

AGREEMENT BY AND BETWEEN FACILITY CONTRACT SERVICES, LLC
AND THE CITY OF PEMBROKE PINES

THIS AGREEMENT, dated this _____ day of _____, 2018, by and between: the CITY OF PEMBROKE PINES, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter referred to as "CITY"), with business address of 601 City Center Way, Pembroke Pines, FL 33025, and FACILITY CONTRACT SERVICES, LCC (hereinafter referred to as "FCS"), with a business address of 13975 Pembroke Road, Pembroke Pines, FL 33027.

WITNESSETH:

WHEREAS, CITY currently has a contract with FCS to provide contract employees and certain professional services for certain identified positions within the CITY; and

WHEREAS, CITY desires to renegotiate its existing contract with FCS to provide contract employees and certain professional services for certain identified positions within the CITY; and

WHEREAS, the CITY is desirous of maintaining a high level of competent, professional, and economically feasible contract administrative and public services in conjunction and harmony with its fiscal policies of sound, economical management; and

WHEREAS, FCS has agreed to render to the CITY a continuing high level of professional contract services and the CITY is desirous of contracting for such services upon the terms and conditions hereinafter set forth; and

WHEREAS, FCS has offered its professional services to the CITY in a manner consistent with the terms, conditions and provisions herein; and

NOW, THEREFORE, in consideration of the sums hereinafter set forth and for other good and valuable considerations, the receipt and legal sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

ARTICLE I
SERVICES

1.1 The above recitals are true and correct, and the preamble hereinabove is incorporated in this Agreement by reference.

1.2 FCS shall provide to CITY for the term hereinafter set forth, as the same may be extended in accordance with the provisions hereof, competent and professional contract services, within and throughout the corporate limits of CITY to the extent and in the manner hereinafter described.

1.3 The CITY hereby engages FCS for the services described in Article VII herein.

1.4 Services shall mean comprehensive, contract services provided in accordance with the services described in Article VII herein.

1.5 The parties recognize that the services provided for under this Agreement are intended to provide flexibility to the CITY in order to meet the challenges of the CITY. Therefore, FCS shall provide the staffing levels and assignments of personnel in a way as to insure professional, competent services to the CITY consistent with the staffing requirements outlined herein. FCS shall enact a drug-free workplace program for all of its staffing requirements outlined herein, and shall comply with all Federal and State Laws for the work performed under this Agreement, as well as the local ordinances applicable to the FCS employees providing services hereunder.

1.6 In addition to the foregoing, FCS agrees to provide CITY all services to fulfill the obligations of FCS under this Agreement.

1.7 FCS shall insure that all CITY equipment used by FCS employees in the performance of service hereunder shall be maintained, in a reasonable, prudent, and safe manner to obtain maximum life expectancy.

ARTICLE II

MAINTENANCE OF ABILITY

2.1 FCS shall furnish to and maintain for the benefit of the CITY, without additional cost therefor, all necessary labor and management, excluding equipment, vehicles and communication facilities, necessary and proper for the purpose of performing the services, duties and responsibilities set forth and contemplated herein and as necessary to maintain the level of service to be rendered hereunder.

ARTICLE III

ADDITIONAL SERVICES

3.1 FCS shall provide to the CITY, upon the request of the City Manager, such additional services as may from time to time be needed. In providing said additional services, FCS shall have control over any additional personnel in the manner set forth in Article V.

3.2 The cost of such services shall be borne by the CITY and shall be payable in such amounts and in such a manner as may be determined by mutual agreement, upon each occurrence.

ARTICLE IV

EMPLOYMENT RESPONSIBILITY

4.1 All personnel employed by FCS in the performance of such services, functions, and responsibilities as described and contemplated herein for the CITY shall be and remain FCS

employees. FCS shall be responsible for complying with all employment laws, including, but not limited to Title VII of the Civil Rights Act of 1964, as amended; the Fair Credit Reporting Act, as amended; the Family and Medical Leave Act; and the Florida Civil Rights Act, as amended. FCS will comply with the requirements of Section 768.096, Florida Statutes, and will perform the necessary background checks on applicants, including criminal history checks, physical examinations, drug screenings, and driver's record checks as required by CITY for each position.

4.2 FCS shall be responsible for all insurance benefits, compensation and/or any legal obligations or rights to which FCS personnel are entitled during the course of employment with FCS. Accordingly, the CITY shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, Workers' Compensation benefits under Chapter 440, Florida Statutes, legal liability for alleged violation of civil rights, or any amenities of employment to any FCS personnel performing services, duties, and responsibilities hereunder for the benefit of said CITY and the residents thereof or any other liabilities whatsoever. FCS is and shall be in the performance of all work, services, and activities under this Agreement, an independent contractor and not an employee, agent, or servant of the CITY, and all personnel performing services under this Agreement shall be and remain FCS employees.

ARTICLE V EMPLOYMENT; RIGHT ON CONTROL

5.1 FCS shall have and maintain the sole responsibility for and control of the rendition of the services, the standards of performance, the discipline of personnel and other matters incident to the performance of the services, duties, and responsibilities as described and contemplated herein.

5.2 FCS shall at all times maintain sole and absolute discretion over the selection, assignment, discipline and termination of its employees providing services hereunder. Nothing in this Agreement shall be construed as a guarantee of any person's employment, it being the intention that all employees hired pursuant to this Agreement be at-will employees of FCS and shall not be entitled to any of the rights or interests of employment as may apply to employees of the CITY.

5.3 No personnel shall be terminated, transferred or reassigned out of the CITY, without FCS first filling the vacated position as necessary to maintain the level of service, unless pre-approved by the City. Additionally, no individual should be assigned to perform services for the City unless requested by the City Manager and/or his/her designee.

5.4 FCS shall conduct all background checks in compliance with City policies, rules, ordinances, including, but not limited to Level II (enhanced), criminal, etc.

ARTICLE VI CONSIDERATION

6.1 The CITY shall pay to FCS, in consideration for the above stated services and responsibilities for the period October 1, 2018 through termination of this Agreement or any subsequent renewal term, the wages of the personnel provided by FCS plus the twenty percent (20%) burden rate.

6.2 Payments due pursuant to the Agreement will be made within fifteen (15) business days of receipt from FCS of its invoice for services. Payments not made when due will bear interest at one percent (1%) per month.

6.3 The CITY shall pay FCS a monthly administrative fee of \$1,500.00 (One Thousand Five Hundred Dollars and Zero Cents) for each complete month that services are provided. FCS shall invoice the CITY on a monthly basis in arrears.

ARTICLE VII POSITION TO BE DETERMINED

7.1 FCS will provide a Project Manager to oversee the performance of services under this Agreement. The Project Manager shall, among other specified duties, act as liaison between the CITY and FCS.

7.2 The selection of the Project Manager at the commencement of this Agreement shall be disclosed in writing by FCS to the CITY. In the event of a vacancy in the position of the Project Manager, FCS agrees to make such successor selections in good faith and in the best interest of the CITY.

7.3 In the event the CITY becomes dissatisfied with the performance of the Project Manager, the CITY may provide notification to FCS. Thereafter, representatives of FCS and the CITY shall meet to discuss possible remedies of the problems experienced by the CITY. The Project Manager will be required by FCS to act in good faith in resolving any problems experienced by the CITY. The Project Manager shall be employed by FCS and is responsible for ensuring that FCS upholds its obligations under this Agreement. The Project Manager shall in no event be construed to be an employee of the CITY.

7.4 FCS will provide a Human Resources Manager to provide full human resources services for their employees under this Agreement. The Human Resources Manager shall, among other specified duties, act as liaison between the CITY and FCS.

7.5 The selection of the Human Resources Manager at the commencement of this Agreement shall be disclosed in writing by FCS to the CITY. In the event of a vacancy in the position of the Human Resources Manager, FCS agrees to make such successor selections in good faith and in the best interest of the CITY.

7.6 In the event the CITY becomes dissatisfied with the performance of the Human Resources Manager, the CITY may provide notification to FCS. Thereafter, representatives of FCS and the CITY shall meet to discuss possible remedies of the problems experienced by the CITY. The Human Resources Manager will be required by FCS to act in good faith in resolving

any problems experienced by the CITY. The Human Resources Manager shall be employed by FCS and is responsible for ensuring that FCS upholds its obligations under this Agreement. The Human Resources Manager shall in no event be construed to be an employee of the CITY.

7.7 FCS will provide a part-time Payroll Assistant to provide full payroll management services under this Agreement.

7.8 The selection of the part-time Payroll Assistant at the commencement of this Agreement shall be disclosed in writing by FCS to the CITY. In the event of a vacancy in the position of the part-time Payroll Assistant, FCS agrees to make such successor selections in good faith and in the best interest of the CITY.

7.9 In the event the CITY becomes dissatisfied with the performance of the part-time Payroll Assistant, the CITY may provide notification to FCS. Thereafter, representatives of FCS and the CITY shall meet to discuss possible remedies of the problems experienced by the CITY. The part-time Payroll Assistant will be required by FCS to act in good faith in resolving any problems experienced by the CITY. The part-time Payroll Assistant shall be employed by FCS and is responsible for ensuring that FCS upholds its obligations under this Agreement. The part-time Payroll Assistant shall in no event be construed to be an employee of the CITY.

7.10 FCS shall provide to the CITY the personnel required by the CITY to perform functions for the benefit of the CITY as necessary. As consideration therefore, the CITY shall pay the wages of the personnel provided by FCS plus the burden rate of 20% (not including the Project Manager, Part Time Payroll Assistant, or Human Resources Manager, which full costs are the responsibility of FCS).

7.10.1 Personnel provided by FCS to the City include, but are not limited to, Management and Administration, Finance, Record Keeping, Base Information Technology Services, Risk Management, Purchasing and Corporate Infrastructure.

ARTICLE VIII INDEMNIFICATION

8.1 FCS shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by FCS or its employees, agents, servants, partners, principals or subcontractors. FCS shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. FCS expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by FCS shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

ARTICLE IX INSURANCE

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

9.1 Commercial General Liability:

- a. Each Occurrence Limit: \$1,000,000.00
- b. Fire Damage Limit (Damage to rented premises): \$100,000.00
- c. Personal & Advertising Injury Limit: \$1,000,000.00
- d. General Aggregate Limit: \$1,000,000.00
- e. Products & Completed Operations Aggregate Limit: \$2,000,000.00 (mostly for construction or equipment sold to the CITY); This coverage shall be maintained for two (2) years after the final payment under this Agreement (increase to ten (10) years for construction projects including Designated Construction Project(s) General Aggregate Limit

9.1.1 The CITY must be shown as an additional insured with respect to the above coverages.

9.2 Automobile Liability

9.2.1 This must cover all owned, leased, hired, non-owned and employee non-owned vehicles used in connection with the performance of work under this Agreement with a combined single limit of liability for bodily injury and property damage no less than:

- a. Any Auto (Combined Single Limit (Each Accident)): \$1,000,000.00
- b. Hired Autos (Combined Single Limit (Each Accident)): \$1,000,000.00
- c. Non-Owned Autos (Combined Single Limit (Each Accident)): \$1,000,000.00

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

9.3 FCS shall maintain, when applicable, Professional Liability/Errors & Omissions Insurance with a limit of liability no less than \$1,000,000.00 per wrongful act. This coverage shall be maintained for a period of no less than three (3) years after final payment of the Agreement. (Increase to ten (10) years for construction projects).

9.4 FCS shall be required to maintain Environmental/Pollution Liability with a limit of no less than \$1,000,000.00 per wrongful act whenever work under this Agreement involves potential losses caused by pollution conditions. Coverage shall include: FCS' completed operations as well as sudden and gradual pollution conditions. If coverage is written on a claims-made basis, coverage shall be maintained for a period of no less than three (3) years after final payment of the contract. The CITY must be shown as an additional insured with respect to this coverage. Furthermore, the CITY's Additional Insured status shall extend to any coverage beyond the minimum requirements for limits of liability found herein.

9.5 FCS shall maintain, when applicable, Cyber Liability including Network Security and Privacy Liability with a limit of liability no less than \$1,000,000.00 per loss. Coverage shall include liability arising from: theft, dissemination and/or use of confidential information stored or transmitted in electronic form, unauthorized access to, use of, or tampering with computer systems, including hacker attacks or inability of an authorized third party to gain access to your services, including denial of service, and the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network, or similar computer-related property and the data, software and programs thereon. This coverage shall be maintained for a period of no less than three (3) years after final payment of the Agreement. The CITY must be shown as an additional insured with respect to this coverage. Furthermore, the CITY's Additional Insured status shall extend to any coverage beyond the minimum requirements for limits of liability found herein.

9.6 FCS shall maintain, when applicable, Crime Coverage, which shall include employee dishonesty, forgery or alteration, and computer fraud in an amount of not less than \$1,000,000.00 per loss. If FCS is physically located on the CITY's premises, a third-party fidelity coverage extension shall apply.

9.7 FCS shall maintain Worker's Compensation and Employers Liability Insurance covering all employees, and/or volunteers of FCS engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, FCS shall require the subcontractors similarly to provide Workers Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by FCS. Coverage for FCS and its subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

- a. Workers' Compensation: Coverage A – Statutory
- b. Employers Liability: Coverage B - \$500,000.00 (Each Accident)
 - \$500,000.00 - Disease (Policy Limit)
 - \$500,000.00 – Disease (Each Employee)

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

9.8 FCS shall not exclude Sexual Abuse from any policy for Agreements involving any interaction with minors or seniors.

9.9 FCS shall maintain the respective policies of liability, automobile, and excess automobile throughout the term of this Agreement, as the same may be extended in accordance with the provisions hereof.

9.10 FCS shall provide CITY with a copy of current respective policies of insurance required hereunder, and renewals thereof.

9.11 The costs of all policies of insurance required hereunder shall be the obligation of FCS and the CITY shall in no way be responsible therefor except to the extent the cost of the insurance is a permitted "Cost of the Work" on **Exhibit "A"** hereto.

9.12 FCS shall provide CITY with a Certificate of Insurance listing CITY as an insured for the respective insurance required hereunder.

9.13 Should any of the required insurance policies be modified before the expiration date of this Agreement, and unless otherwise agreed, FCS will provide at least thirty (30) days prior written notice to the City.

9.14 Required Endorsements

9.14.1 The CITY shall be named as an Additional Insured on each of the General Liability policies required herein;

9.14.2 Waiver of all Rights of Subrogation against the CITY;

9.14.3 Thirty (30) day Notice of Cancellation or Non-Renewal to the City;

9.14.4 FCS' policies shall be Primary and Non-Contributory;

9.14.5 All policies shall contain a "severability of interest" or "cross liability" liability clause without obligation for premium payment by the CITY;

9.14.6 The CITY shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

9.15 FCS shall name the CITY, as an additional insured on each of the General Liability policies required herein and shall hold the CITY, its agents, officers and employees harmless on account of claims for damages to persons, property or premises arising out of the services provided hereunder. Any insurance required of FCS pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by FCS and provided proof of such coverage is provided to the CITY. FCS and any subcontractors shall maintain such policies during the term of this Agreement.

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

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

9.18 Policies shall be endorsed to provide the CITY thirty (30) days' notice of cancellation, material change or non-renewal of policies required under the Agreement. If the carrier will not agree to this notification, FCS or its insurance broker shall notify the CITY of any cancellation or reduction in coverage within seven (7) days of receipt of insurer's notification of cancellation or reduction in coverage.

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

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

ARTICLE X

INDEPENDENT CONTRACTOR

10.1 FCS, for the purposes of this Agreement, is and shall remain an independent contractor; not an employee, agent, or servant of the CITY.

ARTICLE XI

TERM

11.1 This Agreement shall remain in full force and effect for a five (5) year period commencing October 1, 2018, and ending September 30, 2023, all dates inclusive, unless this Agreement be otherwise extended or terminated in accordance with the terms hereof.

ARTICLE XII
OPTION TO RENEW

12.1 This Agreement shall be renewed for two independent five (5) year terms at the expiration of the initial term upon mutual agreement of the parties unless notice of intent not to renew is provided in conformity with Article XIII. The parties agree to furnish notice of intent not to renew this Agreement not less than one hundred eighty (180) days prior to the expiration of this Agreement.

ARTICLE XIII
TERMINATION

13.1 FCS may terminate this Agreement at its discretion either with or without cause, by giving written notice thereof to CITY; provided, however, that such termination shall not be effective until the one hundred and eightieth (180th) day after the receipt thereof by CITY, unless an earlier date is agreed upon by CITY. If the reason for termination by FCS is nonpayment by CITY, FCS's termination shall, at its election, become effective upon the date specified in its written notice which shall be at least seven (7) days after the conclusion of the informal negotiation and mediation provided for in Section 20.1 hereof.

13.2 CITY may terminate this Agreement at its discretion either with or without cause, by giving written notice thereof to FCS; provided, however, that such termination shall not be effective until the one hundred and eightieth (180th) day after the receipt thereof by FCS, unless an earlier date is agreed upon by FCS.

13.3 In the event of termination by either party, the other party shall render such aid, coordination and cooperation as might be required for an expeditious and efficient termination of service. Following the decision to terminate, there shall be no increase in the cost of services performed by FCS.

13.4 In the event of the termination or expiration of this Agreement, FCS and CITY shall cooperate in good faith in order to effectuate a smooth and harmonious transition from FCS to CITY, or to any other person or entity CITY may designate, and to maintain during such period of transition the same high quality services otherwise afforded to the residents of the CITY pursuant to the terms hereof.

ARTICLE XIV
EQUIPMENT APPRAISAL AND TRANSFER PROVISION

14.1 In the event of termination or upon the expiration of this Agreement, CITY shall have the option to purchase from FCS any piece of equipment, directly attributable to or in use by FCS in the CITY at the time of such termination in connection with the services contemplated herein.

14.2 The purchase price for such equipment shall be determined by mutual agreement of the parties as to the fair market value of such equipment.

14.3 Upon the exercise by the CITY of its option to possess the subject equipment, FCS shall convey within ten (10) days or upon such other mutually agreed time, all of its rights, title, and interest, thereto, to the CITY by Bill of Sale Absolute of Certificate of Title, as applicable.

ARTICLE XV
AUTHORITY TO EXECUTE, NO CONFLICT CREATED

15.1 FCS, by execution hereof, does hereby represent to CITY that FCS has full power and authority to make and execute this Agreement, to the effect that:

15.1.1 Execution of this Agreement shall create a legal obligation upon FCS, which shall be legally binding upon FCS.

15.1.2 The same shall be enforceable by the CITY according and to the extent of the provisions hereof.

15.2 Nothing herein contained or any obligation on the part of FCS to be performed hereunder shall in any way be contrary to or in contravention of any policy of insurance or surety bond required of FCS, pursuant to the laws of the State of Florida.

15.3 Nothing herein contained is intended in any way to be contrary to or in contravention of the Charter of the CITY and the Laws of the State of Florida, and to the extent such conflict exists, the CITY and FCS shall be mutually relieved of any obligations of such conflict.

15.4 In the event of any litigation or dispute arising from this Agreement, venue shall be in Broward County, Florida.

ARTICLE XVI
NOTICE

All notice required hereunder shall be by first class mail, except that any Notice of Termination shall be mailed via United States Mail, return receipt requested and any notice required hereunder shall be addressed to the party intended to receive same at the following addresses:

16.1 CITY: Charles F. Dodge, City Manager
City of Pembroke Pines
601 City Center Way
Pembroke Pines, FL 33025

COPY TO: Samuel S. Goren, City Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Blvd., Ste. 200
Fort Lauderdale, FL 33308

FCS: Facility Contract Services, LLC
13975 Pembroke Road
Pembroke Pines, FL 33027

ARTICLE XVII
ASSIGNABILITY

17.1 FCS shall not assign any of the obligations or benefits imposed hereby or contained herein, unless upon the written consent of the City Commission of the CITY, which consent must be evidenced by a duly passed Resolution.

ARTICLE XVIII
ENTIRE AGREEMENT, AMENDMENT

18.1 The parties acknowledge, one to the other, that the terms hereof constitute the entire understanding and agreement of the parties with respect hereof. No modification hereof shall be effective unless in writing, executed with the same formalities as this Agreement is executed.

ARTICLE XIX
BINDING EFFECT

19.1 This Agreement shall inure to the benefit of and be binding upon the respective parties' successors.

ARTICLE XX
DISPUTE RESOLUTION

20.1 All claims, disputes and other matters in question arising out of, or relating to, this Agreement or the breach thereof, and which cannot be settled by negotiation between FCS and CITY shall be decided by the applicable court of law unless FCS and CITY agree to have the same decided by arbitration. Neither party shall initiate litigation to pursue a claim arising out of or related to this Agreement without first exhausting the two stage dispute resolution mechanism set forth below. Exhaustion of such dispute resolution mechanism by agreement of the parties is a condition precedent to the filing of any litigation on such claim.

- a. Informal Negotiation. Either party may initiate informal negotiation of its claim by giving the other party written notice of such demand. Within then (10) days of receipt of a demand for informal negotiation, representatives of the parties with authority to settle will meet to determine if the claim can be resolved informally.

- b. Mediation. If informal negotiation fails to resolve this claim, either party may give written demand for mediation. Within ten (10) days of receipt of such demand, the parties shall confer to select a single mediator to handle the mediation session. Such mediation session shall take place, absent extraordinary circumstances or a mutually agreed decision to continue the mediation session to a later date, within ten (10) days of the appointment of the mediator. The parties shall share equally in the cost of the mediation session. Should mediation fail, either party may thereafter file suit to prosecute its claim.

In any litigation arising out of this Agreement, each party shall bear its own costs and fees, including fees incurred on appeal; provided that nothing herein is intended to waive CITY's sovereign immunity rights pursuant to Section 768.28, Florida Statutes.

ARTICLE XXI NON-DISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYMENT

21.1 During the performance of the Agreement, neither FCS nor its subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. FCS will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. FCS shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. FCS further agrees that it will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

ARTICLE XXII PUBLIC RECORDS

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

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

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

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

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

22.2 The failure of FCS to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the CITY shall enforce the Default in accordance with the provisions set forth in **Article XX**.

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

**CITY CLERK
601 CITY CENTER WAY, 4th FLOOR
PEMBROKE PINES, FL 33026
(954) 450-1050
mgraham@ppines.com**

ARTICLE XXIII
LEGAL REPRESENTATION

23.1 It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

ARTICLE XXIV
HEADINGS

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

ARTICLE XXV
EXHIBITS

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

ARTICLE XXVI
SEVERABILITY

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

ARTICLE XXVII
WAIVER

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

ARTICLE XXVIII
COUNTERPARTS AND EXECUTION

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

ARTICLE XXIX
REMIBURSABLE/PASS THROUGH COSTS

29.1 The following costs will be reimbursed by the CITY as a pass through with no additional markup (such policies must be pre-approved by the City):

- a. Health Insurance (FCS Contribution);
- b. Dental Insurance (FCS Contribution);
- c. Life Insurance (FCS Contribution);
- d. 401k Match (50% match for the first 6% of employee salary deferral, maximum 3%);
- e. Insurance of certain CITY owned Equipment or Vehicles used by FCS Employees as identified below:

- i. (Fuel Transport Truck and Trailer)
- ii. Vactor – Utility Cleaning Truck; and
- f. Any other reimbursable costs that are pre-approved by the CITY.

ARTICLE XXX
SCRUTINIZED COMPANIES

30.1 In accordance with Florida Statute 287.135, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services if:

- a. Any amount of, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 or is engaged in a boycott of Israel; or
- b. One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company
 - 1. Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473; or
 - 2. Is engaged in business operations in Syria.

30.1.1 By submitting a bid, proposal or response, the company, principals or owners certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations in Syria.

IN WITNESS WHEREOF, the parties hereto have caused their respective agents to execute this instrument on their behalf, at the times set forth below:

Witness

Print Name

Witness

Print Name

ATTEST:

Marlene Graham, City Clerk

City of Pembroke Pines

By: _____
Charles F. Dodge, City Manager

Date: _____

Approved as to form and legal sufficiency
subject to execution by the parties:

By: _____

Print Name: _____
City Attorney

FACILITY CONTRACT SERVICES, LLC

By: _____

Print Name: _____

Title: _____

Date: _____

EXHIBIT “A”

FCS’ Proposal to the City of Pembroke Pines

Clarifications to Cost and Scope of Services to be Provided

The term “Cost of the Work” shall mean costs necessarily incurred by FCS in the performance of Work.

A. The CITY and FCS agree that the following generally defines, but does not limit cost to be reimbursed under this Agreement.

1. Wages or workers directly employed by FCS to perform the Work.
2. Payments made by FCS to Subcontractors/Vendors in accordance with the requirements of the subcontracts/purchase orders.
3. Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the Work.
4. That portion of the reasonable expenses of FCS’ personnel incurred while travelling in discharge of duties connected with the Work.
5. Costs of material and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the City.
6. Fees and assessments for the building permit and for other permits, licenses and inspections for which FCS is required to pay.
7. Deposits lost for causes other than FCS negligence or failure to fulfill a specific responsibility to the CITY.
8. Legal, mediation and arbitration costs, including attorneys’ fees, other than those arising from disputes between the CITY and FCS, reasonably incurred by FCS in the performance of the Work and with the CITY’s prior written approval; which approval shall not be unreasonably withheld; provided that no such costs may be included to the extent they are incurred as a result of the acts or omissions of FCS.
9. Expenses incurred in accordance with FCS standard personnel policy for relocation and temporary living allowances or personnel required for the Work, if approved by the CITY.
10. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the CITY.

11. Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.
 12. Costs of repairing or correcting damaged or non-conforming Work executed by FCS, Subcontractors or suppliers, provided that such damaged or non-conforming Work was not caused by negligence or failure to fulfill a specific responsibility and only to the extent that the cost of repair or correction is not recoverable by FCS from insurance, sureties, Subcontractors or suppliers.
 13. All other costs as approved by the CITY.
- B. The CITY and FCS agree that the cost of the following will not be included in the Cost of the Work.
1. Salaries and other compensation of FCS' Corporate Officers, except as provided in Paragraph A3 above.
 2. Primary occupancy expenses of FCS' principal office.
 3. FCS' capital expenses, including interest on FCS' capital employed for the Work.
- C. The CITY hereby agrees to furnish the following to FCS or its employees assigned to the Work:
1. Office space for FCS' onsite management.
 2. Office furniture for FCS' onsite management.
 3. Telephone for onsite management's office, as part of CITY system.
 4. Vehicles for employees, as required, for the Work other than the Managers.
 5. Telephone, pagers and radios for employees, as required, for the Work other than the managers.