







**City Attorney's Communication #2016-144**

November 3, 2015

**TO:** Otis J. Thomas, General Services Director

**FROM:** Carrie L. Sarver, Assistant City Attorney

**RE:** Resolution – Approval of a New Dollar Threshold for Change Orders and Service Agreements

As requested, the following form of Resolution, relative to the above-referenced matter, has been prepared and is attached:

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPAÑO BEACH, FLORIDA, REPEALING RESOLUTION NO. 96-96 AND INCORPORATING A NEW DOLLAR THRESHOLD FOR APPROVAL OF CHANGE ORDERS ON CONSTRUCTION PROJECTS; AMENDING RESOLUTION NO. 2012-142 BY INCORPORATING A NEW DOLLAR THRESHOLD FOR APPROVAL OF SERVICE AGREEMENTS; PROVIDING AN EFFECTIVE DATE.**

Please feel free to contact me if I may be of further assistance.

A handwritten signature in cursive script, appearing to read "Carrie Sarver", is written over a horizontal line.

CARRIE L. SARVER

/jrm  
l:cor/gen-srv/2016-144

Attachment

RESOLUTION NO. 2016- \_\_\_\_\_

**CITY OF POMPANO BEACH**  
**Broward County, Florida**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, REPEALING RESOLUTION NO. 96-96 AND INCORPORATING A NEW DOLLAR THRESHOLD FOR APPROVAL OF CHANGE ORDERS ON CONSTRUCTION PROJECTS; AMENDING RESOLUTION NO. 2012-142 BY INCORPORATING A NEW DOLLAR THRESHOLD FOR APPROVAL OF SERVICE AGREEMENTS; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, change order thresholds have not been updated since 1996 and service agreement thresholds have not been updated since 2012; and

**WHEREAS**, due to the need to allow service agreements and construction projects to proceed on a timely basis and be carried out more efficiently, it is often necessary for change orders and service agreements to be approved by the City Manager or his designee; and

**WHEREAS**, the City Commission deems it appropriate to establish a policy regarding approval of change orders and service agreements which will provide the necessary flexibility and that said policy was established by Resolution No. 96-96 and 2012-142; and

**WHEREAS**, a new dollar threshold for approval of change orders on construction projects and approval of service agreements is desired in order to prevent delays and allow for services to be carried out more efficiently; now, therefore,

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:**

**SECTION 1.** That Resolution No. 96-96 is hereby repealed.

**SECTION 2.** That authority is hereby granted to the City Manager to authorize approval of all construction project change orders up to \$75,000.00, on a cumulative basis.

**SECTION 3.** That authority is hereby granted to the City Manager to authorize approval of all service agreements up to \$75,000.

**SECTION 4.** City Commission approval is required once the \$75,000 threshold level amount is reached for construction project change orders and service agreements.

**SECTION 5.** This Resolution shall become effective upon passage.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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**LAMAR FISHER, MAYOR**

**ATTEST:**

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**ASCELETA HAMMOND, CITY CLERK**

CLS/jrm  
11/2/15  
l:reso/2016-23

### Summary of Changes

<u>Subject</u>	<u>Current</u>	<u>Proposed</u>	<u>Comments</u>
Increase City Manager's approval authority for construction change-orders and service agreements. Construction change orders are signed off by the following: City Engineer, CIP Engineer (if applicable), General Services Director, and City Manager. Service Agreements are signed off by the following: Department Head Directors, City Manager, City Clerk, and counter signed by the Mayor or Vice Mayor	\$10,000.00/\$ 25,000.00	\$75,000.00	New dollar thresholds for approval of change orders on construction projects and approval of service agreements is desired in order to prevent delays and allow for services to be carried out more efficiently. The amount of consent Agenda items will be reduced if these thresholds are approved. Staff will provide quarterly reports to Commission for service agreements under the \$75,000.00 threshold
Staff Training	None	11/19/2015	Contract Management and Administration training will be provided for staff. A review of the revised Construction Change Order and Contingency Usage procedure will be conducted. Staff training will be scheduled on an annual basis
Contingency Usage Procedure	None	Approval of revisions	On many occasions, City staff will include a project contingency within the total Contract award amount, generally in the range of 15% – 20% of the anticipated project costs. If City Commission approves this contingency allowance, then only City staff has the discretion and authorization to utilize it for the sole purpose of unforeseen conditions or Owner requested additions not originally anticipated at the time of contract award
Contract Time Extensions	None	Approval of revisions	Commission must be notified once project is delayed by more than 90 days, or 25% of the contract time, whichever is lower
Employee Agreement Form	None	Approval of revisions	All employees in attendance of the training session will be required to sign an agreement form stating that they have received training and also received a copy of the revised Construction Change Order and Contingency Usage Procedure
Contingency Usage Form	None	Approval of revisions	Form must be attached to the original Purchase Order (PO) for documentation purposes. Staff is responsible for tracking these expenditures on the "Contingency Usage" form

MEMORANDUM

Purchasing #15-099  
September 24, 2015

To: Dennis W. Beach, City Manager

From: Otis J. Thomas, General Services Director *O.T.*

Subject: Revised Construction Change Order and Contingency Procedure

Introduction

The Change Order Sub-Committee has collaborated to revise the current change order process. These changes were needed in-order to address the issues that have escalated with change orders. The General Services Department benchmarked other municipalities within the tri-county area to review and verify their change order processes. A training session will be scheduled to inform staff members of the revised Construction Change Order and Contingency Procedure. All Employees in attendance will be required to sign an agreement stating that they have received training and also received the Construction Change Order and Contingency Usage Procedure.

Please indicate your concurrence/non-concurrence and sign in the space provided below.

CONCUR:

NON-CONCUR:

*Dennis W. Beach* 10-5-15  
\_\_\_\_\_  
City Manager Date

\_\_\_\_\_  
City Manager Date

Comments: \_\_\_\_\_

enclosures

cc: file

- Phyllis A. Korab, Assistant City Manager
- Greg Harrison, Assistant City Manager
- Michael Smith, Human Resources Director

CITY OF POMPANO BEACH AND POMPANO BEACH

ADMINISTRATIVE POLICY

Title: Construction Change Orders and Contingency Usage

Number: 905.08

Effective: TBD

**PROCEDURE FOR CONSTRUCTION CHANGE ORDERS AND  
CONTINGENCY USAGE**

While the City does not encourage changes to City contracts with vendors, there may be certain situations where unforeseen circumstances result in the requirement for a formal written change order. A written change order must be prepared in any circumstance where there is a material change in the scope of work, specifications, price, or terms and conditions of a contract. Change orders; however, normally occur with construction projects, when it is necessary to make changes due to conditions that were unforeseen at the time of contract award.

**1. Approval Authority**

- I. City Manager approval: The City Manager or designee is authorized to approve all change orders determined to be in the best interest of the City. The City Manager has the sole authority to approve any and all change orders meeting the following requirements:
  - a) The City Manager shall approve any change order increasing the cost of the contract to the City by an amount up to ten percent (10%) of the project's original total cost or \$75,000.00, whichever is lower, on a cumulative basis or aggregate.
  - b) The City Manager shall approve any change order for specific contracts when such authority is delegated to the City Manager for a specific agreement by a formal City Commission action. This delegation occurs in situations where it is in the best interest of the City to streamline the change order approval process in order to accommodate operational needs, including, but not limited to approval of changes using funding from a City Commission approved project contingency.
  - c) It is the responsibility of the requesting department to monitor construction change orders and initiate request for Commission approval when the ten percent (10%) or \$75,000.00 threshold is reached. Once the threshold is reached, **all** subsequent change orders for that project **must be approved** by the City Commission **prior** to any work being performed. Approval of change orders under this policy must be for the purposes of expediting the work in progress and must be confirmed by City Commission action at the next regular meeting of the City Commission.

CITY OF POMPANO BEACH AND POMPANO BEACH

ADMINISTRATIVE POLICY

Title: Construction Change Orders and Contingency Usage

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- d) A change order request must be submitted through the electronic requisition process in order to modify the original Purchase Order. The approved Contract Modification (Change Order) form for construction contracts must be submitted to the Purchasing Division under separate cover. A copy of this form is attached herein as Exhibit "A." A copy of the Contract Modification (Change Order) form must be attached to the Original Purchase Order for documentation purposes.

**Note: The Purchasing Division will not process any change orders that do not have proper authorization and signatures.**

II. City Commission approval: The City Commission **must** formally approve all other change orders in excess of the City Manager's authority as follows:

- a) The City Commission must approve any change order that exceeds the ten (10%) threshold.
- b) The City Commission must approve any change order which results in the cumulative or aggregate cost of a change order to exceed \$75,000.00 regardless of the value of the change order. As an example, if a project was awarded at a cost of \$1,000,000.00 a change order processed in the amount of \$75,001 would result in a new aggregate cost of \$1,075,001.00. Since the revised value now exceeds the City Manager's approval authority, the City Commission must now approve the change order **prior** to any work being performed.

III. All change orders, regardless of value, must be routed through the Purchasing Department for review, processing and distribution to the vendor. Change Orders which require the approval of the City Manager or the City Commission must also include a Memorandum of explanation and justification for the change order. Change orders that are received without the Memorandum and Contract Modification (Change Order) form will be returned to the department.

IV. Until approval of the change order, **no** work under the requirements of such change will be authorized to begin, and **no** claim against the city of extra work in furtherance of such change order will be allowed unless prior approval has been obtained, notwithstanding any other provisions, contractual or otherwise.

CITY OF POMPANO BEACH AND POMPANO BEACH

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- V. Change orders will not artificially be distributed or divided to bring the amount within the approval level of the City Manager. Such proposed change orders must include all logically connected work required to be done at the time of proposal, and must be accompanied by appropriate signatures and written documentation.
- VI. A formal change order is required for any situation involving a material change in the scope of work, specifications, price, or terms and conditions of a contract. Change orders, which are normally used for construction projects, should be executed as a result of unforeseen conditions or owners requested additions not originally anticipated at the time of contract award.
- VII. Change orders, by their nature, should normally account for no more than approximately 50% of the contract value. Change order requests for amounts in excess of 50% of the contract value, or which include a scope or application somewhat different from the original intent of the agreement should normally be accommodated through a new procurement process.

## 2. Contingency

- I. On many occasions, City staff will include a project contingency within the total Contract award amount, generally in the range of 15% – 20% of the anticipated project costs. If City Commission approves this contingency allowance, then only City staff has the discretion and authorization to utilize it for the sole purpose of unforeseen conditions or Owner requested additions not originally anticipated at the time of contract award. However, this language must be clearly defined within the Contract and Bid documents, and the purchase order must include this contingency amount. Staff is responsible for tracking these expenditures on the "Contingency Usage" form attached herein as Exhibit "B." A copy of the Contingency Usage form must be attached to the Original Purchase Order for documentation purposes. **Note: the change order procedure comes into effect once the contingencies have been exhausted.**

## 3. Time Extensions

- I. The City Engineer and Project Manager have the discretion to review and approve non-compensatory time-extensions as and when needed up to ninety (90) days or twenty-five percent (25%) of the Contract time, whichever is lower, and this must be documented on the Contract Modification (Change Order Form), Exhibit "A." City Commission must be notified at the next regular meeting once the project is delayed by more than ninety (90) days, or twenty-five (25%) of the Contract time, whichever is lower.

CITY OF POMPANO BEACH AND POMPANO BEACH

ADMINISTRATIVE POLICY

Title: Construction Change Orders and Contingency Usage

Number: 905.08

Effective: TBD

Exhibits:

Exhibit "A" CONTRACT MODIFICATION (CHANGE ORDER FORM)

Exhibit "B" CONTINGENCY USAGE FORM

Exhibit "C" EMPLOYEE AGREEMENT FOR CONSTRUCTION CHANGE ORDERS AND  
CONTINGENCY USAGE

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**Dennis W. Beach, City Manager**

CITY OF POMPANO BEACH AND POMPANO BEACH

ADMINISTRATIVE POLICY

Title: Construction Change Orders and Contingency Usage

Number: 905.08

Effective: TBD

# Exhibit "A"



## CONTRACT MODIFICATION (CHANGE ORDER FORM)

CITY OF POMPANO BEACH

P.O. Drawer 1300

Pompano Beach, FL 33061

The City Manager has the authority to approve all construction change orders up to ten percent (**10%**) of the project's original total cost or **\$75,000.00**, whichever is lower, on a cumulative or aggregate basis. The City Commission must formally approve all other change orders in excess of the City Manager's approval authority **prior** to work being performed. The City Engineer and Project Manager have the discretion to review and approve non-compensatory time-extensions as and when needed up to ninety (90) days or 25% of the Contract time, whichever is lower. City Commission must be notified at the next regular meeting once the project is delayed by more than ninety (90) days, or 25% of the Contract Time, whichever is lower.

Project Name:		Contract #:	
Project Number:		Date:	
Project Manager:			
Owner:	<b>City of Pompano Beach</b>	Change Order #:	
Contractor:			

**All items terms and conditions of the original contract # \_\_\_ dated \_\_\_ remain unchanged and in full force and effect.**

The following modifications to the CONTRACT are hereby ordered:

CONTRACT AMOUNT		CONTRACT TIME (Calendar Days)	
Original	\$	Original Contract Time	Days
Previous Changes (+/-)	\$	Previous Changes (+/-)	Days
This Change Order (+/-)	\$	This Change Order (+/-)	Days
Revised Contract Amount	\$	Revised Contract Time	Days
% change from Original ( this CO)		Cumulative COs	%
Revised Contract Completion Date Is			

OWNER	CONSULTANT	CONTRACTOR
City of Pompano Beach		
P.O. Box 1300		
Pompano Beach, FL 33061		

CITY MANAGER
By:
Date:

CITY ENGINEER	PUBLIC WORKS DIRECTOR	GENERAL SERVICES DIRECTOR
City of Pompano Beach	City of Pompano Beach	City of Pompano Beach
1201 NE 5 <sup>th</sup> Avenue	1201 NE 5 <sup>th</sup> Avenue	1190 NE 3 <sup>rd</sup> Avenue
Pompano Beach, FL 33060	Pompano Beach, FL 33060	Pompano Beach, FL 33060
By:	By:	By:
Date:	Date:	Date:

CITY OF POMPANO BEACH AND POMPANO BEACH

ADMINISTRATIVE POLICY

Title: <u>Construction Change Orders and Contingency Usage</u>	Number: <u>905.08</u> Effective: <u>TBD</u>
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Change Order Category	Sub Category
<input type="checkbox"/> Owners Request	<input type="checkbox"/> Consultant Error / Omission
	<input type="checkbox"/> Regulatory Compliance <input type="checkbox"/> Safety/ Emergency

**A copy of the Contract Modification (Change Order) form must be attached to the Original Purchase Order for documentation purposes.**

CITY OF POMPANO BEACH AND POMPANO BEACH

ADMINISTRATIVE POLICY

Title: <u>Construction Change Orders and Contingency Usage</u>	Number: <u>905.08</u> Effective: <u>TBD</u>
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# Exhibit "B"



## CONTINGENCY USAGE FORM CITY OF POMPANO BEACH

**A copy of the Contingency Usage form must be attached to the Original Purchase Order for documentation purposes.**

Project Name:	Contract/Bid #:
Project Number:	Date:
Project Manager:	Contingency Usage #:
Owner: City of Pompano Beach	
Contractor:	

All items terms and conditions of the original Contract/Bid # \_\_\_\_\_ dated \_\_\_\_\_ remain unchanged and in full force and effect.

Reason for Contingency \_\_\_\_\_

Original Contract Contingency Amount \_\_\_\_\_

Current Contingency Balance \_\_\_\_\_

Requested Contingency Amount \_\_\_\_\_

Remaining Contingency Balance \_\_\_\_\_

OWNER	CONSULTANT	CONTRACTOR
City of Pompano Beach		
P.O. Box 1300		
Pompano Beach, FL 33061		

CITY ENGINEER	PUBLIC WORKS DIRECTOR	GENERAL SERVICES DIRECTOR
City of Pompano Beach	City of Pompano Beach	City of Pompano Beach
1201 NE 5 <sup>th</sup> Avenue	1201 NE 5 <sup>th</sup> Avenue	1190 NE 3 <sup>rd</sup> Avenue
Pompano Beach, FL 33060	Pompano Beach, FL 33060	Pompano Beach, FL 33060

By: \_\_\_\_\_ By: \_\_\_\_\_ By: \_\_\_\_\_  
 City Engineer                      Public Works Director                      General Services Director

CITY OF POMPANO BEACH AND POMPANO BEACH

ADMINISTRATIVE POLICY

Title: <u>Construction Change Orders and Contingency Usage</u>	Number: <u>905.08</u> Effective: <u>TBD</u>
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Date: \_\_\_\_\_ Date: \_\_\_\_\_ Date: \_\_\_\_\_

Contingency Category		Sub Category	
<input type="checkbox"/> Owners Request	<input type="checkbox"/> Consultant Error / Omission	<input type="checkbox"/> Regulatory Compliance	<input type="checkbox"/> Safety/ Emergency

CITY OF POMPANO BEACH AND POMPANO BEACH

ADMINISTRATIVE POLICY

Title: Construction Change Orders and Contingency Usage

Number: 905.08

Effective: TBD

## Exhibit "C"

### EMPLOYEE AGREEMENT FOR CONSTRUCTION CHANGE ORDERS AND CONTINGENCY USAGE

I, \_\_\_\_\_, do hereby agree that I have received training and also received a copy of the City's Construction Change Order and Contingency Usages Procedure. I also understand my responsibilities as listed therein.

Employee signature:

Date

Print/type signature as signed above:

Department Head signature:

Date

Print/type signature as signed above:

Department/Division: \_\_\_\_\_

**Construction Change Order Threshold**

Agency	2015 Population (Est)	Cumulative Total	Procurement Official Threshold	City Manager Threshold	City Commission Required	%	Time Extensions Require Change Order	Contingency	Written Policy / Procedures	Notes
Boca Raton	84,392		\$25,000	\$50,000	\$50,001		No	Yes	No	When we take an item for Council approval the department submits a memo requesting a contingency amount. The contract award amount is then taken with the contingency included. Contingency is issued as a separate line item on the P.O. No specific change order polices – Project Manager should be following the construction contract requirement for the change order.
Boynton Beach	72,000		\$9,999	\$24,999	\$25,000	10%	Yes	Yes	Yes	All totals are cumulative. Separate policy for contracts with and without contingencies. For construction projects with contingency funding Commission awards the construction project with a contingency allocation, then no further Commission action is necessary provided the construction project does not exceed the project budget (awarded contract + contingency funding). Although staff recognizes contingency funding for budgetary purposes, it will not be included in the construction Contract (nor the Purchase Order). The City shall Issue the construction contract for the dollar value of the bid award. Therefore, in order to modify the Purchase Order amount it is necessary for the Project Manager to request a Change Order. The Change Order request will recap the adjustments and identify the dollar value of the Change Order and should balance to the dollar value of changes shown in the Schedule of Payments. For construction projects without contingency funding change orders must go to City Commission for approval if they cumulatively are \$25,000 or more.

Agency	2015 Population (Est)	Cumulative Total	Procurement Official Threshold	City Manager Threshold	City Commission Required	%	Time Extensions Require Change Order	Contingency	Written Policy / Procedures	Notes
Margate	53,284	\$50,000	\$0	\$50,000 or 10%	\$50,001	10%	Yes		Yes	Emailed Patricia on contingencies & time extensions 8/11/15 8.1.2 All Change Orders which, individually or when cumulatively added to amounts authorized pursuant to prior change Orders for this Project, increase the cost of the WORK to CITY or which extend the time for completion, must be formally authorized and approved by the CITY'S Commission prior to their issuance and before WORK may begin. No claim against CITY for extra WORK in furtherance of such change order shall be allowed unless prior approval has been obtained. Notwithstanding the above paragraph, Change Orders which individually or when cumulatively added to amounts authorized, pursuant to prior Change Orders for this Project, increase the cost of the WORK to the CITY not in excess of ten percent (10%) or \$50,000 (whichever is less) may be approved by signed approval of the City Manager of the City of Margate.
Hollywood	143,000		\$10,000	\$50,000		10%				email sent.
Miami Beach	98,000		\$0	\$49,999	\$50,000				No	Waiting on additional information from CIP Director Maria Cerna. The City Code is silent on change orders and we do not have a written policy for change orders.
Miramar	122,041			\$50,000	\$50,001					City Commission approval required after City Manager's threshold
North Miami Beach	41,523	\$50,000	\$50,000	\$50,000	\$50,001	10%				emailed Brian 8/11/15
Palm Beach Gardens	48,452		\$64,999	\$64,999	\$65,000		Yes	Yes	Yes	Contingencies are not included as bid items, but as part of the contract if the contractor had it in his quote. The contingency must be clearly identified during the work or service for it to be invoiced to the City. Usually, it is never used, except in lieu of a change-order. How contingency fees are utilized is part of the eventual contract signed with the contractor. The factors that make up the contingency are included, and only can be charged if those items/unexpected events occur. All changes require approval. Below \$65k is within the purview of the City Manager, anything above must go to Council. The procedure for time modification is included in the contract

Agency	2015 Population (Est)	Cumulative Total	Procurement Official Threshold	City Manager Threshold	City Commission Required	%	Time Extensions Require Change Order	Contingency	Written Policy / Procedures	Notes
Pompano	99,845	\$10,000	\$0	\$10,000	over \$10,000	10%	Yes	Yes	Yes	<b>PROPOSED</b> - Allowable contingency fee uses will be specified in the bid document and construction contract. Once the contingency has been exhausted all subsequent change orders must be approved by City Commission. Once the contingency has been exhausted, all change orders exceeding \$75,000 (cumulative) must be approved by City Commission. City Commission approval is required <b>PRIOR</b> to work being performed. The City Manager will have authority to approve all change orders up to \$75,000.
Tamarac	63,000	\$0	\$0	\$65,000	Any change order that exceeds allowed contingency for contract	10%	Yes	Yes	Yes	10% contingency included in construction bids, may be higher for specialized construction. All change orders in excess of contingency in bid must go to Commission for approval.
West Palm Beach	99,919	10,000/25,000	10,000/25,000	10,000/25,000	10,001/25,000 1	10%	Yes	No	Yes	Technically contingencies are not included or considered for the award or contract. If bids come back over budget and additional funding can't be secured the solicitation is canceled. If a project goes over budget and additional funding can be found the budget is increased via a F-Resolution which is approved by City Commissioners. • When the change order is processed the percentage over original budget is noted and if over 10% it must be justified. For contracts under \$100,000 change orders go to Commission if the cumulative amount exceeds \$10,000 or 10%, whichever is less. For contracts over \$100,000 change orders go to Commission if the cumulative amount exceeds \$25,000 or 10%, whichever is less. Change orders are issued for adjustments in contract sum. Time extensions are processed by a simple contract amendment process

# SERVICE CONTRACT

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THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the CITY OF POMPANO BEACH, hereinafter referred to as "City" and \_\_\_\_\_, hereinafter referred to as "Contractor."

WHEREAS, City requires services which Contractor is capable of providing, under the terms and conditions hereinafter described or referenced; and

WHEREAS, Contractor is able and prepared to provide such services as City does hereinafter require, under those terms and conditions set forth.

NOW, THEREFORE, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

1. Contract Documents. The Contract Documents consist of this Agreement; Exhibit "A" – Scope of Work; Exhibit "B" insurance requirements, if needed; and all written change orders and modifications issued after execution of this Agreement. These form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

2. Purpose. City hereby contracts with Contractor to provide \_\_\_\_\_ services upon the terms and conditions herein set forth

3. Scope of Work. Contractor will provide the services to be rendered as set forth in Exhibit "A" (Scope of Work), attached hereto and by reference incorporated herein and made a part hereof.

4. Term of Contract. This Contract shall be for a one (1) year period. The start of this Agreement shall be \_\_\_\_\_, 20\_\_\_\_. Contractor shall commence \_\_\_\_\_ services for the City and continue operation *REMOVE THE LANGUAGE THAT IS NOT APPLICABLE:* through \_\_\_\_\_, 20\_\_\_\_. **OR** until completion of Scope of Work.

5. Renewal. In the event City determines the Contractor to be in full compliance with this contract and Contractor's performance to be satisfactory, then City shall have the option to renew this contract for an additional period one (1) year, provided that City will provide notification within sixty (60) days of termination date of its intention; **OR** *Remove the following language if not applicable:* This Contract is not subject to renewal.

6. Maximum Obligation. City agrees to pay Contractor in consideration for its services described herein. It is the intention of the parties hereby to insure that unless otherwise

directed by the City in writing, Contractor will continue to provide services as specified in Exhibit "A" for the term of the contract.

7. Price Formula. City agrees to pay Contractor for performance of the services set forth in this Agreement as follows:

**Payment of a Fixed Fee of \$ \_\_\_\_\_ per month or a Fixed Fee of \$ \_\_\_\_\_.\***

8. Invoices. Contractor shall submit the invoices to City, if requested by City, as follows:

Invoices shall be submitted on a monthly basis or on \_\_\_\_\_.

9. Payment. All payments by the City shall be made after the service has been provided. All invoices shall be submitted to the City for approval and payment will be issued within forty-five (45) days of submittal.

10. Disputes.

A. Any factual disputes between City and the Contractor in regard to this Agreement shall be directed to the City Manager for the City, and such decision shall be final.

B. Any action brought against either party to enforce this Agreement will be brought in Broward County, Florida.

11. Communications. All notices hereunder and communications with respect to this Agreement shall be effective upon the mailing thereof to the persons named below.

**If to Contractor:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**If to City:** City of Pompano Beach  
City Manager  
P. O. Box 1300  
Pompano Beach, Florida 33060

12. Information and Documents. All information, data, reports, as are existing, if any, and necessary for carrying out the work as outlined in Exhibit "A" hereof, shall be furnished to Contractor without charge by City, and City shall cooperate in the carrying out of the work without undue delay.

13. Termination. This Agreement may be terminated without cause by either party upon thirty (30) days written notice to the other party.

14. Force Majeure. Contractor shall not be held responsible for losses, delays, failure to perform or excess costs caused by events beyond the control of the Contractor. Such events may include, but are not restricted to the following: Acts of God; fire, epidemics, earthquake, flood or other natural disaster; acts of the government; riots, strikes, war or civil disorder; unavailability of fuel.

15. Insurance. Throughout the term of this Agreement, Contractor shall procure and maintain liability insurance in the type and amounts set forth in Exhibit "B" attached hereto. Such insurance shall specify that it is issued on an "occurrence" basis. Contractor shall name City as additional insured on said policies and shall provide evidence of such insurance. Such policies shall provide that they may not be canceled without at least thirty (30) days notice to City.

16. Indemnity. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The parties agree that one percent (1%) of the total compensation paid to Contractor for the work of the contract shall constitute specific consideration to Contractor for the indemnification to be provided under the contract.

17. Assignment. Contractor shall not assign all or any portion of this Agreement without the prior written consent of the City, and it is agreed that said consent must be sought in writing by Contractor not less than fifteen (15) days prior to the date of any proposed assignment.

18. Performance Under Law. The Contractor, in the performance of duties under the Agreement, agrees to comply with all applicable local, state and/or federal laws and ordinances including, but not limited to, standards of licensing, conduct of business and those relating to criminal activity.

19. Audit and Inspection Records. The Contractor shall permit the authorized representatives of the City to inspect and audit all data and records of the Contractor, if any, relating to performance under the contract until the expiration of three years after final payment under this contract.

The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that City or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontractor, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontractor.

20. Adherence to Law. Both parties shall adhere to all applicable laws governing their relationship with their employees including, but not limited to, laws, rules, regulations and policies concerning worker's compensation, unemployment compensation and minimum wage requirements.

21. Independent Contractor. The Contractor shall be deemed an independent Contractor for all purposes, and the employees of the Contractor or any of its contractors, subcontractors and the employees thereof, shall not in any manner be deemed to be employees of City. As such, the employees of the Contractor, its Contractors or subcontractors, shall not be subject to any withholding for tax, social security or other purposes by City, nor shall such Contractor, subcontractor or employee be entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, workers or unemployment compensation or the like from City.

22. Mutual cooperation. The Contractor recognizes that the performance of this contract is essential to the provision of vital public services and the accomplishment of the stated goals and mission of City. Therefore, the Contractor shall be responsible to maintain a cooperative and good faith attitude in all relations with City and shall actively foster a public image of mutual benefit to both parties. The Contractor shall not make any statements or take any actions detrimental to this effort.

23. Public Records.

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the city in order to perform the service;
2. Provide the public with access to such public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed that provided in Chapter 199, Fla. Stat., or as otherwise provided by law;
3. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
4. Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the city in a format that is compatible with the information technology systems of the City.

B. The failure of Contractor to comply with the provisions set forth in this section shall constitute a Default and Breach of this Agreement and the city shall enforce the Default in accordance with the provisions set forth in this Agreement or as provided by law.

24. Governing Law. This Agreement has been and shall be construed as having been made and delivered within the State of Florida, and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. Any action at law, or in equity, shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

25. Waiver. Any waiver of any breach of the covenants herein contained to be performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the City from declaring a forfeiture for any succeeding breach either of the same condition or covenant or otherwise.

26. Entire Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

27. Headings. The headings or titles to sections of this Agreement are not part of the Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

28. Severability. Should any provision of this Agreement or the applications of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts of provisions of this Agreement shall remain in full force and effect.

The City hereby promises and agrees with the Contractor to employ and does employ the Contractor to provide the materials, if any, and to do and cause to do and be done the above-described work and to complete and finish the same according to the attached plans and specifications and the terms and conditions herein contained and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices hereto attached, at the time and in the manner and upon the conditions provided for in this contract.

The Contractor for himself and for his heirs, executors, administrators, successors and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

It is further provided that no liability shall be attached to the City by reason of entering into this contract, except as expressly provided herein.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
LAMAR FISHER, MAYOR

\_\_\_\_\_

By: \_\_\_\_\_  
DENNIS W. BEACH, CITY MANAGER

Attest:

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

(SEAL)

APPROVED AS TO DEPARTMENT HEAD:

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

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**\* This Contract may not be in an amount greater than \$25,000.00.**

**“CONTRACTOR”**

Witnesses:

\_\_\_\_\_  
(Print name of company)

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

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

Title: \_\_\_\_\_

Business License No. \_\_\_\_\_

\_\_\_\_\_

(Print or Type Name)

\_\_\_\_\_

(Print or Type Name)

STATE OF FLORIDA

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, A Florida corporation on behalf of the corporation. He/she is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY’S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

l:agr/genl srvs/service contract – no resolution