

Meeting Date: November 10, 2015

Agenda Item 29

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration Workshop

SHORT TITLE OR MOTION: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A PRECONSTRUCTION SERVICES AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND BURKHARDT CONSTRUCTION, INC. FOR THE OVERHEAD UTILITY UNDERGROUNDING PROJECT ON A1A FROM HILLSBORO BAY TO TERRA MAR ROAD; PROVIDING AN EFFECTIVE DATE. (\$503,512.50)

Summary of Purpose and Why:

Please find attached Preconstruction Services Agreement with Burkhardt Construction, Inc. in the amount of \$503,512.50, consistent with the Construction Management at Risk Contract (RFQ T-12-15) that was awarded to Burkhardt Construction (ranked No. 1) on February 24, 2015, to include the following: Value engineer the existing undergrounding design plans completed by Utility Engineering along A1A from Terra Mar Drive to the Inlet, secure all necessary easements along A1A, value engineer FPL preliminary plans of the side streets along A1A from Terra Mar Drive to SE 10th St following completion, secure all necessary easements along these side streets, public outreach, and develop guaranteed maximum price.



Accomplishing this item supports achieving Objective 5.4.7 "Complete undergrounding of electric on A1A" identified in the City's Great Places Strategy.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

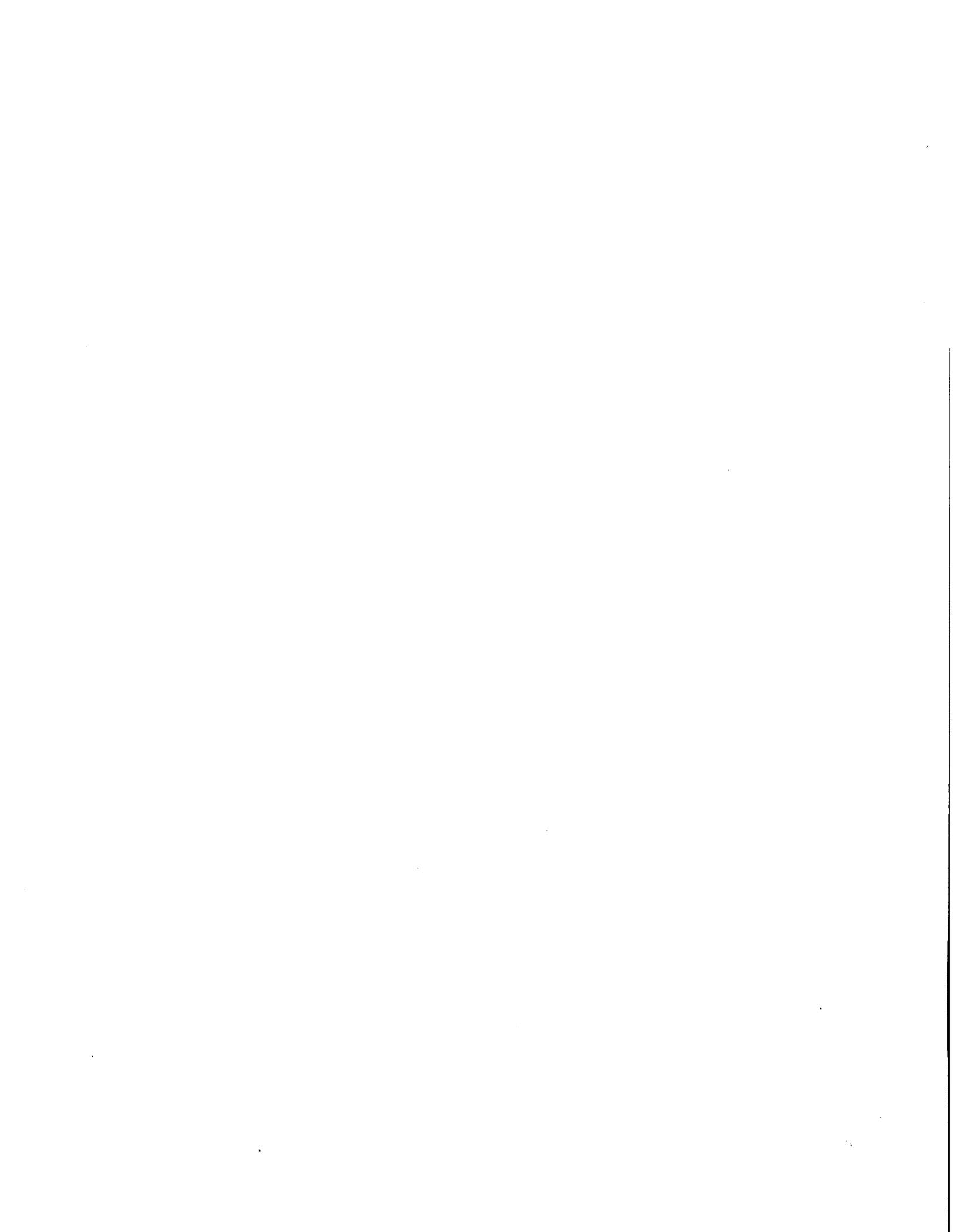
- (1) Origin of request for this action: Engineering
- (2) Primary staff contact: Horacio Danovich / John Sfiropoulos Ext 7834 / 7009
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: \$503,512.50 from CIP 11-142, Acct No. 302-7420-530-6512

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER
Engineering	<u>10/28/15</u>	APPROVE	
Purchasing	<u>10/28/15</u>	APPROVE	
City Attorney	<u>10/28/15</u>	APPROVE ✓	
Finance	<u>10/30/15</u>	APPROVE	
Budget	<u>11-1-15</u>	APPROVE	

Advisory Board
 Development Services Director
 City Manager

ACTION TAKEN BY COMMISSION:

<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>	<u>Workshop</u>
1st Reading	1st Reading	Results:	Results:
_____	_____	_____	_____
_____	_____	_____	_____
2nd Reading	_____	_____	_____
_____	_____	_____	_____





City Attorney's Communication #2016-121

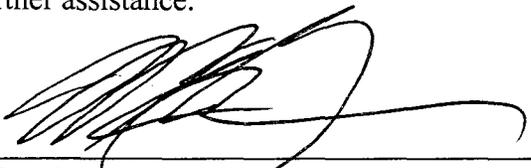
October 28, 2015

TO: John Sfiropoulos, P.E., Civil Engineer III
FROM: Mark E. Berman, City Attorney
RE: Burkhardt Construction, Inc. – Overhead Utility Undergrounding Project

As requested, I have prepared and attached the following form of Resolution:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A PRECONSTRUCTION SERVICES AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND BURKHARDT CONSTRUCTION, INC. FOR THE OVERHEAD UTILITY UNDERGROUNDING PROJECT ON A1A FROM HILLSBORO BAY TO TERRA MAR ROAD; PROVIDING AN EFFECTIVE DATE.

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



MARK E. BERMAN

MEB/jrm
l:cor/engr/2016-121

Attachment

RESOLUTION NO. 2015-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A PRECONSTRUCTION SERVICES AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND BURKHARDT CONSTRUCTION, INC. FOR THE OVERHEAD UTILITY UNDERGROUNDING PROJECT ON A1A FROM HILLSBORO BAY TO TERRA MAR ROAD; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That an Agreement between the City of Pompano Beach and Burkhardt Construction, Inc. for the Overhead Utility Undergrounding Project on A1A from Hillsboro Bay to Terra Mar Road, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and Burkhardt Construction, Inc.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2015.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

CONSTRUCTION MANAGER-AT-RISK CONTRACT

This Contract made and entered into this _____ day of _____ between The City of Pompano Beach, a political subdivision of the State of Florida (“Owner”), and Burkhardt Construction, Inc. (“Construction Manager”), a Florida Corporation, having its principal office located at 1400 Alabama Avenue, West Palm Beach, Florida 33401.

WITNESSETH:

That the said Construction Manager, having been awarded the Contract for the: AIA Utilities Undergrounding (“**Project**”) in accordance with the Request for Qualifications T-12-15 (“RFQ”) therefore, and for and in consideration of the promises and of the covenants and agreements, and of the payments herein specified, to be made and performed by the Construction Manager and the Owner, the Construction Manager hereby covenants and agrees to and with the Owner to undertake and execute all of the said named work, in a good, substantial and workmanlike manner, and to furnish and pay for all materials, labor, supervision, equipment, supplies, fees, expertise, incidentals and services necessary to fully complete all Work, as defined in Article 1.4.8 below, in accordance with all requirements of the Contract Documents, and in accordance with all applicable codes and governing regulations. The Contract Documents (“Contract Documents”) consist of this Contract, the General Conditions, and the following Exhibits, all hereto attached and made a part hereof:

PRE-CONSTRUCTION:

- A Pre-Construction Services Proposal dated July 14, 2015
- B Certificate of Insurance- Worker’s Compensation and Liability Coverage
- C The Request for Qualifications, T-12-15
- D List of Drawings, Specifications, and Addenda issued prior to execution of this Contract (incorporated herein by reference)

CONSTRUCTION PHASE (Exhibits to be attached conditioned upon Article 2.1.13.1):

- E Project Construction Budget/Schedule of Values (GMP)
- F Performance Bond
- G Payment Bond
- H Project Schedule
- I List of Drawings, Specifications, and Addenda issued at time of execution of GMP Amendment (incorporated herein by reference)
- J Certificate of Insurance

Attachment 1 GMP Amendment

ARTICLE 1

The Construction Team and Extent of Contract

1.1 The Construction Manager accepts the fiduciary relationship of trust and confidence established with the Owner by this Contract, and covenants with the Owner to furnish the Construction Manager's best skill and judgment in furthering the interests of the Owner, and to cooperate with the Owner and Architect in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to use Construction Manager's best efforts to perform and complete the Project in an expeditious and economical manner consistent with the interests of the Owner.

1.1.1 Construction Manager understands and agrees that a material inducement for the Owner entering into this Contract, following a competitive award process authorized under Florida law, was Construction Manager's representations about its expertise in the scheduling, sequencing and construction of a AIA Utilities Undergrounding and related infrastructure projects, as well as its superior familiarity with the unique local conditions and geography of the City of Pompano Beach, Florida, and the jobsite area. Construction Manager understands that time is of the essence in connection with the performance of the Work set forth in this Contract, and that even a minor breach of its terms may have a substantial, adverse impact upon the Owner, adjacent merchants, and the seasonal nature of City of Pompano Beach's economy, including the lifestyles of its residents and visitors. Accordingly, Construction Manager hereby affirms that the foregoing is true and correct, and that all anticipated costs to achieve the schedule and design intent have been included in the Guaranteed Maximum Price ("GMP") for the Project.

1.2 The Construction Team. The Construction Manager, the Owner, and the Architect (the "Construction Team") will cooperate together through the completion of construction. The Construction Manager shall provide leadership to the Construction Team on all matters relating to construction. The Architect will provide leadership to the Construction Team on all matters relating to design. Nothing herein is intended to make the Owner liable for the acts or deeds of the Construction Manager, it being understood that Construction Manager at all times is an independent contractor

1.3 Extent of Contract. This Contract is complementary to the Drawings, Specifications and the General Conditions of the Contract, and together represent the entire integrated agreement between the Owner and the Construction Manager, superseding all prior negotiations, representations or agreements, either written or oral. Where this Contract is expressly in conflict with the General Conditions of the Contract, this Contract will prevail. Where this Contract is silent, the General Conditions of the Contract, and the requirements of the Drawings and Specifications will prevail, in that order. This Contract may be amended only by written instrument signed by the Owner and the Construction Manager.

1.4 Terms used in the Contract shall have the following meanings:

1.4.1 "Owner" means The City of Pompano Beach, Florida, or "City," and the terms may be used interchangeably;

- 1.4.2 "Project" means the AIA Utilities Undergrounding located as noted above;
- 1.4.3 "Design Professional" shall mean Architect, Engineer and other licensed Design Professionals engaged by the City;
- 1.4.4 "Contractor" means Construction Manager, and the terms may be used interchangeably;
- 1.4.5 "Subcontractor" means Trade Contractor, and the terms may be used interchangeably;
- 1.4.6 "Contract Sum" means Guaranteed Maximum Price ("GMP"), and the terms may be used interchangeably;
- 1.4.7 "Construction Team" means Owner, Architect and Construction Manager; and
- 1.4.8 "Work" means the totality of the obligations, including construction and other services, imposed on the Construction Manager by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, services, fees, expertise and incidentals provided or to be provided by the Construction Manager to fulfill the Construction Manager's obligations.

ARTICLE 2

Construction Manager's Basic Services

2.0 The Construction Manager's Basic Services under this Contract include Preconstruction Phase services, as addressed below, and Construction Phase services.

2.1 The Preconstruction Phase.

2.1 The Preconstruction Phase. It is the intent of the Construction Manager at Risk project delivery system to engage the Construction Manager as an active participant in the design process working with the Owner and Architect/Engineer in maintaining the project budget and project scope. The Construction Manager shall:

2.1.1 Provide preconstruction deliverables consisting of value engineering, constructability analysis, securing of easements, community outreach, and as otherwise set forth elsewhere herein and in Exhibit C, together with a Guaranteed Maximum Price proposal. The reports shall include a complete discussion and summary of the services provided in accordance with Subparagraphs 2.1.2 through 2.1.8 herein below, including the schedule and a detailed cost estimate.

2.1.2 Review designs during their development. Proactively advise the Architect with regard to the most effective approach for designing the project regarding issues of onsite use and improvements, selection of materials, building systems and equipment. Provide recommendations on relative feasibility of construction methods, compliance with applicable laws, codes, design standards, and ordinance; availability of materials and labor, time requirements for procurement, installation and construction and factors related to cost including, but not limited to, costs of alternative designs or materials, preliminary

budgets and possible economies, while maintaining the Owner's design objectives.

2.1.3 Provide, for the Architect/Engineer's and the Owner's review and acceptance, a Project Schedule that coordinates and integrates the Construction Manager's services, the Architect/Engineer's services and the Owner's responsibilities with anticipated construction schedules. The Construction Manager shall update this schedule periodically, as required.

2.1.4 Prepare for the Owner's approval a detailed estimate of Construction Cost, as defined in Article 8 herein, developed by using estimating techniques which anticipate the various elements of the Project, and based on design documents prepared by the Architect/Engineer. Update and refine the estimate with 30%, 60% and 90% Construction Documents. Advise the Owner and the Architect/Engineer if it appears that the Construction Cost may exceed the Project budget. Make recommendations for corrective action.

2.1.5 Coordinate Contract Documents by consulting with the Owner and the Architect/Engineer regarding Drawings and Specifications as they are being prepared, and recommending alternative solutions whenever design details affect construction feasibility, cost or schedules.

2.1.6 The Construction Manager agrees that time is of the essence in maintaining the project schedule. In an effort to achieve the project schedule, the Architect/Engineer will rely upon the input and recommendations of the Construction Manager in preparing the project documents, recognizing that cost is one of a number of issues which will influence the selection of building components and systems.

2.1.7 It is incumbent upon the Construction Manager to advise the Architect/Engineer of recommended building components and systems before the design professionals have comprehensively documented the materials, systems and equipment within the project.

2.1.8 NOT USED

2.1.9 Develop a Project Construction Schedule providing for all major elements such as phasing of construction and times of commencement and completion required of each Trade Contractor. Provide the Project Construction Schedule for each set of bidding documents. Develop a plan for the phasing of construction, if phasing is required.

2.1.9.1 Establish a schedule for the purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect/Engineer. Expedite and coordinate delivery of these purchases.

2.1.10 Provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. Develop bidding packages designed to minimize adverse effects of labor shortages.

2.1.11 Make recommendations for pre-qualification criteria for bidders and develop bidders' interest in the Project. Establish bidding schedules.

2.1.12 Schedule and conduct monthly meetings of the Construction Team, and prepare and distribute minutes.

2.1.13 Based upon Drawings and Specifications produced by the Architect/Engineer, develop Guaranteed Maximum Price (GMP) proposal(s) at 90% Construction Documents, including, a Project Construction Schedule, itemized by Trade Contract, for phases of Work as required by the Owner. If the documents as prepared by the Architect/Engineer are not adequate for the development of a Guaranteed Maximum Price, the Construction Manager shall notify the Owner immediately, prior to developing the GMP. All assumptions made by the Construction Manager in the development of the GMP shall be specifically listed in the GMP proposals, and the GMP will not be adjusted due to assumptions made by the Construction Manager, but not included in the GMP proposal.

2.1.13.1 If the GMP proposal is accepted, in writing, by the Owner, it will become an Amendment to this Contract which will establish the GMP and Contract Time for the Work. A Public Construction Bond acceptable to Owner must be executed simultaneously with the GMP amendment.

2.1.13.2 If the GMP proposal is not accepted by the Owner, the Owner shall so notify the Construction Manager in writing. The Construction Manager shall then recommend adjustments to the Work through value engineering. The Construction Team and Owner will discuss and negotiate these recommendations for no more than thirty (30) calendar days, unless an extension is granted in writing by the Owner. If an acceptable GMP is not developed, negotiations may be terminated, and the Owner may initiate negotiations with another Construction Manager.

2.1.14 The Construction Manager's personnel to be assigned during this phase and their duties are identified, as follows: To be determined, and at all times subject to Owner's approval.

2.2 Construction Phase. Unless otherwise authorized by the Owner, in writing, all Work shall be performed under Trade Contracts with the Construction Manager. The Construction Manager shall not bid on any of the Trade Contractor Work, or perform such Work with its own forces, without prior written notification and consent of the Owner. THE CONSTRUCTION MANAGER SHALL, WITHOUT LIMITATION:

2.2.1 Administer the Construction Phase as provided herein and in the General Conditions of the Contract.

2.2.2 Commence the Work within ten (10) days after receipt of a written Notice to proceed from the Owner.

2.2.3 With respect to work to be subcontracted by Construction Manager: a) Develop procedures that are reasonably acceptable to the Owner for the prequalification of Trade Contractors; b) Develop Trade Contractor interest in the Project, and conduct pre-bid conferences with interested bidders to review the documents; c) Take competitive bids on the Work of the various Trade Contractors or, if specifically authorized by the Owner, in writing, negotiate for the performance of that Work; d) Construction Manager may require bidders to submit bid bonds or other bid security acceptable to the Construction Manager as a prerequisite to bidding on the Work; e) Analyze and evaluate the results of the various bids and their relationship to budgeted and estimated amounts, and prepare for review with the Owner and

Architect bid tabulation analysis and such other support data as necessary to properly compare the various bids and their responsiveness to the desired scope of Work; f) Review the scope of Work in detail with apparent low responsive bidders to determine that their bids are complete but do not include duplicate scope items; g) Maintain records of all pre-award interviews with apparent low bidders; h) Promptly award and execute Trade Contracts with approved Trade Contractors; i) Provide copies of fully executed Trade Contracts, insurance certificates, and, if required, bonds, to the Owner.

2.2.4 With respect to the scheduling, sequencing, and coordination of the Work: a) Manage, schedule and coordinate the Work, including the Work of the Trade Contractors, and coordinate the Work with the activities and responsibilities of the Owner, Architect and Construction Manager in order to complete the Project in accordance with the Owner's objectives of cost, time, and quality as set forth in the Contract Documents; b) Develop and maintain a program, acceptable to the Owner and Architect, to assure quality control of the Work; c) Supervise the Work of all Trade Contractors so that the work conforms to the requirements of the plans and specifications; d) Provide instructions to each Trade Contractor when its Work does not conform to the requirements of the plans and specifications so that the work conforms to the requirements of the plans and specifications, and continue to manage each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the progress of the Work; e) Should disagreement occur between the Construction Manager and the Architect over acceptability of Work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability, and the Owner's decision thereon shall be final and binding.

2.2.5 Maintain at all times exclusively for this Project adequate, competent staffing to coordinate and direct the Work and progress of the Trade Contractors on the Project. The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the work and progress of the Subcontractors and shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit "D" to this Contract. Construction Manager shall not change any of those persons named in Exhibit "D" unless mutually agreed to by the Owner and Construction Manager, in writing. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. All of the Construction Manager's on-site management and supervisory personnel shall be consistent with the RFP presentation that preceded the execution of this Contract, and shall not be removed or replaced without the Owner's written consent. The Owner shall have the right to direct the Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event, the Construction Manager shall promptly replace such personnel, without entitlement to additional compensation or additional time for the replacement.

2.2.5.1 Establish and maintain a) on-site organization and lines of authority in order to carry out the overall plans of the Construction Team; b) Identify an on-site staff member to represent the

Construction Manager, on a daily basis, with authority to negotiate Change Orders and contract modifications on behalf of the Construction Manager; c) Make available such executive personnel as necessary to execute Change Orders or other contract modifications on behalf of the Construction Manager so as not to delay the progress of the Work.

2.2.6 Establish and maintain a) procedures for coordination among the Owner, Architect, Trade Contractors and Construction Manager with respect to all aspects of the Work; b) Implement such procedures, incorporate them into a Project resource manual, and distribute manuals to the Construction Team.

2.2.6.1 Require of the various Trade Contractors such Coordination Drawings as may be necessary to properly coordinate the Work among the Trade Contractors.

2.2.6.2 In collaboration with the Architect, establish and implement procedures for tracking and expediting the processing of shop drawings, samples, Requests for Information (“RFI”), and other submittals as required by the General Conditions of the Contract.

2.2.7 Schedule and conduct weekly or more frequent progress meetings with Trade Contractors to review such matters as job procedures, job safety, construction progress, schedule, shop drawing status and other information as necessary. Construction Manager shall provide prior notice to Owner and Architect of all such meetings, and prepare and distribute minutes. Additionally, Construction Manager shall schedule and attend Team meetings with the Architect and Owner.

2.2.8 Review the Project schedule with the various Trade Contractors and review, or expand, the level of detail to incorporate specific Trade Contractor input consistent with the overall completion requirements. Construction Manager shall regularly monitor and update the Project Schedule and various sub-networks as construction progresses, identify potential variances between scheduled and probable completion dates, review schedule for Work not started, or incomplete, and make adjustments in the schedule to meet the scheduled completion date. Construction Manager shall provide summary reports of each monitoring and document all changes in schedule, and prepare regular schedule updates and reporting which shall be included as part of the monthly Project report outlined in Subparagraph 2.2.16 herein.

2.2.9 Determine the adequacy of the Trade Contractors’ personnel and equipment, and the availability of materials and supplies to meet the schedule. In consultation with the Owner and the Architect, take necessary corrective actions when requirements of a Trade Contract or a Trade Contract Schedule are not being met.

2.2.10 If applicable, whenever Owner-Furnished Contractor-Installed (“OFCI”) materials or equipment are shipped to the Project site, the Construction Manager shall notify the Owner and shall be responsible for their inspection, proper storage, and incorporation into the Work; provided the scope of the OFCI work is included within the Guaranteed Maximum Price.

2.2.11 Develop and maintain an effective system of Project cost control which is satisfactory to the Owner. Revise and refine the initially approved Project Construction budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise Owner and Architect whenever projected costs exceed budgets or estimates. Cost Control reports shall be included as part of the monthly Project report outlined in Subparagraph 2.3.16 herein.

2.2.12 Maintain a system of accounting satisfactory to Owner and consistent with generally accepted construction accounting principles. The Construction Manager shall preserve all accounting records for a period of four (4) years after final acceptance of the Work or as otherwise requested in writing by the Owner. The Owner, or the Owner's auditors shall have access to all such accounting records, supporting documentation, correspondence, subcontracts, purchase orders, and other things relating to this Contract, at any time during regular business hours, both throughout the performance of the Work, and for a period of four (4) years after final payment of the Work.

2.2.13 Develop and implement a system for the preparation, review and processing of Change Orders. Without assuming any of the Architect's responsibilities for, among other things, design, recommend necessary or desirable changes to the Owner and the Architect, review requests for changes and submit recommendations to the Owner and Architect.

2.2.13.1 When requested by the Owner or Architect, promptly prepare and submit informal estimates of probable cost for changes proposed in the Work including similar estimates from the Trade Contractors. If directed by the Owner, promptly secure formal written Change Order Proposals from such Trade Contractors.

2.2.14 Be responsible for initiating, maintaining and supervising effective safety programs and require similar programs of the Trade Contractors and Sub-subcontractors. The OSHA guidelines shall serve as the basis for the construction safety program. If the Owner implements an Owner Provided Insurance Program as provided for in Article 11, the Construction Manager shall cooperate with the safety representatives of the Owner's Insurance Administrator and/or the Owner's insurance carrier(s) in the course of construction site inspections and in all other matters related to job safety and accident prevention.

2.2.14.1 Promptly notify the Owner and, where applicable, the Owner's Insurance Administrator, in writing, upon receiving notice of filing of any charge of non-compliance from OSHA, or upon receiving notification that a federal or state inspector shall visit or is visiting the Project site.

2.2.14.2 At progress meetings with Trade Contractors, conduct a review of job safety and accident prevention, and prepare minutes of such meetings that will be available to the Owner's Representative on request. The minutes of job safety and accident prevention portion of such

progress meetings shall be made available to the Owner's Insurance Administrator, where applicable, upon request.

2.2.14.3 Designate a full-time staff member as the Project safety director who shall oversee job safety and accident prevention for the Construction Manager, Trade Contractors and Sub-subcontractors involved in the Work, in addition to any other responsibilities assigned to such staff member.

2.2.15 Make provisions for Project security acceptable to the Owner, to protect the Project site and materials stored off-site, or on-site, against theft, vandalism, fire and accidents, damage, or injury to person(s) or property, etc., as required by job and location conditions.

2.2.16 Record the progress of the Project. Submit written monthly progress reports to the Owner and the Engineer including information on the Trade Contractors' Work, the percentage of completion, current estimating, computerized updated monthly Critical Path Method scheduling and Project accounting reports, including Estimated Time to Completion and Estimated Cost to Complete. Keep a daily log available to the Owner and the Architect. Report and record such additional information related to construction as may be requested by the Owner. (For Horizontal Construction only: Construction Manager may substitute a Bar Chart, so long as the Bar Chart software provides the functional equivalent, to the extent possible, of the CPM provisions set forth in this Contract and its General Conditions. The Bar Chart format must be acceptable to the Owner. This parenthetical provision shall govern any provisions hereafter dealing with CPM Scheduling.)

2.2.17 The Construction Manager shall be responsible for the removal, encapsulation, transportation and disposal of any hazardous material, including, without limitation, lead-based paint, and any asbestos or asbestos-related products as may be required in connection with the Work. Hazardous material, described by federal guidelines brought by the Construction Manager or the Trade Contractors shall remain their responsibility for proper disposal. Any hazardous material not specifically shown on the documents, or which was not discovered or should have been discovered during performance of the Pre-Con Agreement, shall be considered a concealed condition and may become the responsibility of the Construction Manager in a Change Order increasing the Guaranteed Maximum Price for any additional costs incurred in connection therewith. Such Change Order shall be submitted in as timely a manner as is reasonably possible after discovery of the concealed condition, as more particularly set forth in the General Conditions.

2.2.18 The Construction Manager shall prepare a Project Manual, as more particularly set forth in RFP Terms and Conditions, Article IV, pp. 21-22 thereof, incorporated herein by reference and made a part hereof.

ARTICLE 3

Additional Services

3.1 Upon the mutual agreement of the Owner and the Construction Manager, and upon written authorization from the Owner, the Construction Manager shall provide additional services that are beyond the scope of the Basic Services described in Article 2 herein. The Construction Manager shall be compensated for such additional services by Change Order to be negotiated by the Owner and the Construction Manager at the time of the additional service request, as set forth in the General Conditions.

ARTICLE 4

Owner's Responsibilities

4.1 The Owner will designate a representative to act in its behalf. This representative, or his/her designee will receive progress reports of the Work from the Construction Manager, serve as liaison with the Construction Manager and the Architect, receive and process communications and paperwork, and represent the Owner in the day-to-day conduct of the Project. The Construction Manager will be notified in writing of the representative and of his/her designee, or any changes thereto.

ARTICLE 5

Schedule

5.1 Preconstruction Phase. The Construction Manager shall complete the documents and things provided for in Article 2.1, et. seq., above, within three hundred sixty five (365) calendar days from the date of this Contract, and Guaranteed Maximum Price Proposal within sixty (60) calendar days after the Architect/Engineer documents (in 30% 60% and 90% completion) have been made available to the Construction Manager.

5.2 Construction Phase. The performance of the Work under the Construction Phase of this Contract shall be substantially completed by the Construction Manager on or before November 24, 2010, time being of the essence in this Contract, as more particularly set forth in Exhibit "G" hereto attached and made a part hereof, and receipt of building permits, as may be later adjusted by Change Order(s), if any, and subject to adjustment for delays as otherwise provided for in this Contract.

5.3 The Construction Manager agrees to complete the Work in accordance with the agreed upon substantial completion date set forth in Exhibit "G." The Construction Manager acknowledges that time is of the essence throughout this Contract, and that failure to complete

the Project within the time set forth in the approved schedule will result in substantial damages to the Owner that are impossible to precisely ascertain. Upon failure of the Construction Manager to substantially complete the Project within the specified period of time, plus approved time extensions, Construction Manager shall pay to the Owner, as liquidated damages and not as a penalty, the sum of \$1,000 for each calendar day in excess of the established substantial contract completion date, plus approved time extensions. After achieving substantial completion, as more particularly addressed in GC 71 and its several subparts, should Construction Manager fail to complete the remaining Work within the time specified for final completion in Exhibit "G," plus approved time extensions, if any, and after providing Construction Manager with seven (7) days advance written notice, Owner shall have the right to complete the work through other means, and the costs therefore shall be set-off against retainage remaining in the contract balances, which, if insufficient, the balance shall be paid to Owner by Construction Manager, or its performance bond Surety.

5.4 The Owner may direct the Construction Manager to expedite the Work by whatever means the Construction Manager may use, including, without limitation, increasing staffing or working overtime to bring the Work back within the agreed construction schedule. If expediting the Work is required due to reasons within the control or responsibility of the Construction Manager, then the additional costs incurred shall be chargeable to the Cost of the Work as part of, and subject to the GMP. If the expediting of the Work is required due to reasons outside the control or responsibility of the Construction Manager, then in such event, the additional costs incurred shall be the subject of an appropriate adjustment by Change Order, as elsewhere provided for in the General Conditions.

5.5 The Owner shall have the right to occupy, or use, any portion of the Work prior to completion of the Project. If use or occupancy ahead of schedule affects the cost of the Project or the schedule for the Work, the Construction Manager shall so notify the Owner, in writing, and the use or occupancy will be treated as a Change to the Work in accordance with Article 9, herein.

ARTICLE 6

Guaranteed Maximum Price

6.1 The "Guaranteed Maximum Price" (GMP), also referred to as the Contract Sum, includes Cost of the Work required by the Contract Documents as defined in Article 8 herein, the Construction Manager's Fixed Fee as defined in Paragraph 6.1.1 below, the Contingency Fund, and Construction Manager's Lump Sum General Conditions. The GMP will be established based on construction documents prepared by the Architect/Engineer. The GMP is guaranteed by the Construction Manager not to exceed the amount established herein, subject to additions and deductions by Change Order as provided for elsewhere in this Contract. Cost which would cause the GMP to be exceeded shall be paid by the Construction Manager without recourse or reimbursement by the Owner.

6.1.1 The Construction Manager's Fixed Fee for performance of the Work as later set forth in GMP

Amendment.

6.2 The GMP will only include those taxes in the Cost of the Work which are legally enacted at the time the GMP is established.

6.3 If and only in the event that this Project is substantially completed within the scheduled substantial completion date, as may be adjusted as provided for elsewhere herein, the following shared savings provisions shall apply: Upon final completion of the Work, if the total cost of the Work (excluding any unused portion of the Contingency Fund) is less than the Guaranteed Maximum Price, taking into account any adjustments made during the term of this Contract, as provided for elsewhere herein, the Owner and Construction Manager will be entitled to share this savings, as follows: Construction Manager will receive an amount equal to 50% of the difference between the actual cost of the Work and the final GMP amount (excluding any unused portion of the Contingency Fund), not to exceed, in any event, 3% of the adjusted GMP amount (excluding any unused portion of the Contingency Fund). Construction Manager's portion of these shared savings will be added to Contractor's Fee, and included in Construction Manager's Final Payment. Liquidated damages, if any, are different from, and are not a part of, this calculation.

6.4 The GMP shall include an agreed upon sum as a construction contingency fund which is exclusively reserved to cover Construction Manager's unanticipated and unforeseen Project conditions not otherwise covered by insurance, inadvertent, non-negligent scope and pricing omissions and errors, and other damages that are sustained by Construction Manager during the estimating, buy-out, and construction process, unless specifically enumerated as non-reimbursable costs of the Work as provided for elsewhere in this Contract. This Contingency Fund is not to be used for changes in the scope of the Work, which are otherwise provided for in the contract documents addressing Change Orders. No draws against the Contingency Fund may be made unless specifically agreed to by the Owner, in writing. There shall be no entitlement to overhead, fee, and general conditions in connection with any approved payments from the Contingency Fund. The Construction Manager will be required to furnish documentation required by the Owner evidencing expenditures charged to this contingency prior to the release of funds by the Owner. The Architect-Engineer shall verify the actual costs, which are subject to audit.

6.5 By execution of this Contract, the Construction Manager certifies that all factual unit costs supporting the fees specified in this Contract are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished the Owner in the future to support any additional fees that may be authorized will also be accurate and complete. The fees specified in this Contract and any additional fees that may be authorized in the future shall be adjusted to exclude any significant sums by which the Owner determines the fee was increased due to inaccurate, incomplete, or non-current factual unit costs.

6.6 Adjustments to the GMP will be made as described in the Conditions of the Contract.

ARTICLE 7

Payments to Construction Manager

7.1 In consideration of the performance of the Contract, the Owner agrees to pay the Construction Manager, as compensation for its services as set forth below:

7.1.1 For preconstruction services, the total sum of Five Hundred Three Thousand, Five Hundred Twelve Dollars and 50/100 (\$503,512.50) to be paid upon the satisfactory completion of line items for each Task as specified in a Pre-Construction Schedule of Values that is agreed to by the parties, in writing, before commencement of the Preconstruction services.

TOTAL: \$503,512.50

7.1.1.1 Upon receipt of the Notice to Proceed, the Construction Manager shall begin providing the indemnification described in the Conditions of the Contract, as part of the fee established for the first phase of preconstruction services.

7.1.2 Upon acceptance of the GMP, the amount established in the GMP Amendment to this Contract, which includes the Construction Manager's fee and Lump Sum General Conditions as described in Paragraph 7.2 and the Cost of the Work as described in Article 8, to be paid monthly as described in the General Conditions of the Contract.

7.1.2.1 As required by Section 287.0585, F.S., within seven working days from receipt of payment from the Owner, the Construction Manager shall pay each Trade Contractor out of the amount paid to the Construction Manager on account of such Trade Contractor's Work, the amount to which said Trade Contractor is entitled reflecting the percentage actually retained, if any, from payments to the Construction Manager on account of said Trade Contractor's Work. The Construction Manager shall, by appropriate Contract with each Trade Contractor, require each Trade Contractor to make payments to its subcontractors in a similar manner.

7.1.3 Pay requests for preconstruction services and for construction shall be documented in accordance with the General Conditions.

7.2 Construction Manager's Lump Sum General Conditions during the Construction Phase includes, without limitation, the following:

7.2.1 The cost of its home or branch office employees or consultants not at the Project site, including the cost of all benefits, insurance, and taxes attributable to wages and salaries and other company overhead expenses for said home office employees.

7.2.2 The cost of its field employees identified in Subparagraph 2.2.5 herein, or their approved replacements, including the cost of all benefits, insurance, and taxes attributable to wages and salaries for said field employees.

7.2.3 General operating expenses of the Construction Manager's principal and branch offices other than

the field office.

7.2.4 Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

7.2.5 Overhead and profit, or general expenses of any kind, except as may be expressly included in Article 8, herein, as Cost of the Work.

7.2.6 All travel and per diem costs of Construction Manager's employees and consultants.

7.2.7 Those services set forth in Article 2.2.

7.2.8 Expenses such as long distance telephone calls, telephone service at the site, postage, office supplies, expressage, and similar items in connection with the Work.

7.2.9 Cost of equipment such as laptops, cameras, radios, computers, cell phones, copiers, telephones, dictating units, trailers, vehicles and furniture purchased or rented by the Construction Manager.

7.2.10 Administration of direct tax savings purchase program.

7.2.11 All costs incurred during the guarantee period after construction.

7.3 Adjustments in the Lump Sum General Conditions associated with compensable Changes in the Work, or compensable delays, shall be made as described in the General Conditions of the Contract, and in strict accordance therewith.

ARTICLE 8

Cost of the Work

8.1 The term "Cost of the Work" shall mean direct construction costs, including Lump Sum General Conditions as more specifically addressed in 7.2 et.seq. above, and in 8.1.2 below, incurred specifically in and about the performance of the Work, and paid or incurred by the Construction Manager, less any reimbursement for scrap value and cash or trade discounts, subject to Article 10, herein. Excluding those individuals included in the Lump Sum General Conditions, 8.1.2 below, the term "wages" used herein shall include the straight time and overtime pay authorized in writing by the Owner, and the cost of associated employee benefits. Excluding those individuals included in the Lump Sum General Conditions, employee benefits include, but are not limited to, unemployment taxes, social security taxes, compensated absences, and other mandatory and customary contributions and fringe benefits insofar as such costs are based on wages, salaries, or other remuneration paid to employees of the Construction Manager, excluding bonuses. Employee benefits do not include Workers' Compensation insurance when such insurance is provided by the Owner in accordance with Article 11.

8.1.1 Subject at all times to the amount of the GMP, the Owner agrees to pay the Construction Manager for the reimbursable Costs of the Work as defined in Article 8, herein, and its subparts, through completion of the Work, plus the Construction Manager's Fixed Fee,

8.1.2 For Construction Phase services, as more particularly set forth in Article 2.2 and its subparts, above, and further including those line items in Exhibit "C" designated as General Conditions, the Construction Manager shall be paid a lump sum amount (included in the GMP and as set forth in the GMP Amendment), in installments, as provided for elsewhere in these Contract Documents, which amount is subject to the Contract audit provisions for the limited purposes of verifying the Construction Manager's warrants and representations set forth in Article 6.8 above. This Lump Sum General Conditions amount preempts, disables and governs those reimbursable Costs of the Work set forth in Article 7.2, et.seq. and this Article 8, and its subparts. In the event that those specified reimbursables conflict with, or are subsumed by this Lump Sum General Conditions, it is the intention of the parties that the Lump Sum will not be adjusted for any reasons whatsoever during the Construction Phase, except and solely for compensable Change Orders and compensable delays, if any, that increase the GMP, and extend the contract completion date in excess of thirty (30) calendar days beyond the agreed Substantial Completion date of midnight, as later set forth in the GMP Amendment. In the event that the Lump Sum is exceeded by actual costs for such items incurred by the Construction Manager, there shall be no entitlement to reimbursement from the Owner by way of Change Order, Claims, requests for equitable adjustments, or from the Construction Contingency.

8.2 *Cost of the Work includes, and is limited to, actual documented expenditure for the following cost items (all subparts below shall be preceded by the phrase "Except and to the extent governed by 8.1.2 above...":*

8.2.1 Subject to prior written approval by the Owner, wages paid for labor in the direct employ of the Construction Manager at the construction site other than those provided under Paragraph 7.2, herein, as a part of the Construction Manager's Fixed Fee in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the Owner and Construction Manager, and including benefits, if any, as may be payable with respect thereto.

8.2.2 The cost of all materials, supplies and equipment incorporated into the Work or stored on site, including cost of transportation and storage thereof. At the Owner's sole discretion, the Owner may make payment for materials, supplies and/or equipment stored off-site and bonded.

8.2.3 Payments made by the Construction Manager to Trade Contractors for their Work performed pursuant to Trade Contracts with the Construction Manager.

8.2.4 Cost of the premiums for all insurance or bonds including Trade Contractor bonds which the Construction Manager is required to procure by this Contract, or other insurance or bonds subsequently deemed necessary by the Construction Manager, and agreed upon by the Owner, in

writing. The cost of insurance for the Construction Manager, Trade Contractors, and Sub-subcontractors at any tier in the Work shall be excluded for any insurance to be provided by the Owner in accordance with Article 11 herein.

8.2.5 Sales, use, gross receipt, or similar taxes related to the Work imposed by any governmental authority and for which the Construction Manager is liable.

8.2.6 Building and operating permit fees, inspection and filing fees, sewer and water fees, and deposits lost for causes other than the Construction Manager's own negligence.

8.2.7 Cost of removal and disposal of all debris including clean-up and trash removal.

8.2.8 Cost incurred due to an emergency affecting the safety of persons and/or property.

8.2.9 Subject to prior written approval by Owner, legal costs reasonably, and properly, resulting from prosecution of the Work for the Owner provided, however, that they are not the result of the Construction Manager's own negligence or malfeasance. Legal costs incurred in connection with disputes solely between the Construction Manager and the Owner or incurred in connection with disputes solely between the Construction Manager and Trade Contractors are the responsibility of the Construction Manager and shall not be included in the Cost of the Work.

8.2.10 Cost to the Construction Manager of temporary electric power, lighting, water, sanitary facilities, and heat required for the performance of the Work, or required to protect the Work from weather damage.

8.2.11 Cost to the Construction Manager of temporary safety-related protection including barricades and safety equipment, temporary roads and parking, dust control, pest control, installation and operation of temporary hoists, scaffolds, ladders and runways, and temporary Project signs and costs of permits and fees pursuant to the General Conditions of the Contract.

8.2.12 Cost of watchmen or similar security services, if approved in writing by Owner.

8.2.13 Cost of surveys, measurements and layout work reasonably required for the execution of the Work or the requirements of the Contract.

8.2.14 Cost of preparation of shop drawings, coordination plans, photographs, or as-built documents not included in Trade Contracts.

8.2.15 All costs for reproduction of documents to directly benefit the Work.

8.2.16 Costs directly, properly, and reasonably incurred in the performance of the Work and not included in the Construction Manager's Fee as set forth in Paragraph 7.2, herein.

8.2.17 Testing laboratory costs, except relating to defective or non-conforming work for which reimbursement is otherwise excluded by the Contract Documents.

8.2.18 Deposits lost for causes other than Construction Manager's or any Trade Contractor's negligence or failure to fulfill a specific responsibility to the Owner under the Contract Documents.

8.2.19 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen that are employed or consumed in the performance of the Work.

8.2.20 Rental charges of all necessary machinery and equipment, including hand tools used in the performance of the Work, whether rented from the Construction Manager (upon prior written approval of the Owner, at the standard rate paid at the place of the Project) or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof.

8.2.21 Costs associated with setting up and demobilizing tool sheds, Project field offices, temporary fences, temporary roads, and temporary fire protection.

8.3 Costs not to be reimbursed include:

8.3.1 Those costs enumerated in Article 7.2.1 through 7.2.10 above, and as set forth in the Contract Documents as to be borne at the expense of the Construction Manager.

8.3.2 Salaries and other compensation of the Construction Manager's personnel stationed at Construction Manager's principal office or offices other than the site office;

8.3.3 Expenses of the Construction Manager's principal office and offices other than the site office;

8.3.4 Overhead and general expenses, except as may be expressly included in Article

8.3.5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

8.3.6 Costs due to the negligence or failure of the Construction Manager, subcontractors and suppliers or anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

8.3.7 Any cost not specifically and expressly described in Section 8.3 and subparts;

8.3.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

8.3.9 Costs resulting from failure of the Construction Manager or any subcontractor to procure and maintain insurance by the Contract Documents;

8.3.10 Amounts due by Construction Manager for federal and state income and franchise taxes, and the costs of licenses, fees, taxes, and other charges of a similar nature, required to be obtained or maintained by Construction Manager for the general conduct of its business;

8.3.11 Costs to replace or pay for lost or stolen machinery or equipment or materials, but only if not covered by Builder's Risk Insurance. Construction Manager may seek to recover replacement cost from insurance, sureties, Subcontractors, suppliers, or other such third parties;

8.3.12 The cost for any legal, accounting or other professional services except to the extent provided for in the reimbursable costs of the Work;

8.3.13 Penalties, fines, or costs imposed by governmental authorities in connection with, or resulting from any violations for noncompliance with laws, regulations, codes, ordinances, or directives by the Construction Manager or any subcontractor, except if the result of specific and written directive by the Owner;

8.3.14 Costs of any insurance deductibles for coverage furnished and paid by Construction Manager or any Subcontractor and losses or expenses for which the Construction Manager or any Subcontractor is compensated by insurance.

8.3.15 Costs associated with the Construction Manager's failure to obtain any and all permits in a timely manner, including, without limitation, the costs of any delays resulting therefrom, unless attributable to Owner's Design Professionals.

8.3.16 Costs of accelerating the Work to the extent caused by the negligence or default of the Construction Manager or any subcontractor of any tier, unless otherwise expressly provided for elsewhere in this Contract and in strict accordance therewith;

8.3.17 Overtime costs required to the extent caused by the Construction Manager or any subcontractor of any tier, unless otherwise expressly provided for elsewhere in this Contract and in strict accordance with the requirements therein;

8.3.18 Project incentive bonuses, except as approved by the Owner in writing;

8.3.19 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor shall

not be deemed a Cost of the Work without Owner's prior written approval;

8.3.20 Any and all costs and or cost overruns, including schedule related costs, resulting from the default and/or termination of a bonded subcontractor and/or material supplier by Construction Manager.

8.3.21 Except as provided in Article 8.2.9 above, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract.

8.3.22 Any cost not specifically and expressly described in Article 8.2 and its subparts, above.

8.3.23 Costs, other than costs included in Change Orders approved by the Owner, in writing, that would cause the GMP to be exceeded.

8.3.24 Costs exceeding the Lump Sum General Conditions, as set forth in Article 8.1.2 above.

ARTICLE 9

Changes in the Work

9.1 The Owner, without invalidating this Contract, may order Changes in the Work within the general scope of this Contract consisting of additions, deletions, or other revisions. All changes in the Work shall be authorized as described in the General Conditions of the Contract. Except in cases of emergency endangering life or property, the Construction Manager shall allow no Changes in the Work without the prior written approval of the Owner.

ARTICLE 10

Discounts

10.1 All quantity discounts shall accrue to the Owner if (i) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (ii) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 11

Insurance

11.1 The Construction Manager shall provide insurance as required and addressed in RFQ T-12-15, and as specified in GC 31.

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November 5, 2015

To: Mayor and City Commission
From: John Sfiropoulos, City Engineer 
Via: Dennis W. Beach, City Manager 
Re: Contract Signatures for Agenda Item #29

A copy of the signed, witnessed and notarized Contractor's signature page will be provided no later than Monday, November 9, 2015.

Thank you

"CORPORATION":

Witnesses:

Corporation Name

Signature

Title

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 by _____, as _____, of _____, on behalf of the corporation. He/she is personally known to me or has produced _____ (type of identification) as identification.

NOTARY'S SEAL: NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 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 are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

THE CITY OF POMPANO BEACH, FLORIDA

PROJECT: AIA Utilities Undergrounding

CONSTRUCTION MANAGER AT RISK CONTRACT

GENERAL CONDITIONS

PROJECT NO. 11-142

	Pages
GENERAL CONDITIONS GC-1 to GC-77	1 - 66

**GENERAL CONDITIONS
TABLE OF CONTENTS**

ARTICLE

GC-1	ENTIRE AGREEMENT
GC-2	INDEPENDENT CONSTRUCTION MANAGER
GC-3	AUTHORIZED REPRESENTATIVES
GC-4	NOTICES
GC-5	LAWS AND REGULATIONS
GC-6	STANDARDS AND CODES
GC-7	CODE RELATED INSPECTIONS
GC-8	GOVERNING LAW
GC-9	RIGHTS AND REMEDIES
GC-10	COMMERCIAL ACTIVITIES
GC-11	COOPERATION WITH OTHERS
GC-12	FORMS & DOCUMENTS
GC-13	PUBLICITY AND ADVERTISING
GC-14	TAXES
GC-15	FEES
GC-16	UTILITIES
GC-17	SUCCESSORS, ASSIGNS AND ASSIGNMENT
GC-18	EXAMINATION OF CONSTRUCTION MANAGER'S RECORDS/AUDIT
GC-19	COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS
GC-20	PERMIT DRAWINGS AND SPECIFICATIONS

- GC-21 CONTRACT INTERPRETATION
- GC-22 DISPUTES-WAIVER OF JURY TRIAL
- GC-23 SUSPENSION
- GC-24 DECLARATION OF DEFAULT
- GC-25 TERMINATION FOR DEFAULT
- GC-26 OPTIONAL TERMINATION-TERMINATION FOR CONVENIENCE
- GC-27 EXTENSION OF TIME/NO DAMAGES FOR DELAY
- GC-28 WARRANTY
- GC-29 PATENT INDEMNITY
- GC-30 INDEMNITY
- GC-31 INSURANCE
- GC-32 SITE CONDITIONS
- GC-33 NOT USED
- GC-34 ACCESS TO WORK AREAS
- GC-35 INGRESS AND EGRESS
- GC-36 PRECONSTRUCTION CONFERENCE
- GC-37 MEETINGS
- GC-38 OWNER-FURNISHED DRAWINGS AND SPECIFICATIONS
- GC-39 DELIVERY, UNLOADING AND STORAGE
- GC-40 WORK AREA
- GC-41 PLANT, EQUIPMENT AND FACILITIES
- GC-42 CONSTRUCTION MANAGER-FURNISHED MATERIALS, EQUIPMENT AND WORKMANSHIP

- GC-43 SUBSTITUTIONS
- GC-44 EXPEDITING
- GC-45 FIELD LAYOUT OF WORK
- GC-46 CONSTRUCTION MANAGER FURNISHED DRAWINGS, DATA AND SAMPLES
- GC-47 CONSTRUCTION SCHEDULE
- GC-48 RESPONSIBILITY FOR WORK SECURITY
- GC-49 PROTECTION OF WORK IN PROGRESS, MATERIALS AND EQUIPMENT
- GC-50 PROTECTION OF EXISTING PROPERTY
- GC-51 LABOR
- GC-52 EQUAL EMPLOYMENT OPPORTUNITY
- GC-53 SAFETY & PROTECTION OF PERSONS & PROPERTY
- GC-54 PROJECT SITE PROTECTION
- GC-55 FIRE PREVENTION
- GC-56 ILLUMINATION
- GC-57 BEST MANAGEMENT PRACTICES
- GC-58 DUST CONTROL
- GC-59 WATER POLLUTION
- GC-60 AIR POLLUTION
- GC-61 EXPLOSIVES & HAZARDOUS MATERIALS
- GC-62 INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP
- GC-63 TESTING
- GC-64 PROGRESS

- GC-65 CHANGES
- GC-66 RECORD DRAWINGS AND SPECIFICATIONS
- GC-67 MEASUREMENT OF AND PAYMENT FOR WORK
- GC-68 PROGRESS PAYMENT PROCEDURES
- GC-69 USE OF COMPLETED PORTIONS OF WORK
- GC-70 ALLOWANCES AND UNIT PRICES
- GC-71 SUBSTANTIAL COMPLETION
- GC-72 FINAL INSPECTION AND ACCEPTANCE
- GC-73 DISPOSAL OF MATERIAL OUTSIDE PROJECT LIMITS
- GC-74 IDENTITY OF INTEREST WITH SUBCONTRACTORS/SUPPLIERS
- GC-75 CLEANING UP
- GC-76 PROJECT SIGNS
- GC-77 PERFORMANCE AND PAYMENT BONDS/CHAPTER 558 OPT OUT

GENERAL CONDITIONS

GC 1 ENTIRE AGREEMENT

- 1.1 This Construction Manager at Risk Contract embodies the entire agreement between Owner and Construction Manager and supersedes all other writings, oral agreements, or representations. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of any of the terms or conditions of the Contract shall be valid unless reduced to writing and signed by both parties.

GC 2 INDEPENDENT CONSTRUCTION MANAGER

- 2.1 Construction Manager represents that it is extensively experienced in the performance of streetscape and infrastructure construction Work as provided for herein, and that it is properly licensed as a General Contractor in the State of Florida, equipped, organized and financed to perform such Work. Construction Manager shall act as an independent contractor, and not as the agent of Owner, in performing the Contract, maintaining complete control over its employees, and all of its suppliers and subcontractors. Nothing contained in this Contract, or any subcontract awarded by Construction Manager, shall create any contractual relationship between any such supplier or subcontractor and the Owner. Construction Manager shall perform all work in accordance with its own means, methods, sequences and procedures, subject to compliance with the Contract. Construction Manager represents that all subcontractor agreements entered into shall incorporate by reference the terms and conditions of this Contract.

GC 3 AUTHORIZED REPRESENTATIVES

- 3.1 Before starting work, Construction Manager shall designate a competent, authorized representative acceptable to Owner to represent and act for Construction Manager and shall inform Owner in writing, of the name and address of such representative, together with a clear definition of the scope of his/her authority to represent and act for Construction Manager, and shall specify any and all limitations of such authority. Such representative shall be present or duly represented at the site of work at all times when work is actually in progress. During periods when work is suspended, arrangements for an authorized representative acceptable to Owner shall be made for any emergency work that may be required. All notices, determinations, instructions and other communications given to the authorized representatives of the Construction Manager shall be binding upon Construction Manager. Nothing contained herein shall be construed as modifying the Construction Manager's duty of supervision and fiscal management as provided for by Florida law. The Owner shall designate an authorized representative who will have limited authority to act for the Owner. The Owner will notify the Construction Manager in writing of the name of such representative(s). The Owner's representative will be the Public Works Director, or his designee. Any work performed by the Construction Manager without proper authorization, is performed at the Construction Manager's risk,

and the City of Pompano Beach shall have no obligation to compensate the Construction Manager for such work. The Owner has the right to assign various responsibilities of the Owner to the Design Professional of Record, and can do so at any time during the duration of this Contract with written notice to the Construction Manager.

3.2 The Construction Manager's Authorized Representative, Qualifying Agents, Project Managers, Superintendents and Supervisors are all subject to prior and continuous approval of the Owner. If, at any time during the term of the Contract, any individual nominally performing any of the positions named above is, for any reason, unacceptable to the Owner, Construction Manager shall replace the unacceptable personnel with personnel acceptable to the Owner.

GC 4 NOTICES

4.1 Any notices provided for hereunder shall be in writing and may be served either personally on the authorized representative of the receiving party at the job site, by certified mail, return receipt requested, or national overnight courier to that party at the addresses shown below:

OWNER: The City of Pompano Beach, Florida
100 West Atlantic Blvd.
Pompano Beach, FL 33060
Attn.: City Manager: Dennis Beach

CONSTRUCTION MANAGER: TBD

4.2 These addresses may be changed by either of the parties by written notice to the other.

GC 5 LAWS AND REGULATIONS

5.1 Construction Manager and its employees and representatives shall at all times comply with all applicable laws, codes, ordinances, statutes, rules and regulations in effect at the time Work is performed under this Contract.

5.2 If, during the term of this Contract, there are any changed or new laws, ordinances or regulations not known at the time of signing this Contract which become effective and which are known, or in the exercise of its due diligence, should have been known to Construction Manager as a licensed general contractor regarding the performance and conduct of the Work, and which affect the cost or time of performance of the Contract, Construction Manager shall immediately notify Owner, in writing, and submit detailed documentation of such affect in terms of both time and cost of performing the Contract. Upon concurrence by Owner as to the effect of such changes, an adjustment in the

compensation and/or time of performance may be made, subject to the provisions elsewhere set forth in these Contract Documents.

- 5.3 It is recognized that the Construction Manager's review of the drawings and specifications is made in the Construction Manager's capacity as a contractor and not as a licensed design professional. If any discrepancy or inconsistency should be discovered by Construction Manager between the drawings and specifications and any law, ordinance, regulation, order or decree, Construction Manager shall immediately report the same in writing to Owner and Design Professional, who will issue such instructions as may be necessary.
- 5.4 Construction Manager shall use its best efforts to investigate the rules, codes, regulations, statutes, and all ordinances of all applicable governmental agencies having jurisdiction over the Project or the Work, and advise Design Professional and Owner of same in writing, but Construction Manager assumes no responsibility or liability for any failure of the design of the Project to comply with same. However, at no time shall the Construction Manager's efforts fall below the commonly accepted knowledge base of an experienced Florida licensed general contractor.
- 5.5 Owner shall not be liable for any costs, delays or damages which Construction Manager incurs as a result of the actions or orders of any other governmental entity or agency that are caused by Construction Manager's failure to comply with the terms of this Contract.

GC 6 STANDARDS AND CODES

- 6.1 Wherever references are made in the Contract to standards or codes in accordance with which Work is to be performed or tested, the edition or revision of the standards or codes current on the effective date of this Contract shall apply, unless otherwise expressly set forth. Unless otherwise specified, reference to such standards or codes is solely for implementation of the technical portions of such standards and codes. In case of conflict among any referenced standards and codes, or between any referenced standards and codes which are later revised during the course of construction, the Owner will determine which shall govern. Construction Manager acknowledges that compliance with code requirements represents minimum standards for construction, and is not evidence that the Work has been completed in accordance with the Contract Documents.

GC 7 CODE RELATED INSPECTIONS

7.1 The Construction Manager recognizes that The City of Pompano Beach, FL Department of Planning, Zoning and Building (“PZ&B”), is a separate department within the City that is charged with the inspection of improvements to real property for code compliance. The Construction Manager agrees that it will not assert, as an Owner caused delay, or as a defense of any delay on the part of the Construction Manager, any good-faith action or series of actions on the part of PZ&B, including, but not limited to, PZ&B’s refusal to accept any portion of the Construction Manager’s Work. If it is ultimately determined by the Design Professional and Owner that such delay was not the result of Construction Manager’s failure to comply with the Contract Documents, the Construction Manager may be entitled to make a claim for extension of Contract Time only as its exclusive remedy, not damages, in accordance with the terms of the Contract.

GC 8 GOVERNING LAW

8.1 The Contract shall be governed by the laws of the State of Florida, and venue for any action shall be in Broward County, Florida.

GC 9 RIGHTS AND REMEDIES

9.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

GC 10 COMMERCIAL ACTIVITIES

10.1 Construction Manager shall not establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on lands owned or controlled by Owner. Construction Manager shall not allow its employees to engage in any commercial activities on the site.

GC 11 COOPERATION WITH OTHERS

11.1 Owner and other contractors may be working at the site during the performance of this Contract. Construction Manager shall fully cooperate with the Owner, Owner’s designated Representative, and other separate contractors to avoid any delay or hindrance of their work. Owner may require that certain facilities be used concurrently by Construction Manager and other parties, and Construction Manager shall comply with such requirements. The Owner shall provide for coordination of the activities of the Owner’s own forces, and of each separate contractor, with the Work of the Construction Manager, who shall cooperate and participate with other separate contractors and the Owner in reviewing their construction schedules.

11.2 If any part of the Construction Manager's work depends on proper execution or results from any work performed by the Owner or any separate contractor, the Construction Manager shall, prior to proceeding with the Work, promptly report to the Owner any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Construction Manager to report such discrepancies or defects shall constitute an acceptance of the Owner's separate contractor's work as fit and proper to receive Construction Manager's Work, except as to defects which are not then reasonably discoverable or which may subsequently become apparent in such work performed by others. Any costs caused by defective or ill-timed work of others shall be borne by the Construction Manager, unless Construction Manager gives written notice to Owner, if reasonably possible, prior to proceeding with the Work and in any event within three (3) days of commencement of Work. In no event shall Owner be liable to the Construction Manager for delay damages, however, as provided for in the Contract Documents. If Owner awards separate contracts, or if the Owner's forces are to perform construction or operations related to the Project, but for which Construction Manager's Work is not dependent, Owner and Construction manager shall coordinate that Work with the work of the Construction Manager. Any delays caused thereby to Construction Manager that demonstrably affect the critical path shall entitle Construction Manager to an extension of time and additional compensation in accordance with provisions set forth elsewhere in the Contract Documents.

GC 12 FORMS AND DOCUMENTS

12.1 The below listed documents are to be used by the Construction Manager and Owner during the administration of this Contract. Additional administrative forms may supplement this list upon written notice by the Owner (or Owner's Project representative). Owner reserves the right to modify these forms as it deems necessary. Construction Manager shall maintain logs for Items A-K and provide to Owner monthly.

- A. Request for Information
- B. Field Instruction
- C. Field Bulletin
- D. Construction Change Proposal
- E. Change Order
- F. Construction Change Directive
- G. Submittal Transmittal
- H. Deficiency Report
- I. Non-Conformance Report
- J. Construction Manager's Daily Report
- K. Substitution Report

12.2 Examples of the above listed forms are attached as Appendix "A."

GC 13 PUBLIC RECORDS

- 13.1 Pursuant to the provisions of §119.0701, F.S., all records maintained by Construction Manager with respect to this Project are considered public records subject to inspection as provided for in Chapter 119, F.S.

GC 14 TAXES

- 14.1 Construction Manager shall pay all taxes, levies, duties and assessments of every nature which may be applicable to any Work under this Contract. The Contract Sum and any agreed variations thereof shall include all taxes imposed by law. Construction Manager shall make any and all payroll deductions required by law. Construction Manager herein indemnifies and holds the Owner harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

GC 15 FEES

- 15.1 Owner will be responsible for the following fees associated with this Project: utility connection fees, utility installation fees (including FPL, FPU, AT&T, and Comcast), and water meter charges except for fees/permits associated with Construction Manager mobilization which have not been waived by Owner. Construction Manager shall advise Owner ten (10) days in advance of permit application with any fee amount required. Water and/or sanitary sewer service capacity charges will also be paid directly by the Owner. There are no impact fees pursuant to Palm Beach County's Impact Fee Ordinance associated with this Project.

GC 16 UTILITIES

- 16.1 Construction Manager shall provide and maintain all utilities in work areas to meet the requirements of the Contract. Such utilities shall be furnished by the Construction Manager and shall include, but not be limited to, the following:
- A. Public telephone service for the Construction Manager's use.
 - B. Construction power as required at each point of construction.
 - C. Water as required throughout the construction.
- 16.2 Prior to final acceptance of the Work, the Construction Manager shall, at its expense, satisfactorily remove and dispose of all temporary utilities developed to meet the requirements of the Contract. The Owner will assume the utility costs directly related to its usage of areas in which the Work has been certified as Substantially Complete.

GC 17 SUCCESSORS, ASSIGNS AND ASSIGNMENT

- 17.1 The Owner and the Construction Manager each binds itself, its officers, directors, qualifying agents, partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other

party in respect to all covenants, agreements and obligations contained in the Contract. Construction Manager shall not assign, transfer, convey or otherwise hypothecate the Contract or its right, title or interest in or to the same or any part thereof, or allow legal action to be brought in its name for the benefit of others, without previous written consent of the Owner, and concurred with by the Construction Manager's Surety. Construction Manager acknowledges that the City has entered into this Contract with Construction Manager after a comprehensive competitive award process, and evaluation of Construction Manager's particular qualifications and skills to perform the Work. Therefore, Construction Manager agrees that the City may withhold the consent to assignment referred to herein for any reason the City deems appropriate, in its sole and exclusive discretion.

GC 18 EXAMINATION OF CONSTRUCTION MANAGER'S BOOKS AND RECORDS

18.1 The Owner, or the Owner's auditors, shall have access to, and the right to examine, audit, download and copy electronic media, photocopy, transcribe, and photograph, any and all of Construction Manager's accounting records, supporting documentation, correspondence, subcontracts, purchase orders, and other documentation relating to this Contract, at any time during regular business hours, both throughout the performance of the Work, and for a period of four (4) years after final payment for the Work.

GC 19 COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS

- 19.1 The Construction Manager represents that the Construction Manager, its Subcontractors, material and equipment suppliers have carefully and diligently compared Phasing, Demolition, Landscaping, Design Professional, Structural, Electrical, Underground, Civil and Site Drawings and Specifications, and have compared and reviewed all general and specific details on the Drawings. Based thereon, Construction Manager represents that all conflicts, discrepancies, errors, omissions, and constructability issues that are within the commonly accepted knowledge base of a licensed general contractor with expertise in streetscape and related infrastructure improvements, have been clarified during the performance of the Pre-Con Agreement, and are included in the GMP. Notwithstanding anything contained in this Contract to the contrary, Construction Manager shall not be liable to the Owner for damages or costs resulting from errors, omissions, or inconsistencies in the Contract Documents, or for differences between field conditions and the Contract Documents, unless the Construction Manager recognized, or in the exercise of its due diligence, should have recognized the issue and knowingly failed to report it to the Owner. Construction Manager shall have the right to rely on the completeness and accuracy of written information, Drawings, and specifications provided by the Owner, Design Professional, or any other consultant of either, except if Owner requires full field verification by Construction Manager.
- 19.2 Construction Manager represents that the GMP embodies the total cost for a complete and functioning Project. The Construction Manager's review and comparison of all documents and things set forth in GC 19.1 above has taken into consideration the total

and complete functioning of all systems as provided, and as are reasonably inferable from the Drawings and Specifications.

GC 20 PERMIT DRAWINGS AND SPECIFICATIONS

- 20.1 The Construction Manager shall provide the Owner with two (2) complete sets of the permitted drawings within five (5) days of issuance. If the permitted set of Drawings change the scope of the Work to be performed, the Construction Manager shall notify the Owner and Design Professional, in writing, within ten (10) days after Construction Manager's receipt of the permitted Drawings, and such notification shall contain a written description of the change(s), and the estimated cost and time associated therewith, if any.
- 20.2 The Construction Manager shall perform work only in accordance with the permitted drawings, and any subsequent revisions thereto.

GC 21 CONTRACT INTERPRETATION

- 21.1 All claims of Construction Manager, and all questions the Construction Manager may have concerning interpretation or clarification of this Contract or its acceptable fulfillment shall be submitted immediately, in writing, to Owner for resolution. Owner, or its representatives, will render its determination concerning such resolution within an appropriate period, not to exceed five (5) days, unless additional time is needed due to the novelty or complexity of the interpretation or clarification requested, which determination shall be considered final and conclusive unless Construction Manager files a timely written protest pursuant to GC 22 "Disputes." The Construction Manager's written protest shall state clearly and in detail the basis thereof, and the relief it seeks, if any. Owner will consider Construction Manager's protest, and render its decision thereon within five (5) calendar days. If Construction Manager does not agree with the Owner's decision, the Construction Manager shall immediately deliver written notice to that effect to the Owner. If questions of interpretation are not responded to by the Design Professional or Owner within the time frame above, and in a manner so as not to impede the natural progress of the Work as scheduled, and such delay impacts the critical path of the Work, Construction Manager shall be entitled to adjustment in the performance time as its exclusive remedy.
- 21.2 Construction Manager is solely responsible for requesting instructions or interpretations, and is solely liable for any cost and/or expenses arising from its failure to do so. Construction Manager's failure to protest Owner's determinations, instructions, clarifications or decisions within five (5) calendar days after receipt thereof shall constitute a waiver by Construction Manager of all its rights to further protest, judicially or otherwise.

GC 22 DISPUTES-WAIVER OF JURY TRIAL

- 22.1 Any and all disputes arising out of or in connection with this Contract shall be resolved through good faith efforts upon the part of Construction Manager and Owner, or its representatives. At all times, Construction Manager shall carry on the Work and maintain its progress schedule in accordance with the requirements of the Contract and the determination of the Owner or its representatives, pending resolution of any dispute. Any dispute that is not disposed of by mutual agreement shall be decided by the Owner or its representatives, who shall reduce such decision to writing. The decision of the Owner or its representatives shall be final and conclusive. Construction Manager's failure to protest Owner's determinations, instructions, clarifications or decisions within thirty (30) calendar days after receipt thereof shall constitute a waiver by Construction Manager of all its rights to further protest, judicially or otherwise.
- 22.2 The Owner and Construction Manager hereby expressly, knowingly and intentionally waive any right they may have to a jury trial in connection with, or in respect to, any litigation or claim based on or related to this Contract, or with regard to performance of the Work, including, but without limitation, any to which the Design Professional may also be a party.

GC 23 SUSPENSION

- 23.1 Owner may, at its sole option, suspend, at any time, the performance of all or any portion of Work to be performed under the Contract. Owner will notify Construction Manager of such decision, in writing. Such notice of suspension of work may designate the amount and type of plant, labor and equipment to be committed to the Work site. During the period of suspension, Construction Manager shall use its best efforts to utilize its plant, labor and equipment in such a manner as to minimize costs associated with suspension.
- 23.1.1 Upon receipt of any such written notice, Construction Manager shall, unless the notice requires otherwise:
1. immediately discontinue work on the date and to the extent specified in the notice;
 2. place no further orders or subcontracts for material, services, or facilities with respect to suspended work other than to the extent required in the notice;
 3. promptly make every reasonable effort to obtain suspension, upon terms satisfactory to Owner, of all orders, subcontracts and rental agreements to the extent they relate to performance of work suspended;
 4. continue to protect and maintain the Work including those portions on which work has been suspended, and
 5. take any other reasonable steps to minimize costs associated with such suspension.

23.1.2 In addition to all amounts that would otherwise be due for Work performed prior to the suspension, as compensation for such suspension, Construction Manager will be reimbursed for the following verifiable costs (without profit) and without duplication of any item, to the extent that such costs directly result from such suspension of work:

1. A standby charge to be paid to Construction Manager during the period of suspension of work which standby charge shall be sufficient to compensate Construction Manager for keeping, to the extent required in the notice, its organization and equipment committed to the Work in a standby status;
2. All reasonable costs associated with mobilization and demobilization of Construction Manager's plant, forces and equipment;
3. An equitable amount to reimburse Construction Manager for the cost of maintaining and protecting that portion of the Work upon which work has been suspended; and
4. If as a result of any such suspension of Work the cost to Construction Manager of subsequently performing Work is increased or decreased, an equitable adjustment will be made in the GMP.

23.2 In no event shall the Construction Manager be entitled to assert a claim for home office overhead in accordance with the Eichleay Formula, or otherwise, in the event of an Owner suspension. Upon receipt of notice to resume suspended work, Construction Manager shall immediately resume performance of the suspended work to the extent required in the notice. Any claim on the part of Construction Manager for time and/or compensation arising from suspension shall be made within twenty-one (21) calendar days after receipt of notice to resume work and Construction Manager shall submit for review a revised construction schedule. No adjustment shall be made for any suspension to the extent that performance would have been suspended, delayed, or interrupted by any Construction Manager's non-compliance with the requirements of this Contract.

GC 24 DECLARATION OF DEFAULT

24.1 The failure of the Construction Manager a) to supply enough properly skilled workers or materials, or b) its failure to make prompt payments to subcontractors, or for materials or labor, or c) to obey laws, ordinances, rules, regulations or orders of public agencies having jurisdiction, or d) to comply in any way with the Contract Documents, shall be sufficient grounds for the Owner to find the Construction Manager in material default, and that sufficient cause exists to terminate the Contract for cause, and to withhold payment or any part thereof until the cause or causes giving rise to the default has/have been eliminated by the Construction Manager and approved by the Owner. If a finding of default is made by the Owner, the Construction Manager and its Surety shall remain responsible for performance of the requirements of the Contract Documents unless and until the Owner terminates the Contract. Upon a finding of default, the Owner shall set a reasonable time, but in no event in excess of seven (7) calendar days after written notice from Owner detailing the default, within which the Construction Manager and its Surety

shall eliminate the cause or causes of default. When the basis for finding of default no longer exists, the Owner shall notify the Construction Manager and its Surety, in writing, that the default has been corrected, and that the Construction Manager is no longer in default. If the Construction Manager fails to correct the default within the time allowed, the Owner, without further notice to Construction Manager or its Surety, may immediately terminate the Contract and the employment of the Construction Manager, without otherwise waiving its rights against the Construction Manager or its Surety. To the extent that the time limits herein and in GC 25 conflict with those set forth in the Performance Bond, the time limits in GC 24 and GC 25 shall take precedence.

GC 25 TERMINATION FOR DEFAULT

25.1 Notwithstanding any other provisions of this Contract, Construction Manager shall be considered in default of its contractual obligation under this Contract if the:

a. Construction Manager fails or refuses to prosecute the Work or any severable part, with the diligence that will insure its completion within the time specified in this Contract;

b. Construction Manager fails or refuses to prosecute the Work on any severable part, with the diligence that will insure its completion within the time specified in construction schedules and related milestones issued in conjunction with this Contract;

c. Construction Manager fails to complete the Work within the time specified in this Contract;

d. Abandons or refuses to proceed with any or all Work, including modifications directed by Owner pursuant to change directives issued under the Contract;

e. Construction Manager fails to provide the materials or perform the services required of the Construction Manager under this Contract within the time specified in this Contract;

f. Construction Manager fails or refuses to provide sufficient, properly skilled, workmen or tradesmen;

g. Construction Manager refuses or fails to supply materials, equipment or services meeting the requirements of this Contract;

h. Construction Manager fails to make payments for materials, labor or services to subcontractors, sub-subcontractors, suppliers or materialmen of any tier in accordance with such agreements that may exist among them;

i. Construction Manager violates laws, ordinances, rules, regulations of any governmental authority having jurisdiction;

j. Construction Manager materially breaches any of the provisions of this Contract.

25.2 If Construction Manager or its Surety(ies) do(es) not cure such failure within seven (7) calendar days from receipt of notification, or sooner if consideration of safety to persons is involved, or if Construction Manager or its Surety(ies) fails to provide satisfactory evidence that such default will be corrected, Owner may, without further notice to Construction Manager, terminate in whole or in part Construction Manager's right to proceed with work by written notice and prosecute the Work to completion by contract or by any other method deemed expedient. Owner may take possession of and utilize any materials, plant, tools, equipment, and property of any kind furnished by Construction Manager and necessary to complete the Work.

25.3 Construction Manager, and its sureties, shall be liable, jointly and severally, to Owner for all costs in excess of the Contract price for such terminated work reasonably and necessarily incurred in the completion of the Work, as adjusted by Change Orders, if any, including costs of administration of any contract awarded to others for completion, design professional fees, plus Liquidated Damages.

25.4 Upon termination for default, Construction Manager shall:

- A. immediately discontinue work on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of work terminated;
- B. inventory, maintain and turn over to Owner all materials, plant, tools, equipment, and property furnished by Construction Manager or provided by Owner for performance of work;
- C. promptly obtain cancellation upon terms satisfactory to Owner of all purchase orders, subcontracts, rentals, or any other agreements existing for performance of the terminated work or assign those agreements to Owner as directed;
- D. cooperate with Owner in the transfer of information and disposition of work in progress so as to mitigate damages;
- E. comply with other reasonable requests from Owner regarding the terminated work; and
- F. continue to perform in accordance with all of the terms and conditions of the Contract such portion of work that is not terminated.

- 25.6 If, upon termination pursuant to this GC 25, it is determined for any reason that Construction Manager was not in default, the rights and obligations of the parties shall be the same as if the default termination had been made pursuant to GC 26, "TERMINATION FOR CONVENIENCE."

GC 26 TERMINATION FOR CONVENIENCE

26.1 Owner may, at its option and convenience, terminate the Contract, in whole or in part, at any time by written notice thereof to Construction Manager, whether or not Construction Manager is in default. Upon any such termination, Construction Manager hereby waives any claims for damages from the termination, including, without limiting the generality thereof, loss of anticipated profits on Work not performed on account thereof, home office overhead, lost bonding capacity, and consequential damages. As the sole right and remedy of Construction Manager, Owner shall pay Construction Manager in accordance with Subparagraphs below; provided, however, that those provisions of the Contract, which by their very nature survive final acceptance under the Contract, shall remain in full force and effect after such termination .

- A. Upon receipt of any such notice, Construction Manager and its Surety shall, unless the notice requires otherwise:
1. Immediately discontinue work on the date and to the extent specified in the notice;
 2. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the Contract that is not terminated;
 3. Promptly make every reasonable effort to obtain cancellation upon terms satisfactory to Owner of all orders and subcontracts to the extent they relate to the performance of work terminated;
 4. If requested by the Owner in writing, assign to the Owner, all right, title and interest of the Construction Manager under the subcontracts terminated. Such Assignment shall not include assumption of Construction Manager's obligations or liabilities under any subcontract. The Owner shall have the right (but not the obligation) to assume the Construction Manager's obligations under any subcontracts assigned. Neither this paragraph or any assignment of subcontracts, shall constitute the Owner's assumption of Construction Manager's or other obligations under any such subcontract absent a written document executed by the Owner and the subcontractor in which the Owner expressly acknowledges an assumption of Construction Manager's obligations, and then only to the extent specified. In no event will the Owner assume any obligation of the Construction Manager under the subcontracts that arise out of or relate to Construction Manager's default prior to such assignment;

5. The Construction Manager shall include in all subcontracts, equipment leases and purchase orders, a provision requiring the subcontractor, equipment lessor, or supplier, to consent to the assignment of their subcontract or purchase order to the Owner;
 6. Assist Owner, as specifically requested in writing, in the maintenance, protection and disposition of property acquired by Owner under the Contract; and,
 7. Complete performance of any work that is not terminated.
- B. Upon any such termination, Owner will pay to Construction Manager an amount determined in accordance with the following (without duplication of any item):
1. All amounts due and not previously paid to Construction Manager for work completed in accordance with the Contract prior to such notice, and for work thereafter completed as specified in such notice.
 2. The reasonable cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in Subparagraph A.3. above.
 3. The verifiable costs incurred pursuant to Subparagraph A.4 above.
 4. Any other reasonable costs which can be verified to be incidental to such termination of Work, including demobilization costs.
- 26.2 In the case of such termination for Owner's convenience, Construction Manager shall be entitled to receive payment for Work actually executed in accordance with GC 25.B.1 above, and verifiable costs incurred by reason of such termination, along with an amount not to exceed ten (10) percent for profit and overhead on such verifiable costs incurred.
- 26.3 The Owner's Termination for Convenience shall be without waiver or prejudice to, all of the Owner's claims, rights and remedies arising out of or related to any default, breach of contract, damages or other claims the Owner may have against Construction Manager, or Construction Manager's subcontractors, material suppliers of any tier, or any other person or entity at the time of termination, or arising thereafter.
- 26.3.1 Construction Manager hereby acknowledges acceptance of the risk and cost of the foregoing, and acknowledges and agrees to the foregoing limitation on Construction Manager's claims or damages arising out of, or relating to, a termination for convenience by the Owner.
- 26.4 Construction Manager shall submit within 30 days after receipt of notice of Termination, for Convenience, a written proposal for payment, including all incurred costs and other entitlements described herein. Owner shall review, analyze, and verify such proposal, and negotiate an equitable adjustment, and the Contract shall be amended in writing accordingly.

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GC 27 EXTENSION OF TIME/NO DAMAGES FOR DELAY

- 27.1 If the Construction Manager is delayed at any time in the progress of the Work by a written directive issued by the Owner or Design Professional, or any act, omission or neglect of the Owner or the Design Professional, or by a separate contractor employed by the Owner, or by any changes ordered in the Work, , labor disputes, unusual delay in deliveries, or other causes beyond Construction Manager's control, including discovery of unforeseen site conditions, and such delay extends the completion date, the date of Substantial Completion shall be extended by Change Order for such reasonable time as the Owner may determine.
- 27.2 The Construction Manager shall not be entitled to, and hereby expressly waives, any and all damages which it may suffer by reason of those instances set forth in Article 27.1 above (collectively "Noncompensable Events"), and further, hereby waives all damages which it may suffer by reason of these Noncompensable Events, including, but not limited to lost profits, overhead (whether determined by the Eichleay Formula or otherwise), home office expense, increased insurance costs, loss of bonding capacity or lost profits on alternate or unperformed contracts, supervision, material and labor escalation costs, and any other direct or consequential damages. Construction Manager hereby affirms that the extension of time granted herein is the Construction Manager's sole and exclusive remedy.
- 27.3 The Construction Manager must request the extension of time, in writing, and must provide the following information within the time periods stated hereafter. Failure to submit such information and in compliance with the time requirements hereinafter stated, shall constitute a waiver by the Construction Manager and a denial of the claim for extension of time:
- a. Nature of the delay or change in the Work;
 - b. Dates of commencement/cessation of the delay or change in the Work;
 - c. Activities on the progress schedule current as of the time of the delay or change in the work affected by the delay or change in the Work;
 - d. Identification and demonstration that the delay or change in work impacts on the CRITICAL PATH (submittal of an updated CPM schedule) [For Horizontal Construction only: Construction Manager may substitute a Bar Chart, so long as the Bar Chart software provides the functional equivalent, to the extent possible, of the CPM provisions set forth in this Contract and its General Conditions. The Bar Chart format must be acceptable to the Owner. This provision shall govern any provisions hereafter dealing with CPM Scheduling.];
 - e. Identification of the source of delay or change in the Work;
 - f. Anticipated impact extent of the delay or change in the Work; and
 - g. Recommended action to minimize the delay.

- 27.4 The Construction Manager acknowledges and agrees that the evaluation of time extensions will be based upon the following criteria:
1. All schedule updates, submittals and other requirements of this General Condition have been met;
 2. The delay must be due to the Owners or Design Professional's change in the Work,, an Act of God, or for other causes set forth in GC 27.1;
 3. The delay which is the subject of the time extension must result in a demonstrable impact to the Critical Path;
 4. The schedule must clearly display that the Construction Manager has used, in full, all the float time, except for Owner initiated changes. Float time is not for the exclusive use of either the Construction Manager or the Owner; and
 5. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be submitted within thirty (30) days of occurrence and shall be documented by data substantiating that weather conditions were abnormal for the period of time required for completion of the Work, could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.
- 27.5 The Owner's determination as to the total number of days of Contract extension will be based upon the computer generated CPM construction schedule current at the time of the delay event, as revised in connection with the foregoing criteria.
- 27.6 The Construction Manager shall not be entitled to any extension of time for delays resulting from any cause unless it shall have notified the Owner in writing within twenty-four (24) hours after the commencement of such delay, or ninety-six (96) hours of knowledge of a potential delay, whichever is earlier. In any event, within seven (7) days of commencement of the delay, the Construction Manager shall provide in writing the information stated above.
- 27.5 The term "Force Majeure Event" means any action or event which occurs (i) outside Owner's and Construction Manager's reasonable control; and (ii) without the fault or negligence of either party, specifically, Acts of God, terrorism, war, riots, hurricanes, unusually severe weather (as substantiated by NOAA reports nearest to the jobsite location), floods, fires, civil disturbances, governmental restrictions, epidemics, explosions, acts of the public enemy, the enactment, imposition or modification of any applicable law which occurs after the date of this Agreement and which prohibits or materially interferes with the development or construction of the Project Improvements. Notwithstanding anything to the contrary, a "Force Majeure Event" shall not include acts, events, or other matters arising out of violations of any environmental laws with respect to or the presence or discharge of any hazardous substances on the lands comprising the Project. In the event of a Force

Majeure Event which impacts the critical path, Construction Manager shall only be entitled to an extension of time and shall not be entitled to any compensation or any increase in the GMP, except to the extent that a Force Majeure Event causes damage to Work in place or causes the Work to be shut down for more than thirty (30) days. Such costs for damage to Work in place may be recoverable by insurance that is applicable to the Project. Notwithstanding, however, if such costs to correct the Work damaged by a Force Majeure Event or for shut down for more than thirty (30) days are not covered by insurance, then Construction Manager shall be entitled to recover only its actual direct plus reasonable General Conditions costs associated to correct the Work or to its unavoidable costs for shut down for more than thirty (30) days but no other compensation, and without fee markup. No recovery on any basis shall take place unless the Construction Manager has satisfied all of the following conditions:

- (i) Construction Manager has properly documented all such direct costs for the Owner and any insurance carrier; and
- (ii) Construction Manager shall have used reasonable and diligent efforts to avoid and minimize delays, regardless of cause; and
- (iii) Construction Manager shall cooperate with Owner to mitigate the impact of any delays encountered by Construction Manager that would entitle it to such extension of time, even if its performance is unreasonably delayed by the Owner.

27.6 For all Changes in the Work in which the Construction Manager claims entitlement to a time extension, the Construction Manager shall provide to the Owner the same information as required above within seven (7) days of the issuance of the request for Change Order or direction to change the scope of the Work. Construction Manager's failure to provide such information shall constitute a waiver by the Construction Manager, and a denial of any time extension for that change in the Work. Further, upon execution by the Owner and Construction Manager of any Change Order where no time extension has been requested or granted, that Change Order shall constitute a complete waiver of all claims for damages or for any extension of time related to that work, or any work impacted by the change.

GC 28 WARRANTY

28.1 Unless otherwise provided elsewhere in the Contract, all materials and equipment incorporated into any Work covered by the Contract shall be new and, where not specified, of the highest grade and quality for their intended use, and all workmanship shall be in accordance with construction practices acceptable to Owner. Unless otherwise provided in the Contract, Construction Manager warrants all equipment, materials, and labor furnished or performed under this Contract, against defects in design, materials and workmanship, for a period of twelve (12) months (unless longer guarantees or warranties are provided for elsewhere in the Contract in which case the longer periods of time shall prevail) from and after Substantial Completion of the Work under the Contract, regardless of whether the same were furnished or performed by Construction Manager or by any of its subcontractors of any tier. Even in the event that the Owner assumes partial

utilization of portions of the Work prior to completion of all Work, the Warranties for that portion shall also extend for twelve (12) months from Substantial Completion of the entire Work, so that all warranties are running concurrently upon Substantial Completion of the total Project.

- 28.2 Upon receipt of written notice from Owner of any defect in any such equipment, materials, or labor during the applicable warranty period due to defective design, materials or workmanship, the affected item or parts thereof shall be redesigned, repaired or replaced by Construction Manager at a time and in a manner acceptable to Owner in compliance with the Contract Documents, at its expense.
- 28.3 Construction Manager warrants such redesigned, repaired or replaced Work against defective design, materials and workmanship for a period of twelve (12) months from and after the date of acceptance thereof. Should Construction Manager fail to promptly make the necessary redesign, repair, replacement and tests, after written notice from Owner specifying the defects, Owner may perform or cause to be performed the same, at Construction Manager's sole cost and expense.
- 28.4 Construction Manager shall perform such tests as Owner may require to verify that such redesign, repairs and replacements comply with the requirements of this Contract. All costs incidental to such redesign, repair, replacement, and testing, including the removal, replacement, and reinstallation of equipment and materials necessary to gain access, shall be borne exclusively by Construction Manager. However, if such testing determines that the Work is not defective, than Owner shall compensate Construction Manager for such costs of testing and any affects on previously completed work.
- 28.5 Construction Manager and its Surety shall be liable for the satisfaction and full performance of the warranties as set forth herein, and any damage to other parts of the Work caused by the Construction Manager's failure to perform pursuant to this GC 28.
- 28.6 The Construction Manager shall commence Work to remedy or replace the defective, deficient Work within five (5) calendar days after receiving written (including transmittals by FAX) notice from the Owner, subject to allowance for long-lead items. If the Construction Manager fails to remedy or remove or replace that Work or material which has been found to be defective, or reasonably commence corrective action, then the Owner may remedy or replace the defective or deficient Work at the Construction Manager's expense; provided, however, all repairs to natural gas, telephone, radio, computer security, water, electric, air conditioning services and all emergency services shall be commenced within twelve (12) hours of notification, or by 7:00 a.m. whichever is earlier, and Construction Manager shall complete the repairs in an expeditious manner befitting the nature of the deficiency. The Construction Manager shall immediately pay the expenses incurred by the Owner for remedying the defects. If the Owner is not paid within ten (10) calendar days, the Owner may pursue any and all legal remedies it may have against the Construction Manager and its Surety.

28.7 The Construction Manager is required to provide a designated telephone number for warranty related emergencies which occur outside the normal workday. The Construction Manager is solely responsible for ensuring that all warranty Work is completed in the manner described above. If the Owner agrees, in writing, a subcontractor may be the point of contact for notices regarding warranty items, but such agreement shall not absolve the Construction Manager of its responsibility.

GC 29 PATENT INDEMNITY

29.1 Construction Manager hereby indemnifies and shall defend and hold Owner, Design Professional, and its representatives harmless from and against all claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by Owner, Design Professional and its representatives, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent and arising out of the use of the equipment or materials furnished under the Contract by Construction Manager, or out of the processes or actions employed by, or on behalf of Construction Manager in connection with the performance of the Contract, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Design Professional. However, if the Construction Manager has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Construction Manager shall be responsible for such loss unless such information is promptly furnished to the Design Professional.

29.2 Construction Manager shall, at its sole expense, promptly defend against any such claim or action for which it is responsible under the prior paragraph unless directed otherwise by Owner or its representatives; provided that Owner or its representatives shall have notified Construction Manager upon becoming aware of such claims or actions, and provided further that Construction Manager's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by Owner or representatives. Construction Manager shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials, or processes, or to modify such infringing equipment, materials and processes so they become non-infringing, or obtain the necessary licenses to use the infringing equipment, material or processes, provided that such substituted and modified equipment, materials and processes shall meet all the requirements and be subject to all the provisions of this Contract.

GC 30 INDEMNITY

30.1 To the fullest extent provided for by law, Construction Manager agrees to protect, defend, reimburse, indemnify and hold the Owner, its agents, employees, elected officers and representatives and each of them, (hereinafter collectively and for the purposes of this paragraph, referred to as "Owner"), free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including reasonable

attorneys' fees, and causes of action of every kind and character against Owner by reason of any damage to property or the environment, economic losses, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring an interest hereunder, any agent or employee of any party hereto or of any party acquiring an interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or in incident to or in connection with Construction Manager's performance under this Contract, the condition of the premises, Construction Manager's acts, or omissions or operations hereunder, or the performance, non-performance or purported performance of the Construction Manager of any breach of the terms of this Contract; provided however, and without waiving the provisions of §768.28, F.S., that Construction Manager shall not be responsible to Owner for damages resulting out of bodily injury or damages to property which Construction Manager can establish as being attributable to the negligence of Owner, its respective agents, servants, employees, officers, or others for whom Owner is responsible, including separate contractors. The indemnification shall not include the indemnity/defense of claims or damages resulting from gross negligence or willful, wanton, or intentional misconduct of Owner or its respective officers, directors, agents, or employees, or for statutory violation or punitive damages, except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Construction Manager, its agents, employees, or any of the Subcontractors, their agents, or of any tier or their respective employees. The parties acknowledge the requirements of Florida Statute § 725.06 have been fulfilled and apply to this GC 30.1.

- 30.2 Construction Manager further agrees to hold harmless and indemnify Owner for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from Construction Manager's activities on the Project, whether or not Construction Manager was negligent or even knowledgeable of any events precipitating a claim or arising as a result of any situation involving Construction Manager's activities.
- 30.3 Said indemnification by Construction Manager shall be extended to include all deliverers, suppliers, furnishers of material or anyone acting for, on behalf of, or at the request of Construction Manager. Construction Manager recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges consideration of one-hundred dollars (\$100.00) therefore, which amount is incorporated into the GMP, as well as such other good and valuable consideration provided by Owner in support of this indemnification in accordance with the laws of the State of Florida. This clause shall survive termination of this Contract.

GC 31 INSURANCE

- 31.1 Unless otherwise specified in this Contract, Construction Manager shall, at its sole expense, maintain in effect at all times during the performance of Work hereunder insurance coverage with limits not less than those set forth in Exhibit "B" and "J" and with insurers and under forms of policies acceptable to Owner, copies of which shall be furnished to Owner upon its request. Construction Manager shall deliver to Owner

Certificates of Insurance, evidencing that such policies are in full force and effect, no later than ten (10) days after execution of the Contract by Owner and prior to commencing Work on the Project site. Such Certificates shall adhere to the conditions set forth in the table below.

- 31.2 Construction Manager shall purchase and maintain during the life of this Contract Workers Compensation insurance, including Employers Liability, to comply with all applicable State and Federal laws covering all of its employees on the Work site, and in accordance with all of the limits, terms and conditions set forth in Exhibits "B" and "J." If any Work is sublet, Construction Manager shall require all subcontractors to similarly comply with this requirement, unless such subcontractors' employees are covered by Construction Manager's Workers Compensation insurance policy.
- 31.3 Construction Manager shall purchase and maintain during the life of this Contract Comprehensive or Commercial General Liability insurance in accordance with all of the limits, terms and conditions set forth in the table below.
- 31.4 Should any of the Work hereunder involve watercraft owned or operated by Construction Manager or any subcontractor, such shall be insured under the Comprehensive or Commercial General Liability policy, or by other such liability insurance such as Protection and Indemnity.
- 31.5 Construction Manager shall purchase and maintain during the life of this Contract Comprehensive Automobile Liability insurance covering on all owned, non-owned and hired automobiles with all of the limits, terms and conditions set forth in Exhibits "B" and "J."
- 31.6 To the extent available for some or all of the component parts of this Project, Construction Manager shall procure and maintain "all risk" Builder's Risk insurance, including, but not necessary limited to fire, flood, wind and other water damage, in accordance with all of the limits, terms and conditions set forth in Exhibit "B" and "J" unless directed by Owner, in writing.
- 31.7 Should any of the Work hereunder involve the hauling and/or rigging of property in excess of \$500,000.00 or \$250,000.00 in transit, Construction Manager shall procure and maintain "all risk" Transit or Motor Truck Cargo insurance, or similar form of coverage, insuring against physical damage or loss to the property being transported, stored, moved or handled by Construction Manager or any subcontractor pursuant to the terms of this Contract, subject to the limits, terms and conditions set forth in Exhibits "B" and "J."
- 31.8 Should any of the Work hereunder involve aircraft (fixed wing or helicopter) owned or operated by Construction Manager or any subcontractor, Construction Manager shall procure and maintain Aircraft Liability insurance in accordance with the terms and conditions of the table set in Exhibits "B" and "J."

31.9 The requirements contained herein as to types and limits, as well as Owner's approval of insurance coverage to be maintained by Construction Manager are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Construction Manager under the Contract.

31.10 The Certificates of Insurance must provide clear evidence that Construction Manager's Insurance Policies contain the minimum limits of coverage and special provisions prescribed in this GC-31, in accordance with all of the limits, terms and conditions set forth in the table below. All policies must be endorsed so that thirty (30) days notification of cancellation and any material change(s) in coverage shall be provided to the City.. Insurance shall remain in force until all Work required to be performed under the terms of this Contract are satisfactorily completed as evidenced by the formal acceptance by the City.. In the event that the insurance certificates provided hereunder indicates that the insurance shall terminate and lapse during the period of this Contract then, in that event, the Construction Manager shall furnish, at least thirty (30) days prior to the expiration of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Contract and any extension thereunder is in effect. Construction Manager shall not continue to work pursuant to this Contract unless all required insurance remains in effect. Owner may withhold payment to the Construction Manager until coverage is reinstated.

31.11 The Construction Manager shall deliver the original of the initial Certificates of Insurance and five (5) copies to:

The City of Pompano Beach, Florida

Pompano Beach, FL

Attn.: Dennis Beach, City Manager

31.12 Notices, in original and five (5) copies, of cancellation, terminations and alterations of such policies shall be delivered to:

The City of Pompano Beach, Florida

100 West Atlantic Blvd.

Pompano Beach, FL 33060

Attn.: Dennis Beach, City Manager

GC 32 SITE CONDITIONS

32.1 Construction Manager has the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access; staging, parking, disposal, handling and storage of materials; availability, quantity and quality of labor, water and electric power; availability and condition of roads; climatic conditions, location of underground utilities as depicted on Contract documents, and

through verification with local utility companies and the Owner, physical conditions of existing construction, topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials to be encountered; the nature of the ground water conditions; equipment and facilities needed preliminary to and during performance of the Contract; and all other matters which would be reasonably known to a licensed general contractor with expertise in overhead utility undergrounding and related infrastructure construction as in any way affecting performance of the Contract, or the cost associated with such performance. The failure of Construction Manager to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully and timely performing the Contract.

32.2 The Owner shall not be responsible for any conclusions or interpretations made by the Construction Manager based on the information made available by the Owner. The Town shall not be responsible for any understanding reached or representation made concerning conditions which can affect the Work by any of Construction Manager's officers, employees, agents, subcontractors, material men, or suppliers before execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

32.3 The provisions of GC 32.1 shall be deemed a complete waiver by the Construction Manager of claims for equitable adjustment in Contract Time or Price, or both, unless due to (1) subsurface or concealed conditions which differ materially from those indicated on the Contract Documents, or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction of the character provided in the Contract Documents; provided however, that claims under this GC 32.3 shall be denied in the event that the conditions were reasonably inferable from activities, testing and investigations performed in connection with the Pre-Con Agreement, and which would otherwise provide to Construction Manager an expectation that the conditions could be similar elsewhere in the Project.

GC 33 NOT USED

GC 34 ACCESS TO WORK AREAS

34.1 Owner, Design Professional, and their duly authorized representatives and employees, and all duly authorized representatives of governmental agencies having jurisdiction over Work areas or any part thereof shall, at all reasonable times, for the purpose of determining compliance with Contract requirements and permits, have access to such areas and the premises used by Construction Manager. Construction Manager shall also arrange for Owner, Design Professional, and their said representatives and employees, to have access at all reasonable times to all places where equipment or materials are being manufactured, produced, or fabricated for use under the Contract.

34.2 Construction Manager's access to the site and storage areas shall be as shown on the plans and as designated by the Owner. Access routes may also be used by Owner's employees, the public, and other separate Owner contractors. No other access points shall be allowed unless approved by the Owner, in writing. All Construction Manager traffic authorized to enter the site shall be experienced with the route or guided by Construction Manager personnel. The Construction Manager is responsible for immediate cleanup of any debris deposited along the access route as a result of its construction traffic.

GC 35 INGRESS AND EGRESS

35.1 Construction Manager's access to the Work area will be permitted only through approaches that will be designated by Owner, and then only in such manner that Construction Manager's traffic will not interfere with Owner's operations and Merchants/Tenants adjacent to the activity area(s). Construction Manager shall, at all times, maintain reasonably free unimpeded ingress and egress at the site. Construction Manager personnel are not to enter into any areas of the jobsite other than Work areas and areas of designated access. Construction Manager shall safely maintain, at all times during the performance of the Work, both vehicular and pedestrian traffic in, around, and adjacent to the Project.

GC 36 PRECONSTRUCTION CONFERENCE

36.1 As soon as practicable after execution of this Contract, and prior to commencing any Work, a pre-construction conference will be coordinated by the Construction Manager and the Owner. In attendance at said conference will be Owner, Design Professional, and any of their representatives as may be deemed advisable. The purpose of said conference is to determine procedures related to the smooth progress of the Project, review of any items requiring clarification, maintenance of traffic, merchant and pedestrian accessibility, related safety issues, and procedures for the processing and distribution of all documents and correspondence related to the Contract, among other things.

GC 37 MEETINGS

37.1 The Construction Manager shall, at its expense, as requested by Owner, attend any and all meetings called by Owner to discuss the Work under the Contract. Such meetings shall be conducted and recorded by the Owner with typed minutes of each meeting distributed to all attendees.

GC 38 NOT USED

GC 39 DELIVERY, UNLOADING AND STORAGE

- 39.1 Construction Manager shall, at its expense, receive, unload, store in a secure place, and deliver from storage to the construction site all materials, plant and equipment required for the performance of the Contract. The storage facilities, methods of storing and security provisions shall meet Owner's approval and manufacturer's recommendations. Materials and equipment subject to degradation by outside exposure shall be stored in a weather tight enclosure.

GC 40 WORK AREA

- 40.1 All Construction Manager's Work areas on the jobsite will be assigned by Owner. Construction Manager shall confine its office, shops, storage, assembly and equipment and vehicle parking to the areas so assigned. Before commencing Work, the Construction Manager shall provide a temporary office in the vicinity of the Work, or as otherwise agreed to by the Owner, in writing, which shall have a telephone where a representative of the Construction Manager may be reached at all times during normal working hours. Should Construction Manager find it necessary or advantageous to use any additional land outside the Project site for any purpose whatever, Construction Manager shall, provide and make its own arrangements for the use of such additional land.

GC 41 PLANT, EQUIPMENT AND FACILITIES

- 41.1 Construction Manager shall provide and use on any Work only such construction plant and equipment as are capable of producing the quality and quantity of work and materials required by the Contract and within the time or times specified in the Contract. Before proceeding with any Contract Work or with erection of any facilities, including, but not limited to, temporary structures, machinery, equipment, offices and warehouses, Construction Manager shall furnish Owner such information and drawings relative to such equipment, plant facilities as Owner may request.
- 41.2 Upon written order of Owner, Construction Manager shall discontinue operation of unsatisfactory plant and equipment or facilities and shall either modify or remove the unsatisfactory items from the site.
- 41.3 Construction Manager shall not remove construction plant or equipment from the site before the Work is finally accepted without Owner's written approval. Such approval shall not be unreasonably withheld.

GC 42 CONSTRUCTION MANAGER-FURNISHED MATERIALS, EQUIPMENT AND WORKMANSHIP

- 42.1 Only new, unused items of recent manufacture, of designated quality, but in no event less than the standard quality for the improvements, free from defects, will be accepted. Rejected items shall be removed immediately from the Work and replaced with items of specified quality. Failure by Owner to order removal of rejected materials and equipment shall not relieve Construction Manager from responsibility for quality of the materials supplied nor from any other obligation under the Contract Documents.
- 42.2 Construction Manager shall continuously check Design Professionalural and structural clearances for accessibility of equipment and mechanical and electrical systems. No allowance of any kind will be made for Construction Manager's negligence to foresee means of installing equipment into position inside structures.
- 42.3 No Work defective in construction or quality, or deficient in meeting any requirement of the Contract Drawings and Specifications, will be acceptable regardless of Owner's failure to discover or to point out defects or deficiencies during construction; nor will the presence of field representatives at the Work or the satisfaction of the Work meeting applicable code requirements relieve Construction Manager from responsibility for the quality and securing progress of Work as required by the Contract Documents. The Owner shall notify the Construction Manager of defective or unacceptable Work if the Owner discovers such. Defective Work revealed within the time required by warranties (whether expressed or implied) shall be remedied in accordance with the GENERAL CONDITIONS Section entitled, WARRANTY. No payment, whether partial or final, shall be construed as an acceptance of defective Work or improper materials.
- 42.4 Construction Manager shall waive "common practice" and "common usage" as construction criteria wherever details and specifications or governing codes and ordinances require greater quantity or better quality than common practices and common usage would require. Construction Manager shall order and schedule delivery of materials in reasonable time to avoid delays in construction. Delays in delivery of equipment or material purchased by the Construction Manager or its Trade Contractors shall not be considered as a cause for an adjustment of the Contract Time or a basis for damages or compensation. The Construction Manager shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials. If an item is found to be unavailable, Construction Manager shall notify Owner immediately of recommended substitute(s) to permit Owner's selection of a suitable substitute.
- 42.5 Owner will exercise sole authority for determining conformance of workmanship, materials, equipment and systems with the requirements of the Contract. Review and approval of all items proposed by Construction Manager for incorporation into the Work will be by Owner. This function by Owner will apply both to approvals for the Contract

as initially signed, and to approvals for changes to Contract by modifications during progress of the Work. Reference to manufacturers' names, brands and models is to establish the type and quality desired. Substitutions may be permitted unless specifically noted otherwise and in accordance with GC 43 below.

- 42.6 When materials, equipment, or systems are specified by performance only, without reference to specific manufacturer's brands or models, Construction Manager shall submit its own choice for Owner's review and approval, supported by sufficient evidence of conformity with the Contract Documents.

GC 43 SUBSTITUTIONS

- 43.1 Prior to proposing any substitute item, Construction Manager shall satisfy itself that the item proposed is, in fact, equal or better to that specified, that such item will fit into the space allocated, that such item affords comparable ease of operation, maintenance and service, that the appearance, longevity and suitability for the climate are comparable, and that by reason of cost savings, reduced construction time, or similar demonstrable benefit, the substitution of such item will be in Owner's interest, and will in no way impact detrimentally upon the Project completion date and schedule.
- 43.2 The burden of proof of equality of a proposed substitution for a specified item shall be upon Construction Manager prior to Owner's decision on such substitution. Construction Manager shall support its request with sufficient test data and other means to permit Owner to make a fair and equitable decision on the merits of the proposal. Construction Manager shall submit drawings, samples, data, certificates, and additional information as may be required by the Owner for proposed substitute items as required by GC 46 CONSTRUCTION MANAGER FURNISHED DRAWINGS, DATA & SAMPLES.
- 43.3 Any item by a manufacturer other than those specified or of brand name or model number or of generic species other than those specified will be considered a substitution. Owner will be the sole judge of whether or not the substitution is equal in quality, utility and economy to that specified. Construction Manager shall allow an additional 7 days for Owner's review of substitution. All requests for substitutions with submittal data must be made at least fourteen (14) days prior to the time Construction Manager must order, purchase, or release for manufacture or fabrication. Materials and methods proposed as substitutions for specified items shall be supported by certification of their approval for use by all governmental agencies having jurisdiction over use of specific material or method. Substitutions may not be permitted in those instances where the products are designed to match artistic design, specific function or economy of maintenance. Approval of a substitution shall not relieve Construction Manager from responsibility for compliance with all requirements of the Contract. Construction Manager shall coordinate the change with all trades and bear the expense for any changes in other parts of the Work caused by any substitutions.

- 43.4 If Owner rejects Construction Manager's substitute item on the first submittal, Construction Manager may make only one additional request for substitution in the same category. On the second request, and all future requests, the Construction Manager shall be invoiced the expenses (including Owner's and Design Professionals' cost and overhead) involved in reviewing submittal data.

GC 44 EXPEDITING

- 44.1 The equipment and material furnished under this Contract may be subject to expediting by Owner, at Owner's expense. Owner shall be allowed reasonable access to the shops, factories, and other places of business of the Construction Manager and its subcontractors and suppliers, for expediting purposes. As required by Owner, Construction Manager shall supply schedules and progress reports for Owner's use in expediting and Construction Manager shall cooperate with Owner and require its subcontractors and suppliers to cooperate with Owner in such expediting. Any expediting performed by Owner shall not relieve Construction Manager of its sole and primary responsibility for timeliness of delivery of the equipment and material to be furnished under this Contract.

GC 45 FIELD LAYOUT OF WORK

- 45.1 All Work under this Contract shall be constructed in accordance with the lines and grades shown on the Contract Drawings or as approved by the Owner in writing. Elevation of existing ground, structures and appurtenances are believed to be reasonably correct but are not guaranteed to be absolute and therefore are presented only as an approximation.
- 45.2 All survey work for construction control purposes shall be made by a land surveyor registered in the State of Florida, with demonstrated experience in the Project area, and who shall be employed by the Construction Manager at Construction Manager's expense. The Construction Manager shall establish all base lines for the location of the principal component parts of the Work together with permanent benchmarks and temporary bench marks adjacent to the Work. Based upon the information provided by the Contract Drawings, the Construction Manager's surveyor shall develop and make all detail surveys necessary for construction including establishment or construction of grid coordinates as shown on the Contract Drawings, location of property boundaries, stakes for all working points, lines and elevations. Owner shall provide surveys necessary for utility easements.
- 45.3 The Construction Manager shall have the responsibility to carefully preserve all bench marks, reference points and stakes. In case of destruction thereof by the Construction Manager resulting from his negligence, or for any other reason, it shall be held liable for any expense and damage resulting therefrom and shall be responsible for any mistakes that may be caused by the unnecessary loss or disturbance of such bench marks, reference points and stakes. Existing or new control points, property markers, and monuments that will be established or are destroyed during the normal course of construction shall be re-established by the Construction Manager, and all reference ties recorded therefor shall be

not be folded, but will be transmitted in mailer rolls manufactured expressly for that purpose. The reproducible with the Owner's review comments will be returned to the Construction Manager. A reproducible copy of drawings equal to or less than 11" x 17" is not necessary, but five copies of the unfolded drawings must be transmitted to the Design Professional and Owner.

46.3.3 If drawings show variations from the Contract requirements, the Construction Manager shall describe such variations in writing, separate from the drawings, at the time of submission. If the Owner approves any such variation(s), it will issue an appropriate Contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

46.3.4 Drawings of a specific piece of equipment shall identify components with the manufacturer's part number or reference drawing clearly indicated. If reference drawing numbers are used, the review date of such drawings shall be included. Drawings shall indicate design dimensions, maximum and minimum allowable operating tolerances on all major wear fits, i.e. - rotating, reciprocating or intermittent sliding fits between shafts or stems and seals, guides and pivot pins. The sequence of submission of all drawings shall be such that all information is available for reviewing each drawing when it is received.

46.3.5 All drawings submitted by the Construction Manager shall be certified and dated by the Construction Manager on the face of each drawing to be correct, accurate and shall be furnished in accordance with requirements of the Specifications. The Design Professional and Owner will conduct a review of Construction Manager's drawings and a drawing marked with one of the following review comments will be returned to the Construction Manager:

1. No exceptions taken.
2. Make corrections noted. No resubmittal.
3. Not required for review.

46.3.6 The Construction Manager must incorporate the changes indicated, resubmit and obtain a Code 1 or 2 notation before release for shipment can be granted.

46.4 Samples.

46.4.1 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. Samples of all items of related systems (i.e., adjacent surfaces requiring similar colors but manufactured of different materials) must be submitted in the same time frame before the approval process can begin.

46.4.2 Where samples are required, they shall be submitted by and at the expense of the Construction Manager. Such submittal shall be made not less than thirty five (35)

calendar days prior to the time that the materials represented by such samples need to be ordered for incorporation into any Work in accordance with the schedule. Allow at least five (5) calendar days for Owner's review. Materials represented by such samples shall not be manufactured, delivered to the site or incorporated into any Work without such review. Each sample shall bear a label showing the Construction Manager's name, date submitted, Project name, name of the item, manufacturer's name, brand name, model number, supplier's name, and reference to the appropriate drawing, Technical Specification section and paragraph number, all as applicable.

46.4.3 Samples that have been reviewed may, at Design Professional's and Owner's option, be returned to the Construction Manager for incorporation into the Work.

46.5 Catalogues, Data and Certificates.

46.5.1 Where catalogues, data or certificates are required, five (5) copies of each shall be submitted by and at the expense of the Construction Manager. Such submittal shall be made not less than fourteen (14) calendar days prior to the time that the materials represented by such catalogues, data or certificates must be ordered for incorporation into any Work in accordance with the approved Bar Chart schedule. Allow at least 7 calendar days for Design Professional and Owner's review. Material represented by such shall not be fabricated, delivered to the site or incorporated into any Work without such review.

46.5.2 Certificates shall clearly identify the material being certified and shall include but not be limited to providing the following information: Construction Manager's name, Project name, name of the item, manufacturer's name, and reference to the appropriate drawing, Technical Specification section and paragraph number all as applicable. All catalogues, data and certificates submitted by the Construction Manager shall be certified and dated by the Construction Manager on the face of each catalogue, data and certificate to be correct and shall be furnished in accordance with these requirements and the requirements of the Technical Specifications. Design Professional and Owner will conduct a review of Construction Manager's catalogues, data, and certificates and one copy marked with the review comments listed in paragraph 46.3.5, above, will be returned to the Construction Manager.

GC 47 CONSTRUCTION SCHEDULE

47.1 Within ten (10) days after the date of the Owner's issuance of a Notice to Proceed, the Construction Manager shall prepare and submit to the Owner a CPM construction schedule in graphically depicting the activities contemplated to occur as a necessary incident to performance of the Work required to complete the Project, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The Owner's initial approval for the purposes of this GC 47.1, and any other provisions in the Contract Documents related to the Construction Manager's responsibility to

prepare and submit schedules shall be limited to a determination that the activities, durations and logic are reasonable.

47.1.1 The construction schedule shall be complete in all respects, covering, in addition to activities and interfaces with other Construction Managers at the site of the Work, offsite activities such as design, fabrication, an allowance for weather delays, submittals, procurement and jobsite delivery of Construction Manager furnished material and equipment. The schedule shall be a Bar Chart drawn to a time scale using arrow or precedence type diagramming. The construction schedule activities shall mirror the payment application breakdown.

47.1.2 The construction schedule shall include the following:

- a. Brief description of each activity.
- b. All submittals, samples, approvals, fabrication, and deliveries for equipment and materials. Allow no more than 60 days float between submittal approval and beginning of fabrication.
- c. Activities showing scheduled start and finish, late start and finish, and float.
- d. Relations between activities.
- e. Duration of activities. No activity should be scheduled for more than 20 workdays.
- f. Contractual and other major milestones including phasing.
- g. Schedule activities to include labor and material.
- h. An allowance for delays due to weather. Contract Time extensions for weather delays will be granted only when all of the conditions and criteria for evaluation of time extensions have been met pursuant to the General Conditions.

47.1.3 Upon acceptance of the original Bar Chart Schedule, the Early Start and Early Finish dates for all activities shall be fixed as Planned Start and Planned Finish dates. Any further revisions to the schedule must be submitted in writing and approved by the Owner.

47.1.4 The detailed Bar Chart schedule submittal shall include five (5) color copies of the following:

- a) Time Scaled Diagram.
- b) Bar Chart in the following formats:
- c) Sorted by activity.
- d) NOT USED.
- e) Sorted by early start.
- f) Precedence and Successor report.
- g) Narrative report.
- h) Computer diskette. (One copy)
- i) Submittals shall be organized under Standard CSI format.

- 47.1.5 The detailed Bar Chart Schedule shall be updated monthly and submitted along with an updated CD accompanied by an Application for Payment. Construction Manager shall meet with the Owner and Design Professional of Record to review and verify:
- a) Actual start and finish dates for completed activities.
 - b) Remaining duration required to complete each activity started, scheduled to start, but not completed.
 - c) Logic and time, for change orders that are to be incorporated into the schedules.
 - d) Percentage for completed and partially completed activities.
- 47.2 Following development and submittal of the construction schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or will affect the progress of the performance of the Work yet to be performed in contrast with the planned progress of performance of such Work, as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision.
- 47.3 The Construction Manager shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules:
- a. Subcontractor Construction (Subnetworks) - Upon the award of each subcontract, the Construction Manager shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the Specifications, taking into account the Work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.
 - b. Occupancy Schedule - The Construction Manager shall jointly develop with the Engineer and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.
- 47.4 The Construction Manager shall submit a written narrative report as a part of his monthly review and update in a form agreed upon by the Construction Manager and the Owner. The narrative report shall include a description of problem areas; current and anticipated

delaying factors and their estimated impact on performance of other activities and completion dates; and an explanation of corrective action taken or proposed.

- 47.5 The Construction Manager shall have in its employ for the length of this Project, at least one qualified scheduling specialist whose responsibility as to this Contract will be to prepare, plan and draft the construction schedules, monitor the construction progress, analyze scheduling problems for resolution, update the Construction Schedule as required in the Contract, and maintain updated information as required regarding the interface with other contracts. The costs associated herewith, and all scheduling activities, are included in the Lump Sum.
- 47.6 The Construction Manager agrees that whenever it becomes apparent from the current progress review meeting or the computer produced calendar dated schedule that the Contract completion date will not be met, the Construction Manager shall execute some or all of the following remedial actions at Construction Manager's sole cost and expense:
- a) Increase construction manpower in such quantities and crafts as necessary to eliminate the backlog of Work.
 - b) Increase the number of working hours per shift, shifts per working day, working days per week, the amount of construction equipment, or any combination of the foregoing to eliminate the backlog of Work.
 - c) Reschedule the Work in conformance with the specification requirements.
- 47.7 Prior to proceeding with any of the above actions, the Construction Manager shall notify the Owner of the proposed schedule changes. Such actions shall be incorporated by the Construction Manager into the diagram before the next update, at no additional cost.

GC 48 RESPONSIBILITY FOR WORK SECURITY

- 48.1 Construction Manager shall, at its expense, at all times conduct all operations under the Contract in a manner to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any property. Construction Manager shall promptly take all reasonable precautions which are necessary and adequate against any conditions which involve a risk of loss, theft or damage to its property, at a minimum. Construction Manager shall continuously inspect all its Work, materials, equipment and facilities to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such condition.
- 48.2 Construction Manager shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall furnish these reports to Owner within three days of each incident.

GC 49 PROTECTION OF WORK IN PROGRESS, MATERIALS AND EQUIPMENT

- 49.1 Construction Manager shall be responsible for and shall bear any and all risk of loss or damage to Work in progress, all materials delivered to the site, and all materials and equipment involved in the Work until completion and final acceptance of Work under this Contract. Excluded from Construction Manager's responsibility is any loss or damage which results from acts or omissions of the Owner or its representatives or other contractors.
- 49.2 Permanent openings or thoroughfares for the introduction of work and materials to the structure and construction site shall be protected so that upon completion, the entire Work will be delivered to the Owner in proper, whole and unblemished condition.

GC 50 PROTECTION OF EXISTING PROPERTY

- 50.1 Construction Manager shall so conduct its operations as not to damage, close, or obstruct any utility installation, highway, road or other property until permits therefore have been obtained. If facilities are closed, obstructed, damaged or rendered unsafe by Construction Manager's operations, Construction Manager shall, at its expense, make such repairs and provide temporary guards, lights and other signals as necessary or required for safety and the welfare of persons on the jobsite and the general public.
- 50.2 Construction Manager shall conduct its operation so as not to damage any existing buildings or structures. The Construction Manager shall verify that means and methods of construction used inside, adjacent to, under or over existing buildings will not cause damage. The Construction Manager shall provide protection methods which insure the safety of persons on the jobsite and the general public.
- 50.3 Unless otherwise specifically provided in the Contract, Construction Manager shall not do any Work that would disrupt or otherwise interfere with the operation of any pipeline, telephone, electric, radio, gas, transmission line, ditch or other structure, nor enter upon lands in their natural state until approved by Owner. Thereafter, and before it begins such Work, Construction Manager shall give due notice to Owner of its intention to start such Work. Construction Manager shall not be entitled to any extension of time or any extra compensation on account of any postponement, interference, or delay cause by any such line, ditch or structure on or adjacent to the site of the Work. If Construction Manager has exercised due diligence, such as, but not limited to, conducting soft digs, securing utility locates, as well as other activities both during its Pre-Con performance and thereafter, +Construction Manager shall not be held responsible for any damages caused to any lines, cables, pipes, or pipelines which are not depicted on the surveys, studies, reports, investigations and legal descriptions of the site supplied to the Construction Manager.
- 50.4 Construction Manager shall preserve and protect all cultivated and planted areas and vegetation such as trees, plants, shrubs and grass on or adjacent to the Project, which, as determined by Owner, do not reasonably interfere with the performance of this Contract.

50.5 Construction Manager shall be responsible for damage to any such areas and vegetation and for unauthorized cutting of trees and vegetation, including, without limitation, damage arising from the performance of its work through operation of equipment or stockpiling of materials. All cost in connection with any repairs or restoration necessary or required by reason of any such damage or unauthorized cutting shall be borne by Construction Manager.

GC 51 LABOR

51.1 Construction Manager shall employ only competent and skilled personnel to perform the Work. Construction Manager shall, if requested to do so by Owner, remove from the jobsite any personnel of Construction Manager whom Owner determines unfit or acting or working in violation of any provision of this Contract.

51.2 Work assignments and the settlement of jurisdictional disputes shall conform with either the Rules, Regulations and Procedures of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry, and any successor agreement thereto, or any other mutually established method of determining work assignments and settling jurisdictional disputes.

51.3 Construction Manager shall comply with and shall cooperate with Owner in enforcing jobsite conditions and job work rules which directly affect the performance of the Work including, but not limited to, starting and quitting time, smoking regulations, check-in and check-out procedures, job site safety regulations and security regulations, emergency plans and procedures, and daily clean-up.

51.4 The Construction Manager and subcontractors shall be bound by and comply with all Federal, State and local laws with regard to minimum wages, overtime work, hiring, and discrimination. All work necessary to be performed after regular working hours, on Saturdays, legal and Town holidays, shall be performed without additional expense to the Owner. The Construction Manager shall comply with the Copeland Anti-Kick Back Act (19 U.S.C. 874) as supplemented in the Department of Labor Regulations (29 CFR Part 3). This act provides that each Construction Manager or subcontractor shall be prohibited from inducing by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

51.5 Construction Manager shall complete "Construction Manager's Daily Report" (Appendix "A") for each day work is accomplished. Reports shall be made available to Owner upon its request.

GC 52 EQUAL EMPLOYMENT OPPORTUNITY

52.1 During the performance of this Contract, the Construction Manager agrees as follows:

- A. The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, or national origin. The Construction Manager will take affirmative action to ensure that applicants and employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owner setting forth provisions of this nondiscrimination clause.
- B. The Construction Manager will, in all solicitations or advertisements for employees placed for, by, or on behalf of the Construction Manager, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, or national origin.
- C. The Construction Manager will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Owner, advising the labor union or workers' representative of the Construction Manager's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Construction Manager will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Construction Manager will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Owner and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the Construction Manager's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Construction Manager may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Construction Manager will include the provisions of paragraphs A through F in every subcontract or purchase unless exempted by rules, regulations, or orders of the

Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Construction Manager will take such action with respect to any subcontractor or purchase order as may be directed to the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Construction Manager becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Construction Manager may request the United States to enter into such litigation to protect the interest of the United States.

H. All regulations, guidelines, and standards lawfully adopted under the governing statutes.

GC 53 SAFETY & PROTECTION OF PERSONS & PROPERTY

53.1 RESPONSIBILITY FOR SAFETY AND HEALTH

53.1.1 The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to be performed under the terms of the Contract ("Work"). The Construction Manager shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the Owner and Users who may be affected thereby. The Construction Manager shall set forth in writing its safety precautions and programs in connection with the Work and submit the same to the Owner. The Owner may, but shall not be obligated to, make suggestions and recommendations to the Construction Manager with respect thereto.

53.1.2 All Work, whether performed by the Construction Manager, its Sub-Construction Managers or Sub-subcontractors, or anyone directly or indirectly employed by any of them, and all equipment, appliance, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with, and conform to:

a. all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970, as amended and all State, Local, City and County rules and regulations now or hereafter in effect; and

b. all codes, rules, regulations and requirements of the Owner and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.

53.1.3 Should the Construction Manager fail to provide a safe area for the performance of the Work or any portion thereof, the Owner shall have the right, but not the obligation, to

suspend Work in the unsafe area. All costs of any nature resulting from the suspension, by whomsoever incurred, shall be borne by the Construction Manager.

53.1.4 The Construction Manager shall provide, or cause to be provided, to each worker on the Job Site the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Job Site who fails or refuses to use the same. The Owner shall have the right, but not the obligation, to order the Construction Manager to send a worker home for the day or to discharge a worker for his or her failure to comply with safe practices, with which order the Construction Manager shall promptly comply.

53.1.5 The Construction Manager shall defend, indemnify and hold the Owner, the Owner's Representative and their respective officers, directors, agents, employees and assigns, harmless from and against any and all liability, public or private, penalties, contractual or otherwise, losses, damages, costs, reasonable attorneys' fees, expenses, causes of action, claims or judgments to the extent resulting from any failure of the Construction Manager, its subcontractors or sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, to comply with the provisions of this General Condition.

53.1.6 In any and all claims against those indemnified hereunder by any employee of the Construction Manager, any subcontractor or sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way to any limit(s) on the amount or type of damage, compensation or benefits payable by or for the Construction Manager or any subcontractor or sub-subcontractor under any workers' compensation acts, disability benefit acts or other employee benefit acts.

53.2 PROTECTION OF WORK AND PROPERTY; RESPONSIBILITY FOR LOSS

53.2.1 The Construction Manager shall, throughout the performance of the Contract, maintain adequate and continuous protection of all completed Work and temporary facilities against loss or damage from whatever cause, shall protect the property of the Owner and third parties from loss or damage from whatever cause arising out of the performance of the Contract and shall comply with the requirements of the Owner and its insurance carriers and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to the property. The Owner, their representatives or insurance carriers may, but shall not be required to, make periodic patrols of the Job Site as a part of its normal safety, loss control and security programs. In such event, however, the Construction Manager shall not be relieved of its aforesaid responsibilities and the Owner shall not assume, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the Construction Manager by this Contract.

53.2.2 Until final acceptance of the Work by the Owner pursuant to GC 72 of this Contract, the Construction Manager shall have full and complete charge and care of and, except as otherwise provided in this subparagraph or elsewhere in this Contract, shall bear all risk

of loss of, and injury or damage to, the Work or any portion thereof (specifically including Owner furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) from any cause whatsoever, except to the extent caused by Owner, its representatives, or contractors.

53.2.3 The Construction Manager shall rebuild, repair, restore and make good all losses of, and injuries or damages to, the Work or any portion thereof (specifically including Owner furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) before final acceptance of the Work. Such rebuilding, repair or restoration shall be at the Construction Manager's sole cost and expense unless the loss, injury or damage requiring such rebuilding, repair or restoration:

A. Is directly due to errors in the Contract Documents which were not discovered by the Construction Manager and which the Construction Manager could not have discovered through the exercise of due diligence;

B. Is caused by the agents or employees or contractors of the Owner (unless (1) the Construction Manager has waived its rights of subrogation against the Owner on account thereof as provided in the Contract Documents, or (2) such loss or damage would be covered by any policy or policies of insurance which the Construction Manager is required to maintain hereunder, whether the Construction Manager actually maintains such insurance or not, or (3) is otherwise covered by a policy or policies of insurance maintained by the Construction Manager, whether or not required hereunder).

53.3 SURFACE AND SUBSURFACE WATER

53.3.1 Surface or subsurface water or other fluid shall not be permitted to accumulate in excavations or under or in the structures. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines and ditches, dams or other methods approved by the Owner in writing. The proposed location and coordination of temporary channels and conduits conducting accumulated water from the Job Site shall be permitted by the proper regulatory agency and submitted to the Owner for its prior written approval. All such Work shall be done at the sole expense of the Construction Manager.

53.4 EMERGENCIES

53.4.1 In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any federal or state safety or health law or regulation, arising out of or in any way connected with the Work or its performance, the Construction Manager shall act immediately to prevent threatened damage, injury or loss to remedy said violation, whichever is applicable. Failure by Construction Manager to take necessary emergency action shall entitle the Owner to take whatever action it deems reasonably necessary, including, but not limited to, suspending the Work as provided in GC 23.

53.4.2 The Owner may offset any and all costs or expenses of whatever nature, including reasonable attorneys' fees, paid or incurred by the Owner in taking such emergency action against any sums then or thereafter due to the Construction Manager. The Construction Manager shall defend, indemnify and hold the Owner harmless against any and all costs or expenses pursuant to this GC 53.4.2, by whomsoever incurred. If the Construction Manager shall be entitled to any additional compensation or extension of time claimed on account of emergency work which is not due to the fault or neglect of the Construction Manager or its subcontractors or sub-subcontractors, it shall be handled as provided in GC 65.

53.5 OWNER'S STANDARDS

53.5.1 The Owner reserves the right, but assumes no duty, to establish and enforce standards, and to change the same from time to time, for the protection of persons and property, with which the Construction Manager shall comply, and to review the efficacy of all protective measures taken by the Construction Manager. The exercise of or failure to exercise any or all of these rights by the Owner shall not relieve the Construction Manager of its duties and responsibilities under this Contract, and the Owner shall not thereby assume, nor be deemed to have assumed, any such duties or responsibilities of the Construction Manager.

GC 54 PROJECT SITE PROTECTION

54.1 Construction Manager, at its expense, shall maintain such protection as provided in General Conditions Section (GC 53) titled SAFETY & PROTECTION OF PERSONS & PROPERTY in a satisfactory condition until removal is authorized by Owner. Construction Manager, at its expense, shall make all necessary repairs to property damaged by construction operations. Repairs shall be made in a manner satisfactory to Owner. The Construction Manager will provide parking for its employees within the designated work areas. Construction Manager employees will not be allowed to park in areas which are used by any facilities which remain in operation.

GC 55 FIRE PREVENTION

55.1 Construction Manager shall, at its expense, conform to all Federal, State, and local laws and regulations pertaining to burning, fire prevention and control within or adjacent to the Project. Necessary precautions to avoid and eliminate fire hazards shall be the responsibility of the Construction Manager. This includes keeping the Contract Work area clear of all trash at all times.

55.2 All tarpaulins used for any purpose during construction of any Work shall be made of material resistant to fire, water and weather and shall bear UL labels. Lighting of any fires on premises is strictly forbidden. Controlled burning shall be with the consent of the Owner. Construction Manager shall provide portable fire extinguishers properly labeled, located and compatible with the hazard of each work area and shall instruct its personnel

in their use. Wherever welding and burning are conducted, inflammable materials shall be protected and a fire watch shall be provided by Construction Manager to be present during the burning and welding operation to ensure that protective measures are taken and that no fires result from such operation. The fire watch shall have fire extinguisher equipment readily available and know-how for proper use.

GC 56 ILLUMINATION

56.1 When any work is performed at night or where daylight is shut off or obscured, Construction Manager shall, at its expense, provide artificial light sufficient to permit work to be carried on efficiently, satisfactorily and safely, and to permit thorough inspection. During such time periods the access to the place of work shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in a first-class manner, securely fastened in place at all points, and shall be kept as far as possible from telephone wires, signal wires, and wires used for firing blasts.

GC 57 BEST MANAGEMENT PRACTICES

57.1 Construction Manager shall be responsible for evaluating the site before construction is initiated to determine if any site conditions may pose particular problems for the handling of any Regulated Substances. For example, handling Regulated Substances in the proximity of water bodies or wetlands may be improper.

57.2 Regulated Substances are substances that are known to cause significant harm to human health and the environment (including surface and groundwater). The Unified Land Development Code (ULDA) Section 9.3, Wellfield Protection, regulates the storage, handling, use and production of Regulated Substances within wellfield zones which may impair present and future drinking water suppliers. In addition, the ULDC, Section 9.6, Excavation, requires that Best Management Practices for the Construction industries be followed for Agricultural Area, TYPE II, TYPE IIIA and TYPE IIIB excavation activities.

57.3 If any Regulated Substances are stored on the construction site, they shall be stored in a location and manner which will minimize any possible risk of release to the environment. Any storage container of 55 gallons, or 440 pounds, or more containing Regulated Substances shall have constructed below it an impervious containment system constructed of materials of sufficient thickness, density and composition that will prevent the discharge to the land, ground waters, or surface waters, of any pollutant which may emanate from said storage container or containers. Each containment system shall be able to contain 150% of the contents of all storage containers above the containment system.

57.4 Construction Manager shall familiarize itself with the manufacturer's safety data sheet supplied with each material containing a Regulated Substance and shall be familiar with procedures required to contain and clean up any releases of the Regulated Substance.

Any tools or equipment necessary to accomplish same shall be available in case of a release.

- 57.5 Upon completion of construction, all unused and waste Regulated Substances and containment systems shall be removed from the construction site and shall be disposed of in a proper manner as prescribed by law.

GC 58 DUST CONTROL

- 58.1 The Construction Manager, for the duration of the Contract, shall, at its expense, maintain all excavations embankments, haul roads, access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry-accepted methods of dust control suitable for the area involved and approved by Owner will be permitted.

GC 59 WATER POLLUTION

- 59.1 Construction Manager shall, at its expense, provide suitable facilities to prevent the introduction of any substance or materials into any stream, river, lake or other body of water which may pollute the water or constitute substances or materials deleterious to fish and wildlife.

GC 60 AIR POLLUTION

- 60.1 The Construction Manager shall, at its expense, so perform its work as not to discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules and regulations of all Federal, State and local air and water pollution requirements including, but not limited to: Registering with the Palm Beach County Health Department, Air Pollution Board, any equipment requiring operating permits by said Board; Adhering to all Palm Beach County Air Pollution Board Regulations.

GC 61 EXPLOSIVES & HAZARDOUS MATERIALS

- 61.1 Construction Manager shall obtain all required Federal, State and local permits and licenses and shall be responsible for the safe and proper handling, labeling, transporting, storage and use of any explosive or hazardous materials brought onto or encountered within the site, and at its expense, make good any damage caused by its handling, transporting, storage and use. The Construction Manager will notify the Owner immediately if explosive or hazardous materials are encountered on the site. Transporting explosive or hazardous materials onto the site will require prior written approval from the Owner. The Construction Manager shall maintain and post as necessary Material Hazard Data Sheets for all applicable Hazardous Materials used in the course of his work.

61.2 In the event that hazardous material is improperly handled or stored by the Construction Manager, its subcontractors, any sub-subcontractors, or any employee or agent of any of the aforementioned which results in contamination of the site, Construction Manager shall immediately notify the Owner and the appropriate governmental authority and shall take whatever action is necessary or desirable to remediate the contamination at the Construction Manager's sole cost and expense. Further, Construction Manager shall indemnify and hold harmless from any and all cost, expense, action, or liability whatsoever resulting from such contamination and/or remedial activities. If without negligence on the part of the Construction Manager or anyone for whom it is responsible, Construction Manager is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing the Work as required by the Contract Documents, the Owner shall pay for the direct costs of remediation as approved beforehand by Owner, in writing, which shall be paid from the Contingency Fund.

GC 62 INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP

62.1 All materials and equipment furnished and work performed shall be properly inspected by Construction Manager, at its expense, and shall at all times be subject to quality surveillance, observations or quality audit by Owner. Construction Manager shall provide safe and adequate facilities and all samples, drawings, lists and documents necessary for such quality surveillance, observation or quality audit. For this purpose Owner shall be afforded full and free access to the shops, factories or places of business of Construction Manager and its subcontractors and suppliers for such quality surveillance, observation or quality audit and to determine the status of the Work. If Construction Manager covers all or any portion of the Work prior to any quality surveillance or test by Owner, the cost of any necessary uncovering and replacing shall be borne by Construction Manager. Neither the failure to make such quality surveillance, observance or quality audit, nor to discover defective workmanship, materials, or equipment, nor acceptance of or payment to Construction Manager for such work, materials or equipment shall prejudice the rights of Owner thereafter to correct or reject the same as hereinafter provided.

62.2 If any material, equipment or workmanship is determined by Owner, either during performance of the Work or on final quality surveillance, or during any applicable warranty period (expressed or implied), to be defective or not complying with the requirements of this Contract, Owner shall notify Construction Manager in writing that such material, equipment or work is rejected and the Owner reserves the right to withhold payment on any such item. Thereupon, Construction Manager shall, at its own expense, immediately remove and replace or correct such defective material, equipment or work by making the same comply strictly with all requirements of the Contract.

GC 63 TESTING

63.1 Unless otherwise provided in the Contract, Drawings and Specifications shop testing of materials or work shall be performed by the Construction Manager and in accordance

with the Technical Specifications. Field testing of materials or work shall be performed by Owner. Should tests in addition to those required by the Specifications be desired by Owner, Construction Manager will be advised in reasonable time to permit such testing. Such additional tests will be at Owner's expense unless such additional tests are required due to Construction Manager's work or materials having failed any initial test. In this event, such additional (re-test) tests shall be at Construction Manager's expense. Construction Manager shall furnish samples as requested and shall provide reasonable assistance and cooperation as necessary to permit tests to be performed on materials or work in place including reasonable stoppage of work during testing. Construction Manager shall provide reasonable and accurate notice of when construction activities which require Owner's testing services are required. Construction Manager shall be responsible for stand-by and other costs associated with the testing agency if that construction activity is delayed or canceled.

GC 64 PROGRESS

- 64.1 Construction Manager shall give Owner full information in advance as to its plans for performing each part of the Work. If at any time during the progress of work, Construction Manager's actual progress is inadequate to meet the requirements of the Contract, Owner may so notify Construction Manager who shall thereupon take such steps as may be necessary to improve its progress. If within a reasonable period as determined by Owner, Construction Manager does not improve performance to meet the currently approved Contract construction schedule, Owner may require an increase in Construction Manager's labor force, the number of shifts, overtime operations, additional days of work per week and an increase in the amount of construction plant; all without additional cost to Owner. Neither such notice by Owner nor Owner's failure to issue such notice shall relieve Construction Manager of its obligation to achieve the quality of work and rate of progress required by the Contract.
- 64.2 Failure of Construction Manager to comply with the reasonable instructions of Owner may be grounds for determination by Owner that Construction Manager is not prosecuting its work with such diligence as will assure completion within times specified. Upon such determination, Owner may terminate Construction Manager's right to proceed with the performance of the Contract, or any separable part thereof, in accordance with the applicable provisions of this Contract.

GC 65 CHANGES

- 65.1 Owner may, at any time, without invalidating the Contract and without notice to the Surety(ies), make changes in the Work by issuing Change Orders, as well as Contingency Fund Change Orders addressed elsewhere in the Contract Documents (and which are not subject to this GC 64 and its subparts).
- 65.2 Owner will issue written orders to Construction Manager for any changes, except that in the event of an emergency which Owner determines immediately endangers life or

property, Owner may issue oral orders to Construction Manager for any work required by reason of such emergency. Such orders will be confirmed in writing as soon as practicable. Such orders, whether written or oral, may be accompanied by drawings and data as are necessary to show the extent of such ordered work.

- 65.3 Construction Manager shall commence such changed work so that all dates set forth in Construction Manager's current construction schedule, as accepted by Owner, will be met. In the event of an emergency which Owner determines immediately endangers life or property, Construction Manager shall immediately commence such changes as required by Owner in order to mitigate or remove the emergency condition. Failure to commence any such change in timely fashion shall entitle Owner to invoke the provisions of section GC 25 entitled TERMINATION FOR DEFAULT.
- 65.4 Unless otherwise required, Construction Manager shall, within twenty-one (21) calendar days following receipt of a written Change request from Owner, submit in writing to Owner a Contract Change Proposal for accomplishing such change, which proposal shall reflect the increase or decrease, if any, in cost to Owner of performing the change under the Contract in comparison to what the cost would have been, had such change not been offered.
- 65.5. The proposal shall state the Construction Manager's added and/or deleted compensation in detail, including, but not limited to:
- a. Material quantities and unit prices;
 - b. Labor man-hours and wages by craft;
 - c. Equipment type and size and rental rate;
 - d. Overhead, profit, and bond allowance of 5% for those portions subcontracted, and 15% of those portions that are self-performed by the Construction Manager;
 - e. Subcontract costs with back-up detail as specified (in items a), b), c), and a markup for Subcontractor overhead and profit not to exceed 10% in the aggregate;
 - f. Time extension, if any;
 - g. A detailed description of any impacts this change will have on any activities on the Critical Path which would effect any of the Milestone Dates;
 - h. Proof of payment of any tax liability resulting from a specific change (if requested by Owner);
 - i. General Condition costs: provided however, that said costs shall be compensable *only in the event that the Change Order results in an extension in excess of thirty (30) calendar days of the Substantial Completion Date, as extended by Change Orders, if any*, and at a daily rate that shall be extrapolated from the amount of the General Conditions items specifically applicable to the Change Order.

- 65.6 Under no circumstances shall Construction Manager apply for or be entitled to recover extended home office overhead costs associated with a change in the Work, whether or not calculated in accordance with the Eichleay Formula. The Parties may agree, if justified in accordance with GC 27, to an extension of time in connection with any changes to the Work. Any time extension request submitted after the twenty-one (21) calendar day time period noted above, will not be considered and deemed waived by the Construction Manager.
- 65.7 If Construction Manager does not propose the method of compensation for such change, or any part thereof, within the time required, or if any proposed method is not acceptable to Owner, or if a method of compensation for such change, or any part thereof cannot be agreed upon, Construction Manager shall proceed upon direction (“Construction Change Directive”) with such change.
- 65.8 A Construction Change Directive (CCD) is a written order prepared by the Design Professional of Record and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. A CCD may be used in the absence of total agreement on the terms of Change Order or to complete work which, if not accomplished, could adversely affect a critical path activity. Upon receipt of the CCD, the Construction Manager shall promptly proceed with the change in the Work involved and advise the Design Professional of Record of the Construction Manager’s agreement or disagreement with the method, if any, provided in the CCD for determining the proposed adjustment in the Contract Sum or Contract Time. When the Owner and Construction Manager agree with the determination made by the Design Professional of Record concerning the adjustments in the Contract Sum and/or Time, or otherwise reach agreement upon the adjustments, such agreement shall be recorded by the preparation of a Change Order. The Construction Manager shall not seek payment for work performed pursuant to a CCD until it has been converted to a Change Order.
- 65.8.1 If, at any time after Construction Manager commences such change, and a method of compensation other than verifiable cost of the changed Work plus the markups allowed in GC 65.5 is agreed upon, such compensation will be made in accordance with such agreement. In any event, Construction Manager shall keep accurate records of the actual cost to Construction Manager for such change. Costs for which Construction Manager shall be entitled to compensation on a cost of the changed Work plus markup basis as described above, are as follows:
- a. Direct Labor Cost - Payment will be made for all manual classifications up to and including foremen, but shall not include superintendents, assistant superintendents, general foremen, office personnel, time-keepers and maintenance mechanics, and those personnel categorized in the Lump Sum. The time charged to changes will be subject to the daily approval of Owner, and no charges shall be accepted unless evidence of such approval is submitted by Construction Manager with its billing.

Labor rates used to calculate the direct labor costs shall be those rates in effect during the accomplishment of the change, excluding those employees catalogued above. In addition to the direct payroll costs, the direct labor costs shall include payroll taxes and insurance, vacation allowance, subsistence, travel time and overtime premium and any other payroll additives required to be paid by Construction Manager by law or collective bargaining agreements, excluding those employees catalogued I (a) above. Copies of certified pertinent payrolls shall be submitted to Owner.

- b. Equipment Costs - Payment for the rental and operation of the equipment furnished and used by Construction Manager shall be made for all construction and automotive equipment or tools with a new cost at point of origin of one thousand dollars or less each. Equipment time charged to changes will be subject to daily written approval of Owner and no charges will be accepted unless evidence of such approval is submitted with Construction Manager's billing.

The equipment rental and operation rates include costs for rental, fuel, oil, grease, repair parts, service and maintenance of any kind, and necessary attachments. Such charges do not include costs for operating labor and transportation to and from the location of the change. Equipment rental rates for Construction Manager-owned equipment used in this Contract shall be those contained in the RENTAL RATE BLUE BOOK as published by K-III Directory Corporation, 1735 Technology Drive, Suite 410, San Jose, California 95110-1313, (800-669-3282) and current at the time that work for any specific Change is performed, less 30%. When equipment is used for cost of the workchanges which do not reasonably resemble adjusted Blue Book rental rates, the rental rate shall be negotiated and agreed upon in writing.

If Construction Manager-owned equipment is not available and equipment is rented from outside sources, payment will be computed on the basis of actual invoice cost. Rental rates for non-owned equipment must be approved in advance by Owner.

When the operated use of equipment is infrequent and, as determined by Owner, such equipment need not remain at the site of the Work continuously, payment shall be limited to actual hours of use. Equipment not operating but retained at the location of changes at Owner's direction shall be paid for at a standby rate.

Unless otherwise provided in the Contract, all equipment rental rates shall be agreed upon in writing before commencing any change. When a specific piece of rental equipment, normally used to perform unchanged Contract Work is used for cost of the Work Changes, the applicable rental rate shall be the actual rate paid by the Construction Manager at the time the Work is performed.

Transportation costs for bringing equipment to the jobsite and for returning equipment to the point of origin, exclusively for use on time and material work,

will be reimbursed to Construction Manager based on invoices, provided that prior written approval has been given to Construction Manager.

Overtime shall be paid as per Method 2 described in said RENTAL RATE BLUE BOOK.

No compensation will be made to the Construction Manager for equipment repair, equipment maintenance or idle equipment time.

- c. Material Costs - Payment for the cost of materials furnished by Construction Manager for use in performing the change will be made, provided such furnishing and use of materials was as specifically authorized and the actual use was verified by Owner. Payment will be the net cost to Construction Manager delivered at the job and vendor's invoice shall accompany the billing along with the verification by Owner of such use of such materials.
- d. Contract and Outside Service Costs - Payment for work and services subcontracted by Construction Manager in the performance or completion of the change will be made only when both the subcontractor and the terms of payment to such subcontractor have been approved in writing by Owner before the subcontractor starts to work on the change.
- e. Tools and Equipment - Payment will be made for tools and equipment with a new cost of One Thousand Dollars, or less, each, only upon approval by the Owner.

65.9 For any changes involving deductive items, the following shall apply to the amount of allowable overhead, profit and bond allowance:

- a. For deductive changes only (those which contain no additive items), there will be no reduction in overhead and profit and, likewise, no addition by the Construction Manager for processing.
- b. For changes containing both additions and deductions covering related work or substitutions, the overhead and profit shall be figured on the net increase if any, with respect to that change, plus nine (9) percent thereof covering overhead, profit, and bond allowance.

65.10 No change order or CCD shall be valid until approved and signed by the Owner. The Design Professional of Record is not authorized to bind the Owner to changes relative to changes in Contract cost and or time. The Design Professional may only recommend acceptance or rejection. If a proposed change is deemed beneficial to the Project and is within the limits set forth in the Contract, the Owner may cause to be issued an appropriate change order to the Contract with or without the Construction Manager's signature.

- 65.11 The Design Professional of Record will have the authority to order minor changes in the Work which do not involve adjustment to the GMP or Time and are not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Construction Manager. The Construction Manager shall carry out such written orders promptly, and the Construction Manager shall receive no additional compensation therefore, nor shall there be any change in the Contract Time. The Design Professional shall immediately provide notices of all minor changes in the Work to the Owner.
- 65.12 Execution of a change order acknowledges final settlement of, and releases, all claims for costs and time associated, directly or indirectly, with the stated modification(s), including all claims for cumulative delays or disruptions resulting from, caused by, or incident to such modification(s), and including any claim that the modification(s) constitutes, in whole or part, a cardinal change to the Contract.

GC 66 RECORD DRAWINGS AND SPECIFICATIONS

A. Drawings:

1. Conformed Documents - Prior to the first application for payment, Construction Manager shall show proof of conformed documents with all Bid addenda identified on the record drawings and on his field set of drawings. Supplemental information following the bid shall be included and updated monthly for review with the application for payment.
2. Progress Records - During construction, Construction Manager shall keep a marked-up and up-to-date set of drawings showing as-built conditions on the site as an accurate record of all deviations between work as shown and work as installed. These drawings shall be available to Owner for inspection at any time.
3. Final Records - The Construction Manager shall furnish to Owner a complete set of marked-up as-builts with RECORD clearly printed on each sheet. Owner, at its expense, will furnish Construction Manager with drawings for mark-up by Construction Manager. Construction Manager shall, by use of professional draftsman, accurately and neatly transfer all deviations from progress as-builts to final as-builts.

B. Specifications:

1. Progress Records - During construction, Construction Manager shall keep a marked-up and up-to-date set of Specifications showing as-is conditions on the site annotated to clearly indicate all substitutions that are incorporated into the Work. Where selection of more than one product is specified, annotation shall show which product was installed. These Specifications shall be available to Owner for inspection at any time.
2. Final Records - The Construction Manager shall furnish to Owner a complete set of marked-up as-built Specifications with RECORD clearly printed on cover. Owner, at its expense, will furnish Construction Manager a set of Specifications for mark-up by Construction Manager. Construction Manager shall accurately and neatly transfer all annotations from progress as-builts to final as-builts.

C. Manuals:

1. Manuals - As a condition precedent to Substantial Completion, the Construction Manager shall furnish to Owner three complete sets of manuals and applicable operating instructions as referenced in Technical Specifications.
2. Unless otherwise specified, manuals to be bound in 3-ring binder with contents clearly indicated on outside cover.

D. Endorsement:

1. Construction Manager shall sign each final record drawing and the cover of the record Specifications and shall note thereon that deviations and annotations are complete and accurate.
2. The Construction Manager shall provide a signed and notarized affidavit indicating that no asbestos containing materials were used or installed during the course of construction as a condition precedent to Final Acceptance.

E. Fixed Asset Equipment and Fixture Information:

1. Construction Manager shall provide the Owner with a list (in electronic format and hard copy) of each piece of equipment having an individual value greater than \$500.00 prior to Final Acceptance. The list shall include, at a minimum; a) the name, make and model number, b) the quantity installed, and 3) the value of the equipment.

GC 67 MEASUREMENT OF AND PAYMENT FOR WORK

67.1 Estimates and all support data shall be prepared by Construction Manager and submitted in writing for Owner's approval on or about the end of each month covering the amount and value of work satisfactorily performed by Construction Manager up to the date of such estimate. Such estimates shall be based on the construction schedule completed activity cost, as approved, and may be confirmed by actual measurement of the Work in place. Estimates shall be based on cumulative total quantities of work performed. Estimates may include materials or equipment not incorporated into the Work provided the requirements set forth below are met. A format for such estimates shall be determined by the Owner according to type of Contract Work and shall be agreed upon prior to, or no later than, application for the first progress payment.

The quantity of work to be paid for under any item for which a unit price is fixed in the Contract shall be the amount or number, approved by Owner, of units of work satisfactorily completed with the Contract and computed in accordance with applicable measurement for payment provisions of the Contract.

67.2 Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the Work, provided such materials meet the requirements of this Contract, plans, and Specifications and are delivered to acceptable locations at the Project Site or to other sites in Palm Beach County that are acceptable to the Owner (bonded warehouse). Such material must be stored in a secure manner, acceptable to the Owner, and in accordance with any manufacturer's recommendations.

67.3 Delivered cost of such stored or stockpiled materials may be included in any subsequent payment request once the Construction Manager meets the following conditions:

- a. An applicable purchase order or supplier's invoice is provided listing the materials in detail, cost of materials and identifying this specific Contract, by name.
- b. The material is insured against loss or damage (from whatever source) or disappearance prior to incorporation into the Work.
- c. Once any stored material is paid for by Owner, it shall not be removed from the designated storage area except for incorporation into the Work.
- d. Evidence that Construction Manager has verified quantity and quality of materials delivered (verified packing list).

67.4 It is further agreed between the parties that the transfer of title and the Owner's payment for any stored or stockpiled materials pursuant to this General Condition shall in no way relieve the Construction Manager of the responsibility of ensuring the correctness of those materials and for furnishing and placing such materials in accordance with the requirements of this Contract, plans and Specifications. Construction Manager shall make all surveys necessary for determining all quantities of work to be paid for under the Contract. Copies of field notes, computations, and other records made by Construction Manager for the purpose of determining quantities shall be furnished to Owner upon

request. Construction Manager shall notify Owner prior to the time such surveys are made. Owner, at its discretion, may arrange to have its representative witness and verify all surveys made by Construction Manager for determining quantities of work to be paid for under the Contract. Measurements and computations shall be made by such methods as Owner may consider appropriate for the class of work measured.

- 67.5 The dividing limits, lines or planes between adjacent items or classes of excavation, concrete, or other types of work where not definitely indicated on the drawings or in the Specifications, shall be determined by Owner.
- 67.6 No payments of invoices (or portions thereof) shall at anytime constitute approval or acceptance of the Work under this Contract, nor be a waiver by Owner of any of the terms contained herein.

GC 68 PROGRESS PAYMENT PROCEDURES

- 68.1 The Construction Manager shall prepare a schedule of values by phases of work to show a breakdown of the Contract Sum corresponding to the payment request breakdown and progress schedule line items. The schedule of values must also show dollar value for each unit of work scheduled. Change Orders shall be added as separate line items. The schedule of values shall be submitted to the Owner and Design Professional of Record for review and approval prior to "Commencement of Work."
- 68.2 The Construction Manager will prepare and submit three (3) original copies of monthly invoices for work completed during the one month period. Pay Applications shall be submitted in the format of the sample form given to the Construction Manager at the Pre-Construction meeting. All information must be completed for the pay application to be accepted. Owner's account number(s) for the Project will be given at the Pre-Construction meeting and will be placed at the top right hand corner of each application. These payment applications will be reviewed by all parties in attendance at the monthly pay application meetings. Prior to formal submission of the Application the Construction Manager shall submit a rough draft plus two extra copies for the Owner and Design Professional of Record to review. Submit final approved copies (3) to: the Design Professional of Record, whose approval is required prior to submission to the Owner.
- 68.3 If the pay estimate and support data are not approved, the Construction Manager is required to submit new, revised or missing information according to the Owner's instructions. Otherwise, the Construction Manager shall prepare and submit to Owner an invoice in accordance with the estimate as approved. Owner will pay Construction Manager, in accordance with Florida Prompt Payment Act (FS 218.70). Retainage, in the amount of 10%, will be withheld on the calculated value of any work, with the exception of stored materials which may be paid at the supplier's invoiced cost. After 50% completion of the Work has been achieved, the Owner may, at its sole discretion and with consent of Surety, implement a reduction in retainage. However, in no instance can the amount retained be less than the value of the Work the Owner determines remains to be put in place or required to be performed as remedial activities.

- 68.4 Each application for payment shall be accompanied by the following:
- a. A notarized "Affidavit of Disbursement of Previous Periodic Payments to subcontractors" from the Construction Manager for the portion of work up to the date of that particular pay application.
 - b. An Owner approved construction schedule update.
- 68.5 If one or more "Notice of Non-Payment" is received by the Owner, no further payments will be approved until non-payment(s) have been satisfied and a "Release of Claim" for each "Notice" has been submitted to the Owner. Upon request, Construction Manager shall furnish acceptable evidence that all such claims or liens have been satisfied. On bonded projects only, the Owner may allow, with consent of Surety and indemnification of the County against any claims, payment for work which there is an outstanding Notice of Non-Payment.
- 68.6 Any amount otherwise payable under the Contract may be withheld, in whole or in part, if:
- a. Any claims are filed against Construction Manager by Owner or third parties; or if reasonable evidence indicates the probability of filing any such claim; or
 - b. Construction Manager is in default of any Contract condition; or
 - c. There is reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum
 - d. Damage to the Owner or a separate contractor;
 - e. Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay
 - f. Defective work or material is not remedied; or
 - g. Construction Manager repeatedly fails to carry out the Work in accordance with the Contract Documents; or
 - h. Construction Manager fails to timely submit an owner-approved updated Schedule with each Application for Payment.
- 68.7 If claims or liens filed against Construction Manager or property of Owner connected with performance under this Contract are not promptly removed by Construction Manager after receipt of written notice from Owner to do so, Owner may remove such claims or liens and all costs in connection with such removal shall be deducted from withheld payments or other monies due, or which may become due, to Construction Manager. Construction Manager shall have no less than thirty (30) days to remove or bond off such lien after notice. If the amount of such withheld payments or other monies due Construction Manager under the Contract is insufficient to meet such cost, or if any claim or lien against Construction Manager is discharged by Owner after final payment is

made, Construction Manager and its surety or sureties shall promptly pay Owner all costs (including attorneys' fees) incurred thereby regardless of when such claim or lien arose.

68.8 Following issuance, by the Design Professional of Record, of a Certificate of Substantial Completion, Construction Manager may submit special payment request, provided the following have been completed:

- a. Obtain permits, certificates of inspection and other approvals and releases by governing authorities, required for the Owner's occupancy and use of the Project.
- b. Complete final cleaning of the Work.
- c. Submit record documents (record drawings).
- d. Submit listing of work to be completed before final acceptance.
- e. Settle liens and other claims.
- f. Obtain Consent of Surety for partial release of retainage.
- g. Settle Liquidated Damages due to Owner, if any.

68.9 Upon receipt by Owner of Construction Manager's written Notice of Final Completion of its work under this Contract, in accordance with GC 72, Owner shall verify all work has been completed on the Project. When all work has been verified as complete, and the Construction Manager completes and submits the items listed below, the Construction Manager may submit a final invoice.

- a. Complete work listed as incomplete at the time of Substantial Completion and obtain Design Professional certification of completed Work.
- b. Submit proof of payment on fees, taxes or similar obligations.
- c. Transfer operational, access, security and similar provisions to Owner; remove temporary facilities, tools and similar items.
- d. Obtain Consent of Surety for final payment and/or partial release of retainage.
- e. All information required by GC 66.
- f. Obtain certification of as-built (record) drawings from Design Professional of Record.

GC 69 USE OF COMPLETED PORTIONS OF WORK

69.1 Whenever, as determined by Owner, any portion of work performed by Construction Manager is in a condition suitable for use, Owner may initiate certificate of Substantial Completion (Partial Utilization) for that portion and take possession of or use such portion. Such use by Owner shall in no case be construed as constituting final acceptance, and shall neither relieve Construction Manager of any of its responsibilities under the Contract, nor act as a Waiver by Owner of any of the conditions thereof, provided, that Construction Manager shall not be liable for the cost of repairs, rework, or renewals which may be required due to ordinary wear and tear resulting from such use. However, if such use increases the cost or delays the completion of remaining portions of work, Construction Manager shall be entitled to an equitable adjustment in its compensation and/or schedule under this Contract.

- 69.2 If, as a result of Construction Manager's failure to comply with the provisions of the Contract, such use proves to be unsatisfactory to Owner, Owner shall have the right to continue such use until such portion of work can, without injury to Owner, be taken out of service for correction of defects, errors, omissions, or replacement of unsatisfactory materials or equipment, as necessary for such work to comply with the Contract; provided that the period of such operation or use pending completion of appropriate remedial action shall not exceed twelve months unless otherwise mutually agreed upon in writing between the parties.
- 69.3 Construction Manager shall not use any permanently installed equipment unless such use is approved by Owner in writing. Where Construction Manager's written request is granted for the use of certain equipment, Construction Manager shall properly use and maintain, and upon completion of its use, and at its expense, recondition such equipment to the satisfaction of Owner. If Owner furnishes an operator for such equipment, such operator's services shall be performed under the complete direction and control of Construction Manager and shall be considered Construction Manager's employee for all purposes other than the payment of such operator's wages, workmen's compensation or other benefits paid directly or indirectly by Owner.

GC 70 ALLOWANCES AND UNIT PRICES

- 70.1 Construction Manager has included in the GMP all unit prices and allowances. Items covered by unit prices shall be supplied for such amounts as the Owner may direct.
- 70.2 Unit prices shall apply to revisions to the Work as applicable. Unit Prices are "all inclusive", including labor, material, supervision, tools, equipment, insurance taxes, fringe benefits, coordination, engineering, overhead, profit, performance and payment bonds, and all other things necessary.

GC 71 SUBSTANTIAL COMPLETION

- 71.1 The date of Substantial Completion is the date established by the Design Professional and approved by the Owner when the Project is sufficiently complete to permit the Owner to use it for its intended purpose and the items listed below in 71.4 are complete. Liquidated damages shall be assessed from the date of substantial completion of the entire Project.
- 71.2 The Construction Manager shall notify the Design Professional, in writing, when the Construction Manager considers the Project Substantially Complete and attach a comprehensive list of incomplete work and items needing correction with dates indicating when the items listed will be completed.
- 71.3 Once the Design Professional has received notice from the Construction Manager, the Design Professional will promptly inspect the Work. The Design Professional may

refuse to inspect the Work if the Work is obviously not substantially complete or when the Construction Manager's list is not complete.

71.4 The following items shall be completed prior to a request by the Construction Manager for inspection for Substantial Completion of a particular phase of the Project

- a. Temporary Certificate(s) of Completion shall be obtained from the proper Building Official.
- b. All general construction completed.
- c. All electrical work complete, equipment and fixtures in place, connected, cleaned and ready for use.
- d. All electrical circuits shall be scheduled in panels, and all panels and disconnect switches properly labeled.
- e. Project site shall be cleared of the Construction Manager's excess equipment, storage shacks, trailers, and/or building supplies. All temporary construction shall be removed.
- f. All electrical systems shall be complete, fully functional, and demonstrated to the Owner.
- g. All operations and maintenance manuals for all equipment shall have been submitted.
- h. Manufacturers' certifications and warranties shall be delivered to Owner.
- i. All operations and maintenance training related literature, software and back-up disks shall have been provided. A video tape of the training shall be provided.
- j. All required spare parts as well as any special tools shall have been provided.
- k. The Project record Drawings and Specifications shall be submitted in accordance with GC 66.

71.5 If Substantial Completion is not obtained at the inspection, called by the Construction Manager, for reasons which are the fault of the Construction Manager, the cost of any subsequent inspections requested by the Construction Manager for the purpose of determining Substantial Completion shall be the responsibility of the Construction Manager and shall be assessed against the final payment application.

- 71.6 Punch list items recorded as a result of inspections for Substantial Completion are to be corrected by the Construction Manager within fourteen (14) calendar days and in any event prior to any request for Final Inspection and Acceptance.

GC 72 FINAL INSPECTION AND ACCEPTANCE

- 72.1 When the Construction Manager considers that all work under the Contract is complete as previously referenced in GC 71, Construction Manager shall so inform Owner and Design Professional, in writing. In addition, when items on the punch list as recorded at the Substantial Completion inspection have been corrected and the Owner is satisfied that all work under the Contract is completed and is in accordance with the requirements of this Contract, Owner shall notify Construction Manager in writing of final acceptance of its work under this Contract.

- 72.2 The Owner will make final payment to the Construction Manager of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, including the following items, for which a Change Order will be issued:

1. Liquidated Damages, as applicable.

2. At the discretion of the Owner, one hundred and fifty percent (150%) of the value of outstanding items, corrective Work, or "punch list" items indicated on the Certificate of Substantial Completion, "final punch list", or any other "punch list" as being yet uncompleted or uncorrected, as applicable. All such Work shall be completed or corrected to the satisfaction of the Owner within the time stated on the Certificate of Substantial Completion, or on the "final punch list", or any other "punch list", otherwise the Construction Manager does hereby waive any and all claims to all monies withheld by the Owner to cover the value of all such uncompleted or uncorrected items.

- 72.3 Neither final acceptance of the Work, nor payment therefor, nor any provision of the Contract Documents shall relieve the Construction Manager of responsibility for defective or deficient materials or work. If, within one (1) year or as provided for elsewhere in the General Conditions or Technical Specifications after Substantial Completion, any of the Work is found to be defective, deficient or not in accordance with the Contract Documents, the Construction Manager shall correct, remove and replace it promptly after receipt of a written notice from the Owner and correct and pay for any damage to other Work resulting in therefrom.

GC 73 DISPOSAL OF MATERIAL OUTSIDE PROJECT LIMITS

- 73.1 The Construction Manager shall make his own arrangements for disposal of materials outside the Project limits and shall pay all costs involved. The Owner reserves the right to retain any salvage material or equipment scheduled for removal. Should the Owner elect to retain salvaged materials or equipment, the Construction Manager will provide

appropriate on-site storage and protection. The Owner will be responsible for transporting from the site any materials or equipment it has elected to retain. Off-site disposal of any items not retained by the Owner shall be the responsibility of the Construction Manager.

- 73.2 When any material is to be disposed of outside the Project limits, the Construction Manager shall first obtain a written permit from the property owner on whose property the disposal is to be made and he shall file in writing with the Owner said permit or the certified copy thereof together with a written release from the property owner absolving the agency of any and all responsibility in connection with the disposal of material on said property.
- 73.3 When material is disposed of as above provided and the disposal location is visible from the Project, the Construction Manager shall dispose of the material in a neat and uniform manner to the satisfaction of the Owner.

GC 74 IDENTITY OF INTEREST WITH SUBCONTRACTORS/SUPPLIERS

- 74.1 The Construction Manager represents to the Owner that neither the Construction Manager, nor any officer, director, partner or shareholder who holds ten percent (10%) or more of the outstanding stock of the Construction Manager, has any financial interest in, or as an officer, director, partner or ten percent (10%) plus shareholder of any firm, person or entity which has been or may be contracted with to furnish labor, material, equipment or professional services in connection with the construction or the Project. Construction Manager agrees to give written notification and obtain the approval of the Owner before entering into any Contract on this Project with any subcontractor or material supplier where there exists any identity of interest.

GC 75 CLEANING UP

- 75.1 Construction Manager shall, at all times, at its expense, keep its work areas in a neat, clean and safe condition. Upon completion of any portion of the Work, Construction Manager shall, within 48 hours, remove all of its equipment, construction plant, temporary structures and surplus materials not to be used at or near the same location during later stages of work.

GC 76 PROJECT SIGNS

- 76.1 Construction Manager, shall construct a Project job sign as indicated and described on Site Sign Detail. Construction Manager shall coordinate location of sign with Owner's representative and install within 21 days after Owner's issuance of "Notice to Proceed". Any deletion/addition of lettering during the life of the Project will be at the Construction Manager's expense. Construction Manager will remove and properly dispose of sign at final acceptance of project. With the exception of the right reserved by the Owner to

erect a sign in connection with the Project and unless otherwise provided in the Contract Documents, Construction Manager shall not display or permit to be displayed on or about the Project, any sign, trademark, poster or other advertising or identifying device, without prior written approval of Owner.

GC 77 PERFORMANCE AND PAYMENT BONDS/CHAPTER 558 OPT OUT

- 77.1 Within ten (10) calendar days following the Owner's action to approve this Contract, Construction Manager shall furnish Performance and Payment Bonds in form as set forth in Exhibits "F" and "G," written by a surety company acceptable to Owner. It is the Construction Manager's obligation to record a copy of the statutory Payment Bond in the Public Records of Broward County, Florida, and to otherwise comply with all applicable Florida laws.
- 77.2 Both Owner and Construction Manager hereby expressly opt out of the provisions of Chapter 558, F.S., and elect not to be governed by its terms and provisions.

EXHIBIT A



Vincent G. Burkhardt
President



July 14, 2015

City of Pompano Beach
1201 NE 5th Avenue
Pompano Beach, FL 33060
Attn: Mr. John Sfiropoulos, P.E.

RE: Preconstruction Services Agreement
Construction Manager at Risk for the City of Pompano Beach Overhead Utility
Undergrounding Project – *A1A corridor*; from Hillsboro Bay to Terra Mar Road
including the side streets from Terra Mar Road to 10th Street (excluding a section from
NE 5th Court south to SE 2nd Street and Terra Mar Island)

Dear Mr. Sfiropoulos:

Burkhardt Construction, Inc. (BCI), acting as Construction Manager at Risk (CMAR), is pleased to provide this proposal to the City of Pompano Beach (Owner) for Pre-Construction Services for the Pompano Beach Overhead Utility Undergrounding Project – A1A corridor. The work to be designed and constructed is generally described as demolition, traffic control, undergrounding of franchise utilities and restoration as required. As CMAR, BCI shall function as an agent of the Owner, shall be paid a fixed fee for services performed and shall be an integral part of the design team. Pre-construction services will include:

- Interface with the Owner and the Engineer as required during the design phases of the project to establish a project team that includes the Engineer and the Owner, including attending all design team meetings and review preliminary design drawings and specifications;
- Site visit and “walk through” with CMAR, Owner and Design Team
- Securing of Easements
- Public Outreach
- Review and input of project cost and schedule;
- Review of proposed construction materials and systems;
- Project estimating and value engineering;
- Coordinating of bidding and contracting for trade subcontractors; and
- The development of a Guaranteed Maximum Price (GMP) for the construction of the facilities based on the design.



Pre-construction services shall be rendered and invoiced in the following format:

Task I

PRE-CONSTRUCTION PROGRESS MEETINGS

The scope includes the CMAR participating in team progress meetings attended by CMAR, Design Professionals, Owner and others as requested. This task shall also include the development of project schedules as directed by the Owner. This task shall also include a site visit/walk through with key CMAR personnel, Owner and Design team members. It is anticipated that these meetings will be held at the Owner's office, Engineer's office or location as designated by the Owner. Preconstruction team meetings are to be held at the convenience of the Owner every 2-3 weeks until completion of the plans/contract documents.

Estimated 7 meetings required

TOTAL FEE TASK I \$12,320.00

Task II

ENGINEERING / DESIGN – A1A corridor; from Hillsboro Bay to Terra Mar Road (excluding a section from NE 5th Court south to SE 2nd Street)

The CMAR with the assistance from Brannon & Gillespie, LLC (BNG) will provide engineering coordination services for this portion of the project. This task will include the following: Consolidate Utility Electric, Telephone, and CATV plans to provide a detailed installation drawing as required for the construction of the proposed underground utility Telephone, Cable TV, and Electric Power facilities. The facilities to be converted are those facilities as indicated on the referenced drawing sheets provided by Utility Engineering (Florida CA 27044). This project will replace approximately 14,000 feet of overhead utility pole lines with underground facilities within the A1A right-of-way, and will extend more or less, from Hillsboro Bay to Terra Mar Road, excluding a section from NE 5th Court south to SE 2nd Street, as more specifically indicated on the referenced drawings. Service connections to street lighting, traffic signals, CATV amplifiers, telephone cabinets, etc., will be designed to be converted to underground facilities. Should existing street lighting be removed as a result of pole removal, the design of new street lighting is specifically excluded.

The CMAR/BNG will provide two preliminary sets of plans for client review prior to finalizing plans. The CMAR/BNG will communicate with overhead utility companies as necessary to resolve any design issues that may arise. We will coordinate with the utilities to obtain minimal cost solutions which include the identified needs of the City, and provide minimal disruption to the harmony within the community.

The CMAR/BNG will provide easement descriptions as required to accommodate the utility facilities which cannot be located within the FDOT right-of-way. Easement documents will include instruments acceptable to the utilities with attached exhibits containing legal descriptions and sketches. Sketches and legal descriptions will be prepared by the Engineer or a surveyor based on complexity. Legal descriptions will typically mirror property deed language to convey



uniformity to property owners. We understand that the City of Pompano Beach is willing to enter into an ROW agreement with FPL for the installation of FPL facilities within the right-of-way.

We understand the following:

- 1) The City shall provide property surveys in AutoCAD format for the areas in which this overhead to underground utility conversion construction shall take place. Our proposal does not include the acquisition of a new survey. Our proposal is dependent on the survey being provided by the City. The current survey depicted in the drawing appears to be one provided by Keith and Associates in April of 2011. There may be some minor updates since that survey was completed. Should any field changes/discrepancies be discovered requiring survey updating, such updates would be the responsibility of the City. This survey work is not associated with any easement acquisition efforts, but is for the design work for the utility undergrounding construction. It is likely that adjacent property ownership will have changes and we would rely on the public records for that information.
- 2) The City will provide existing plans in AutoCAD or GIS format depicting existing and proposed underground water, sewer, drainage, and paving improvements.
- 3) Florida Power & Light Company will provide conduit, cable, and equipment designs for the conversion of their electric power facilities which will be merged into the consolidated plan.
- 4) The telephone company and the CATV company will provide plans depicting conduits, pull boxes, and cabinet equipment required to accommodate their new underground facilities. The telephone and CATV companies will provide their own drawings for their crews to utilize in installing their cable and equipment.

This Project may be broken into multiple sections. FPL typically allows municipal projects to be broken into sections where the total of all sections equal the required 3 miles of overhead lines and the section are constructed with gaps between projects no greater than one year. Sections allow FPL to begin overhead facility removals prior to the entire project undergrounding being completed. Fiber Optic lines would be the biggest constraint to creating sections. We will work with the City to develop a section by section construction plan. We anticipate the project might be broken into 4 or more sections as needed to expedite completion in a given portion to minimize community disruption within that specific area.

TOTAL FEE TASK II \$268,400.00

Task III

ENGINEERING / DESIGN - *Side streets from Terra Mar Road to 10th Street (excluding Terra Mar Island)*

The CMAR with the assistance from Brannon & Gillespie, LLC (BNG) will provide engineering design and coordination services for this portion of the project. This task will include the following: Consolidate Utility Electric, Telephone, and CATV plans to provide a detailed installation drawing as required for the construction of the proposed underground utility Telephone, Cable TV, and Electric Power facilities. The facilities to be converted are those lying South of and along 10th Street and north of and along Terra Mar Road. Side streets will include 10th Street, 11th Street, 12th Street, 13th Street, Terra Mar Drive and all connecting streets within this north-south boundary and lying between State Road A1A and the Intracoastal Waterway. Not included are the streets within Terra Mar Island. This project addition will replace approximately



5845 feet of overhead utility pole lines with underground facilities. All overhead Communication lines will also be placed underground. Service connections to street lighting, traffic signals, CATV amplifiers, telephone cabinets, etc., will be designed to be converted to underground facilities. Should existing street lighting be removed as a result of pole removal, the design of new street lighting is specifically excluded.

The CMAR/BNG will provide two preliminary sets of plans for client review prior to finalizing plans. The CMAR/BNG will communicate with overhead utility companies as necessary to resolve any design issues that may arise. We will coordinate with the utilities to obtain minimal cost solutions which include the identified needs of the City, and provide minimal disruption to the harmony within the community.

The CMAR/BNG will provide easement descriptions as required to accommodate the utility facilities which cannot be located within the right-of-way. Easement documents will include instruments acceptable to the utilities with attached exhibits containing legal descriptions and sketches. Sketches and legal descriptions will be prepared by the Engineer or a surveyor based on complexity. Legal descriptions will typically mirror property deed language to convey uniformity to property owners. We understand that the City of Pompano Beach is willing to enter into an ROW agreement with FPL for the installation of FPL facilities within the right-of-way. We understand the following:

- 1) The City shall provide property surveys in AutoCAD format for the areas in which this overhead to underground utility conversion construction shall take place. Our proposal does not include the acquisition of a new survey. Our proposal is dependent on the survey being provided by the City. This survey work is not associated with any easement acquisition efforts, but is for the design work for the utility undergrounding construction. It is likely that adjacent property ownership will have changes and we would rely on the public records for that information.
- 2) The City will provide existing plans in AutoCAD or GIS format depicting existing and proposed underground water, sewer, drainage, and paving improvements
- 3) Florida Power & Light Company will provide conduit, cable, and equipment designs for the conversion of their electric power facilities which will be merged into the consolidated plan.
- 4) The telephone company and the CATV company will provide plans depicting conduits, pull boxes, and cabinet equipment required to accommodate their new underground facilities. The telephone and CATV companies will provide their own drawings for their crews to utilize in installing their cable and equipment.

This Project may be broken into multiple sections. FPL typically allows municipal projects to be broken into sections where the total of all sections equal the required 3 miles of overhead lines and the section are constructed with gaps between projects no greater than one year. Sections allow FPL to begin overhead facility removals prior to the entire project undergrounding being completed. Fiber Optic lines would be the biggest constraint to creating sections. We will work with the City to develop a section by section construction plan. We anticipate the project might be broken into 4 or more sections as needed to expedite completion in a given portion to minimize community disruption within that specific area.

TOTAL FEE TASK III \$101,942.50



Task IV

PUBLIC PRESENTATIONS/PUBLIC OUTREACH

The scope includes CMAR participation in public presentations, in support of Owner Staff and Design team, as directed by the Owner. The public presentations may include public presentation/discussion of construction methods, construction sequences and construction timelines. The public meetings and presentations shall be as directed by the Owner. The public outreach portion of this scope shall consist of the CMAR participating in meetings with the merchants and public to discuss the project. The presentation shall include introduction of the project team, who & how to contact team individuals, discussion of the project sequences, project phasing/ schedule, business/merchant/pedestrian/traveling public access during construction and additional details as requested by the Owner.

Estimated 6 meetings required

TOTAL FEE TASK IV \$ 11,980.00

Task V

TITLE SEARCH AND EASEMENT ACQUISITION (ALLOWANCE)

Title searches for easement acquisition typically cost \$450 per title search. It is difficult to quantify easement negotiation hours with property owners. It appears there are approximately 65 easements indicated to be obtained outside the right-of-way. This would indicate a budget of \$29,250 for title searches. Allowing four hours per easement for locating and negotiating with property owners, a budget for that activity would be approximately \$55,770.

TOTAL FEE TASK V \$ 85,020.00

Task VI

GUARANTEED MAXIMUM PRICE (GMP) - 90% Plans

BCI will prepare and submit a GMP proposal to the Owner after completion of the pre-construction services phase of the project. The GMP proposal will be prepared in accordance with the guidelines and delivered in the format specified by the Owner. The Owner, at its sole option and discretion, may specify different requirements for the GMP proposal. The GMP will be valid for 90 days after submission. BCI will submit the GMP proposal in a bound format which will include, but not be limited to the following:

- Cover sheet including project title and Owner project number;
- Summary sheet of GMP Proposal including subcontractor bids, allowances, contingencies, bonds, insurance, conditions and exclusions. This sheet will also contain contract time, construction start date, date of substantial completion, date of final completion, bar chart schedule and proposed work hours
- Schedule of values
- Detailed summary of general conditions
- Allowance list statement amounts and uses
- Proposed subcontractor list
- Subcontractor bid sheets
- Plans, drawings and specifications specific to the GMP
- Any supporting documents referenced in the GMP



At such time as the GMP preparation process results in a mutually agreeable GMP value, the Owner will document its acceptance thereof in writing and both parties shall execute a contract amendment for the project that incorporates the GMP and its supporting documents into the contract. CMAR's scope of basic and additional services shall be detailed and subject to a final determination of the project scope and size and careful negotiation and coordination between BCI and the Owner.

TOTAL FEE TASK VI **\$ 23,850.00**

TOTAL PRECONSTRUCTION SERVICES FEE (TASKS I-VI) **\$503,512.50**



All tasks and fees include supplies, presentation materials, equipment, personnel, travel and related costs associated with performing the services described.

Presentation and acceptance, by the Owner, of a mutually acceptable GMP shall conclude preconstruction services.

We have attached our current hourly rates for your use should additional pre-construction services be requested.

Preconstruction services scope & fee proposals for subsequent phases of the work program shall be prepared and submitted by the CMAR as requested by the Owner.

Thank you for the opportunity to submit this pre-construction services proposal for the City of Pompano Beach Overhead Utility Undergrounding Project – A1A corridor. If you have any questions on this proposal, please contact us at (561) 659-1400.

Submitted By:
Construction Manager at Risk
Burkhardt Construction, Inc.



Marc R. Kleisley

Title: Vice President of Operations

Accepted by:
Owner
City of Pompano Beach

By: _____
Printed Name

Title: _____

Date: _____

Upon your acceptance of this letter agreement Burkhardt Construction, Inc. shall begin work immediately. Please return one original for our files.



Hourly Rates For Additional Requested
Pre-Construction Services

<u>Name</u>	<u>Position</u>	<u>Rate</u>
Vincent G. Burkhardt	President/Proj. Principal	\$300.00
Sharon H. Burkhardt	Secretary/C.P.A.	\$175.00
Dennis E. Haynes	Vice President/Proj. Principal	\$175.00
Marc R. Kleisley	V.P.Operations/Sr. P.M.	\$150.00
Anthony Sabatino	Senior Project Manager	\$150.00
Bill Zammit	Vertical Project Manager	\$120.00
Adam Rossmell	Project Manager	\$100.00
CJ Rhody	Project Manager	\$100.00
Brandon Rhodes	Project Manager	\$100.00
Christopher Quenneville	Const. Field Mgr./Estimator	\$100.00
Scott Murray	Const. Field Mgr./Estimator	\$100.00
Karl T. Kaminski	Const. Field Mgr./Estimator	\$100.00
Hemant Tank	Asst. PM/Estimator/Cost Engineer	\$75.00
	Merchant Outreach	\$75.00
Sarah B. Hoadley	Accounting Manager/M.B.A.	\$90.00
Katy Pantaleon	Accounting	\$75.00
Kristy Arnold	Admin. Ass't/Secretarial	\$50.00
Melissa McGraw	Marketing/Graphics	\$55.00

BRANNON & GILLESPIE, LLC RATE SCHEDULE:

Principal Professional Engineer: \$195.00/hour

Utility Design Consultant: \$185.00/hour

Utility Coordinator: \$175.00/hour

Draftsman/Designer: \$75.00/hour

(*) -Expenses to be approved by the client in advance.

Hourly rates include all necessary supplies, transportation, communication, overhead and profit.

EXHIBIT B



CERTIFICATE OF LIABILITY INSURANCE

BURKH-3 OP ID: RAL

DATE (MM/DD/YYYY)
10/02/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Brown & Brown of Florida, Inc. 1201 W Cypress Creek Rd # 130 P.O. Box 5727 Ft. Lauderdale, FL 33310-5727 Ken E Willits, CPCU, CFP, CRIS	CONTACT NAME: PHONE (A/C, No, Ext): 954-776-2222 FAX (A/C, No): 954-776-4446 E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
INSURED Burkhardt Construction, Inc. 1400 Alabama Avenue, Suite 20 West Palm Beach, FL 33401-7048	INSURER A : Amerisure Insurance Company	NAIC # 19488
	INSURER B : Amerisure Mutual Ins. Company	23396
	INSURER C : North River Insurance Company	21105
	INSURER D : Lloyd's of London	15792
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

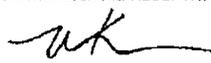
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			GL2089541	10/01/2015	10/01/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			CA2089542	10/01/2015	10/01/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			5811059709	10/01/2015	10/01/2016	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 8,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
D	Professional Liab Claims-Made			B0621P0028087001 RETENTION:\$15,000	07/22/2015	07/22/2016	Per Claim 1,000,000 Aggregate 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder and Pompano Beach CRA listed as additional insured as respects General Liability if required by written contract.

APPROVED
 RISK MANAGEMENT
 ON 10/29/15
 BY JPM

CERTIFICATE HOLDER POMPABC City of Pompano Beach 100 W. Atlantic Blvd. Rm276 Pompano Beach, FL 33060	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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EXHIBIT C



Florida's Warmest Welcome

**CITY OF POMPANO BEACH
REQUEST FOR QUALIFICATIONS
T-12-15**

**CONSTRUCTION MANAGEMENT AT RISK CONTRACT
SERVICES**

**RFQ OPENING: JANUARY 20, 2015 2:00 P.M.
PURCHASING OFFICE
1190 N.E. 3RD AVENUE, BUILDING C (Front)
POMPANO BEACH, FLORIDA 33060**

December 17, 2014

CITY OF POMPANO BEACH, FLORIDA

REQUEST FOR QUALIFICATIONS
T-12-15

CONSTRUCTION MANAGEMENT AT RISK CONTRACT SERVICES

The City is seeking proposals from qualified firms to provide construction management at risk contract services to the City for various city streetscape projects.

The City will receive sealed proposals until **2:00 p.m. (local), January 20, 2015**, in the City's Purchasing Office, 1190 N.E. 3rd Avenue, Building C, Pompano Beach, Florida, 33060. E-mailed or faxed proposals will not be acceptable. Submittal of Response by fax is not acceptable.

RFQ TABLE OF CONTENTS

Section I – RFQ Schedule	Page 02
Section II – Introduction	Page 03
Insurance	Page 05
Section III - Scope of Work	Page 14
Section IV - Evaluation / Selection Process	Page 16
Section V - Submittal Format	Page 19
Essential Requirements Questionnaire	Page 22
Declaration	Page 35
Affidavit	Page 36
Project Team Form	Page 39
Proposal Signature Page	Page 37
Small Business Enterprise Forms (SBE)	Page 41
Local Business Forms	Page 46

SECTION I - RFQ SCHEDULE

The following schedule will be followed for this RFQ:

RFQ Issued:	12/17/2014
Deadline for Questions:	01/13/2015
RFQ Opening:	01/20/2015
Evaluation of Proposals (estimated)	01/29/2015
Evaluation of Presentations (estimated if required)	02/10/2015
Commission Approval of Highest Ranked Firm (estimated)	02/24/2015

SECTION II INTRODUCTION

1. General

The City of Pompano Beach Public Works Department (CITY) has identified major projects and programs within the CITY boundaries with the goal to make the City more attractive to residents, visitors and tourists and promote economic growth and activity as detailed in the City's Strategic Plan.

The intent of this Request for Qualifications (RFQ) is, through a competitive process pursuant to Florida Statutes, Chapter 287.055(2)(g) (Consultants Competitive Negotiations Act), to select the three (3) most qualified firms based on the top three (3) rankings, with whom to negotiate Guaranteed Maximum Price (GMP) Agreements and enter into Construction Manager at Risk Contracts with on an interchangeable basis as determined by the City, for the potential projects listed herein and any other potential projects of similar nature to be determined by City.

The CITY, as part of the City's Capital Improvement Program and Strategic Plan, are providing for the renovation and replacement of existing facilities and the construction of new facilities within the City. The proposed improvements include, but are not restricted to, conversion of existing overhead utilities (e.g. electric, telephone and cable TV) to underground distribution, installation of new drainage, replacement of water and sewer distribution lines, and streetscape improvements, including lighting, sidewalks, pavement and landscaping. The proposed improvements may not occur at the same time, but may be phased as necessary.

Construction drawings and specifications for each project will be provided by the City to the awarded firm(s) to develop a GMP and Construction Manager at Risk contract accordingly, on an as needed basis as determined by the City. The City reserves the right to enter into agreements interchangeably with either of the top three (3) highest ranked firms as determined by the City.

2. Eligibility

Due to the requirement that the Contractor(s) need to be readily available for meetings, discussions and tours within the areas of responsibility, it will be necessary for any proposers to have an office physically located within the tri-county areas of Miami-Dade, Broward, and Palm Beach County. This office must be an active facility from which consultant services are routinely provided and not merely a post office box or other type of mail drop, nor can it be the office of simply a representative agent. The CITY reserves the right to inspect any facility designated by the proposer to insure that it complies with this section.

3. Small Business Enterprise Program

The Pompano Beach City Commission has established a voluntary Small Business Enterprise (SBE) Program to encourage and foster the participation of Small Business Enterprises in the central procurement activities of the City. The City of Pompano Beach is strongly committed to ensuring the participation of Small Business Enterprises (SBE's) as contractors and subcontractors for the procurement of goods and services. The definition of a SBE, for the purpose of the City's voluntary program, is taken from the State of Florida Statute 288.703(1).

As of the date of publication of this solicitation, a small business means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and

that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in Florida that has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

The City encourages all firms to undertake good faith efforts to identify appropriate Small Business Enterprise partners. Sources of information on certified Small Business Enterprises include the Broward County Small Business Development Division, the State of Florida Office of Supplier Diversity, South Florida Water Management District, and other agencies throughout the State. The City includes links to these organizations from the City's website www.pompanobeachfl.gov.

The City has set a 15% voluntary Small Business Enterprise Goal for this project. SBE Forms are located at the end of this solicitation, and all firms responding must return a response of participation or non-participation in order to be considered responsive for evaluation purposes.

Please indicate in your response if your firm is a certified Small Business Enterprise, and include the completed "Good Faith Effort Report" form with your proposal. Proposers should submit Exhibit A, detailing the list of SBE firms to be used on the proposed contract, and a completed Letter of Intent, Exhibit B, for all participating SBE firms. Submit Exhibit C listing SBE firms that were solicited but not selected. Submit Exhibit D explaining your firm's good faith efforts to include SBE firms on this contract.

4. Local Business Program

On March 23, 2010, the City Commission approved a Resolution establishing a Local Business Program, a policy to increase the participation of City of Pompano Beach businesses in the City's procurement process.

You can view the list of City businesses that have a current Business Tax Receipt on the City's website, and locate local firms that are available to perform the work required by the specifications. The business information, sorted by business use classification, is posted on the webpage for the Business Tax Receipt Division: http://pompanobeachfl.gov/pages/department_directory/development_services/business_tax_receipt_division/business_tax_receipt_division.html.php

The City has set a 15% voluntary Local Business goal for this project. Local Business program forms are located at the end of this solicitation, and all firms responding must return a response of participation or non-participation in order to be considered responsive for evaluation purposes.

The City of Pompano Beach is strongly committed to insuring the participation of City of Pompano Beach Businesses as contractors and subcontractors for the procurement of goods and services. Proposers are encouraged to participate in the City of Pompano Beach's voluntary Local Business Program by including, as part of their package, the Local Business Participation Form (Exhibit E,) listing the local businesses that will be used on the contract, and the Letter of Intent Form (Exhibit F) from each local business that will participate in the contract. Proposers should utilize businesses that are physically located in the City of Pompano Beach with a current Business Tax Receipt. Proposers who are unable to meet the recommended voluntary goals should also provide the Local Business Unavailability Form (Exhibit G,) listing firms that were

contacted but not available, and the Good Faith Effort Report (Exhibit H) describing the efforts made to include local business participation in the contract.

5. Contract Award

Upon successful competitive negotiations with the selected Construction Management Firm(s), individual Construction Management at Risk contracts will be developed for each project including a Guaranteed Maximum Price (GMP) and construction schedule. Construction shall not commence until Notice to Proceed is issued by the City. Commission approval will be required for construction projects in excess of \$24,999.

6. Project List

Work to be accomplished under this contract is related, but not limited to the following streetscape, hardscape, and landscape improvement projects in which construction costs may exceed \$2,000,000.00 as follows: The City does not guarantee that the top three (3) ranked firm(s) will be awarded these projects; these projects reflect what we envision to be prospective projects through which construction management at risk contracts are suitable; however, the City reserves the right to procure these services using other methods as deemed appropriate by the City and to expand upon this list or exclude projects from this list.

- A. Briny Avenue Streetscape and Undergrounding Improvements
- B. A1A Undergrounding of Overhead Utilities
- C. DiVito Parking Lot Improvements
- D. N.E. 1st Avenue Streetscape between N.E. 26th Avenue and N.E. 28th Avenue
- E. Section 108 Loan project in Old Pompano (N.E. 1st Avenue, N.E. 1st Street, N.E. 2nd Street, N.E. 3rd Street, N.E. 2nd Avenue, etc.).

7. Insurance

The insurance described herein reflects the insurance requirements deemed necessary for this contract by the City. No contractor or sub-contractor shall commence work under this agreement without the minimal insurance set forth herein, nor without the approval by the City of Pompano Beach Risk Manager. It is not necessary to have this level of insurance in effect at the time of submittal, but certificates indicating that the insurance is currently carried or a letter from the Carrier indicating upgrade ability will speed the review process to determine the most qualified Proposer.

The successful Proposer(s) shall not commence operations until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Pompano Beach Risk Manager.

The following insurance coverage shall be required.

- a. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees). The Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.
- b. Liability Insurance

- 1) Naming the City of Pompano Beach as an additional insured, on General Liability Insurance only, in connection with work being done under this contract.
- 2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

LIMITS OF LIABILITY

Type of Insurance	each occurrence	aggregate
-------------------	--------------------	-----------

GENERAL LIABILITY: MINIMUM \$1,000,000 per OCCURRENCE/\$2,000,000 AGGREGATE

* Policy to be written on a claims incurred basis

XX comprehensive form		
XX premises - operations	bodily injury	
XX explosion & collapse hazard	property damage	
XX underground hazard		
XX products/completed operations hazard	bodily injury and property damage	
XX contractual insurance	combined	
XX broad form property damage		
XX independent contractors		
XX personal injury	personal injury	

AUTOMOBILE LIABILITY: MINIMUM \$1,000,000 per OCCURRENCE/\$2,000,000 AGGREGATE

	bodily injury (each person)	
	bodily injury (each accident)	
XX comprehensive form	property damage	
XX owned		
XX hired	bodily injury and property damage	
XX non-owned	combined	

REAL & PERSONAL PROPERTY

XX comprehensive form	Contractor must show proof they have this coverage.	
-----------------------	---	--

EXCESS LIABILITY

XX umbrella form	bodily injury and property damage	
XX other than umbrella	combined	\$2,000,000. \$2,000,000.

XX PROFESSIONAL LIABILITY		\$1,000,000. \$1,000,000.
----------------------------------	--	--------------------------------

* Policy to be written on a claims made basis

The certification or proof of insurance must contain a provision for notification to the City thirty (30) days in advance of any material change in coverage or cancellation.

The successful Proposer shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within ten (10) days after notification of award of contract.

8. GOVERNING LAW

Interested vendors will agree that agreements shall be governed by the laws of the State of Florida, and the venue for any legal action will be Pompano Beach, Florida.

9. CONFLICT OF INTEREST

For purposes of determining any possible conflict of interest, each Qualifier must disclose if any City employee is also an owner, corporate officer, or an employee of his business. If any City employee is also an owner, corporate officer, or an employee, the Qualifier must file a statement with the Broward County Supervisor of Elections pursuant to Florida Statutes 112.313.

10. LOBBYING PROHIBITED

Qualifiers are not to lobby any City officials, officers or personnel related or involved with this Request for Qualifications. All oral and written inquiries are to be directed to the Procurement Contacts contained herein. Any violation of this condition may result in rejection and/or disqualification of the proposal. The City Manager shall be excluded from this condition.

11. DRUG FREE WORKPLACE

The selected Qualifier with whom an agreement will be negotiated will be required to verify they will operate a "Drug Free Workplace" as outlined in Florida Statute, Section 287.087.

12. PUBLIC ENTITY CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statute, Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

13. TAXES

The CONTRACTOR shall pay all applicable sales, consumer, use and other similar taxes required by law. The CONTRACTOR is responsible for reviewing the pertinent state statutes involving the sales tax and complying with all requirements.

14. HOLD HARMLESS AND INDEMNIFICATION

Proposer covenants and agrees that it will indemnify and hold harmless the City and all of its officers, agents, and employees from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by the Proposer, whether direct or indirect, or whether to any person or property to which the City or said parties may be subject, except that neither the Proposer nor any of its subcontractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused by or resulting from the sole negligence of the City or any of its officers, agents or employees.

15. RETENTION OF RECORDS AND RIGHT TO ACCESS

The selected firm shall maintain during the term of the contract all books of account, receipt invoices, reports and records in accordance with generally accepted accounting practices and standards. The form of all records and reports shall be subject to the approval of the City's Internal Auditor. The selected firm must comply with the Internal Auditor's recommendation for changes, additions, or deletions. The City's Internal Auditor must be permitted during normal business hours to audit and examine the books of account, reports, and records relating to this contract. The selected firm shall maintain and make available such records and files for the duration of the contract and retain them until the expiration of three years after final payment under the contract.

16. COMMUNICATIONS

No negotiations, decisions, or actions shall be initiated or executed by the firm as a result of any discussions with any City employee. Only those communications, which are in writing from the City, may be considered as a duly authorized expression on behalf of the City. In addition, only communications from firms that are signed and in writing will be recognized by the City as duly authorized expressions on behalf of firms.

17. NO DISCRIMINATION

There shall be no discrimination as to race, sex, color, age, religion, or national origin in the operations conducted under any contract with the City.

18. INDEPENDENT CONTRACTOR

The selected firm will conduct business as an independent contractor under the terms of this contract. Personnel services provided by the firm shall be by employees of the firm and subject to supervision by the firm, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this agreement shall be those of the firm.

19. STAFF ASSIGNMENT

The City of Pompano Beach reserves the right to approve or reject, for any reasons, Proposer's staff assigned to this project at any time. Background checks may be required.

20. CONTRACT TERMS

The contract resulting from this RFQ shall include, but not be limited to the following terms:

The contract shall include as a minimum, the entirety of this RFQ document, together with the successful Proposer's proposal. Contract shall be prepared by the City of Pompano Beach City Attorney.

If the City of Pompano Beach defends any claim, demand, cause of action, or lawsuit arising out of any act, action, negligent acts or negligent omissions, or willful misconduct of the contractor, its employees, agents or servants during the performance of the contract, whether directly or indirectly, contractor agrees to reimburse the City of Pompano Beach for all expenses, attorney's fees, and court costs incurred in defending such claim, cause of action or lawsuit.

21. WAIVER

It is agreed that no waiver or modification of the contract resulting from this RFQ, or of any covenant, condition or limitation contained in it shall be valid unless it is in writing and duly executed by the party to be charged with it, and that no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this contract, or the right or obligations of any party under it, unless such waiver or modification is in writing, duly executed as above. The parties agree that the provisions of this paragraph may not be waived except by a duly executed writing.

22. SURVIVORSHIP RIGHTS

This contract resulting from this RFQ shall be binding on and inure to the benefit of the respective parties and their executors, administrators, heirs, personal representative, successors and assigns.

23. TERMINATION

The contract resulting from this RFQ may be terminated by the City of Pompano Beach without cause upon providing contractor with a least sixty (60) days prior written notice.

Should either party fail to perform any of its obligations under the contract resulting from this RFQ for a period of thirty (30) days after receipt of written notice of such failure, the non-defaulting part will have the right to terminate the contract immediately upon delivery of written notice to the defaulting part of its election to do so. The foregoing rights of termination are in addition to any other rights and remedies that such party may have.

24. MANNER OF PERFORMANCE

Proposer agrees to perform its duties and obligations under the contract resulting from this RFQ in a professional manner and in accordance with all applicable local, federal and state laws, rules and regulations.

Proposer agrees that the services provided under the contract resulting from this RFP shall be provided by employees that are educated, trained and experienced, certified and licensed in all areas encompassed within their designated duties. Proposer agrees to furnish the City of Pompano Beach with all documentation, certification, authorization, license, permit, or registration currently required by applicable laws or rules and regulations. Proposer further certifies that it and its employees are now in and will maintain good standing with such governmental agencies and that it and its employees will keep all license, permits, registration, authorization or certification required by applicable laws or regulations in full force and effect during the term of this contract. Failure of Proposer to comply with this paragraph shall constitute a material breach of contract.

25. ACCEPTANCE PERIOD

Proposals submitted in response to this RFP must be valid for a period no less than ninety (90) days from the closing date of this solicitation.

26. RFQ CONDITIONS AND PROVISIONS

The completed and signed proposal (together with all required attachments) must be returned to City on or before the time and date stated herein. All Proposers, by submission of a proposal, shall agree to comply with all of the conditions, requirements and instructions of this RFP as stated or implied herein. All proposals and supporting materials submitted will become the property of the City.

Any alteration, erasure, or interlineations by the Proposer in this RFP shall constitute cause for rejection. Exceptions or deviations to this proposal may not be added after the submittal date.

All Proposers are required to provide all information requested in this RFP. Failure to do so may result in disqualification of the proposal.

The City reserves the right to postpone or cancel this RFP, or reject all proposals, if in its sole discretion it deems it to be in the best interest of the City to do so.

The City reserves the right to waive any technical or formal errors or omissions and to reject all proposals, or to award contract for the items herein, in part or whole, if it is determined to be in the best interests of the City to do so.

The City shall not be liable for any costs incurred by the Proposer in the preparation of proposals or for any work performed in connection therein.

27. STANDARD PROVISIONS

a. Governing Law

Any agreement resulting from this RFP shall be governed by the laws of the State of Florida, and the venue for any legal action relating to such agreement will be in Broward County, Florida.

b. Licenses

In order to perform public work, the successful Proposer shall:
Be licensed to do business in Florida, if an entity, and hold or obtain such Contractor' and Business Licenses if required by State Statutes or local ordinances.

c. Conflict Of Interest

For purposes of determining any possible conflict of interest, each Proposer must disclose if any Elected Official, Appointed Official, or City Employee is also an owner, corporate officer, or an employee of the firm. If any Elected Official, Appointed Official, or City Employee is an owner, corporate officer, or an employee, the Proposer must file a statement with the Broward County Supervisor of Elections pursuant to §112.313, Florida Statutes.

d. Drug Free Workplace

The selected firm(s) will be required to verify they will operate a "Drug Free Workplace" as set forth in Florida Statute, 287.087.

e. Public Entity Crimes

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statute, Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

f. Patent Fees, Royalties, And Licenses

If the selected Proposer requires or desires to use any design, trademark, device, material or process covered by letters of patent or copyright, the selected Proposer and his surety shall indemnify and hold harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, trademark, copyright, material or process in connection with the work agreed to be performed and shall indemnify the City from any cost, expense, royalty or damage which the City may be obligated to pay by reason of any infringement at any time during or after completion of the work.

g. Permits

The selected Proposer shall be responsible for obtaining all permits, licenses, certifications, etc., required by federal, state, county, and municipal laws, regulations, codes, and ordinances for the performance of the work required in these specifications and to conform to the requirements of said legislation.

h. Familiarity With Laws

It is assumed the selected firm(s) will be familiar with all federal, state and local laws, ordinances, rules and regulations that may affect its services pursuant to this RFP. Ignorance on the part of the firm will in no way relieve the firm from responsibility.

i. Withdrawal Of Proposals

A firm may withdraw its proposal without prejudice no later than the advertised deadline for submission of proposals by written communication to the General Services Department, 1190 N.E. 3rd Avenue, Building C, Pompano Beach, Florida 33060.

j. Composition Of Project Team

Firms are required to commit that the principals and personnel named in the proposal will perform the services throughout the contractual term unless otherwise provided for by way of a negotiated contract or written amendment to same executed by both parties. No diversion or substitution of principals or personnel will be allowed unless a written request that sets forth the qualifications and experience of the proposed replacement(s) is submitted to and approved by the City in writing.

k. Variances

While the City allows Proposers to take variances to the RFP terms, conditions, and specifications, the material nature, number, and extent of variances taken will be considered in determining proposal responsiveness and in allocating proposal evaluation points.

l. Invoicing/Payment

All invoices should be sent to City of Pompano Beach, Accounts Payable, P.O. Drawer 1300, Pompano Beach, Florida, 33061. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of a proper invoice.

m. Public Records

1. 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:
 - a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;
 - b. 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 119, Fla. Stat., or as otherwise provided by law;
 - c. 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

- d. 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 agency.
2. The failure of Contractor 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 herein.

28. QUESTIONS AND COMMUNICATION

All questions regarding the RFQ are to be submitted in writing to the Purchasing Office, 1190 N.E. 3rd Avenue, Building C (Front), Pompano Beach, Florida 33060, fax (954) 786-4168, or email purchasing@copbfl.com. All questions must include the inquiring firm's name, address, telephone number and RFP name and number. Questions must be received at least seven (7) calendar days before the scheduled solicitation opening. Oral and other interpretations or clarifications will be without legal effect. Any addendum necessary to answer questions will be posted to the City's website, and it is the Proposer's responsibility to obtain all addenda before submitting a response to the solicitation.

29. ADDENDA

The issuance of a written addendum is the only official method whereby interpretation, clarification, or additional information can be given. If any addenda are issued to this solicitation the City will attempt to notify all known prospective Proposers, however, it shall be the responsibility of each Proposer, prior to submitting their response, to contact the City Purchasing Office at (954) 786 4098 to determine if addenda were issued and to make such addenda a part of their proposal.

30. CONTACT INFORMATION

For additional information regarding this RFQ, please contact City of Pompano Beach Public Works Department, Engineering Division, John Sfiropoulos, P.E., Civil Engineer III at 954-545-7009 or email john.sfiropoulos@copbfl.com.

SECTION III- SCOPE OF WORK

1. INTENTION

The intent of this "Request for Qualifications" is for the CITY to select a Construction Management Firm capable of providing construction management services necessary to construct the improvements within the CITY as outlined above. Applicants are encouraged to self- perform any of the general services listed on page 6. The Construction Management Firm(s) may retain necessary design professionals under the process provided in Florida Statute Section 287.055.

Based on the Guaranteed Maximum Price (GMP), the CITY may or may not proceed if the GMP is not acceptable to the CITY. The CITY reserves the right to discontinue with that firm without recourse or liability. The types of services required may include, but shall not be limited to, the following.

2. PRE-CONSTRUCTION PHASE

- A. Review and coordinate the work that the architect, engineer and/or the owner prepared for the project, within the existing site conditions.
- B. Submit to the architect, engineer and owner for consideration, appropriate cost and savings programs (value engineering).
- C. Coordinate competitive bidding and contracting for trade subcontractors.
- D. Calculate and provide a Guaranteed Maximum Price for the project or each phase of the project.
- E. Provide a preliminary construction schedule.

3. CONSTRUCTION PHASE

- A. Provide Performance and Payment Bonds for the full value of the GMP for each phase of the project.
- B. Monitor Minority/Women and Small Business Enterprises participation (M/WBE, SBE) for the project or phases of the project.
- C. Apply for, obtain, coordinate and pay for all permits, inspections and tests. Ensure the successful, timely, and economical completion of the project or phases of the project.
- D. Coordinate and insure compliance with all insurance requirements.
- E. Create, maintain, and present an overall construction schedule
- F. Create a schedule of values for the project or phases of the project.
- G. Coordinate Construction Management Services, including but not limited to:
 - 1) Regular job site meetings.
 - 2) Public presentations and Public outreach
 - 2) Maintaining and updating schedules.
 - 3) Overseeing quality assurances.
 - 4) Maintaining and providing copies of all contract documents.
 - 5) Insuring compliance with all safety programs.
 - 6) Coordination of all construction.

4. GENERAL SERVICES

Work to be accomplished under this contract may include the following:

- A. Undergrounding existing FPL, ATT and Comcast overhead utilities.
- B. Pedestrian improvements within the ROW and City owned property.
- C. Exercise trail, passive park areas and possible playground upgrades
- D. Eco-tourism elements
- E. Trendy design and art elements
- F. Landscape Beautification
- G. On-Street Beachfront Parking along (if applicable)
- H. Base information review/identification of site design issues/opportunities
- I. Cost estimating and value engineering
- J. Paving and Hardscape materials
- K. Lighting-Electrical
- L. Site Furnishings and Special Features
- M. Roadway alignment plan coordination
- N. Outline Specifications
- O. Plans that shall reflect the location and dimensioning of the following elements:
 - a. Plazas, walkways/sidewalks, and specialty features
 - b. Steps, ramps and retaining walls
 - c. Site furnishings
 - d. Exterior lighting
 - e. Hardscape/Paving Plans
 - f. Special pavement materials and patterns (Type and location)
 - g. Pedestrian surfaces
 - h. Curbs and paving borders
 - i. Planting Plans - Quantity, size, and description of the following:
 - Trees (including relocation of any existing trees)
 - Shrubs and groundcovers
 - Soil mixes
 - Planting details and specifications
- P. Irrigation (City to supply source information for irrigation source, i.e., well or City water source).
 - a. Piping and hydraulics design
 - b. Pump and/or well design
 - c. Specifications
- Q. Construction Details
 - a. Decorative walls (structural sub-consultant)
 - b. Special pavements
 - c. Various lighting treatments
 - d. landscaped edges and buffers
 - e. Stairs, ramps, walls and walkways
 - f. Curbs and hardscape edges
 - g. Site furniture
 - h. Construction Details
 - i. Construction Specifications
 - j. Technical Specifications

5. COMPOSITION OF PROJECT TEAM

Qualifier will be required to commit that the personnel and/or principals named in the proposal shall remain assigned to the "project" throughout the period of the contract unless provided for otherwise in a negotiated contract. No diversion or substitution of personnel or principals will be allowed without submission of a written request with the qualifications and experience of the proposed replacement. The approval of the CITY will be required for any such diversion or substitution.

6. LICENSE

Firms must have previous municipal experience and must be licensed to practice General Contracting in the State of Florida, Florida State Statute 481, by the Board of Professional Regulation.

SECTION IV - SELECTION/EVALUATION PROCESS

1. Interested Respondents shall submit their qualifications and any other information required herein to the City of Pompano Beach's Purchasing Department's office on or before the date and the time specified.
2. Each partner of joint ventures must individually meet the conditions of the General Contractor's Evaluation. Contractor's License may not have been suspended, put on probation or revoked at any time in the last five (5) years.
3. Limited Liability Corporations (LLC) will be required to comply with a Guaranty of Obligations.
4. General Contractor shall provide a complete financial statement indicating organization's financial condition. Financial statements provided by general contractors shall not be older than six (6) months prior to the date of filing this Prequalification Application. The financial statements are to be reviewed and submitted with any accompanying notes and supplemental information. The City of Pompano Beach reserve the right to reject financial statements in which the financial condition shown is of a date six (6) months or more prior to the date of filing.
5. A certificate by a Certified Public Accountant (CPA) is required. The CPA may submit a certificate in his/her own words, including such qualifications as may be necessary in view of the scope of this assignment, provided that such qualifications shall not be so extensive as to nullify the value of the statement or its usefulness to the City of Pompano Beach. Certificate shall be signed and shall indicate license/certificate number.
6. Bearing in mind that working capital is an important factor in determining the prequalification of the general contractor, the accountant will perform a valuable service for their client and at the same time assist the City, if they will furnish, by supplemental schedules or as part of their certificate, any information not specifically called for by the statement which in their opinion might be taken into consideration. In the event that the general contractor's job income and expenditures are accounted on a completed contract basis and the balance sheet includes an item reflecting the excess of costs to date over billings to date, or vice versa, the elements of "Accumulated Costs" and "Billings to Date" must be shown in support of the balance sheet item.

7. A Selection Committee will review the submittals. The selected Firms will be notified and ranked. The committee may conduct discussions, for clarification purposes only, with the finalists and re-score and re-rank the finalists' qualifications. The final ranking will then be recommended to the CITY for approval. The CITY has the authority to (including, but not limited to); approve the recommendation; reject the recommendation and direct staff to re-advertise the solicitation; or, review the responses themselves and/or request oral presentations and determine a ranking order that may be the same or different from what was originally presented to the board.
8. After the CITY has approved the rankings of the firms and authorized negotiations to proceed, CITY staff may negotiate Contracts with any of the three (3) top ranked Firm(s) on an interchangeable basis, as determined by the CITY. The final Contract negotiated between the Firm and CITY staff will incorporate the contents of this "Request for Qualifications" the qualifications submitted by the Firm, and any other terms or conditions that the parties may agree to include by way of negotiation. If CITY staff is unable to negotiate a satisfactory Contract, CITY staff may terminate negotiations with that Firm without recourse or liability. After a Contract has been formally approved and executed by the CITY, the Firm will be issued an "Authorization to Proceed."
9. The Committee will rank responses based upon the following criteria:

- Overall approach and methodology: Explain the firm's approach to these types of projects from initial involvement in contract document preparation through the final construction phases. Include methods used during construction to monitor this project and resolve issues as well as methods of sequencing and coordination among the firm's trades to minimize conflict and errors.
- A. 0-20
- Prior experience with projects of similar size for a City and in an urban environment, beachfront or waterfront areas with an emphasis on streetscape improvements, utility improvements, large promenades, sophisticated landscape themes, undergrounding of overhead utilities in compliance with FPL (contractor and/or subcontractor must be FPL- approved/certified), Comcast, and AT&T standards and certifications, roadway resurfacing, etc., completed during the past five (5) years:
- B. 0-20
- a. Number of similar projects
 - b. Complexity of similar projects
 - c. References from past projects
 - d. Safety record
- Knowledge of site and local conditions: Demonstrate knowledge of the site, State, County, and City requirements, codes, and ordinances. Also knowledge of local subcontractors and suppliers, capable of supplying quality workmanship and materials
- C. 0-5
- Financial Capability - An indication of the resources and the necessary working capital available and how it will relate to the Firm's financial stability through the completion of the project. In addition, the firm's ability to secure bonding shall be also be used as an indicator.
- D. 0-10
- Qualifications of personnel including sub consultants. The general and specific project related capability of the in-house office and field support, including previous experience with similar projects:
- E. 0-20
- a. Number of technical staff
 - b. Qualifications of technical staff: (1) Number of licensed staff
(2) Education of staff
(3) Experience of staff
- Scheduling/Cost Control. A description of the Firm's general project management, scheduling, and cost controls indicating functions and capabilities, with emphasis on the Firm's ability to prevent cost overruns or change orders:
- F. 0-10
- Proximity of the nearest office to the project location:
- G. 0-10
- a. Location
 - b. Number of staff at the nearest office

- Is the firm a certified minority or women owned business enterprise as defined by the City of Pompano Beach or the Florida Small and Minority Business Assistance Act of 1985? Or, is a minority or women owned business enterprise part of the team and assigned to participate in no less than 5% of the work? 0-5

Total Points 0-100

The Committee has the option to use the above criteria for the initial ranking to short-list Proposers and to use an ordinal ranking system to score short-listed Proposers following presentations (if deemed necessary) with a score of "1" assigned to the short-listed Proposer deemed most qualified by the Committee.

Each firm should submit documentation that evidences the firm's capability to provide the services required for the Committee's review for short listing purposes. After an initial review of the Proposals, the City may invite Proposers for an interview to discuss the proposal and meet firm representatives, particularly key personnel who would be assigned to the project. Should interviews be deemed necessary, it is understood that the City shall incur no costs as a result of this interview, nor bear any obligation in further consideration of the submittal.

When more than three responses are received, the committee shall furnish the City Commission (for their approval) a listing, in ranked order, of no fewer than three firms deemed to be the most highly qualified to perform the service. If three or less firms respond to the RFP, the list will contain the ranking of all responses.

The City Commission has the authority to (including, but not limited to); approve the recommendation; reject the recommendation and direct staff to re-advertise the solicitation; or, review the responses themselves and/or request oral presentations and determine a ranking order that may be the same or different from what was originally presented to the City Commission.

SECTION V - SUBMITTAL FORMAT

Information to be submitted should include the following and be tabbed as indicated:

Title Page: Show the "Request for Qualifications" project title, project number, the name of the Respondent firm, address, telephone number, name of contact person and date.

- A. Table of Contents: Clearly identify the section, topic, and page number.
- B. The Essential Requirements Questionnaire and the Declaration page below.
- C. Letter of Transmittal: Limit to one (1) or two (2) printed pages.
 - 1. Briefly state the firm's understanding of the work to be done and provide a positive commitment to perform the work.

2. Give the names of the persons who will be authorized to make representations for the firm including their titles, addresses and telephone numbers.

D. Profile of Construction Management Services:

1. Describe the firm, including the size, range of activities, and other pertinent information.
2. Provide an organizational chart.
3. State whether the organization is national, regional or local.
4. State the location of the office from which the work is to be performed.
5. Describe the organization of the proposed project team, detailing the level of involvement, field of expertise and estimated hours for each member of the team.

E. Provide a list and description of similar municipal or other projects satisfactorily performed within the past five (5) years that have been completed under a "Construction Management at Risk Services" agreement. For each project listed, include the name and telephone number of a representative for whom the project was undertaken who can verify satisfactory performance. Describe experiences in conducting similar projects for each of the staff assigned to the project, as well as their relevant educational background.

F. Provide information on any litigation (decided, settled or pending) the firm has been involved in within the last five (5) years.

G. Describe what municipal staff support is anticipated for this type of project.

H. Describe the firm's approach to performing the work. This should include the following points: overall plan for this project outlining major tasks and responsibilities, project time schedule and staff assigned.

I. Provide reviewed or audited financial statements for your most recent past three (3) complete fiscal years, accompanied by a review report by an independent Certified Public Accountant. Compiled or internally prepared financial statements will not be accepted.

J. Insurance certificate and any other forms the Qualifier feels are pertinent.

K. City Forms: The RFP Proposal Signature Page must be completed, signed and returned. Proposer should return all RFQ pages, initialed where indicated.

The Submittal Package shall be submitted in accordance with the requirements of the Consultants Competitive Negotiation Act and shall include a completed sample insurance certificate listing the insurance company's name(s) for both Professional and General Liability Insurance and the dollar amounts of the coverage.

Submit one (1) original unbound and six (6) bound copies of the proposal. All copies will be on 8 1/2" x 11" plain white paper, typed, and signed by an authorized representative who is able to contractually bind the Proposer. In addition, Proposers must submit one (1) original copy of the Proposal on electronic media in printable Adobe or Microsoft Word format (or other format approved by the City). Failure to adhere to the submittal quantity criteria may result in the Proposal being considered non-responsive.

Submittal packages should be marked on the exterior RFQ CM at Risk Contract Services For Various City Streetscape Improvement Projects and addressed to City of Pompano Beach, 1190 N.E. 3rd Avenue, Building C, Pompano Beach, Florida 33060.

SUBMITTALS MUST BE RECEIVED NO LATER THAN THE DATE SPECIFIED IN THE RFQ SCHEDULE IN THE SECTION I ABOVE.

No fax or e-mail copies will be accepted. Submittals received after the specified time and date will not be considered and will be returned unopened to the sender.

The CITY reserves the right to accept or reject any or all submittals, to waive any minor irregularities, and to extend the deadline for submission when it is in the best interest of the CITY.

VI. CONTRACT SECURITY

When the Successful Firm delivers the executed Agreement to the CITY, it must be accompanied by a Performance Bond equivalent to 100% of the contract. A warranty Bond, equal to 25% of the actual cost of construction shall remain in effect after the project(s) is completed and for a period of two (2) years from the date of final approval.

ESSENTIAL REQUIREMENTS
QUESTIONNAIRE

1. Qualifier possesses a valid and current Florida Contractor's license for the project or projects for which it intends to submit a bid.

___ Yes ___ No

2. Qualifier has or will obtain a general liability insurance policy with a policy limit of at least \$_____ per occurrence and \$_____ aggregate.

___ Yes ___ No

3. Qualifier has current workers' compensation insurance policy.

___ Yes ___ No

Qualifier is exempt from this requirement, because it has no employees

a) A "no" answer to Question 4 will not be disqualifying if the Qualifier is exempt from complying with Question 4, for reasons explained in footnote 3.

b) A Qualifier disqualified solely because of a "Yes" answer given to question 6, 7, or 9 may appeal the disqualification and provide an explanation of the relevant circumstances during the appeal procedure.

c) Public Entity may request an additional notarized statement from the surety at the time of submission of a bid, if this pre-qualification package is submitted more than 60 days prior to submission of the bid.

4. Have you attached your latest copy of a reviewed or audited financial statement with accompanying notes and supplemental information?

___ Yes ___ No

NOTE: A financial statement that is not reviewed or audited is not acceptable. A letter verifying availability of a line of credit may also be attached; however, it will be considered as supplemental information only, and is not a substitute for the required financial statement.

5. Have you attached a notarized statement from an admitted surety insurer (approved by the Florida Department of Insurance) and authorized to issue bonds in the State of Florida, which states: (a) that your current bonding capacity is sufficient for the project for which you seek pre-qualification if you are seeking pre-qualification for the Project?

Yes No

NOTE: Notarized statement must be from the surety company, not an agent or broker.

6. Has your contractor's license been revoked at any time in the last five years?

Yes No

7. Has a surety firm completed a contract on your behalf, or paid for completion because your firm was default terminated by the project owner within the last five (5) years?

Yes No

8. At the time of submitting this pre-qualification form, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract?

Yes No

If the answer is "Yes," state the beginning and ending dates of the period of debarment:

9. At any time during the last five years, has your firm, or any of its owners or officers, been convicted of a crime involving the awarding of a contract for a government construction project, or the bidding or performance of a government contract?

Yes No

A. Current Organization and Structure of the Business

For Firms That Are Corporations:

1a. Date Incorporated: _____

1b. Under the laws of what state: _____

1c. Provide all the following information for each person who is either (a) an officer of the corporation (president, vice president, secretary, and treasurer), or (b) the owner of at least ten per cent of the corporation's stock.

Name: _____

Position: _____

Years with Company: _____

% Ownership: _____

Social Security #: _____

1d. Identify every construction firm that any person listed above has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, "owner" and "partner" refer to ownership of ten percent or more of the business, or 10 percent or more of its stock, if the business is a corporation.

Person's Name: _____

Construction Firm: _____

Dates of Person's Participation with Firm: _____

For Firms That Are Partnerships:

1a. Date of formation: _____

1b. Under the laws of what state: _____

1c. Provide all the following information for each partner who owns 10 per cent or more of the firm.

Name: _____

Position: _____

Years with Company: _____

% Ownership: _____

Social Security #: _____

1d. Identify every construction company that any partner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, "owner" and "partner" refer to ownership of ten per cent or more of the business, or ten per cent or more of its stock, if the business is a corporation.

Person's Name: _____

Construction Firm: _____

Dates of Person's Participation with Firm: _____

For Firms That Are Sole Proprietorships:

1a. Date of commencement of business.

1b. Social security number of company owner.

1c. Identify every construction firm that the business owner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, "owner" and "partner" refer to ownership of ten per cent or more of the business, or ten per cent or more of its stock, if the business is a corporation.

Person's Name: _____

Construction Firm: _____

Dates of Person's Participation with Firm: _____

For Firms That Intend to Make a Bid as Part of a Joint Venture:

1a. Date of commencement of joint venture.

1b. Provide all of the following information for each firm that is a member of the joint venture that expects to bid on one or more projects:

Name of firm: _____

% Ownership of Joint Venture: _____

B. History of the Business and Organizational Performance

1. Has there been any change in ownership of the firm at any time during the last three years?

NOTE: A corporation whose shares are publicly traded is not required to answer this question.

Yes No

If "yes," explain on a separate signed page.

2. Is the firm a subsidiary, parent, holding company or affiliate of another construction firm?

NOTE: Include information about other firms if one firm owns 50 per cent or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm.

Yes No

If "yes," explain on a separate signed page.

3. Are any corporate officers, partners or owners connected to any other construction firms?

NOTE: Include information about other firms if an owner, partner, or officer of your firm holds a similar position in another firm.

Yes No

If "yes," explain on a separate signed page.

4. State your firm's gross revenues for each of the last three calendar years:

2013 _____ 2012 _____ 2011 _____

5. How many years has your organization been in business in Florida as a contractor under your present business name and license number? ___ years

6. Is your firm currently the debtor in a bankruptcy case?

Yes No

If "yes," please attach a copy of the bankruptcy petition, showing the case number, and the date on which the petition was filed.

7. Was your firm in bankruptcy at any time during the last five years? (This question refers only to a bankruptcy action that was not described in answer to question 7, above)

Yes No

If "yes," please attach a copy of the bankruptcy petition, showing the case number and the date on which the petition was filed, and a copy of the Bankruptcy Court's discharge order, or of any other document that ended the case, if no discharge order was issued.

C. Licenses

1. List all Florida construction license numbers, classifications and expiration dates of the Florida contractor licenses held by your firm:

2. If any of your firm's license(s) are held in the name of a corporation or partnership, list below the names of the qualifying individual(s) listed on the Contractors State Licensing Board (CSLB) records who meet(s) the experience and examination requirements for each license.

3. Has your firm changed names or license number in the past five years?

Yes No

If "yes," explain on a separate signed page, including the reason for the change.

4. Has any owner, partner or (for corporations) officer of your firm operated a construction firm under any other name in the last five years?

Yes No

If "yes," explain on a separate signed page, including the reason for the change.

5. Has a State of Florida license(s) held by your firm been suspended within the last five years?
____ Yes ____ No

If "yes," please explain on a separate signed sheet.

D. Disputes

1. At any time in the last five years has your firm been assessed and paid liquidated damages after completion of a project under a construction contract with either a public or private owner?

____ Yes ____ No

If yes, explain on a separate signed page, identifying all such projects by owner, owner's address, and the date of completion of the project, amount of liquidated damages assessed and all other information necessary to fully explain the assessment of liquidated damages.

2. In the last five years has your firm, or any firm with which any of your company's owners, officers or partners was associated, been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any government agency or public works project for any reason?

NOTE: "Associated with" refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and which is listed in response to question 1c or 1d on this form.

____ Yes ____ No

If "yes," explain on a separate signed page. State whether the firm involved was the firm applying for pre-qualification here or another firm. Identify by name of the company, the name of the person within your firm who was associated with that company, the year of the event, the owner of the project, the project and the basis for the action.

3. In the last five years has your firm been denied an award of a public works contract based on a finding by a public agency that your company was not a responsible bidder?

____ Yes ____ No

If "yes," explain on a separate signed page. Identify the year of the event, the owner, the project and the basis for the finding by the public agency.

NOTE: The following two questions refer only to disputes between your firm and the owner of a project. You need not include information about disputes between your firm and a supplier, another contractor, or subcontractor.

4. In the past five years has any claim against your firm concerning your firm's work on a construction project been filed in court or arbitration?

Yes No

If "yes," on separate signed sheets of paper identify the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

5. In the past five years has your firm made any claim against a project owner concerning work on a project or payment for a contract and filed that claim in court or arbitration?

Yes No

If "yes," on separate signed sheets of paper identify the claim by providing the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

6. At any time during the past five years, has any surety company made any payments on your firm's behalf as a result of a default, to satisfy any claims made against a performance or payment bond issued on your firm's behalf, in connection with a construction project, either public or private?

Yes No

If "yes," explain on a separate signed page the amount of each such claim, the name and telephone number of the claimant, the date of the claim, the grounds for the claim, the present status of the claim, the date of resolution of such claim if resolved, the method by which such was resolved if resolved, the nature of the resolution and the amount, if any, at which the claim was resolved.

7. In the last five years has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

Yes No

If "yes," explain on a separate signed page. Name the insurance carrier, the form of insurance and the year of the refusal.

E. Criminal Matters and Related Civil Suits

1. Has your firm or any of its owners, officers or partners ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?

___ Yes ___ No

If "yes," explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the investigation and the grounds for the finding.

2. Has your firm or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction?

___ Yes ___ No

If "yes," explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the conviction and the grounds for the conviction.

3. Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?

___ Yes ___ No

If "yes," identify on a separate signed page the person or persons convicted, the court (the City if a state court, the district or location of the federal court), the year and the criminal conduct.

F. Bonding

1. Bonding capacity: Provide documentation from your surety identifying the following:

Name of bonding company/surety: _____

Name of surety agent, address and
telephone number: _____

2. If your firm was required to pay a premium of more than one per cent for a performance and payment bond on any project(s) on which your firm worked at any time during the last three years, state the percentage that your firm was required to pay. You may provide an explanation for a percentage rate higher than one per cent, if you wish to do so.

3. List all other sureties (name and full address) that have written bonds for your firm during the last five years, including the dates during which each wrote the bonds:

4. During the last five years, has your firm ever been denied bond coverage by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required?

Yes No

If yes, provide details on a separate signed sheet indicating the date when your firm was denied coverage and the name of the company or companies, which denied coverage; and the period during which you had no surety bond in place.

G. Compliance with Occupational Safety and Health Laws and with Other Labor Legislation Safety

1. Has the Occupational Safety and Health Administration (OSHA) cited and assessed penalties against your firm for any "serious," "willful" or "repeat" violations of its safety or health regulations in the past five years?

NOTE: If you have filed an appeal of a citation, and the Occupational Safety and Health Appeals Board has not yet ruled on your appeal, you need not include information about it.

Yes No

If "yes," attach a separate signed page describing the citations, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were issued, the amount of penalty paid, if any. If the citation was appealed to the Occupational Safety and Health Appeals Board and a decision has been issued, state the case number and the date of the decision.

2. Has the federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation. Yes No

If "yes," attach a separate signed page describing each citation.

3. Has the state or federal Environmental Protection Agency (EPA) or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor, in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

Yes No

If "yes," attach a separate signed page describing each citation.

4. How often do you require documented safety meetings to be held for construction employees and field supervisors during the course of a project?

5. Within the last five years has there ever been a period when your firm had employees but was without workers' compensation insurance or state-approved self-insurance?

Yes No

If "yes," please explain the reason for the absence of workers' compensation insurance on a separate signed page. If "No," please provide a statement by your current workers' compensation insurance carrier that verifies periods of workers' compensation insurance coverage for the last five years. (If your firm has been in the construction business for less than five years, provide a statement by your workers' compensation insurance carrier verifying continuous workers' compensation insurance coverage for the period that your firm has been in the construction business).

H. Prevailing Wage and Apprenticeship Compliance Record

1. Has there been more than one occasion during the last five years in which your firm was required to pay either back wages or penalties for your own firm's failure to comply with the state's prevailing wage laws?

NOTE: This question refers only to your own firm's violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.

___ Yes ___ No

If "yes," attach a separate signed page or pages, describing the nature of each violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that you were required to pay.

SURETY AND BONDING REQUIREMENTS

A. Attach a notarized statement from the bonding company your firm proposes to use indicating their commitment to provide a Performance and Payment Bond for the full amount of the contract.

B. List the names of the Bonding firms utilized by your organization in the last five (5) years, for projects over \$3,000,000.

Name of Bonding Company No. 1

Address: _____

Contact Name: _____ Telephone: _____

Project Name: _____

Amount Bonded: _____ % _____

Completed _____

Name of Bonding Company No. 2

Address: _____

Contact Name: _____ Telephone: _____

Project Name: _____

Amount Bonded: _____ % _____

Completed _____

INSURANCE REQUIREMENTS

Each policy of insurance carried by the successful bidder for this project shall be issued by an insurance company licensed to do business in the State of Florida with a rating of "A" or better and a financial size category of "V" or better according to the latest edition of "Bests".

A. Attach a notarized statement from the Worker's Compensation carrier specifying organization's current Experience Modification rating for Worker's Compensation in the State of Florida.

B. List the names of the insurance firms utilized by your organization in the last five (5) years, for projects over \$3,000,000.

Name of Insurance Company No. 1

Address: _____

Contact Name: _____ Telephone: _____

Project Name: _____

Amount Bonded: _____ % _____

Completed _____

Name of Insurance Company No. 2

Address: _____

Contact Name: _____ Telephone: _____

Project Name: _____

Amount Bonded: _____ % _____

Completed _____

Failure to provide all these attachments may be cause for disqualification for this project.

Attachment 1 – Certificate of Accountant Attachment 1A –
General Statement of Bank Credit Attachment 2 – Notarized
Statement from Bonding Company

Attachment 3 – Notarized Statement from Worker's Compensation Insurance Carrier

Attachment 4 – Current Copy of Organization's Florida Contractor's License(s)

Attachment 5 – Certification declaring that the applying Organization has not has a surety company finish work on any project within the last five (5) years.

Attachment 6 – Certification declaring that the applying Organization, in the last five (5) years has not been found by a judge, arbitrator, jury, or a nolo contendere plea to have submitted a false or fraudulent claim to a public agency

Attachment 7 – Certification declaring that the applying Organization has not been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of violations of law or a safety regulation, pursuant to Public Contract Code section 10162

DECLARATION

1. Acknowledgement and Release. By signature and date on this page, prospective bidder authorizes any financial institution, credit reporting agency and/or service, legal firm or any other type of business, agency or individual named within this document to release to the City (or City's designated representative) any and all information as that information relates, or could relate, to their ability to evaluate the background, stability and general worthiness of this bidder to perform current or future construction activities if Pre-Qualified and awarded a contract by the City.

- a. A photocopy of this page shall be deemed as valid as an original document.
- b. This Acknowledgement and Release shall remain in effect until such time as the bidder, in writing, requests that the City cease any attempt to evaluate himself/herself/themselves as potential Pre-Qualified bidder for construction work on City of Pompano Beach properties.
- c. Reserved Right. The City reserves the right, for the sole purpose of evaluating a potential Pre-Qualification candidate (bidder), to make other inquiries as permitted by law. Furthermore, the City reserves the right to reject any or all Pre-qualification applications.

AFFIDAVIT

I, the undersigned, certify and declare that I have read all the foregoing answers to this prequalification questionnaire and know their contents. The matters stated in the questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of Florida, that the foregoing is correct.

Dated: _____

(Signature)

PROPOSAL SIGNATURE PAGE
RFQ T-12-15, CONSTRUCTION MANAGEMENT AT RISK CONTRACT SERVICES

To: The City of Pompano Beach, Florida

The below signed hereby agrees to furnish the proposed services under the terms stated subject to all instructions, terms, conditions, specifications, addenda, legal advertisement, and conditions contained in the RFP. I have read the RFP and all attachments, including the specifications, and fully understand what is required. By submitting this signed proposal, I will accept a contract if approved by the City and such acceptance covers all terms, conditions, and specifications of this proposal.

Proposal submitted by:

Name (printed) _____ Title _____

Company (Legal Registered) _____

Federal Tax Identification Number _____

Address _____

City/State/Zip _____

Telephone No. _____ Fax No. _____

Signature _____ Date _____

Addendum Acknowledgment - Proposer acknowledges that the following addenda have been received and are included in his/her proposal:

Addendum No. _____ Date Issued _____

STATEMENT OF NO RESPONSE

If you do not intend to submit on this requirement, please complete and return this form by the submittal deadline to the City of Pompano Beach Purchasing Division, Building C, 1190 N.E. 3rd Avenue, Pompano Beach, Florida 33060; this form may be faxed to (954) 786-4168. Failure to respond, either by submitting a proposal, or by submitting a "Statement of No Response" form, may result in your firm's name being removed from our mailing list.

WE, the undersigned, have declined to submit on this solicitation for the following reason(s):

- _____ We do not offer this product or an equivalent
- _____ Our workload would not permit us to perform
- _____ Insufficient time to respond to the Request for Letters of Interest
- _____ Unable to meet specifications (explain below)
- _____ Other (specify below)

Remarks _____

COMPANY NAME _____

ADDRESS _____

TELEPHONE _____

SIGNATURE/TITLE _____

DATE _____

PROJECT TEAM FORM

RFQ NUMBER _____

Federal I.D.# _____

Is Prime Consultant a
Certified SBE firm YES__ NO_

PRIME

Role	Name of Individual Assigned to Project	Number of Years Experience	Education, Degrees
Principal-In-Charge	_____	_____	_____
Project Manager	_____	_____	_____
Asst. Project Manager	_____	_____	_____
Other Key Member	_____	_____	_____
Other Key Member	_____	_____	_____

SUB-CONSULTANT

Role	Company Name and Address of Office Handling This Project	Name of Individual Assigned to the Project
Surveying	_____	_____
Landscaping	_____	_____
Engineering	_____	_____

Other Key Member

Other Key Member

Other Key Member

Other Key Member

EXHIBIT "A"
CITY OF POMPANO BEACH, FLORIDA
SMALL BUSINESS ENTERPRISE
PARTICIPATION FORM

RFQ Number & Title: _____ Contractor's Name: _____

<u>Name of Firm</u>	<u>Contact Person, Telephone Number</u>	<u>Type of Work to be Performed</u>	<u>Contract Amount/Percentage</u>

(INCLUDE CERTIFICATES FOR ANY FIRMS LISTED ON THIS PAGE)

FOR CITY USE ONLY

Total SBE Contract Participation _____

Are documents requested submitted accordingly YES NO

EXHIBIT "C"
SMALL BUSINESS ENTERPRISE
UNAVAILABILITY FORM

RFQ # _____

I, _____
(Name and Title)

of _____, certify that on the _____ day of _____, _____, I invited the following SBE CONTRACTOR(s) to bid work items to be performed in the City of Pompano Beach:

SBE Contractor Address	Work Items Sought	Form of Bid Sought (i.e., Unit Price, Materials/Labor, Labor Only, etc.)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Said SBE CONTRACTOR(s):

- ___ Did not bid in response to the invitation
- ___ Submitted a bid that was not the low responsible bid
- ___ Other: _____

Signature: _____ Date: _____

Note: Attach additional documents as available.

EXHIBIT "D"
SMALL BUSINESS ENTERPRISE
GOOD FAITH EFFORT REPORT

RFQ # _____

1. What portions of the contract have you identified as SBE opportunities?

2. Did you provide adequate information to identified SBE? Please comment on how you provided this information.

3. Did you send written notices to SBEs?

Yes No

If yes, please include copy of the notice and the list of individuals who were forwarded copies of the notices.

4. Did you advertise in local publications?

Yes No

If yes, please attach copies of the ads, including name and dates of publication.

5. Did you contact any organizations with large constituents of SBE members for possible sub-contractors? Please attach list of resource organizations used.

6. What type of efforts did you make to assist SBEs in contracting with you?

7. List the SBEs you will utilize and subcontract amount/percentage.

8. Other comments: _____

Note: Please attach the unavailability letters with this report.

EXHIBIT E
CITY OF POMPANO BEACH, FLORIDA
LOCAL BUSINESS PARTICIPATION FORM

RFQ Number & Title: _____

Prime Contractor's Name: _____

<u>Name of Firm, Address</u>	<u>Contact Person, Telephone Number</u>	<u>Type of Work to be Performed</u>	<u>Contract Amount</u>

EXHIBIT G
LOCAL BUSINESS
UNAVAILABILITY FORM

RFQ # _____

I, _____
(Name and Title)

of _____, certify that on the _____ day of _____, _____, I invited the following LOCAL BUSINESSES to bid work items to be performed in the City of Pompano Beach:

Form of Bid Sought (i.e.,
Unit Price,
Materials/Labor, Labor
Only, etc.)

Business Name, Address Work Items Sought

Business Name, Address	Work Items Sought	Form of Bid Sought (i.e., Unit Price, Materials/Labor, Labor Only, etc.)

Said Local Businesses:

- ___ Did not bid in response to the invitation
- ___ Submitted a bid which was not the low responsible bid
- ___ Other: _____

Signature: _____

Date: _____

Note: Attach additional documents as available.

EXHIBIT H
GOOD FAITH EFFORT REPORT
LOCAL BUSINESS PARTICIPATION

RFQ # _____

1. What portions of the contract have you identified as Local Business opportunities?

2. Did you provide adequate information to identified Local Businesses? Please comment on how you provided this information.

3. Did you send written notices to Local Businesses?

Yes No

If yes, please include copy of the notice and the list of individuals who were forwarded copies of the notices.

4. Did you advertise in local publications?

Yes No

If yes, please attach copies of the ads, including name and dates of publication.

5. What type of efforts did you make to assist Local Businesses in contracting with you ?

7. List the Local Businesses you will utilize and subcontract amount.

_____	\$ _____
_____	\$ _____
_____	\$ _____

8. Other comments: _____
