contractor direct Contractor to terminate the Work or such part of Work for which there has been a failure to pay said required wages; and (2) contract with another party to perform the Work or portion thereof to completion. Whereupon, Contractor and its Sureties shall be liable to Municipality for any and all costs incurred by Municipality to complete such Work to the extent such costs exceed any amounts that Contractor would be due for performance of such Work.

1.5.     Contractor shall maintain payrolls and basic records relating thereto during the course of the Work and shall preserve such for a period of three (3) years thereafter for all laborers, mechanics, and apprentices working at the site of the Work. Such records shall contain the name and address of each such employee; the employee's current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.

1.6.     Contractor shall submit, with each application for payment, a signed and sworn "Statement of Compliance" (Form 8A) attesting to compliance with the Prevailing Wage Ordinance, Section 26-5 of the Broward County of Ordinances, as amended.

1.7. The Contract Administrator may withhold or cause to be withheld from Contractor so much of the payments requisitioned as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and guards employed by Contractor or any Subcontractor on the Work, the full amount of wages required by this Contract.

1.8. If Contractor or any Subcontractor fails to pay any laborer, mechanic, or apprentice employed or working on the site of the Work all or part of the wages required by this Contract, the Contract Administrator may, after written notice to Contractor, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

2. ☐ Federal Grant Projects:

2.1. Because this Project will be funded, in whole or in part, by the United States government through \_\_\_\_\_[Federal Agency]\_\_\_\_\_ and referred to as \_\_\_\_\_ No. \_\_\_\_\_, all Federal assurances applicable to such funding, including any and all supervening assurances set forth in Rules and Regulations published in Federal Register or C.F.R., shall apply to this Contract.

2.2. Accordingly, all clauses, terms, or conditions required by federal grantor agency with respect to the federal funding for this Project are hereby attached and made a part of this Contract. **[ATTACH RELEVANT DOCUMENTS IF SECTION 2 IS CHECKED]**

**FORM 1: PERFORMANCE BOND**

Project Name: «Project\_Name»  
Project Number: «Project\_Number»

BY THIS BOND, We \_\_\_\_\_, as Principal, hereinafter called Contractor, located at \_\_\_\_\_, with a phone number of \_\_\_\_\_, and \_\_\_\_\_, as Surety, located at \_\_\_\_\_, with a phone number of \_\_\_\_\_, under the assigned Bond Number \_\_\_\_\_, are bound to the Municipality of \_\_\_\_\_, Florida ("Municipality"), and Broward County, Florida, as dual Obligees (hereinafter jointly and severally referred to as "Municipality/County"), in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, entered into a Contract, Bid/Contract No. \_\_\_\_\_, with Municipality, the terms of which contract (including the Contract Documents, as those are defined in the contract) are incorporated by reference herein and made a part hereof as the "Contract," which includes any and all provisions for liquidated damages, and other damages identified.

THE CONDITION OF THIS BOND is that if Contractor:

- 1) Performs the Contract between Contractor and Municipality for construction of \_\_\_\_\_, in the time and manner prescribed in the Contract; and
- 2) Pays Municipality/County all losses, liquidated damages, expenses, costs and attorneys' fees including appellate proceedings, that Municipality/County sustains as a result of default by Contractor under the Contract; and
- 3) Performs the guaranties of all Work (as defined in the Contract) and materials furnished under the Contract for the time specified in the Contract, then THIS BOND IS VOID; OTHERWISE IT REMAINS IN FULL FORCE AND EFFECT.

Whenever Contractor shall be, and is declared by Municipality/County to be, in default under the Contract with Municipality, having performed its obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- a) Complete the required performance in accordance with the terms and conditions of the Contract Documents; or
- b) Obtain a bid or bids for completing the Project in accordance with the terms and conditions of the Contract Documents, and upon determination by Surety of the lowest

responsible Bidder, or, if Municipality/County elects, upon determination by Municipality/County and Surety jointly of the lowest responsible Bidder, arrange for a contract between such Bidder and Municipality/County on the same terms and conditions as the Contract Documents unless otherwise agreed by Municipality/County, and shall make available as Work progresses sufficient funds to pay the cost of completion of the Work required by the Contract in an amount less but not exceeding the balance of the Contract Price , which amount shall include other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Municipality to Contractor under the Contract and any amendments thereto, less the amount properly paid by Municipality to Contractor.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Municipality/County named herein.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect Surety's obligation under this Bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:

CONTRACTOR

\_\_\_\_\_  
Corporate Secretary or other  
person authorized to attest

By: \_\_\_\_\_  
Authorized Signor

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

(CORPORATE SEAL OR NOTARY)

IN THE PRESENCE OF:

SURETY:

\_\_\_\_\_  
Signature

By \_\_\_\_\_  
Agent and Attorney-in-Fact

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print/Type Name)

\_\_\_\_\_  
Signature

Address: \_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip Code)

Telephone No.: \_\_\_\_\_



|

## FORM 2: PAYMENT BOND

Project Name: «Project\_Name»  
Project Number: «Project\_Number»

KNOW ALL BY THESE PRESENTS:

That we \_\_\_\_\_, as Principal (hereinafter called "Contractor"), located at \_\_\_\_\_, with a phone number of \_\_\_\_\_, and \_\_\_\_\_, as Surety, located at \_\_\_\_\_, with a phone number of \_\_\_\_\_, under the assigned Bond Number \_\_\_\_\_ and pursuant to Section 255.05, Florida Statutes, are bound to the Municipality of \_\_\_\_\_, Florida ("Municipality") and Broward County, Florida (hereinafter jointly and severally referred to as "Municipality/County"), as dual Obligees, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written agreement dated the \_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_, entered into a Contract, Bid/Contract No. \_\_\_\_\_, with Municipality for construction of \_\_\_\_\_ located at \_\_\_\_\_, the terms of which contract (including the Contract Documents, as those are defined in the contract) are incorporated by reference herein and made a part hereof as the "Contract."

THE CONDITION OF THIS BOND is that if Contractor:

1. Pays Municipality/County all losses, damages, expenses, costs and attorneys' fees including appellate proceedings, that Municipality/County sustains because of default by Contractor under the Contract; and
2. Promptly makes payments to all claimants as defined by Florida Statute Section 255.05(1) for all labor, materials and supplies used directly or indirectly by Contractor in the performance of the Contract;

THEN CONTRACTOR'S OBLIGATION SHALL BE VOID; OTHERWISE, IT SHALL REMAIN IN FULL FORCE AND EFFECT SUBJECT, HOWEVER, TO THE FOLLOWING CONDITIONS:

A. A claimant, except a laborer, who is not in privity with Contractor and who has not received payment for its labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the Work (as defined in the Contract), furnish to Contractor a notice that he or she intends to look to the bond for protection.

B. A claimant who is not in privity with Contractor and who has not received payment for its labor, materials, or supplies shall, within ninety (90) days after performance of the labor or after

complete delivery of the materials or supplies, deliver to Contractor and to the Surety, written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment.

C. No action for the labor, materials, or supplies may be instituted against Contractor or the Surety unless the notices stated under the preceding conditions (A) and/or (B), as applicable, have been given.

D. Any action under this Bond must be instituted in accordance with the Notice and Time Limitations provisions prescribed in Sections 255.05(2) and 255.05(10), Florida Statutes.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect the Surety's obligation under this Bond.

Signed and sealed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

CONTRACTOR

\_\_\_\_\_  
Corporate Secretary or other  
person authorized to attest

By: \_\_\_\_\_  
Authorized Signor

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name and Title

\_\_\_\_ day of \_\_\_\_\_, 20\_\_

(CORPORATE SEAL OR NOTARY)

IN THE PRESENCE OF:

SURETY:

\_\_\_\_\_  
Signature

By \_\_\_\_\_  
Agent and Attorney-in-Fact

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print/Type Name)

\_\_\_\_\_  
Signature

Address: \_\_\_\_\_  
(Street)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(City/State/Zip Code)

Telephone No.: \_\_\_\_\_

**FORM 3: CERTIFICATE AS TO CORPORATE PRINCIPAL**

**[COMPLETE ONLY ONE: CERTIFICATION BY CORPORATE SECRETARY OR NOTARIZED CERTIFICATION UNDER OATH]**

*CERTIFICATION BY CORPORATE SECRETARY:*

I, \_\_\_\_\_, certify that I am the Secretary of the corporation named as Principal in the foregoing Performance and Payment Bonds; that \_\_\_\_\_, who signed the Bond(s) on behalf of the Principal, was then \_\_\_\_\_ of said corporation; that I know their signature; that their signature thereto is genuine; and that said Bond(s) was (were) duly signed, sealed and attested to on behalf of said corporation by authority of its governing body.

Signature: \_\_\_\_\_  
as Secretary of [Print Name of Principal/Contractor] \_\_\_\_\_  
(CORPORATE SEAL)  
Print Name: \_\_\_\_\_

*NOTARIZED CERTIFICATION UNDER OATH:*

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Before me, Name of Notary Public a Notary Public duly commissioned, qualified, and acting, personally appeared Name of Principal/Contractor's Authorized Signor, who has duly sworn under oath (or affirmed) that they are authorized to execute the foregoing Performance and Payment Bond on behalf of Contractor named therein in favor of County.

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

NOTARY PUBLIC:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(NOTARY SEAL)

My commission expires:

☐ Personally Known or ☐ Produced Identification

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

**FORM 4: FORM OF CERTIFICATE AND AFFIDAVIT FOR BONDS \$500,000.00 OR LESS**

TO: MUNICIPALITY OF CITY OF PEMBROKE PINES

RE: BID NUMBER: \_\_\_\_\_

BIDDER: \_\_\_\_\_

\_\_\_\_\_  
Insert Name

\_\_\_\_\_  
Insert Address

\_\_\_\_\_  
Address Cont'd

\_\_\_\_\_  
Insert Phone Number

AMOUNT OF BOND: \_\_\_\_\_

SURETY BOND COMPANY:

\_\_\_\_\_  
Insert Name

\_\_\_\_\_  
Insert Address

\_\_\_\_\_  
Address Cont'd

\_\_\_\_\_  
Insert Phone Number

\_\_\_\_\_ This is to  
certify that, in accordance with Section 287.0935, Florida Statutes, the insurer named above:

- (1) Is licensed to do business in the State of Florida;
- (2) Holds a certificate of authority authorizing it to write surety bonds in the State of Florida;
- (3) Has twice the minimum surplus and capital required by the Florida Insurance Code;
- (4) Is otherwise in compliance with the provisions of the Florida Insurance Code; and
- (5) Currently holds a valid certificate of authority issued by the United States Department of Treasury under 31 U.S.C. §§ 9304-9308.

\_\_\_\_\_  
(Date Signed)

\_\_\_\_\_  
Agent and Attorney-in-Fact

*(continued on next page)*

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

AFFIDAVIT

The foregoing instrument was acknowledged before me by means of ☐ physical presence  
or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_, Agent and Attorney-in-Fact of \_\_\_\_\_ and  
who ☐ did ☐ did not take an oath.

NOTARY PUBLIC:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(NOTARY SEAL)

My commission expires:

☐ Personally Known or ☐ Produced Identification

Type of My commission expires:

Identification Produced: \_\_\_\_\_

**FORM 5: UNCONDITIONAL LETTER OF CREDIT  
(PERFORMANCE AND PAYMENT GUARANTY FORM)**

UNCONDITIONAL LETTER OF CREDIT

**Beneficiary:**

Municipality of \_\_\_\_\_, Florida  
Municipality Manager \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Florida \_\_\_\_

Date of Issue \_\_\_\_\_

Issuing Bank's No. \_\_\_\_\_

Applicant: \_\_\_\_\_

Amount: \_\_\_\_\_  
(in United States Funds)

Expiry: \_\_\_\_\_

(Date)

Bid/Contract Number \_\_\_\_\_

We hereby authorize you to draw on (Bank, Issuer Name) at (Branch Address) by order of and for the account of (Contractor, Applicant, Customer) up to an aggregate amount, in United States Funds, of \$(Dollar Amount) available by your drafts at sight, accompanied by: A signed statement from the Municipality Manager of the Municipality of \_\_\_\_\_, Florida, or the Municipality Manager's authorized representative that the drawing is due to default in performance of certain obligations on the part of (Contractor, Applicant, Customer) agreed upon by and between the Municipality of \_\_\_\_\_ and (Contractor, Applicant, Customer) pursuant to the Bid/Contract No. for (Name of Project) and Section 255.05, Florida Statutes. Drafts must be drawn and negotiated not later than (expiration date). Drafts must bear the clause: "Drawn under Letter of Credit No. (number), of (Bank Name) dated \_\_\_\_\_."

This Letter of Credit shall be renewed for successive periods of one (1) year each unless we provide the Municipality Manager with written notice of our intent to terminate the credit herein extended, which notice must be provided at least thirty (30) days prior to the expiration date of the original term hereof or any renewed one (1) year term. Notification to Municipality of \_\_\_\_\_ that this Letter of Credit will expire prior to performance of Contractor's obligations will be deemed a default.

This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified or amplified by reference to any documents, instrument, or agreement referred to herein or in which this Letter of Credit is referred to or this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement.

We hereby agree with the drawers, endorsers, and bona fide holders of all drafts drawn under and in compliance with the terms of this Letter of Credit that such drafts will be duly honored upon presentation to the drawee.

Obligations under this Letter of Credit shall be released one (1) year after the final completion of the Project by the \_\_\_\_\_ (Contractor, Applicant, Customer).

This Credit is subject to the "Uniform Customs and Practice for Documentary Credits," International Chamber of Commerce (2007 revision), Publication No. 600 and to the provisions of Florida law. If a conflict between the Uniform Customs and Practice for Documentary Credits and Florida law should arise, Florida law shall prevail. If a conflict between the law of another state or country and Florida law should arise, Florida law shall prevail.

\_\_\_\_\_  
Authorized Signature





## MONTHLY (CBE) UTILIZATION REPORT

Report No. \_\_\_\_\_

<b>Contract #:</b>	<b>Contract Amount:</b>	<b>Date Form Submitted:</b>	
<b>Project Description:</b>		<b>Project Completion Date:</b>	
<b>Prime Contractor:</b>	<b>Period Ending:</b>	<b>Amt. Paid to Prime:</b>	
<b>Contact Person:</b>	<b>Telephone#:</b> (    )    )	<b>Fax#:</b> (    )    )	

### SUBCONTRACTING INFORMATION

TO BE SUBMITTED TO BROWARD COUNTY OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT						
CBE Subcontractor	Address	Description of Work	Original Agreed Price	Revised Agreed Price	% of work Completed to Date	Amount Paid This Period
						Amount Paid To Date
			Total Amount Paid to Subcontractors to Date:			

I certify that the information submitted in this report is in fact true and correct to the best of my knowledge

<b>Signature:</b>	<b>Date:</b>
-------------------	--------------

**Note: The information provided herein is subject to verification by the Office of Economic and Small Business Development.**

OESBD Compliance Form 2009-MUR



# FINAL (CBE) UTILIZATION REPORT

Report No. \_\_\_\_\_

Contract #:	Contract Amount:	Date Form Submitted:
Project Description:		
Prime Contractor:	Period Ending:	Amt. Paid to Prime:
Contact Person:	Telephone#: ( )	Fax#: ( )

## SUBCONTRACTING INFORMATION

TO BE SUBMITTED TO BROWARD COUNTY OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT

CBE Subcontractor	Address	Description of Work	Original Agreed Price	Revised Agreed Price	% of work Completed to Date	Amount Paid This Period	Amount Paid To Date
			Total Amount Paid to Subcontractors to Date:				

I certify that the information submitted in this report is in fact true and correct to the best of my knowledge

Signature:	Title:	Date:
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Note: The information provided herein is subject to verification by the Office of Economic and Small Business Development.

OESBD Compliance Form 2009-MUR-F

**FORM 8A: STATEMENT OF COMPLIANCE (PREVAILING WAGE RATE)**

No. \_\_\_\_\_  
Contract No. \_\_\_\_\_  
Project Title \_\_\_\_\_

The undersigned Contractor hereby swears under penalty of perjury that, during the period covered by the application for payment to which this statement is attached, all mechanics, laborers, and apprentices, employed or working on the site of the Project, have been paid at wage rates, and that the wage rates of payments, contributions, or costs for fringe benefits have not been less than those required by Section 26-5 of the Broward County Code of Ordinances and the applicable conditions of the Contract.

Dated \_\_\_\_\_, 20\_\_\_\_ Contractor \_\_\_\_\_

By \_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
(Name and Title)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, and who ☐ did ☐ did not take an oath.

NOTARY PUBLIC:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(NOTARY SEAL)

My commission expires:

☐ Personally Known or ☐ Produced Identification

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

**FORM 8B: STATEMENT OF COMPLIANCE (DAVIS-BACON ACT)**

No. \_\_\_\_\_  
Contract No. \_\_\_\_\_  
Project Title \_\_\_\_\_

The undersigned Contractor hereby swears under penalty of perjury that, during the period covered by the application for payment to which this statement is attached, all mechanics, laborers, and apprentices, employed or working on the site of the Project, have been paid at wage rates, and that the wage rates of payments, contributions, or costs for fringe benefits have not been less than those required by the Davis-Bacon Act and the applicable conditions of the Contract.

Dated \_\_\_\_\_, 20\_\_\_\_ Contractor \_\_\_\_\_

By \_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
(Name and Title)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, and who ☐ did ☐ did not take an oath.

NOTARY PUBLIC:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(NOTARY SEAL)

My commission expires:

☐ Personally Known or ☐ Produced Identification

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

**FORM 9: CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS**

Contract No. \_\_\_\_\_

Project Title \_\_\_\_\_

The undersigned Contractor hereby swears under penalty of perjury that:

1. Contractor has paid all Subcontractors all undisputed contract obligations for labor, services, or materials provided on this Project within the time period set forth in Sections 218.73 and 218.735, Florida Statutes, as applicable.
2. The following Subcontractors have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining the good cause why payment has not been made, is attached to this form:

Subcontractor Name and Address	Date of Disputed Invoice	Amount in Dispute

Dated \_\_\_\_\_, 20\_\_

\_\_\_\_\_

Contractor

By \_\_\_\_\_

(Signature)

By \_\_\_\_\_

(Name and Title)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, and who ☐ did ☐ did not take an oath.

NOTARY PUBLIC:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(NOTARY SEAL)

My commission expires: \_\_\_\_\_

☐ Personally Known OR ☐ Produced Identification

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

**FORM 10: CERTIFICATE OF SUBSTANTIAL COMPLETION**

Contract No. \_\_\_\_\_  
Project (Name and Address): \_\_\_\_\_  
To (Municipality): \_\_\_\_\_  
Consultant: \_\_\_\_\_  
Contractor: \_\_\_\_\_  
Notice to Proceed Date: \_\_\_\_\_  
Consultant: \_\_\_\_\_  
Date of Issuance: \_\_\_\_\_

Project or Designated Portion Shall Include:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Work performed under this Contract has been reviewed and found to be substantially complete and all documents required to be submitted by Contractor under the Contract Documents have been received and accepted.

The date of Substantial Completion of the Project or portion thereof designated above is recommended as: \_\_\_\_\_

Unless otherwise defined in the contract, the definition of date of Substantial Completion is that date, as certified in writing by Consultant and as finally determined by Contract Administrator in its sole discretion, on which the Work, or a portion thereof, is at a level of completion in substantial compliance with the Contract Documents, such that all conditions of permits and regulatory agencies have been satisfied and the Owner or its designee can enjoy use or occupancy and can use or operate the Project in all respects for its intended purpose. A Certificate of Occupancy (or a Temporary Certificate of Occupancy or other alternate municipal/county authorization for limited or conditional occupancy acceptable to the Contract Administrator) must be issued for Substantial Completion to be achieved; however, the issuance of a Certificate of Occupancy or the date thereof does not constitute Substantial Completion.

***A list of items to be completed or corrected that has been prepared by Consultant and approved by Municipality is attached hereto.*** The failure to include any items on such list does not alter the responsibility of Contractor to complete all work in accordance with the Contract Documents.

\_\_\_\_\_  
Consultant

\_\_\_\_\_  
By

\_\_\_\_\_  
Date

In accordance with the terms of the Contract, Contractor will complete or correct the work on the list of items attached hereto within \_\_\_\_\_ from the above date of Substantial Completion.

\_\_\_\_\_  
Contractor By \_\_\_\_\_ Date \_\_\_\_\_

Municipality, through the Municipality Manager, has determined the Work or portion thereof designated by Municipality is substantially complete and will assume full possession thereof at \_\_\_\_\_ (time) on \_\_\_\_\_ (date).

MUNICIPALITY OF \_\_\_\_\_: \_\_\_\_\_  
By Municipality Manager Date \_\_\_\_\_

The responsibilities of Municipality and Contractor for security, maintenance, heat, utilities, damage to the work, and insurance shall be as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FORM 11: FINAL CERTIFICATE OF PAYMENT**

Contract No. \_\_\_\_\_  
Project (Name and Address): \_\_\_\_\_  
To (Municipality): \_\_\_\_\_  
Consultant: \_\_\_\_\_  
Contractor: \_\_\_\_\_  
Notice to Proceed Date: \_\_\_\_\_  
Consultant: \_\_\_\_\_  
Date of Issuance: \_\_\_\_\_

All conditions or requirements of any permits or regulatory agencies have been satisfied. The documents required pursuant to the terms and conditions of the Contract, and the final bill of materials, if required, have been received and accepted. The Work required by the Contract Documents has been reviewed and the undersigned certifies that the Work, including minor corrective work, has been completed in accordance with the provision of the Contract Documents and is accepted under the terms and conditions thereof.

\_\_\_\_\_  
Consultant By Date

Municipality, through its Municipality Manager, accepts the work as fully complete and will assume full possession thereof at \_\_\_\_\_ on \_\_\_\_\_.  
(time) (date)

MUNICIPALITY OF \_\_\_\_\_:  
By Municipality Manager Date



**FORM 12: FORM OF FINAL RECEIPT**

[The following form will be used to show receipt of final payment for this Contract.]

**FINAL RECEIPT FOR CONTRACT NO.** \_\_\_\_\_

Received this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, from the Municipality of \_\_\_\_\_, Florida, the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as full and final payment to Contractor for all work and materials for the Project described as:

_____	.....
_____	.....

This sum includes full and final payment for all extra work and material and all incidentals.

Contractor hereby indemnifies and releases the Municipality of \_\_\_\_\_ from all liens and claims whatsoever arising out of the Contract and/or Project.

Contractor hereby certifies that all persons doing work upon or furnishing materials or supplies for the Project have been paid in full. In lieu of this certification regarding payment for work, materials and supplies, Contractor may submit a consent of surety to final payment in a form satisfactory to the Municipality of \_\_\_\_\_.

Contractor further certifies that all taxes imposed by Chapter 212, Florida Statutes (Sales and Use Tax Act), as amended, have been paid and discharged.

**[IF INCORPORATED SIGN BELOW.]**

**CONTRACTOR**

ATTEST:

CONTRACTOR NAME

\_\_\_\_\_  
Corporate Secretary or other  
person authorized to attest

By: \_\_\_\_\_  
Authorized Signor

(CORPORATE SEAL OR NOTARY)

\_\_\_\_\_  
Print Name and Title

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

[IF NOT INCORPORATED SIGN BELOW.]

CONTRACTOR

WITNESSES:

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Business Name

\_\_\_\_\_  
Print/Type Name

By: \_\_\_\_\_  
Authorized Signor

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Print/Type Name and Title

\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**FORM 13: FINAL LIST OF NON-CERTIFIED SUBCONTRACTORS AND SUPPLIERS**

To: \_\_\_\_\_, Contractor

From: Broward County Purchasing Division

Subject: Final List of Non-certified Subcontractors/Sub-vendors

Re: \_\_\_\_\_  
(Project Title, Contract Number)

The attached list of non-certified Subcontractors/sub-vendors have performed or provided services to Municipality for the referenced contract. Non-certified Subcontractors/sub-vendors are any Subcontractors/sub-vendors whose services under the Contract were not approved to meet the participation CBE/SBE goal established for this Contract, and whose participation was not listed on Contractor's "Schedule of Participation" and/or not approved as substitutes or additions by the Broward County Office of Economic Small Business Development Division toward meeting the established goal.

Contractor certifies the following:

- ☐ There were no other non-certified Subcontractors/sub-vendors who provided a service to Municipality for the referenced Contract. All participants on the Contract are listed on the attached list.
- ☐ There were other non-certified Subcontractors/sub-vendors who provided a service and are not listed on the attached list. The additional Subcontractors/sub-vendors are listed on the attached list.

THE UNDERSIGNED VENDOR HEREBY CERTIFIES THAT THE INFORMATION PROVIDED HEREIN IS TRUE AND CORRECT.

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing Final List of Non-Certified Subcontractors and Suppliers was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, and who ☐ did ☐ did not take an oath.

(NOTARY SEAL)

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

My commission expires:

☐ Personally Known or ☐ Produced Identification

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

**FORM 14: LETTER OF INTENT (CBE/SBE)**

**To Utilize a County Business Enterprise (CBE) or Small Business Enterprise (SBE)  
Subcontractor/Subconsultant**

Project Name: «Project\_Name»  
Project Number: «Project\_Number»

From (Name of Proposer/Bidder): \_\_\_\_\_

Firm Address: \_\_\_\_\_

Project Description: \_\_\_\_\_

In response to Municipality's RLI/RFP/Bid No. \_\_\_\_\_, the undersigned hereby agree to utilize the CBE or SBE firm listed below, if awarded the contract. The undersigned further certify that the firm has been contacted and properly apprised of the projected work assignment(s) upon execution of the contract with Municipality.

Name of CBE/SBE Firm: \_\_\_\_\_

Address of CBE/SBE Firm: \_\_\_\_\_

Expiration of CBE/SBE Certification: \_\_\_\_\_ Projected CBE/SBE Work Assignment  
(description of work assignment): \_\_\_\_\_

Projected Percentage of Prime's Contract Fees to be Awarded to CBE/SBE: \_\_\_\_\_%

(Signature of Owner or Authorized Rep. **Prime**) \_\_\_\_\_  
(Date)

Print Name (owner or authorized Rep. **Prime**): \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence  
or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_, and who ☐ did ☐ did not take an oath.

NOTARY PUBLIC:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(NOTARY SEAL)

My commission expires: \_\_\_\_\_

☐ Personally Known or ☐ Produced Identification

Type of ID Produced: \_\_\_\_\_

-----  
**(ACKNOWLEDGEMENT BY THE PROPOSED CBE/SBE FIRM)**

The undersigned intends to perform Work in connection with the above Contract as (check one): \_\_\_ an individual \_\_\_ a partnership \_\_\_ a corporation \_\_\_ a joint venture. The undersigned agrees with the prime contractor's/consultant's proposal and further certifies that all information provided herein is true and correct.

\_\_\_\_\_  
(Signature of Owner or Authorized Rep. **CBE/SBE**)

\_\_\_\_\_  
(Date)

Print Name (owner or authorized Rep. **CBE/SBE**): \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, and who ☐ did ☐ did not take an oath.

NOTARY PUBLIC:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(NOTARY SEAL)

My commission expires: \_\_\_\_\_

☐ Personally Known or ☐ Produced Identification

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

**STATEMENT OF CBE/SBE ASSURANCE**

(Company Letterhead)

**CONTRACTOR ASSURANCE STATEMENT**

**PROJECT DESCRIPTION**

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I, \_\_\_\_\_ (Authorized Official/Agent), on behalf of the \_\_\_\_\_ (Contractor), hereby agree to comply with the County Business Enterprise (CBE) or Small Business Enterprise (SBE) requirements of the RFP between the Municipality of \_\_\_\_\_ and Contractor for \_\_\_\_\_ Project, and to comply with the following requirements.

1. Compliance with the Municipality's non-discrimination policy by providing a non-discrimination Statement;
2. Acknowledgment of the CBE/SBE percentage goal established on the project; and
3. Contract to engage in good faith effort solicitation of approved Broward County Small Business Development Program firms to achieve the project goals as indicated in the RFP document.

\_\_\_\_\_  
Authorized Agent of Contractor

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Telephone Number/Fax Number

Date: \_\_\_\_\_

|

**EXHIBIT "C" INSURANCE REQUIREMENTS** |