

**CONSTRUCTION MANAGEMENT AT RISK  
AGREEMENT**

**BY AND BETWEEN THE  
HALLANDALE BEACH COMMUNITY REDEVELOPMENT AGENCY  
AND BURKHARDT CONSTRUCTION, INC.  
FOR  
PROFESSIONAL CONSTRUCTION MANAGEMENT SERVICES  
FOR CONSTRUCTION OF  
VARIOUS PUBLIC PROJECTS**

**RFP # FY 2020-2021-CRA 002**

This is a CONSTRUCTION MANAGEMENT AT RISK AGREEMENT ("Agreement"), made and entered into by and between the HALLANDALE BEACH COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic (hereinafter the "HBCRA"), and BURKHARDT CONSTRUCTION, INC., a Florida corporation, duly licensed to do business in the State of Florida (hereinafter referred to interchangeably as the "Construction Manager" or "Contractor").

#### **WITNESSETH:**

**WHEREAS**, the HBCRA desires to oversee the construction of public improvements, including but not limited to sidewalks, art trails, bikeways, green projects, landscaping canopying planting, bike paths, crosswalks, bioswales, roadway construction, storm water projects, streetscape projects, lighting projects, and other public projects, as solicited in RFP # FY 2020-2021-CRA 002, and as awarded by the Board of Directors of the HBCRA in Resolution No. 2021-013 CRA (collectively, the "Project"); and

**NOW THEREFORE**, in consideration of the foregoing and of the mutual covenants and compensation set forth herein the HBCRA and Construction Manager agree as follows:

#### **ARTICLE 1 - DEFINITIONS**

Whenever the following terms, or pronouns in place of them, appear in the Contract Documents, the intent and meaning shall be interpreted as follows:

- 1.1 **Acceptance** means the formal written acceptance by the HBCRA of the completed Work. Acceptance shall mean that all of the Work required by the Contract Documents or individual work orders issued are fully executed and completed in accordance to the Contract Documents so that no Work remains to be completed. No further performance of Work shall be required except in regards to the correction of latent defects, gross mistakes and fraud. This shall require that all close-out documentation be fully completed, submitted, and approved.
- 1.2 **Agreement** means this Agreement, together with all documents incorporated herein by reference and the Contract Documents.
- 1.3 **Agreement Time** means the time period defined in this Agreement for the Construction Manager to complete the Pre-Construction Phase Services and submit the GMP Proposal, which shall be amended to reflect the Construction Phase should the HBCRA accept the GMP Proposal.
- 1.4 **Basis of Design** means a specific manufacturer's product that is named, including the make or model number or other designation, establishing the significant qualities related to type, function, dimension, in-service performance, physical properties, appearance, and other characteristics for purposes of evaluating comparable products of other manufacturers.
- 1.5 **Change Order** means a written document ordering a change in the Guaranteed Maximum Price, Agreement Time, a reallocation of sums within categories in the

Guaranteed Maximum Price, or a material change in the Work as determined by the Project Manager. A Change Order must comply with the Contract Documents.

- 1.6 **Constructability** means the creative, organized process of analyzing a project's drawings, specifications and other project documentation with a goal of minimizing design, detailing, and specification problems which might render the construction contract documents unbuildable or requiring addenda or change orders to make them buildable.
- 1.7 **Construction Estimate** means a cost estimate for the completion of the Work, which estimate shall include all components of the cost of the Work, as well as the Construction Manager's Fees for the Project.
- 1.8 **Construction Change Directive** means a written directive to effect changes to the Work, issued by the Consultant or the Project Manager that may affect the Agreement Price or Time.
- 1.9 **Construction Manager** means the firm selected to provide services as outlined in this Agreement. Upon execution of the Construction Services Addendum, the Construction Manager shall serve, from that point forward, as the General Contractor under this Agreement.
- 1.10 **Construction Management Fee** means the negotiated fee to include the cost of overhead and profit for the construction services phase of this agreement. This fee shall be included as a cost element of the GMP.
- 1.11 **Construction Services Addendum** refers to Addendum A, attached hereto in its unexecuted form, to be executed upon HBCRA's approval of the GMP and containing additional terms and conditions relevant to the Construction Phase. Upon execution, the executed Addendum A will replace the unexecuted addendum.
- 1.12 **Consultant** means the individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects and/or engineers, which has entered into an agreement to provide professional design services to the HBCRA for this Project.
- 1.13 **Contingency** means the dollar amount or percentage included in the Guaranteed Maximum Price (GMP) to be used at the HBCRA's discretion for changes requested by the HBCRA to the 90 percent Construction Documents or Specifications. Any unused amount of the Contingency at Final Completion shall vest to the HBCRA.
- 1.14 **Contract Documents** means the Proposal submitted by the CONTRACTOR in response thereto as negotiated and accepted by the HBCRA, the record of the award of this Project by the HBCRA Commission, this Agreement and its Exhibits, attachments and Forms, final, permitted Construction Documents and Specifications, any Addenda to the RFP, the Performance Bond, the Notice of Award, the Notice(s) to Proceed, the Purchase Order and all agreed upon modifications issued after execution of the Agreement are the documents which are collectively referred to as the Contract Documents.
- 1.15 **Contract Price** means the amount established in the Contract as the Guaranteed Maximum Price (GMP), as may be amended by Change Order.
- 1.16 **Cure** means the action taken by the Construction Manager promptly after receipt of written notice from the HBCRA of a breach of the Agreement for the Work, which shall be

performed at no cost to the HBCRA, to repair, replace, correct, or remedy all material, equipment, or other elements of the Work or the Agreement affected by such breach, or to otherwise make good and eliminate such breach, including, without limitation, repairing, replacing or correcting any portion of the Work or the Project site disturbed in performing such cure.

- 1.17 **Cure Period** means the period of time in which the Construction Manager is required to remedy deficiencies in the Work or compliance with the Contract Documents after receipt of written notice to Cure from the HBCRA identifying the deficiencies and the time to Cure.
- 1.18 **Completion** means the date certified by the CONSULTANT and PROJECT MANAGER in the Final Certificate of Payment in which all conditions and requirements of any permits and regulatory agencies have been satisfied; and the documents (if any) required to be provided by Construction Manager have been received by the PROJECT MANAGER; and to the best of Consultant's and PROJECT MANAGER's information and belief has been fully completed in accordance with the terms and conditions of the Contract Documents.
- 1.19 **General Conditions** means the provision of facilities or performance of work by the CONTRACTOR for items at cost and including:
1. Wages of construction workers directly employed by Construction Manager to perform the construction of the Work at the Project site or at off-site workshops;
  2. Wages or salaries of the Construction Manager's supervisory, technical and administrative personnel who are stationed at the Project site;
  3. Wages and salaries of Construction Manager's supervisory and administrative personnel engaged at factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work;
  4. Wages and salaries of Construction Manager's supervisory, technical, and administrative personnel when assigned to the Project and specifically working on this Project in the Construction Manager's administrative or home offices;
  5. Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities (including project field offices, furniture and fixtures), all temporary utilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Construction Manager;
  6. Rental charges, at standard industry rates for the area, for temporary facilities, machinery, vehicles, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site, whether rented from Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of all equipment rented, whether from Construction Manager or others;

7. Cost of clean-up on the Project site(s), and removal and proper disposal of debris from the Project sites;
8. Costs of long distance telephone calls, cellular telephone calls, Internet service, postage and parcel delivery charges and telephone service at the Project site and reasonable petty cash expenses of the Project site office;
9. That portion of the reasonable travel and subsistence expenses of Construction Manager's personnel, assigned to the Project site, incurred while traveling outside of the Broward County area in discharge of duties connected with the Work;
10. Temporary living and travel expenses of employees who are not relocated, but assigned to the Project;
11. Cost of reproducing and printing;
12. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Construction Manager is liable;
13. Fees and assessments for the building permit and for other permits, licenses and inspections for which Construction Manager is required by the Contract Documents to pay;
14. Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of this Contract;
15. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents;
16. Deposits lost for causes other than Construction Manager's fault or negligence;
17. Legal, mediation and arbitration costs, other than those arising from disputes between Owner and Construction Manager, reasonably incurred by Construction Manager in performance of the Work and with Owner's prior written consent;
18. Costs incurred in repairing or correcting damage or nonconforming Work executed by Construction Manager, or its subcontractors or suppliers, provided that such damage or nonconforming Work was not caused by the negligence of Construction Manager;
19. Cost of Public Information or other neighborhood functions hosted by Construction Manager;
20. Cost of Partnering;
21. Cost of site safety and security;
22. Cost of documentation, inspection and testing as required by the Contract Documents or the Construction Documents and Specifications;
23. Bonds and insurance premiums as required by Contract (except Builders Risk, General Liability and the Payment and Performance Bonds shall be invoiced separately as 'pass through costs');
24. Cost to protect the Work and adjacent property from loss and damage.

- 1.20 **Final Completion** means the date when all punch list items are completed, including all closeout requirements, submittals and approval by the CONSULTANT, is given to the HBCRA in writing. Final Completion not accepted until approved by the HBCRA.
- 1.21 **Guaranteed Maximum Price** means the sum agreed to between the Construction Manager and the HBCRA and set forth in the Construction Services Addendum as the maximum total Project price that the Construction Manager guarantees not to exceed for the construction of the Project and for all services under this Agreement, excluding only the Pre-Construction Fee.
- 1.22 **GMP Proposal** means a proposal for completing the Construction Work, which will be submitted based ninety (90%) Construction Documents and Specifications for the Project. Such proposal shall include the GMP for the construction of the Project once it has been accepted by the HBCRA based upon the Drawings and Specifications, the Contract Documents and Memorandum of Changes as approved by the HBCRA. The HBCRA reserves the right to request the submission of the GMP proposal to reflect one or more stages of construction. However, the HBCRA has no obligation to accept the GMP Proposal.
- 1.23 **HBCRA** means the Hallandale Beach Community Redevelopment Agency, a public body corporate and politic. In all respects hereunder, HBCRA's performance is pursuant to the HBCRA's capacity as Owner of the Project. In the event the HBCRA exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, authority as a governmental body and shall not be attributable in any manner to the HBCRA as a party to this Agreement.
- 1.24 **Project Schedule** means the Schedule prepared by the Construction Manager and approved by the HBCRA and a scheduling consultant retained by the HBCRA, using a bar chart method, as updated monthly, that identifies, coordinates and integrates the design and construction schedules for the development of the Project(s).
- 1.25 **Notice to Proceed** means written notice or directive issued by the Project Manager acknowledging that all conditions precedent have been met and directing that the Construction Manager may commence work on the Project or a specific task of the Project.
- 1.26 **Pre-Construction Phase Services** means the services the Construction Manager shall perform for the design phase of the Agreement and culminates with the exercise by HBCRA of one of the HBCRA's options regarding the GMP proposal.
- 1.27 **Professional Services** means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as applicable, as defined by the laws of the State of Florida, or those performed by any architect, professional engineer, landscape architect, or registered surveyor or mapper in connection with his or her professions employment or practice.
- 1.28 **Progress Report** means a monthly progress report to be prepared by Construction Manager and will contain the following: (a) listing of actual costs for completed activities and estimates for uncompleted tasks; (b) identification of variances between actual and budgeted or estimated costs; (c) the updated Project Schedule; (d) progress photos; (e) executive summary; (f) a discussion of pending items and existing or anticipated problems

- 1.29 **Project** means the construction, alteration or repair, and all service and incidents thereto, of public facilities, as solicited in RFP # FY 2020-2021-CRA 002, and as awarded by the HBCRA Board of Directors in Resolution No.: 2021-013 CRA, both hereby incorporated herein. Material Changes to the Project scope as described in the RFP and Resolution require HBCRA Board of Directors Approval.
- 1.30 **Project Manager** means an employee of the HBCRA, expressly designated as PROJECT MANAGER in writing by the Executive Director, who is the representative of the HBCRA, concerning the Contract Documents.
- 1.31 **Punch List** means the list of items, prepared in connection with the inspection of the Project by the HBCRA'S Representative and the CONSULTANT in connection with Substantial Completion of the Work or a portion of the Work, which the HBCRA's Representative or CONSULTANT has designated as remaining to be performed, completed or corrected before the Work will be accepted by the HBCRA. The preparation of a complete Punch List for the area or building to be occupied as agreed upon between the HBCRA and CONTRACTOR by the HBCRA shall be an absolute condition precedent to the HBCRA'S occupancy of any portion of the Project.
- 1.32 **RFP** means the official documents setting forth information and requirements; contract forms, bonds, and certificates; general and supplementary conditions of the Contract Documents; the specifications; and the plans and drawings of the Project.
- 1.33 **Resident Project Representative** means an authorized representative of CONSULTANT on the Project.
- 1.34 **Shop Drawings** are drawings, diagrams, schedules and other product data specifically prepared for the Work by the CONTRACTOR or a Sub-Contractor, sub-Sub-Contractor, manufacturer, supplier or distributor to illustrate the specific requirements for some portion of the Work. The Construction Drawings shall not be used as Shop Drawings
- 1.35 **Subcontractor** means a person, firm or corporation having a direct contract with the CONTRACTOR including one who furnishes material worked to a special design according to the RFP for this work, but does not include a person, firm or corporation merely furnishing material not so worked.
- 1.36 **Substantial Completion** means that date on which, as certified in writing by CONSULTANT, the Work, or a portion thereof designated by the PROJECT MANAGER in his/her sole discretion, is at a level of completion in substantial compliance with the Contract Documents such that all conditions of permits and regulatory agencies have been satisfied and the HBCRA or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects for its intended purpose. A Certificate of Final Inspection must be issued for Substantial Completion to be achieved, however, the issuance of a Certificate of Occupancy or the date thereof is not to be determinative of the achievement or date of Substantial Completion.
- 1.37 **Surety** means the surety company or individual which is bound by the Performance bond and Payment bond with and for CONTRACTOR who is primarily liable, and which surety company or individual is responsible for CONTRACTOR's acceptable and timely performance of the work under the contract and for the payment of all debts pertaining

thereto in accordance with Section 255.05, Florida Statutes, as amended from time to time.

- 1.38 **Work** means the obligations, including, but not limited to, preconstruction services, administration, procurement, materials, equipment, labor, construction and other services necessary for Contractor, or its agents, to fulfill Contractor's obligations under this Agreement. The work may constitute the whole or a part of the project.
- 1.39 **Written Notice** shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last known business address. Electronic, facsimile (FAX) or other telephonic transmission shall not be considered as written notice.

## **ARTICLE 2**

- 2.1 **Overview/Recitals/Intent.** This Agreement sets forth the terms and conditions pursuant to which Construction Manager will provide Construction Manager at Risk Services for the Project, as further detailed in this Agreement. The Recitals are incorporated into and made a part of this Agreement. The intent of this Agreement is to set forth the rights and obligations of the parties with respect to the provision by Contractor to the HBCRA of all necessary equipment, labor, materials and expertise to design and construct the Project. The Project will be designed and constructed as separate individual Projects as designated from time to time by the HBCRA to the Contractor in writing. Each individual Project and the performance by the Contractor of the scope of services for such Project shall at all times be governed by the terms and conditions of this Agreement with the understanding that the defined term Project as used herein shall apply to each individual Project as the context may dictate. The Contractor hereby agrees to accept each Project.
- 2.2 The Contract Documents are intended to include all items necessary for the proper execution and construction of the Project in accordance with the Contract Documents and in accordance with all governing codes and regulations. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied by Construction Manager, at no additional cost to the HBCRA, whether or not specifically stated in this Agreement. Where words, which have a well-known technical or trade meaning, are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening bids and Construction Manager shall comply therewith. HBCRA shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.
- 2.3 The Contract Documents are complementary, and wherever possible the provisions of the Contract Documents shall be construed in such manner as to avoid conflicts between provisions of the various Contract Documents. In the event of any inconsistency in the Contract Documents, where such inconsistency is not clarified by change order,



addendum or amendment, the Contract Documents shall be construed according to the following priorities:

First Priority:	Approved Written Change Orders, Addendums or Amendments
Second Priority:	Agreement
Third Priority:	Commission Authorizations
Fourth Priority:	Final Approved Specifications and Drawings
Fifth Priority:	Solicitation
Sixth Priority:	Contractor's proposal

- 2.4 **Agreement Term.** The Agreement shall commence upon issuance of the Notice to Proceed, which shall be issued subsequent to the execution of the Agreement by the HBCRA. The Agreement shall terminate upon notice by the HBCRA that the Agreement has been closed-out after Final Completion or otherwise terminated by the HBCRA pursuant to the terms and conditions set forth herein.

### **ARTICLE 3**

#### **SCOPE OF WORK**

- 3.1 The scope of services of this agreement consists of two phases:

Phase I:	Preconstruction Services
Phase II:	Construction Services

#### **3.2 PRECONSTRUCTION SERVICES**

CONTRACTOR hereby agrees to furnish all of the labor, materials, equipment services and incidentals necessary to perform all services described or implied in this Article for the Project.

The scope of work for preconstruction services to be provided by the Construction Manager and accepted by the HBCRA for this Project, shall be generally as follows:

##### **3.2.1 CONSTRUCTABILITY REVIEW**

- (A) The CONTRACTOR shall review and evaluate Design Development documents (if applicable) for clarity, consistency, completeness, and ease of construction in order to achieve the overall objective of the Project.
- (B) CONTRACTOR's review of the design documents shall include the following activities:
  - 1. Preparing a Master Checklist to be used as a guide for reviewing each technical discipline.
  - 2. Conducting reviews by preparing a "mark-up" set of documents and a list of comments corresponding to the "mark-up."

3. Preparing and presenting a written report of constructability problems and concerns, including:
  - (a) recommendations
  - (b) checklist and comments
4. Attending workshop meetings with the Design Consultant and the Project Manager to review proposed changes and recommending the changes, which are to be implemented for the project.
5. Verifying and conducting final review of changes to the construction Documents.
6. Conducting inspections and investigation of local site conditions.

### 3.2.2 COST ESTIMATING

- (A) The CONTRACTOR shall be responsible for preparing two (2) Construction Cost Estimates. The CONTRACTOR shall prepare Construction Cost Estimates based on 60% and 90% Construction Documents. The purpose of the Construction Cost Estimates is to verify the HBCRA's ability to complete the Project within the established construction budget. The cost information derived from this estimate shall directly relate to the CONTRACTOR's recommendations in the Constructability and Value Engineering evaluation relative to ways to reduce and/or control costs.

### 3.2.3 VALUE ENGINEERING

As a result of the CONTRACTOR'S Constructability Review or Construction Cost Estimate and in order to reduce or control costs, the CONTRACTOR shall analyze the structural, architectural, mechanical, electrical and plumbing systems and elements of the Projects design as well as materials and product specifications. Based on this analysis, CONTRACTOR shall make cost/performance recommendations for the PROJECT MANAGER's and Consultant's consideration. The CONTRACTOR shall prepare its recommendation in the form of a written report to be presented to the project team.

### 3.2.4 SCHEDULING

- (A) The CONTRACTOR shall develop a Detailed Project Schedule, utilizing bar chart scheduling, reflecting the design and construction of the overall project.
- (B) The CONTRACTOR shall utilize the completed Detailed Project Schedule, to develop a Proposed Project Control Schedule, which shall be presented in a bar graph format. The purpose of the Project Control Schedule is to summarize the information contained in the CPM schedule in order to provide the project team with a management tool and an overall project visual aid to easily determine the schedule and status of the total project.

The information derived from these two schedules are to become part of the CONTRACTOR's management plan developed by the CONTRACTOR.

- (C) CONTRACTOR shall update, on a monthly basis, both the Detailed Project Schedule and the Project Control Schedule throughout the term of the preconstruction and construction phases of the project as part of the CONTRACTOR's management activity.

### 3.2.5 PROPOSED GUARANTEED MAXIMUM PRICE (GMP)

Upon the finalization of the 90% Construction Documents, CONTRACTOR shall prepare a written GMP pricing proposal, consistent with the definitions set forth in this Agreement, local site conditions and taking into account all terms and conditions as set forth in Construction Services Addendum A, attached hereto. The GMP pricing proposal shall reflect the 90% Construction Plans and Specifications for the Project and shall be based on subcontractor bids secured by the CONTRACTOR.

- (A) The CONTRACTOR shall present the GMP Proposal containing the Contract Price Elements in writing to the HBCRA within thirty (30) days of the finalization of the 90% Construction Documents. The Contract Price Elements within the GMP are as follows and more specifically described in Construction Services Addendum A:

- (1) Direct Construction Cost: Direct costs necessarily and reasonably incurred and to be paid by the CONTRACTOR in the performance of the Work. This cost shall be itemized by category in a schedule of values which shall list the cost of materials, the cost of labor, the cost of equipment and the cost of subcontractor work separately for all the portions of the Work delineated in a manner satisfactory to the Project Manager to evaluate the charges.

- (2) General Conditions Cost: Actual ancillary project costs for the provision of services or functions as defined above.

- (3) Construction Management Fee: Negotiated Fee to include profit and overhead.

- (4) Owner's Contingency: The Owner's Contingency is available only at the discretion of HBCRA to cover increases to the scope of the Work as approved by the HBCRA.

- (5) Direct Purchase Tax Savings: Estimated tax savings to the HBCRA for direct purchase of materials.

- (B) The proposed GMP shall include any supporting documentation deemed necessary by the Project Manager to evaluate the proposed costs.

### **3.3 CONSTRUCTION SERVICES**

3.3.1 Upon receipt of the Proposed GMP, if the HBCRA and the CONTRACTOR are able to negotiate and agree upon a GMP, an agenda item will be prepared for submission to the HBCRA Commission for approval of a GMP, the construction plans and the Construction Services Addendum. Additional terms and conditions relevant to the construction services phase of this agreement are outlined in the Construction Services Addendum. If approved by the HBCRA Commission, the executed version of the Construction Services Addendum shall replace the Addendum A, attached hereto, and shall be incorporated within this agreement. In interpreting this agreement, any conflict between this agreement and the Construction Services Addendum shall be resolved in favor of the Construction Services Addendum if the dispute relates to the construction phase of the Project.

3.3.2 If the HBCRA and the CONTRACTOR are unable to agree upon a GMP, then the HBCRA may elect to issue a new solicitation for the construction services or begin negotiations with the other firms in the order ranked in the original solicitation process. Should the HBCRA determine to issue a new solicitation, the HBCRA reserves the right to select the most appropriate procurement method in its sole discretion. No further compensation, except as detailed in Article 5, shall be due to the CONTRACTOR and this agreement shall be deemed terminated for convenience. The CONTRACTOR will immediately tender all documents, in accordance with the applicable provisions of this Agreement. The CONTRACTOR shall have no recourse from this termination and the HBCRA may utilize all documents relevant to this agreement to commence negotiations with the second and third ranked firm, respectively or pursue a new solicitation. This Agreement in no way affects the ability of CONTRACTOR to participate in any new solicitations related to the Project as any potential vendor might participate.

## **ARTICLE 4** **TERM AND TIME OF PERFORMANCE**

- 4.1 Unless continued pursuant to an approved and executed Construction Services Addendum, the term of this Agreement shall begin on the date it is fully executed by both parties and shall end upon written notice from the HBCRA that it is exercising its authority pursuant to Section 3.3.2 above, unless otherwise terminated as permitted herein. Timelines for performance shall be as detailed for specific tasks herein. The HBCRA shall have the authority to extend the time of performance provided herein, in its sole discretion. Any such extension shall be accomplished by an amendment to this Agreement in accordance with the "AMENDMENTS" provisions stated in Article 23 herein.
- 4.2 All duties, obligations, and responsibilities of CONTRACTOR required by this Agreement shall be completed no later than time specified in section 3.1 above. Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Agreement.

**ARTICLE 5**  
**COMPENSATION FOR PRECONSTRUCTION SERVICES**

5.1 HBCRA agrees to pay CONTRACTOR total compensation in the amount of Two Million, Five Hundred Thousand Dollars and No/100 (\$2,500,000.00) for work actually performed and completed for Preconstruction Services as defined and required by this Agreement, which amount shall be accepted by CONTRACTOR as full compensation for all such work. It is acknowledged and agreed by CONTRACTOR that this amount is the maximum payable and constitutes a limitation upon HBCRA's obligation to compensate CONTRACTOR for its Preconstruction services related to the Scope of Services set forth in this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon CONTRACTOR's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

5.2 Compensation for Preconstruction Services shall be paid out in accordance with the fee schedule as set forth in attached Exhibit 1.

**5.3 METHOD OF BILLING AND PAYMENT**

5.3.1 CONTRACTOR may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. Such invoices shall include the phase of the services for which invoice is submitted along with a detail of the task or services performed for that phase. An original invoice, plus one copy, are due within fifteen (15) days of the end of the month, except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the expenses incurred.

5.3.2 HBCRA shall pay CONTRACTOR within twenty (20) calendar days of receipt of CONTRACTOR's proper statement. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Project Manager. Payment may be withheld for failure of CONTRACTOR to comply with a term, condition, or requirement of this Agreement.

5.3.3 Additional billing and payment provisions apply to Construction Services Phase in accordance with the Construction Services Addendum.

5.3.4 Invoices shall be sent to:

Faith Phinn, CRA Deputy Director  
400 S. Federal Highway  
Hallandale Beach, FL 33009

5.4 Notwithstanding any provision of this Agreement to the contrary, HBCRA may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account

of inadequate or defective work which has not been remedied, or resolved in a manner satisfactory to the Project Manager, or otherwise the subject of a good-faith dispute in accordance with Florida Statutes Section 218.70, et al. The amount withheld shall not be subject to payment of interest by HBCRA.

## **ARTICLE 6** **CHANGES IN SCOPE OF SERVICES**

6.1 During Preconstruction Services Phase, any change to the Scope of Services must be accomplished by a written amendment, executed by the parties in accordance with Article 24. If a Construction Services Addendum has been executed, written change orders shall be required pursuant to the Addendum. Except that, in all instances, Material Changes to the Project scope as described in the RFP and Resolution require HBCRA Commission approval.

## **ARTICLE 7** **INDEMNIFICATION**

7.1 To the fullest extent permitted by law, CONTRACTOR agrees to indemnify, save harmless and, at the HBCRA Attorney's option, defend or pay for an attorney selected by the HBCRA Attorney to defend HBCRA, their officers, agents, servants and employees (collectively, as used hereafter for the purposes of this paragraph, "HBCRA") against any and all claims, losses, liabilities, damages, losses, costs and expenditures of any kind, including attorney's fees, court costs, and other expenses, caused in whole or in part, by the professional negligence, error or omission, recklessness or intentionally wrongful conduct of CONTRACTOR, any sub-contractors, their employees, agents, servants, or officers, accruing, resulting from, or related to the performance of this Agreement. CONTRACTOR further agrees to indemnify and save harmless the HBCRA, for or on account of any injuries or damages received or sustained by any person or persons resulting from any construction defects, including latent defects. Neither the CONTRACTOR nor any of its sub-contractors will be liable under this section for damages to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of HBCRA. CONTRACTORS liability pursuant to this paragraph is limited as follows:

- A. Not to exceed \$1 million if no Construction Services Addendum is executed.
- B. Not to exceed an amount equal to the GMP as approved in the Construction Services Addendum if executed.

7.2 Nothing herein shall be read or interpreted as a waiver of HBCRA's sovereign immunity rights or the limitations of liability pursuant to Section 768.28, Florida Statutes, as amended.

7.3 To the extent this indemnification clause or any other indemnification clause in this Agreement does not comply with Chapter 725, Florida Statutes, as may be amended, this provision and all aspects of the Contract Documents shall hereby be interpreted as the

parties' intention for the indemnification clauses and Contract Documents to comply with Chapter 725, Florida Statutes, as may be amended.

## **ARTICLE 8** **INSURANCE**

8.1 CONTRACTOR shall procure and maintain for the duration of and in full compliance with the contract insurance against claims for injuries to persons and damage to property which may arise from or in connection with their performance hereunder by the CONTRACTOR, his agents, representatives, employees and subcontractors. The cost of such insurance shall be included in the CONTRACTOR'S Lump Sum Fee for Pre-Construction services and General Conditions for the GMP.

### **8.1.1 Minimum Scope of Insurance**

#### **A. Commercial General Liability, including:**

1. Premises and Operations;
2. Explosion, Collapse and Underground;
3. Products and Completed Operations;
4. Blanket Contractual Liability;
5. Independent Contractors;
6. Broad Form Property Damage;
7. Personal Injury Liability;
8. Owner's and Contractor's Protective Policy, issued by the same insurance company as that issuing liability insurance above (I.A.). The policy must be submitted to the Risk Manager and be issued in the name of the HBCRA of Hallandale Beach;
9. Fire Legal Liability;
10. Incidental Medical Malpractice.

#### **B. Automobile Liability Insurance, including:**

1. Owned Automobiles;
2. Nonowned Automobiles;
3. Hired Automobiles.

#### **C. Workers' Compensation Insurance.**

#### **D. Employer's Liability Insurance.**

#### **E. Professional Liability Insurance**

### **8.1.2 Minimum Limits of Insurance**

#### **A. Commercial General Liability: \$1,000,000 combined single limit per occurrence**

for bodily injury, personal injury and property damage.

- B. Auto Liability: \$1,000,000 combined single limit per occurrence for bodily injury and property damage arising from the operations of all Owned Automobiles, Nonowned Automobiles and Hired Automobiles.
- C. Workers' Compensation: Workers' Compensation Insurance as required by the State of Florida. If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.
- D. Employer's Liability:
  - \$100,000 limit per occurrence,
  - \$500,000 annual aggregate for disease,
  - \$100,000 limit for disease of an individual employee.

The CONTRACTOR agrees to endorse the HBCRA as "Additional Insured" on the Inland Marine Builder's Risk Insurance coverage form.

- E. Professional (Errors & Omissions) Liability of not less than \$1,000,000 per claim, \$1,000,000 Annual Aggregate, or a Combined Single limit. The Contractor agrees the policy shall include a minimum three (3) year Discovery (tail) reporting period, and a Retroactive Date that equals or precedes the effective date of the Contract, or the performance of services hereunder. The Contractor agrees the Self-Insured-Retention shall not exceed \$25,000. This coverage may be provided on a Per-Project Basis.

#### 8.1.3. Deductibles and Self-Insured Retentions

- A. Deductibles/Self-Insurance Retentions Defined: All deductibles and self-insured retentions must be shown clearly on the Certificates of Insurance and approved by the HBCRA.
- B. Retention Levels: The HBCRA has the option to reduce or eliminate any deductible or self-insured retention maintained by the contractor.

#### 8.1.4. Other Insurance Provisions

The policies shall contain the following provisions:

- A. Additional Insured, Certificate Holder and Breach of Warranty Clause:

All insurances shall include as Additional Insured and Certificate Holder the HBCRA of Hallandale Beach. There are not to be any special limitations on the protection being



provided to the HBCRA, its officials, officers, employees or volunteers.

**B. CONTRACTOR'S Insurance is Primary:**

The CONTRACTOR'S insurance coverages shall be primary insurance with respect to the HBCRA'S, its officials', officers', employees', and volunteers' insurances. Any insurance and self-insurance maintained by the HBCRA, its officials, officers, employees, or volunteers shall be excess of the contractor's insurances and shall not contribute with it.

**C. Coverage Guaranteed:**

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the HBCRA, its officers, officials, employees or volunteers.

**D. Occurrence Basis:**

The contractor's insurances shall be on an occurrence basis as opposed to a claims-made basis. In other words, claims which occur during the policy period can be reported months or years later and still be paid, if they occur during the policy period. Claims-made policies cover only claims which occur and are made during the policy period. In the event occurrence based insurance is not available, use of claims-made insurance may be considered acceptable in limited circumstances, subject to written approval by the Risk Manager.

**E. 30 Days Notice:**

The following clause shall be included in all policies:

This policy shall not be suspended, voided, or cancelled by either party, or a reduction or revision in coverage or limits of coverage except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the HBCRA.

**F. Separation of Insureds:**

The definition of insured shall read as follows: "The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability". The company, in this context, being the CONTRACTOR'S insurance company. If no such definition of the insured is quoted in the insurance, the contractor must provide "Cross Liability Clause" or "Severability of Interests Clause" endorsements for all liability insurances.

#### 8.1.5. Acceptability of Insurance Company

##### A. Florida State Licensed:

All insurance policies and bonds herein required of the contractor shall be written by a company authorized and licensed to do insurance business in the State of Florida and be executed by agents licensed as agents by the State of Florida.

#### 8.1.6. Verification of Coverage

##### A. Certificates and Endorsements Provided:

The contractor shall furnish the HBCRA with a certificate of insurance specifically stating the bid number and title and with original endorsements affecting coverage. The certificates and endorsements must be received and approved before any work commences.

##### B. Authorized Signatures:

The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

##### C. Coverage Continuation:

Insurance coverage required in these specifications shall be in force throughout the contract. Should the CONTRACTOR fail to provide acceptable evidence of current insurance within seven (7) days of receipt of written notice at any time during the contract, the HBCRA shall have the right to consider the contract breached and justifying termination thereof.

Compliance by the CONTRACTOR and its subcontractors with the foregoing requirements as to carrying insurance and furnishing copies of the insurance policies shall not relieve the contractor and all subcontractors of their liabilities and obligations under this contract.

If coverage on the certificates of insurance is shown to expire prior to completion of all terms of the contract with the HBCRA, the contractor shall furnish certificates of insurance evidencing renewal of such coverage to the HBCRA.

#### 8.1.7. Limited Contractual Relationship

Nothing contained in these contract specifications shall be construed as creating any contractual relationship between any of the CONTRACTOR'S subcontractors or suppliers and the HBCRA.

The CONTRACTOR shall be as fully responsible to the HBCRA for acts and omissions

of all subcontractors and suppliers and of all persons employed by the subcontractors and suppliers, as the CONTRACTOR is for acts and omissions of persons directly employed by the CONTRACTOR.

A. Joint Venture:

The parties agree that this agreement shall be the whole and total agreement between the parties, and the contractor is undertaking its activities as for its sole use and benefit and this agreement or the activities resulting therefrom shall in no way be construed to be a joint undertaking with the HBCRA, nor is the HBCRA in any way assuming responsibility or benefits of the contractor's activity. The CONTRACTOR acts independently and in its own right, risk and responsibilities. The HBCRA assumes no direction, control, responsibility or liability for the activities of the CONTRACTOR and, by the execution of this agreement, does not endorse or undertake any activity heretofore conducted by the CONTRACTOR.

8.1.8. Other Requirements

A. Subcontractors' Insurance Requirements:

CONTRACTOR shall include all subcontractors as its insured under its policies or shall furnish separate certificates and all endorsements for each subcontractor's coverages. All coverages for subcontractors shall be subject to all the requirements stated herein.

**ARTICLE 9**  
**TERMINATION**

- 9.1 This Agreement may be terminated for cause by action of the HBCRA or by CONTRACTOR if the party in breach has not corrected the breach within thirty (30) days after written notice from the aggrieved party identifying the breach, or for convenience by action of the HBCRA, without any cause, upon not less than thirty (30) days' written notice by PROJECT MANAGER. This Agreement may also be terminated by Project Manager upon such notice as Project Manager deems appropriate under the circumstances in the event Project Manager determines that termination is necessary to protect the public health, safety, or welfare.
- 9.2 Termination of this Agreement for cause shall include, but not be limited to, failure to suitably perform the Work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of HBCRA as set forth in this Agreement notwithstanding whether any such breach was previously waived or cured.
- 9.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement, except that notice of termination by Project Manager, which Project Manager deems necessary, to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

- 9.4 In the event this Agreement is terminated for convenience, CONTRACTOR shall be paid for any services performed to the date the Agreement is terminated; however, upon being notified of HBCRA's election to terminate, CONTRACTOR shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. CONTRACTOR acknowledges and agrees that ten dollars (\$10.00) of the compensation to be paid by HBCRA, the adequacy of which is hereby acknowledged by CONTRACTOR, is given as specific consideration to CONTRACTOR for HBCRA's right to terminate this Agreement for convenience.
- 9.5 In the event this Agreement is terminated, any compensation payable by HBCRA shall be withheld until all documents are provided to HBCRA pursuant to Article 9 herein.

#### **ARTICLE 10**

#### **RIGHTS IN DOCUMENTS AND WORK**

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the HBCRA. In the event of termination of this Agreement, any reports, photographs, surveys, estimates, schedules, drawings, and other data and documents prepared by CONTRACTOR, whether finished or unfinished, shall become the property of the HBCRA and shall be delivered by CONTRACTOR to the PROJECT MANAGER within seven (7) days of termination of this Agreement by either party. Any compensation due to CONTRACTOR shall be withheld until all documents are received as provided herein. This shall apply to all documents produced in any phase of the work, regardless of whether a subsequent phase is undertaken with CONTRACTOR.

#### **ARTICLE 11**

#### **SUBCONTRACTORS AND PURCHASE ORDERS**

Unless waived in writing, for good cause, by the HBCRA, the CONTRACTOR must obtain competitive pricing, in compliance with the requirements of this Article 11, for One Hundred Percent (100%) of the CONTRACTOR's Direct Construction Cost required under this Contract.

#### **ARTICLE 12**

#### **AUDIT RIGHT AND RETENTION OF RECORDS**

12.1 HBCRA shall have the right to audit the books, records, and accounts of CONTRACTOR and its subcontractors that are related to this Project. CONTRACTOR and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of CONTRACTOR and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CONTRACTOR or its subcontractor, as applicable, shall make same available at no cost to HBCRA in written form.

12.2 CONTRACTOR and its subcontractors shall preserve and make available, at reasonable times for examination and audit by HBCRA, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by HBCRA to be applicable to CONTRACTOR's and its subcontractors' records, CONTRACTOR and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR or its subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for HBCRA's disallowance and recovery of any payment upon such entry.

12.3 CONTRACTOR shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section.

**12.4 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954-457-1340, [cityclerkoffice@cohb.org](mailto:cityclerkoffice@cohb.org), and 400 S. Federal Highway, Hallandale Beach, FL 33009).**

### **ARTICLE 13**

13.1 **Public Entity Crime Act.** CONTRACTOR represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a CONTRACTOR, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to HBCRA, may not submit a bid on a contract with HBCRA for the construction or repair of a public building or public work, may not submit bids on leases of real property to HBCRA, may not be awarded or perform work as a CONTRACTOR, supplier, subcontractor, or consultant under a contract with HBCRA, and may not transact any business with HBCRA in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by HBCRA pursuant to this Agreement, and may result in debarment from HBCRA's competitive procurement activities.

13.2 In addition to the foregoing, CONTRACTOR further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133,

Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONTRACTOR has been placed on the convicted vendor list.

**13.3 Drug Free Workplace.** It is a requirement of HBCRA that it enter into contracts only with firms that certify the establishment of a drug-free workplace. Execution of this Agreement by CONTRACTOR shall also serve as CONTRACTOR's required certification that it either has or that it will establish a drug-free workplace.

#### **ARTICLE 14**

#### **INDEPENDENT CONTRACTOR**

CONTRACTOR is an independent CONTRACTOR under this Agreement. In providing services, neither CONTRACTOR nor its agents shall act as officers, employees, or agents of HBCRA. No partnership, joint venture, or other joint relationship is created hereby. HBCRA does not extend to CONTRACTOR or CONTRACTOR's agents any authority of any kind to bind HBCRA in any respect whatsoever.

#### **ARTICLE 15**

#### **THIRD PARTY BENEFICIARIES**

Neither CONTRACTOR nor HBCRA intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

#### **ARTICLE 16**

#### **ASSIGNMENT AND PERFORMANCE**

16.1 Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. HBCRA may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by CONTRACTOR of this Agreement or any right or interest herein without HBCRA's written consent.

16.2 CONTRACTOR represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

16.3 CONTRACTOR shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONTRACTOR's performance and all interim and final product(s) provided to or on behalf of HBCRA shall be comparable to the best local and national standards.

## **ARTICLE 17**

### **CONFLICTS**

17.1 Neither CONTRACTOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONTRACTOR's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

17.2 In the event CONTRACTOR is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, CONTRACTOR agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as CONTRACTOR.

## **ARTICLE 18**

### **CONTINGENCY FEE**

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement. For a breach or violation of this provision, HBCRA shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

## **ARTICLE 19**

### **MATERIALITY AND WAIVER OF BREACH**

19.1 HBCRA and CONTRACTOR agree that each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

19.2 HBCRA's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

## **ARTICLE 20**

### **COMPLIANCE WITH LAWS**

CONTRACTOR shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

**ARTICLE 21**  
**SEVERANCE**

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless HBCRA or CONTRACTOR elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

**ARTICLE 21**  
**JOINT PREPARATION AND COUNTERPARTS**

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**ARTICLE 22**  
**JURISDICTION, VENUE, WAIVER OF JURY TRIAL**

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AND HBCRA HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, or of any other immunity, defense, or privilege enjoyed by the HBCRA pursuant to Section 768.28, Florida Statutes, as amended.

**ARTICLE 23**  
**AMENDMENTS**

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar



formality as this Agreement and executed by the HBCRA and CONTRACTOR or others delegated authority to or otherwise authorized to execute same on their behalf.

**ARTICLE 24**  
**PRIOR AGREEMENTS**

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

**ARTICLE 25**  
**NOTICES**

All notices to be given hereunder shall be in writing, and may be given by depositing the same in the United States Mail addressed to the party to be notified, postpaid, return receipt requested or by delivering the same in person to such party with written receipt of acknowledgement of delivery by a person at the address (s) set forth below. All notices to be given to the parties hereto shall be sent to or made to the addresses shown below. The place for giving notice shall remain the same as set forth herein unless changed in the manner provided in this Article.

For HBCRA:           Jeremy Earle, Executive Director  
Hallandale Beach Community Redevelopment Agency  
400 S. Federal Highway  
Hallandale Beach, FL 33009

Copy to:           Steven W. Zelkowitz, Esq.  
Spiritus Law LLC  
2525 Ponce De Leon Boulevard, Suite 1080  
Coral Gables, FL 33134


For Contractor:   Marc Kleisley, Vice President  
Burkhardt Construction, Inc.  
1400 Alabama Avenue, #20  
West Palm Beach, FL 33401

And to Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the respective dates under each signature. HALLANDALE BEACH COMMUNITY REDEVELOPMENT AGENCY signing by and through its Executive Director, JEREMY EARLE, duly authorized to execute same.

**HBCRA**

HALLANDALE BEACH COMMUNITY  
REDEVELOPMENT AGENCY

  
\_\_\_\_\_  
Jenorgen M. Guillen  
HBCRA Secretary

By: \_\_\_\_\_  
Jeremy Earle  
Executive Director

Approved as to legal sufficiency and form by

  
\_\_\_\_\_  
Spiritus Law LLC  
HBCRA Attorney

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the respective dates under each signature. BURKHARDT CONSTRUCTION, INC. signing by and through its Vice President, MARC KLEISLEY, duly authorized to execute same.

**CONTRACTOR MUST EXECUTE THIS CONTRACT AS INDICATED BELOW. USE CORPORATION OR NON-CORPORATION FORMAT, AS APPLICABLE.** If the Company President does not sign the Contract, there must be a Secretary's Certificate Form provided to the HBCRA indicating designee signing, has the authority to sign.

**CONTRACTOR**

ATTEST:

Burkhardt Construction, Inc.

Sharon Burkhardt  
(Secretary)

By: Marc Kleisley, VP  
Marc Kleisley, Vice President

(Corporate Seal)

Sharon Burkhardt, Secretary  
(Type Name and Title Signed Above)

\_\_\_\_ Day of \_\_\_\_\_, 2021.

OR

(ONLY If not incorporated sign below).

WITNESSES:

\_\_\_\_\_  
(PRINT NAME)

\_\_\_\_\_  
(PRESIDENT OR VICE-PRESIDENT)

\_\_\_\_\_  
(PRINT NAME)

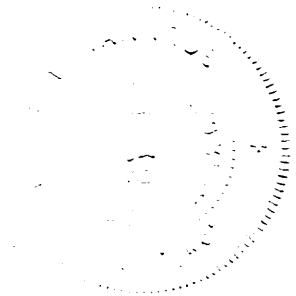
\_\_\_\_\_  
(TYPE NAME & SIGNED ABOVE)

**NOTARY SEAL**

**Exhibit 1**

**PRECONSTRUCTION SERVICES  
MILESTONES AND PAYMENT SCHEDULE**

[INSERT AGREED UPON PAYMENT BREAKDOWN FOR PRECONSTRUCTION  
SERVICES AS REFERENCED IN ARTICLE 5]



Vincent G. Burkhardt  
President



July 28, 2021; Revised 8/18/21

**City of Hallandale Beach**

400 South Federal Highway

Hallandale Beach, FL 33009

Attn: Mr. Kenneth Bowe, CRA Project Coordinator

RE: Scope and fee proposal for pre-construction phase services  
RFP #FY 2020-2021-CRA 002  
Construction Manager at Risk (CMAR) for Professional Construction Management  
Services.

Dear Mr. Bowe:

Burkhardt Construction, Inc., acting as Construction Manager At Risk (CMAR), is pleased to provide the attached scope and fee proposal to the Hallandale Beach Community Redevelopment Agency (HBCRA) for pre-construction services for the construction of public improvements, including but not limited to sidewalks, art trails, bikeways, green projects, landscaping, canopy planting, crosswalks, bioswales, traffic calming, roadway construction, storm water projects, streetscape projects, lighting projects as solicited in RFP #FY 2020-2021-CRA 002.

The CMAR met with the HBCRA staff to review the following prioritized project list for implementation under the Program:

1. NE 1st Avenue within the Fashion Arts and Design District (FADD) - from Hallandale Beach Boulevard to NE 5th Street, including a parking lot adjacent to and within the FEC railroad R/W north of NE 3rd Street. All improvements are to be implemented within existing rights-of-ways and easements.
  - a. Parking lot and pedestrian lighting
  - b. Landscape and irrigation
  - c. Sidewalk, crosswalk, and intersection hardscape treatments
  - d. Bioswale and green infrastructure improvements
  - e. Traffic calming strategies
2. Art Trail - to be implemented throughout the HBCRA boundary area to provide enhanced connectivity, in accordance with guidance identified in the Hallandale Beach CRA Redevelopment Plan. The HBCRA envisions including features such as permeable treatments, large canopy trees, urban bioswales, public art 'stops / display spaces, unique/artistic paving patterning to identify the trail. Due to the general nature of this project, we anticipate mostly schematic drawings and some details for this assignment.

3. Tree Planting program – to be implemented within the HBCRA boundary per recommendations of the January 2021 Urban Tree Canopy Assessment document provided by the City.
4. Foster Road On-Street Parking – from NW 9th Ave to NW4th Ave, reconfigure the existing roadway to add on-street parking, modifying the existing curbing and landscape verge area to add parking spaces and create on-street bulb-outs. The HBCRA would also like to incorporate lighting, traffic calming strategies, site furnishings amenities, public art, and urban bioswales if practical.
5. New Sidewalks HBCRA-Wide – to be implemented throughout the HBCRA boundary area to provide enhanced connectivity, in accordance with guidance identified in the Hallandale Beach CRA Redevelopment Plan.
6. New Streetlights HBCRA-Wide – to be implemented throughout the HBCRA boundary area to provide pedestrian and street lighting, in accordance with guidance identified in the Hallandale Beach CRA Redevelopment Plan.
7. New Bike Lanes HBCRA-Wide - to be implemented throughout the HBCRA boundary area to provide enhanced connectivity, in accordance with guidance identified in the Hallandale Beach CRA Redevelopment Plan. No roadway widenings are anticipated in this task.
8. Intersection Art Program – for the design and/or permitting of artistic patterned and/or textured pavement treatments to be implemented in HBCRA-designated intersections.
9. NW 3rd Street extension – extension from NW 6th Avenue to 8th Avenue within existing R/W. This new street is to be designed just north of the existing Hallandale Public Works Department facility and feature approximately 1,400 LF of new street, sidewalk, landscaping, irrigation, and potential privacy fencing/wall treatment along the north side, bordering existing residences. The HBCRA would also like to incorporate lighting, traffic calming strategies, site furnishings/ amenities, public art, and urban bioswales.
10. FADD Parking Lot with Mechanical Parking – The CMAR will work with the HBCRA to identify and specify a vendor-designed mechanical parking system for implementation into a new or existing FADD-area parking lot. Services will be limited to site design for the parking lot and siting the mechanical parking system within the parking lot property. It is our understanding that the mechanical parking system will be designed, permitted, and engineered (including structural design for required foundations) as a component of the project by a vendor, to be approved by the HBCRA. Site design services provided are limited to site civil engineering, electrical engineering for lighting and service to the mechanical parking system, landscape architectural services, and irrigation design.
11. Traffic Calming Measures, CRA-wide - to be implemented throughout the CRA boundary area to provide roadway traffic calming improvements such as: Deviations, Chicanes, roundabouts, neck-downs, chokers, 2-lane angled deviations, modified intersections, lane narrowing, and/or medians. These plans are anticipated to be limited to improvements within existing rights-of-way. No right-of-way acquisitions are anticipated in this task.



The scope of work for preconstruction services to be provided by the CMAR and accepted by the HBCRA for these eleven (11) prioritized projects, shall be generally as follows:

**A. DESIGN / PERMITTING**

**B. PLAN REVIEW / CONSTRUCTABILITY REVIEW**

The CMAR shall review and evaluate Design Development documents for clarity, consistency, completeness, and ease of construction in order to achieve the overall objective of each Project.

CMAR's review of the design documents shall include the following activities:

1. Preparing a Master Checklist to be used as a guide for reviewing each technical discipline.
2. Conducting reviews by preparing a "mark-up" set of documents and a list of comments corresponding to the "mark-up."
3. Preparing and presenting a written report of constructability problems and concerns, including recommendations, checklist and comments.
4. Attending workshop meetings with the Design Consultant and the Project Manager to review proposed changes and recommending the changes, which are to be implemented for the project.
5. Verifying and conducting final review of changes to the construction documents.
6. Conducting inspections and investigation of local site conditions.

**C. COST ESTIMATING**

The CMAR shall be responsible for preparing two (2) Construction Cost Estimates. The CMAR shall prepare Construction Cost Estimates based on 60% and 90% Construction Documents. The purpose of the Construction Cost Estimates is to verify the HBCRA's ability to complete the Project within the established construction budget. The cost information derived from this estimate shall directly relate to the CMAR's recommendations in the Constructability and Value Engineering evaluation relative to ways to reduce and/or control costs.

**D. VALUE ENGINEERING**

As a result of the CMAR'S Constructability Review or Construction Cost Estimate and in order to reduce or control costs, the CMAR shall analyze the structural, architectural, electrical and elements of the Projects design as well as materials and product specifications. Based on this analysis, CMAR shall make cost/performance recommendations for the HBCRA'S consideration. The CMAR shall prepare its recommendation in the form of a written report to be presented to the project team.

**E. SCHEDULING**

The CMAR shall develop a Detailed Project Schedule, utilizing bar chart scheduling, reflecting the design and construction of the overall project.

The CMAR shall utilize a Detailed Project Schedule, to develop a Proposed Project Control Schedule for each project, which shall be presented in a bar graph format. The purpose of the Project Control Schedule is to summarize the information contained in the overall schedule in order to provide the project team with a management tool and an overall project visual aid to easily determine the schedule and status of each project.

The information derived from these two schedules are to become part of the CMAR's management plan developed by the CMAR.

CMAR shall update, on a monthly basis, both the Detailed Project Schedule and the Project Control Schedule throughout the term of the preconstruction and construction phases of the project as part of the CMAR's management activity.

**F. PROPOSED GUARANTEED MAXIMUM PRICE (GMP)**

Upon the finalization of the 90% Construction Documents, CMAR shall prepare a written GMP pricing proposal. The GMP pricing proposal shall reflect the 90% Construction Plans and Specifications for the Project(s).

The CMAR shall present the GMP Proposal containing the Contract Price Elements in writing to the HBCRA within thirty (30) days of the finalization of the 90% Construction Documents. The Contract Price Elements within the GMP are as follows:

1. Direct Construction Cost: Direct costs necessarily and reasonably incurred and to be paid by the CMAR in the performance of the Work. This cost shall be itemized by category in a schedule of values which shall list the cost of materials, the cost of labor, the cost of equipment and the cost of CMAR work separately for all the portions of the Work delineated in a manner satisfactory to the Project Manager to evaluate the charges.
2. General Conditions Cost: Actual ancillary project costs for the provision of services or functions as defined above.
3. Construction Management Fee: Negotiated Fee to include profit and overhead.
4. Owner's Contingency: The Owner's Contingency is available only at the discretion of HBCRA to cover increases to the scope of the Work as approved by the HBCRA.
5. Direct Purchase Tax Savings: Estimated tax savings to the HBCRA for direct purchase of materials.

**TOTAL PRE-CONSTRUCTION SERVICES FEE:**

**\$ 2,500,000.00**



ASSUMPTIONS:

This Proposal assumes the following:

- All improvements are to be implemented within existing rights-of-ways and City or HBCRA-owned easements.
- The prioritized list may change, but the sum of the Program, inclusive of all fees, Construction Cost, and Consultant Fees will not exceed \$20,000,000.00
- It is anticipated that projects 2,3,5,6,7, 8 and 11 (or improvements associated with those projects) may be located within FDOT rights-of-way and may require FDOT permitting. CMAR's Consultant will make FDOT permit applications on the HBCRA's behalf, upon authorization from the City/CRA. Certain FDOT permits or agreements may take more than one year to process.

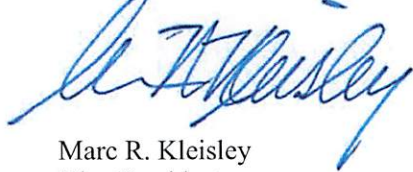
Please feel free to contact me directly should you have any questions regarding any of the information included in this letter.

We have attached our current hourly rates for your use should additional pre-construction services be requested. Additional pre-construction services scope and fee proposals for other services 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. If you have any questions on this proposal, please contact us at (561) 659-1400.

Respectfully,

Burkhardt Construction, Inc.



Marc R. Kleisley  
Vice President

**BURKHARDT  
CONSTRUCTION, INC.**

City of Hallandale Beach  
RFP #FY 2020-2021-CRA 002  
Construction Manager at Risk (CMAR)

Hourly Rates For Additional Requested  
Pre-Construction Services

<u>Name</u>	<u>Position</u>	<u>Rate</u>
Vincent G. Burkhardt	President	\$300.00
Sharon H. Burkhardt	Secretary/C.P.A.	\$200.00
Marc R. Kleisley	Vice President/Proj. Principal	\$200.00
Anthony Sabatino	Senior Project Manager	\$150.00
Bill Zammit	Snr. Vertical Project Manager	\$150.00
Adam Rossmell	Project Manager	\$120.00
CJ Rhody	Project Manager	\$120.00
Brandon Rhodes	Project Manager	\$120.00
Kevin Brennen	Safety Dir./Liaison	\$ 90.00
Nick Fasulo	Asst. Project Manager	\$ 90.00
Ruben Almazan	Const. Field Mgr.	\$100.00
Karl T. Kaminski	Utilities Const. Field Mgr.	\$100.00
Michael Parsons	Utilities Const. Field Mgr.	\$100.00
Lee VanPraag	Utilities Const. Field Mgr.	\$100.00
Hemant Tank	Asst. Proj. Manager/Cost Engineer	\$ 90.00
Diane Decker	Resident/Merchant Outreach	\$ 75.00
Sarah B. Hoadley	Accounting Manager/M.B.A.	\$ 90.00
Katy Pantaleon	Accounting	\$ 75.00
Brittany Darville	Admin. Ass't/Clerical	\$ 50.00

**ADDENDUM A**

**CONSTRUCTION SERVICES ADDENDUM**

**TO BE EXECUTED ONLY UPON COMMISSION APPROVAL PURSUANT TO THE  
TERMS OF SECTION 3.3.**

**TO BE REPLACED BY EXECUTED VERSION IF APPLICABLE.**

**WHEREAS**, CONTRACTOR has reviewed the 90% percent Construction Documents for RFP # FY 2020-2021-CRA 002, Construction of Various Public Projects, accepts them as complete, and has negotiated an agreed upon GMP with the HBCRA.

**WHEREAS**, the Board of Directors of the HBCRA, via RESOLUTION NO. 2021-013 CRA, has approved the negotiated GMP as detailed herein and attached as Addendum Exhibit A.1, the completed construction plans, and this Addendum.

**WHEREAS**, all references herein to the "Agreement" are a reference to the Construction Manager At Risk Agreement between the HBCRA and BURKHARDT CONSTRUCTION, INC. for the Project. This addendum describes additional terms and conditions applicable to the Construction Phase of the Agreement and should be interpreted in accordance with Section 3.3 of the Agreement. All terms and conditions not contained herein shall be as defined in the Agreement.

**NOW THEREFORE**, the forgoing "Whereas" clauses are incorporated herein, and, in consideration of the foregoing and of the mutual covenants and compensation set forth herein, the HBCRA and Construction Manager agree as follows:

#### **ARTICLE A.1** **GUARANTEED MAXIMUM PRICE**

A1.1 The Approved GMP is attached and incorporated herein as Addendum Exhibit A.1.

A1.2 CONTRACTOR hereby agrees to furnish all of the labor, materials, equipment services and incidentals necessary to perform all of the work described in the construction documents for the Project.

A1.3 Anything shown on the drawings and not mentioned in the specifications, or mentioned in the specifications and not shown on the drawings, shall have the same effect as if shown or mentioned respectively in both. In the event of a conflict among the Contract Documents, the latest, most stringent, and more technical requirement(s), including, but not limited to, issues of quantities or cost of the Work, to Contractor shall control, as determined by the Consultant.

A1.4 The organization of the Specifications into divisions and sections and the arrangement of drawings shall not control CONTRACTOR in dividing the Work among subcontractors or in establishing the extent of the work to be performed by any trade. The organization of the Specifications and the arrangement of the Drawings is for the convenience of the CONTRACTOR and is not intended to relieve the CONTRACTOR from its obligation to conduct a complete study of the Drawings, Specifications and Addenda for the purpose of directing and coordinating the various subcontractors and suppliers as to their respective responsibilities.

A1.5 **Local Conditions and Project Site.** Execution of this Addendum by the Contractor is a representation that the Contractor has visited the Project sites, become familiar with local conditions under which the Work is to be performed and correlated personal

observations with requirements of the Contract Documents. Contractor represents that it has performed its own investigation and examination of the Project Work sites and their surroundings and satisfied itself before entering into this contract as to:

1. Conditions bearing upon transportation, disposal, handling, and storage of materials;
2. The availability of labor, materials, equipment, water, electrical power, utilities and roads;
3. Uncertainties of weather, flooding and similar characteristics of the site;
4. Conditions bearing upon security and protection of material, equipment, and Work in progress;
5. The form and nature of the Work site, including the surface and sub-surface conditions;
6. The extent and nature of Work and materials necessary for the execution of the Work and the remedying of any defects therein; and
7. The means of access to the site and the accommodations it may require and, in general, shall be deemed to have obtained all information as to risks, contingencies and other circumstances.

## **ARTICLE A.2** **CONSULTANT'S AUTHORITY**

CONSULTANT may provide as requested by the HBCRA selected technical and management services to assist the HBCRA in maintaining schedules, establishing budgets, controlling costs, and achieving quality.

## **ARTICLE A.3** **TIME FOR PERFORMANCE**

### **A.3.1 CONTRACT TIME**

A3.1.1 CONTRACTOR shall be instructed to commence construction by written Notice to Proceed for Construction issued by the PROJECT MANAGER. The Notice to Proceed for Construction will not be issued until CONTRACTOR's submission to HBCRA of all required documents, after execution of the Addendum by both parties. Receipt of all permits by CONTRACTOR is a condition precedent to the issuance of the Notice to Proceed for Construction. The Work to be performed pursuant to the Notice to Proceed for Construction including the submission of a Project Schedule, Schedule of Values, Submittals, Submittal Schedule shall be completed within ten (10) calendar days of the Project Initiation Date specified in the Notice to Proceed.

A3.1.2 Time is of the essence throughout this contract. The Project shall be Substantially Completed within \_\_\_\_\_ **< > calendar days** from the date of the Notice to Proceed for Construction. The total Project shall be completed and ready for final payment in accordance with Article A.5 within **60 calendar days** from the date certified by the PROJECT MANAGER as the date of Substantial Completion.

A3.1.3 Upon failure of CONTRACTOR to Substantially Complete the Project within the specified period of time, plus approved time extensions, CONTRACTOR shall pay to HBCRA the sum of **Three Hundred Dollars (\$300.00)** for each calendar day after the time specified in Article 3.1.2, plus any approved extensions for Substantial Completion. After Substantial Completion should CONTRACTOR fail to complete the remaining work within the time specified in Article A3.1.2, plus approved time extensions thereof, for completion and **One Hundred Fifty Dollars (\$150.00)** for each calendar day after the time specified in Article 3.1.2, plus any approved extensions, for completion and readiness for final payment. These amounts are not penalties but are liquidated damages to HBCRA to reimburse the HBCRA for costs associated with the delay.

A3.1.4 The above Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by HBCRA as a consequence of such delay, and both parties desiring to obviate any questions of dispute concerning the amount of said damages and the cost and effect of the failure of CONTRACTOR to complete the Contract on time. The above-stated liquidated damages shall apply separately to each phase of the Project for which a time for completion is given.

A3.1.5 PROJECT MANAGER is authorized to deduct liquidated damages from monies due to CONTRACTOR for the work under this contract or as much thereof as PROJECT MANAGER may, at its option, deem just and reasonable.

A3.1.6 CONTRACTOR shall be responsible for reimbursing HBCRA, in addition to liquidated damages, for all costs incurred by the HBCRA in administering the construction of the Project beyond the completion dates specified above or beyond an approved extension of time granted to CONTRACTOR, whichever date is later. Such costs shall be deducted from the monies due CONTRACTOR for performance of work under this contract by means of unilateral credit change orders issued periodically to HBCRA as costs are incurred.

A3.1.7 Extensions to the Contract Time for delays caused by the effects of inclement weather shall be submitted as a request for change in Contract Time pursuant to Article 3.3. These time extensions are justified only when rains or other inclement weather conditions or related adverse soil conditions prevent CONTRACTOR from productively performing controlling items of work identified on the accepted schedule or updates resulting in CONTRACTOR being unable to work at least fifty (50%) of the normal workday on controlling items of work identified on the accepted schedule or updates due to adverse weather conditions.

### A3.2 SUBSTANTIAL COMPLETION:

A3.2.1 When CONTRACTOR considers that the Work, or portion thereof designated by PROJECT MANAGER pursuant to Article 3.4 hereof, has reached Substantial Completion, CONTRACTOR shall so notify PROJECT MANAGER in writing. PROJECT MANAGER shall then promptly inspect the work.

A3.2.2 When PROJECT MANAGER, on the basis of such an inspection, determines that the work or designated portion thereof is Substantially Complete, PROJECT MANAGER will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion; shall state the responsibilities of HBCRA and CONTRACTOR for security, operation, safety, maintenance, utilities, damage to the work, insurance, and warranties; shall list all work yet to be completed (Punch List) to satisfy the requirements of the Contract Documents for Final Completion. The failure to include any items of corrective work on such list does not alter the responsibility of CONTRACTOR to complete all of the work in accordance with the Contract Documents. The Certificate of Substantial Completion shall be submitted to the PROJECT MANAGER, after execution by CONTRACTOR, and the HBCRA, indicating their written acceptance of such certificate.

### A3.3 NOTIFICATION OF CHANGE OF CONTRACT TIME OR CONTRACT PRICE:

A3.3.1 Any claim for a change in the Contract Time or Contract Price shall be made by written notice and delivered by CONTRACTOR to the PROJECT MANAGER within five (5) calendar days of the commencement of the event giving rise to the claim and stating the general nature of the claim. Notice of the nature and elements of the claim shall be delivered within twenty (20) calendar days after the date of such written notice. Thereafter, within ten (10) calendar days of the termination of the event giving rise to the claim, notice of the extent of the claim with supporting data shall be delivered unless the HBCRA allows an additional period of time to ascertain more accurate data in support of the claim and shall be accompanied by CONTRACTOR's written statement that the adjustment claimed justified as a result of the occurrence of said event. All claims for adjustment in the Contract Time or contract price shall be determined by the HBCRA in accordance with Article 4 hereof, if the HBCRA and CONTRACTOR cannot otherwise agree. NO CLAIM FOR AN ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT PRICE WILL BE VALID IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.

A3.3.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of and through no fault or negligence of CONTRACTOR if a claim is made therefore as provided in Article 3.3. Such delays shall include, but not be limited to, acts or neglect by any separate independent contractors employed by HBCRA, fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

#### **A3.4 USE OF COMPLETED PORTIONS:**

A3.4.1 HBCRA shall have the right, at its sole option, to take possession of and use of any completed or partially completed portions of the Project. Such possession and use shall not be deemed an acceptance of any of the Work not completed in accordance with the Contract Documents. If such possession and use increases the cost of or delays of the work, CONTRACTOR shall be entitled to reasonable extra compensation, or reasonable extension of time or both, by appropriate adjustment pursuant to Article 4.

A3.4.2 In the event HBCRA takes possession of any completed or partially completed portions of the project, the following shall occur:

1. HBCRA shall give notice to CONTRACTOR in writing at least fifteen (15) calendar days prior to HBCRA's intended occupancy of a designated area.
2. CONTRACTOR shall complete to the point of Substantial Completion the designated area and request inspection and issuance of a Certificate of Substantial Completion in the form provided by the HBCRA.
3. Upon the PROJECT MANAGER'S issuance of a Certificate of Substantial Completion, HBCRA will assume full responsibility for maintenance, utilities, subsequent damages of or by the HBCRA and the public, adjustment of insurance coverage and start of warranty for the occupied area.
4. CONTRACTOR shall complete all items noted on the Certificate of Substantial Completion within the time specified in article 3.2 and request final acceptance of the portion of the Work occupied. Upon completion of final inspection and receipt of an application for final payment, the PROJECT MANAGER shall issue a Final Certificate of Payment relative to the occupied area.

A3.4.3 If the HBCRA finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by HBCRA and CONTRACTOR and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. Insurance on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. Consent of CONTRACTOR and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

#### **ARTICLE A.4** **CHANGES IN THE WORK OR TERMS OF CONTRACT DOCUMENTS**

A4.1 Without invalidating the Contract and without notice to the surety, HBCRA reserves and shall have the right, from time to time, to make such increases, decreases or other



changes in the character or quantity of the work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any extra or additional work within the scope of this project must be accomplished by means of an appropriate Change Order in accordance with the requirements of the Contract Documents. Contractor acknowledges that individual or collective changes beyond the HBCRA Manager's delegated spending authority, available in the HBCRA Code of Ordinances, either as a deletion or addition, require the approval of the HBCRA Commission.

A4.2 Any changes to the terms of the Contract Documents must be contained in a written document, executed by the parties hereto, with the same formality and of equal dignity prior to the initiation of any work reflecting such change. This section shall not prohibit the issuance of Change Orders executed only by HBCRA as hereinafter provided.

A4.3 The PROJECT MANAGER may direct the CONTRACTOR to expedite the work by whatever means the CONTRACTOR may use, including, without limitation, increasing staffing or working overtime to bring the work back within the progress schedule. If the expediting of Work is required due to reasons outside the control or responsibility of the CONTRACTOR, then the additional costs incurred shall be the subject of an appropriate adjustment issued pursuant to Article 4, as applicable.

#### A4.4 CHANGE ORDERS:

A4.4.1 Changes in the quantity or character of the work within the scope of the Project, or the subject of Field Orders or Supplemental Instructions, including all changes resulting in changes in the contract price, or the Contract Time, shall be authorized only by written Change Orders approved and issued in accordance with the provisions of the Contract Documents and the applicable of the HBCRA's Purchasing Policies.

A4.4.2 Without invalidating the Contract and without notice to any surety, HBCRA reserves and shall have the right, from time to time to make such increases, decreases or other changes in the character or quantity of the work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any changes, increases or decreases to the work within the scope of this project must be accomplished by means of appropriate Change Orders.

A4.4.3 The CONTRACTOR's fee on such changes which exceeds GMP shall be determined as follows:

- (a) A mutually acceptable fixed fee, or if none can be agreed upon,
- (b) A fee based upon a percentage of the net change to the Cost of the Work resulting from the Change Order, in accordance with this Article, not to exceed Contractor's fee percentage. In no event shall Subcontractors' or Sub-subcontractors' profit, overhead, general conditions, insurance and bond exceed fifteen percent (15%) of any applicable Change Order.

A4.4.4 Pursuant to the HBCRA Purchasing Policies, all changes to construction contracts which exceeds the GMP must be approved in advance in accordance with the value of the Change Order or the calculated value of the time extension. CONTRACTOR shall not start work on any changes requiring an increase in the contract price or the Contract Time until a Change Order setting forth adjustments is approved and issued by the HBCRA. If the CONTRACTOR commences work pertaining to a Change Order prior to receiving written authorization through the Project Manager then they do so at their own risk and assume all associated responsibility and costs. Upon receipt of a Change Order, CONTRACTOR shall promptly proceed with the work set forth within the document.

A4.4.5 In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, HBCRA reserves the right at its sole option to either terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed work; or submit the matter in dispute to CONSULTANT as set forth in Article 27 hereof. During the pendency of the dispute, and upon receipt of a Change Order, CONTRACTOR shall promptly proceed with the change in the work involved and advise the CONSULTANT and PROJECT MANAGER in writing within seven (7) calendar days of CONTRACTOR's agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Price or Contract Time.

A4.4.6 On approval of any Contract change increasing the contract price, CONTRACTOR shall ensure that the Performance Bond and Payment Bond are increased so that each reflects the total contract price as increased.

#### A4.5 FIELD ORDERS AND SUPPLEMENTAL INSTRUCTIONS:

A4.5.1 The Project Manager shall have the right to approve and issue changes setting forth written interpretations of the intent of the Contract Documents and ordering minor changes in work execution, providing the Field Order involves no change in the Contract Price or Contract Time.

A4.5.2 Project Manager shall have the right to approve and issue Supplemental Instructions setting forth written orders, instruction, or interpretations concerning the Contract Documents, provided such supplemental instructions involve no change in the contract price or Contract Time.

#### A4.6 CONTRACT PRICE ELEMENT ADJUSTMENT MEMORANDA:

At the Completion of the Work, a Contract Price Element Adjustment Memorandum will be issued in conjunction with a final Change Order to remove any remaining sums within the Cost of the Work and General Conditions and reduce the GMP in accordance with

the actual costs and work performed. The Project Manager shall have the right to issue the Memoranda, which shall address the reallocation of sums between the Contract Price Elements within the Contract Price to reflect approved Change Orders. In no event shall the Contract Price be modified except by following an appropriate Change Order. The preceding specific Memorandum is contemplated, but additional or different Memoranda may be required and issued, provided they do not result in a change to the Contract Price, and provided that amounts shall only be transferred between the Price Elements by prior mutual agreement of the CONTRACTOR and the HBCRA.

#### **A4.7 NO DAMAGES FOR DELAY:**

No claim for damages or any claim other than for an extension of time, shall be made or asserted against HBCRA by reason of any delays. CONTRACTOR shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from HBCRA for direct, indirect, consequential, impact or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, Eichleay Formula Costs, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided except for Excusable Delay set forth below this provision shall not preclude recovery of damages by CONTRACTOR for hindrance or delays due solely to fraud, bad faith, unknown conditions including subsurface conditions, discovery of hazardous or toxic materials, force majeure, or active interference or negligence on the part of HBCRA or its agents. Otherwise, CONTRACTOR shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

#### **A4.8 EXCUSABLE DELAY: COMPENSABLE & NON-COMPENSABLE**

A4.8.1 Excusable Delay: Delay which extends the completion of the work which is caused by circumstances beyond the control of CONTRACTOR or its subcontractors, materials persons, suppliers, or vendors is Excusable Delay. CONTRACTOR is entitled to a time extension of the Contract Time for each day the work is delayed due to excusable delay. CONTRACTOR shall document its claim for any time extensions.

Failure of CONTRACTOR to comply with Article 3.3 hereof as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.

A 4.8.2 Excusable Delay may be compensable or non-compensable.

- (a) Compensable Excusable Delay. Excusable Delay is only compensable when:
- (i) the delay extends the Contract Time, and (ii) is due solely to fraud, bad faith, negligence, unforeseeable conditions including subsurface conditions, discovery of hazardous or toxic materials, force majeure, or active interference

on the part of HBCRA or its agents. In no event shall CONTRACTOR be compensated for interim or non-critical delays, which do not extend the Contract Time.

CONTRACTOR shall be entitled to direct and indirect costs for Compensable Excusable Delay. Direct costs recoverable by CONTRACTOR shall be limited to the actual additional costs allowed pursuant to Article 5.0 hereof.

HBCRA and CONTRACTOR recognize and agree that the amount of CONTRACTOR's precise actual indirect costs for delay in the performance and completion of the work is impossible to determine as of the date of execution of the Contract Documents, and that proof of the precise amount will be difficult. Therefore, indirect costs recoverable by the CONTRACTOR shall be determined on a daily basis for each day the Contract Time is delayed due to a Compensable Excusable Delay. These indirect costs shall be paid to compensate CONTRACTOR or for all indirect costs caused by a Compensable Excusable Delay and shall include, but not be limited to, all profit on indirect costs, home office overhead, acceleration, loss of earnings, loss of productivity, loss of bonding, loss of opportunity and all other indirect costs recoverable shall be for each day the Contract is delayed due to a Compensable Excusable Delay.

- (b) Non-Compensable Excusable Delay. When Excusable Delay is not due solely to fraud, bad faith or active interference on the part of HBCRA or its agents, then CONTRACTOR shall be entitled only to a time extension and no further compensation for the delay.

#### **ARTICLE A.5** **PAYMENTS AND COST OF THE WORK**

A5.1 In full consideration of the full and complete performance of the Work and all other obligations of the CONTRACTOR hereunder, the HBCRA shall pay to the CONTRACTOR a sum of money not to exceed the contract price which is defined to be the total of: (i) the CONTRACTOR's Cost of the Work, (ii) so much of the CONTRACTOR's General Conditions as may have been expended, (iii) so much of the approved amount of the Contingency as may have been expended, (iv) the CONTRACTOR's Construction Management Fee, and (v) Profit/Overhead. The contract price shall not exceed the sum shown in Article 1.0 as the Guaranteed Maximum Price, adjusted to take into account any approved Change Orders, and shall mean those costs necessarily incurred and paid by the CONTRACTOR in connection with the performance of all the work.

A5.2 After completion and acceptance of the work, in the event that the Cost of the Work plus the CONTRACTOR's fee are less than the Guaranteed Maximum Price after giving effect to adjustments to the GMP made in accordance with this Contract then the difference between the Cost of the Work plus the CONTRACTOR's Fee on the one hand and the GMP on the other hand is the "savings". Prior to making this calculation and for the purpose of this calculation only, the remaining balance of the HBCRA's money shall

be deducted from the GMP. In the event that the CONTRACTOR's total approved expenditures for the Project shall exceed the Guaranteed Maximum Price, the CONTRACTOR shall pay such excess from its own funds, and the HBCRA shall not be required to pay any amount that exceeds the GMP; and the CONTRACTOR shall have no claim against the HBCRA on account thereof.

A5.3 The term "Cost of the Work" shall mean the sum of all direct costs necessarily and reasonably incurred and paid by the CONTRACTOR in the performance of the Work. Such costs shall be at rates not higher than those customarily paid in the locality of the Project except with the prior written consent of HBCRA. The Cost of the Work shall include only those items set forth in this Article 4.6 Cost of the Work shall be determined as follows:

A5.3.1 SUBCONTRACTOR COSTS:

1. Where the work is covered by unit prices contained in the Contract documents or an applicable subcontract, the Cost of the Work shall be determined by application of unit prices to the quantities of items involved.
2. By mutual acceptance of a lump sum which subcontractor, CONTRACTOR and HBCRA acknowledge contains a component for overhead and profit, which shall be subject to the limitation of subcontractor fees set forth in Article 4.4.3. Whenever a change in subcontractor work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, CONTRACTOR shall submit an initial cost estimate obtained from the subcontractor and acceptable to the HBCRA. The breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost. Whenever a change involves more than one subcontractor and the change is an increase in the GMP, overhead and profit percentage of each subcontractor and CONTRACTOR, if applicable, shall be itemized separately.
3. If the subcontract provides that the subcontractor is to be paid on the basis of Cost of the Work plus a fee, the subcontractor's Cost of the Work shall be determined in the same manner as CONTRACTOR's Cost of the Work, subject to the limitation on subcontractor's fees set forth in Article 4.4.3.
4. If changes to subcontracted work affected the GMP, such changes shall be accomplished in accordance with Article 4.4, Change Orders. The amount of decrease in the GMP for any change that results in a net decrease in cost, will be the amount of the actual net decrease. When both additions and decreases are involved in any one change, the combined effect shall be figured on the basis of the net change in the GMP, if any.

A5.3.2 MATERIALS AND EQUIPMENT:

Cost of all materials and equipment furnished and incorporated in the work, including

costs of transportation and storage thereof, and manufacturers' field services required in connection therewith, adjusted in accordance with Article 7.1, pertaining to Discounts, Rebates and Refunds; rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the work.

**A5.3.3 MISCELLANEOUS COSTS:**

1. The cost, as documented by the CONTRACTOR's detailed receipts, of telephone, telegrams, postage, photographs, blueprints, office supplies, first aid supplies and related miscellaneous costs reasonably incurred in direct support of the work at the project location.
2. Premiums (Net) on bonds and insurance, including subcontractor bonds, if any that the CONTRACTOR is obligated to secure and maintain under the terms of the CONTRACT DOCUMENTS and such other insurance and bonds as may be required, subject to the written approval of the HBCRA. Premiums paid, as part of CONTRACTOR's Cost, shall be net of trade discounts, volume discounts, dividends and other adjustments. All insurance and bonds shall be provided by companies acceptable to the HBCRA.

Self-insurance by the CONTRACTOR or insurance through any affiliates of CONTRACTOR shall not be permitted without the HBCRA's prior written approval. HBCRA's approval shall not be required on a subcontractor bond, and premiums thereof shall be considered a Cost of the Work.

3. The cost of obtaining and using any utility services required for the Work that are not paid directly by HBCRA, including fuel and sanitary services at the Project sites.
4. The cost of removal of debris from the sites. The Project sites, lay-down locations, and staging sites will be kept clear of all debris on a daily basis. All subcontracts shall require subcontractors to remove all debris daily created by their activities, and the CONTRACTOR shall exercise its best efforts to enforce such requirements or effect the removal of the debris of the subcontractors who fail in this regard. Provided, however, the CONTRACTOR shall not be required to remove debris created by the HBCRA's separate contractors except pursuant to Change Order procedures set forth herein.
5. The cost and expenses, actually sustained by the CONTRACTOR in connection with the work, of protecting and repairing adjoining property, if required, except to the extent that any such cost or expense is:

- (a) the responsibility of the CONTRACTOR under Article 1, reimbursable by insurance or otherwise;
  - (b) Due to the failure of the CONTRACTOR to comply with the requirements of the Contract Documents with respect to insurance; or
  - (c) Due to the failure of any officer of the CONTRACTOR or any of its representatives having supervision or direction of the Work to exercise good faith or the standard of care normally exercised in the conduct of the business of a general contractor experienced in the performance of work of the magnitude, complexity and type encompassed by the Contract Documents, in any of which events any such expenses shall not be included in CONTRACTOR's costs.
- 6. Federal, state, municipal, sales, use and other taxes required by law, as applicable to the Project, all with respect to service performed or materials furnished for the work, it being understood that none of the foregoing includes, federal, state or local income or franchise taxes.
  - 7. All reasonable costs and expenditures necessary for the operation of the project job site office(s), including cost of field computer equipment and software.
  - 8. The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees, excluding travel time, incurred in discharge of duties connected with the work except for local travel to and from the site of the Work.
  - 9. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.
  - 10. Deposits lost for causes other than CONTRACTOR's negligence, or negligence of the Contractor's lower tiers, royalty payments and fees for permits and licenses.
  - 11. Cost of premiums for additional bonds and insurance required because of changes in the work and incurred through no fault of the Contractor or their lower tiers.
  - 12. Cost of special consultants, including, but not limited to, engineers, architects, testing laboratories, surveyors employed for services specifically related to the Work.

13. Any other expenses or changes incurred, with the prior written approval of the CONSULTANT, in the performance of the Work.

**A5.4 EXCLUSIONS TO COST OF THE WORK:**

Overhead is defined as any and all other costs, not referenced in Article 5, of the CONTRACTOR and its operation which are not in direct support of the Project. The CONTRACTOR agrees to furnish and perform, as a part of the CONTRACTOR'S Management Fee and Overhead/Profit without reimbursement, said overhead items. The term "Cost of the Work" shall not include any of the following:

A5.4.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorship), general managers, estimators, purchasing and contracting agents, clerks and other personnel employed by CONTRACTOR whether at the Project sites or in its principal or a branch office for general administration that are not specifically included in the General Conditions are to be considered administrative costs covered by CONTRACTOR's fees.

A5.4.2 Other than those expenses authorized expenses of CONTRACTOR's principal and branch offices.

A5.4.3 Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and changes against CONTRACTOR for delinquent payments.

A5.4.4 Other overhead, general expense costs or charges of any kind and the cost of any item not specifically and expressly included in Article A5.

A5.4.5 Costs in excess of the Guaranteed Maximum Price.

A5.4.6 Entertainment and meal expenses, car allowances and charges of a personal nature.

A5.4.7 Bonuses, pensions, profit sharing or other special labor charges not included in Article A5.3.2, above.

A5.4.8 Any outside legal or HBCRA accounting fees incurred without prior written approval from the HBCRA Attorney, which approval is at the sole discretion of the HBCRA Attorney.

A5.4.9 Any cost not expressly provided for herein.

**A5.5 PROGRESS PAYMENTS:**

A5.5.1 CONTRACTOR may make Application for Payment for Work completed during the Project at intervals of not more than once a month unless agreed by the Project



Manager. CONTRACTOR's application shall show a complete breakdown of the Project Schedule of Values, and actual cost incurred as of the date of the Application for Payment for the Work completed or, as to General Conditions, at cost, plus applicable Construction Management Fee incurred and percentage of Profit/Overhead due. Each application shall be accompanied by such supporting evidence as may be reasonably required by the HBCRA, as more particularly described in Article 3.5.3 below. CONTRACTOR shall submit with each Application for Payment, an updated progress schedule acceptable to the HBCRA and its Schedule Consultant, either release of liens relative to the Work which is the subject of the Application or consent of the surety as to such payment. Each Application for Payment shall be submitted to the HBCRA for approval. HBCRA shall make payment to CONTRACTOR within thirty (30) days after approval of CONTRACTOR's Application for Payment and submission of an acceptable updated progress schedule and all supporting documents required herein for progress payments including Contractor and Subcontractor lien releases.

A5.5.2 Five percent (5%) of all monies earned by CONTRACTOR shall be retained by HBCRA until substantial completion of the Project and acceptance by HBCRA in accordance with Article A5.9 hereof, except for the following item: Self-performed Work performed on a cost reimbursement basis, if any. After substantial completion of the project and Final Payment, HBCRA shall retain two and a half percent (2.5%) of monies earned by CONTRACTOR. The HBCRA may retain amounts greater than those set forth above that are the subject of a good faith dispute pursuant to Florida Statute 255.078 (6), the subject of a claim brought pursuant to Section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the HBCRA or CONTRACTOR. Retainage as set forth herein shall not be held or retained by the HBCRA for costs of general conditions, insurance, or bonds.

A5.5.3 HBCRA may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

A5.5.3.1 Defective CONTRACTOR or subcontractor Work not remedied.

A5.5.3.2 Claims filed or reasonable evidence indicating probable filing of claims by other parties against CONTRACTOR.

A5.5.3.3 Failure of CONTRACTOR to make payments properly to subcontractors or for material or labor and failure to meet deadlines in construction schedule.

A5.5.3.4 Damage to another contractor not remedied.

A5.5.3.5 Liquidated damages

A5.5.4 The Schedule of Values, shall list the cost of materials, the cost of labor, the cost of equipment and the cost of subcontractor Work separately for all the portions of the Work delineated. Each monthly Application for Payment shall be for a sum equal to (i) that portion of the CONTRACTOR's Direct Construction Cost equal to the

percentage of the Work completed; plus (ii) an appropriate amount of the CONTRACTOR's Fee as related to the percentage of the Work completed. The calculation of the percentage of the Work completed shall be in accordance with the approved Progress Schedule; provided, however, prior to the date of the Final Request, and unless subject to reduction under Article 5.5.2, the aggregate of the CONTRACTOR's Fee payments shall not exceed Ninety (90%) percent of the Contractor's Fee as stated in Article 5.3.

The CONTRACTOR's Cost of the Work shall be segregated and detailed in a manner satisfactory to the PROJECT MANAGER to evaluate the charges. The Request for Payment shall indicate the percentage of completion of each portion of the Work, and the total Work, as of the end of the period covered by the Application for Payment. The Schedule of Values shall be used as one basis for reviewing the Request for Payment when such amounts are approved.

A5.5.5 If the HBCRA, in its good faith judgment, determines that the portion of the GMP then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, no additional payments will be due to the CONTRACTOR hereunder unless and until the CONTRACTOR, at its sole cost, performs a sufficient portion of the Work so that such portion of the Guaranteed Maximum Price then remaining unpaid is determined by the HBCRA to be sufficient to complete the Work.

A5.6 The Project Manager shall review each such Request for Payment and may make such exceptions, as the PROJECT MANAGER reasonably deem necessary or appropriate.

A5.7 CONTRACTOR shall remain solely liable for subcontractor's Work and for any unpaid laborers, material suppliers or subcontractors or subcontractor in the event it is later discovered that said Work is deficient or that any of said laborers, material suppliers or subcontractors did not receive payments due them on the Project.

A5.8 Within thirty (30) days after Final Completion of the Work and acceptance thereof by the HBCRA, the CONTRACTOR shall submit a Final Request For Payment (Final Request) which shall set forth all amounts due and remaining unpaid to the CONTRACTOR (including the unpaid portion of the Contractor's Fee).

A5.9 Except for the CONTRACTOR'S Management Fee and Profit/Overhead, the CONTRACTOR shall use the sums paid to it pursuant to this article solely for the purpose of performance of the Work and the construction, furnishing and equipping of the Work in accordance with the Contract Documents and payments of bills incurred by the CONTRACTOR in performance of the Work.

A5.10 The CONTRACTOR shall promptly pay all bills for labor and material performed and furnished by its subcontractors, suppliers and materials providers, in connection with the construction, furnishing and equipping of the Work and the performance of the Work.

## **ARTICLE A6**

## **CONTINGENCIES AND ALLOWANCES**

An agreed upon sum included in the GMP for the purpose of any modifications, additions or any other expenditures that the HBCRA deems necessary for completion of the project. This contingency will be referred to as an "Owners Contingency" and the HBCRA will dictate its use. Any costs to be applied against the contingency must first be approved by the HBCRA in writing. The CONTRACTOR will be required to furnish documentation evidencing the expenditures charged to this Contingency prior to release of funds by the HBCRA. At Final Completion of the Project, any remaining monies in the Construction Contingency shall vest in the HBCRA. The Guaranteed Maximum Price shall be reduced in the amount of the Construction Contingency remaining monies, if any.

## **ARTICLE A7** **DISCOUNTS, REBATES AND REFUNDS**

All cash discounts obtained on payments made by the CONTRACTOR shall accrue to the HBCRA unless the CONTRACTOR actually advanced its own funds, prior to receipt of funds from HBCRA, to make the payment giving rise to the discount. When CONTRACTOR becomes aware that a cash discount may be available to HBCRA, CONTRACTOR shall, prior to advancing its own funds, notify PROJECT MANAGER of such opportunity so HBCRA can make the required payment to achieve the discount for the HBCRA. CONTRACTOR shall only advance its own funds if PROJECT MANAGER declines to make the early payment. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to HBCRA, and CONTRACTOR shall make provisions so that they may be obtained.

## **ARTICLE A8** **SUBCONTRACTS AND PURCHASE ORDERS**

A8.1 Unless waived in writing for good cause, by the HBCRA or its PROJECT MANAGER, the CONTRACTOR must obtain competitive pricing and subcontracts, in compliance with the requirements of this Article, for One Hundred Percent (100%) of the Contractor's Direct Construction Cost required under this Contract. All subcontracts and purchase orders shall be awarded according to the following procedure:

1. The CONTRACTOR shall prepare for the PROJECT MANAGER's review and approval a list of subcontractors and suppliers for each bid who meet the CONTRACTOR'S schedule of minimum requirements. The CONTRACTOR shall obtain bids from a minimum of three (3) such subcontractors for each subcontract, when available. After receiving such bids, the CONTRACTOR shall analyze them and make recommendations to the PROJECT MANAGER's for awards.
2. When the PROJECT MANAGER has approved the award of any such subcontract or purchase order, the CONTRACTOR shall contract solely in its own name and behalf, and not in the name or behalf of the HBCRA, with the specified subcontractor or supplier. The subcontract shall provide that the

subcontractor shall perform its portion of the Work in accordance with all applicable provisions of this Contract and the other Contract Documents; that the subcontractor shall be bound to the CONTRACTOR, to the same extent as the CONTRACTOR is bound to the HBCRA; to name the HBCRA as an additional insured on its comprehensive general liability insurance; that the subcontractor shall provide an insurance certificate evidencing the same; that the CONTRACTOR shall have the right to terminate the subcontract in the same manner and by the same method as provided for termination of this Contract by the HBCRA, or as otherwise provided in the subcontract, whichever is more protective of the HBCRA's interest; and that, in the event this Contract is terminated for any reason, the subcontractor shall, at the HBCRA's option, perform its subcontract for the HBCRA, or for a CONTRACTOR designated by the HBCRA, without additional or increased cost, provided the subcontractor is paid in accordance with its subcontract. The CONTRACTOR shall sign and cause each subcontractor to sign an Assignment of Rights under Construction Subcontract.

3. Nothing contained herein shall impose on the HBCRA an obligation to assume any subcontract or make any payments to any subcontractor to perform, and nothing contained herein shall create any contractual relationship between the HBCRA and any subcontractor.

A8.2 If the HBCRA shall designate as the selected subcontractor or supplier a bidder whose bid exceeds that of the bidder recommended by the CONTRACTOR, whose bid complies with the Contract Documents (the amount by which the bid of the selected subcontractor exceeds the bid of the bidder recommended by the CONTRACTOR is referred to herein as the preferred subcontractor cost differential), then the PROJECT MANAGER may designate that the Guaranteed Maximum Price shall be increased by the amount of the preferred subcontractor cost differential.

A8.3 All subcontracts shall, so far as practicable, contain unit prices and any other feasible formula for use in determination of the cost of changes in the Work.

## **ARTICLE A9** **INSURANCE**

CONTRACTOR shall procure and maintain for the duration of and in full compliance with the contract insurance against claims for injuries to persons and damage to property which may arise from or in connection with their performance hereunder by the CONTRACTOR, his agents, representatives, employees and subcontractors. The cost of such insurance shall be included in the CONTRACTOR'S bid.

### **A9.1 Minimum Scope of Insurance**

- A. Commercial General Liability, including:

1. Premises and Operations.
2. Explosion, Collapse and Underground
3. Products and Completed Operations
4. Blanket Contractual Liability
5. Independent Contractors
6. Broad Form Property Damage
7. Personal Injury Liability
8. Owner's and CONTRACTOR'S Protective Policy, issued by the same insurance company as that issuing liability insurance above (I.A.). The policy must be submitted to the HBCRA's Risk Manager and be issued in the name of the HBCRA of Hallandale Beach
9. Fire Legal Liability
10. Incidental Medical Malpractice

B. Automobile Liability Insurance, including:

1. Owned Automobiles.
2. Nonowned Automobiles.
3. Hired Automobiles.

C. Workers' Compensation Insurance.

D. Employer's Liability Insurance.

F. Professional Liability Insurance

A9.2 Minimum Limits of Insurance

A. Commercial General Liability:

\$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

B. Auto Liability:

\$1,000,000 combined single limit per occurrence for bodily injury and property damage arising from the operations of all Owned Automobiles, Nonowned Automobiles and Hired Automobiles.

C. Workers' Compensation:

Workers' Compensation Insurance as required by the State of Florida. If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

**D. Employer's Liability:**

\$100,000 limit per occurrence;

\$500,000 annual aggregate for disease; and

\$100,000 limit for disease of an individual employee.

F. Professional (Errors & Omissions) Liability of not less than \$1,000,000 per claim, \$1,000,000 Annual Aggregate, or a Combined Single limit. The CONTRACTOR agrees the policy shall include a minimum three (3) year Discovery (tail) reporting period, and a Retroactive Date that equals or precedes the effective date of the Contract, or the performance of services hereunder. The CONTRACTOR agrees the Self-Insured-Retention shall not exceed \$25,000. This coverage may be provided on a Per-Project Basis.

**A9.3 Deductibles and Self-Insured Retentions**

**A. Deductibles/Self-Insurance Retentions Defined:**

All deductibles and self-insured retentions must be shown clearly on the Certificates of Insurance and approved by the HBCRA.

**B. Retention Levels:**

The HBCRA has the option to reduce or eliminate any deductible or self-insured retention maintained by the contractor.

**A9.4 Other Insurance Provisions**

The policies shall contain the following provisions:

**A. Additional Insured, Certificate Holder and Breach of Warranty Clause:**

All insurances shall include as Additional Insured and Certificate Holder the HBCRA of Hallandale Beach. There are not to be any special limitations on the protection being provided to the HBCRA, its officials, officers, employees or volunteers.

**B. Contractor's Insurance is Primary:**

The contractor's insurance coverages shall be primary insurance with respect to the HBCRA's, its officials', officers', employees', and volunteers' insurances. Any insurance and self-insurance maintained by the HBCRA, its officials, officers, employees, or volunteers shall be excess of the contractor's insurances and shall not contribute with it.

**C. Coverage Guaranteed:**

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the HBCRA, its officers, officials, employees or volunteers.

**D. Occurrence Basis:**

The contractor's insurances shall be on an occurrence basis as opposed to a claims-made basis. In other words, claims which occur during the policy period can be reported months or years later and still be paid, if they occur during the policy period. Claims-made policies cover only claims which occur and are made during the policy period. In the event occurrence based insurance is not available, use of claims-made insurance may be considered acceptable in limited circumstances, subject to written approval by the HBCRA's Risk Manager.

**E. 30 Days Notice:**

The following clause shall be included in all policies:

This policy shall not be suspended, voided, or cancelled by either party, or a reduction or revision in coverage or limits of coverage except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the HBCRA.

**F. Separation of Insureds:**

The definition of insured shall read as follows: "The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability". The company, in this context, being the CONTRACTOR's insurance company.

If no such definition of the insured is quoted in the insurance, the contractor must provide "Cross Liability Clause" or "Severability of Interests Clause" endorsements for all liability insurances.

**G. Bonds:**

The following bonds are required:

1. Performance Bond.
2. Labor and Materials Payment Bond

**A9.4 Acceptability of Insurance Company**

**A. Florida State Licensed:**

All insurance policies and bonds herein required of the contractor shall be written by a

company authorized and licensed to do insurance business in the State of Florida with an A.M. Best rating of AA or better and be executed by agents licensed as agents by the State of Florida.

#### A9.5 Verification of Coverage

##### A. Certificates and Endorsements Provided:

The CONTRACTOR shall furnish the HBCRA with a certificate of insurance specifically stating the bid number and title and with original endorsements affecting coverage. The certificates and endorsements must be received and approved before any work commences.

##### B. Authorized Signatures:

The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

##### C. Coverage Continuation:

Insurance coverage required in these specifications shall be in force throughout the contract. Should the contractor fail to provide acceptable evidence of current insurance within seven (7) days of receipt of written notice at any time during the contract, the HBCRA shall have the right to consider the contract breached and justifying termination thereof.

Compliance by the CONTRACTOR and its subcontractors with the foregoing requirements as to carrying insurance and furnishing copies of the insurance policies shall not relieve the contractor and all subcontractors of their liabilities and obligations under this contract.

If coverage on the certificates of insurance is shown to expire prior to completion of all terms of the contract with the HBCRA, the contractor shall furnish certificates of insurance evidencing renewal of such coverage to the HBCRA.

#### A9.6 Limited Contractual Relationship

Nothing contained in these contract specifications shall be construed as creating any contractual relationship between any of the CONTRACTOR'S subcontractors or suppliers and the HBCRA.

The CONTRACTOR shall be as fully responsible to the HBCRA for acts and omissions of all subcontractors and suppliers and of all persons employed by the subcontractors and suppliers, as the CONTRACTOR is for acts and omissions of persons directly employed by the CONTRACTOR.



A. Joint Venture:

The parties agree that this agreement shall be the whole and total agreement between the parties, and the CONTRACTOR is undertaking its activities as for its sole use and benefit and this agreement or the activities resulting therefrom shall in no way be construed to be a joint undertaking with the HBCRA, nor is the HBCRA in any way assuming responsibility or benefits of the contractor's activity. The CONTRACTOR acts independently and in its own right, risk and responsibilities. The HBCRA assumes no direction, control, responsibility or liability for the activities of the CONTRACTOR and, by the execution of this agreement, does not endorse or undertake any activity heretofore conducted by the CONTRACTOR.

A9.7 Other Requirements

A. Subcontractors' Insurance Requirements:

CONTRACTOR shall include all subcontractors as it's insured under its policies or shall furnish separate certificates and all endorsements for each subcontractor's coverages. All coverages for subcontractors shall be subject to all the requirements stated herein.

**ARTICLE A10**  
**PERFORMANCE AND PAYMENT BOND AND QUALIFICATIONS OF SURETY**

A10.1 Bonds

The following bonds are required:

1. Performance Bond;
2. Labor and Materials Payment Bond.

A10.2 Acceptability of Insurance Company

A. Florida State Licensed:

All insurance policies and bonds herein required of the CONTRACTOR shall be written by a company authorized and licensed to do insurance business in the State of Florida and be executed by agents licensed as agents by the State of Florida.

**ARTICLE A11**  
**PROJECT RECORDS**

A11.1 HBCRA or its designee shall have the right to inspect and copy the books and records and accounts of CONTRACTOR and all major subcontractors including but not limited to books, records, correspondence, instructions, drawings, receipts, payment records, vouchers, and memoranda which relate in any way to the Project, and to any claim for additional compensation made by CONTRACTOR which relate to the Project

and to any claim for additional compensation made by CONTRACTOR. CONTRACTOR shall preserve and make available to HBCRA all financial records, supporting documents, statistical records and any other documents which relate to the Project and to any claim for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Statute), if applicable, and, if the Public Records Act is not applicable, for a period of three (3) years following final completion of the Project. During the Project and for the appropriate record retention period, CONTRACTOR shall provide HBCRA access to its books and records at CONTRACTOR's usual place of business upon seventy-two (72) hours written notice. If any audit has been initiated and audit findings have not been resolved at the end of the retention period of three (3) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act (Chapter 119, FL Statute) is determined by HBCRA to be applicable to CONTRACTOR's records, CONTRACTOR shall comply with all requirements thereof. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for HBCRA's disallowance and recovery of any payment upon such entry.

A11.1.1 CONTRACTOR's records shall include, but not be limited to accounting records (hard copy, as well as computer readable data), written policies and procedures; subcontractor files (including proposals of successful and unsuccessful bidders and bid recaps), surety files and bond company files, original estimates, estimating work sheets, correspondence, change order files (including, but not limited to, documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends and any other supporting evidence deemed necessary by the HBCRA to substantiate charges related to this Contract (all of the foregoing hereinafter referred to as records).

A11.1.2 CONTRACTOR shall require all subcontractors, insurance agents and material suppliers (payees) to keep and maintain comparable records for the same time period and to permit the HBCRA to review, inspect and audit such records. CONTRACTOR shall include such requirements in all written subcontracts and purchase orders issued.

A11.1.3 If an audit inspection or other examination by the HBCRA or the HBCRA's representatives in accordance with this Article, disclose overcharges (of any nature) by the CONTRACTOR to the HBCRA in excess of one (1%) percent of the total billings, the cost of the HBCRA's audit (whether performed by the HBCRA or outside auditors) shall be reimbursed or paid to the HBCRA by the CONTRACTOR. Any adjustments and/or records shall be made within a reasonable amount of time (not to exceed thirty (30) days) from presentation of the HBCRA findings to the CONTRACTOR.

## **ARTICLE A12**

### **SURVEY AND AS-BUILT DRAWINGS**

A12.1 Prior to final payment and as required by the technical specifications (or, in absence of technical specification requirements concurrent with the Final Request for

Payment), the CONTRACTOR shall furnish final as-built drawings (in electronic and hard copy as designated by the PROJECT MANAGER) and surveys and in electronic media utilizing CAD Standards as designated by the PROJECT MANAGER, in addition to three (3) sets of hard copy, showing the exact locations of all structures and underground site utilities installed by CONTRACTOR, including all water, sewer, gas, fuel, telephone, security and electric lines and main, and locations of all easements for such utilities. Such surveys shall be prepared by a licensed Florida surveyor who shall certify that the Work is installed and erected entirely upon the Project Site and within the building restriction lines, if any, and does not overcharge or encroach upon any easement or right-of-way of others.

### **ARTICLE A13**

#### **CONTRACTOR'S RESPONSIBILITY FOR THE WORK**

A13.1 CONTRACTOR shall accept full responsibility for the Work against all loss or damage of whatsoever nature sustained until final acceptance by HBCRA, and shall promptly repair any damage done from any cause whatsoever.

A13.2 CONTRACTOR shall be responsible for all materials, equipment and supplies pertaining to the Project. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by HBCRA; CONTRACTOR shall replace it without cost to HBCRA. CONTRACTOR shall be responsible to protect all materials, equipment and supplies, keeping them free from deterioration, weathering, rusting or other action detrimental to the materials.

A13.3 HBCRA reserves the right to award other contracts in connection with this Project. CONTRACTOR shall afford other persons or contractors reasonable opportunity for the introduction and storage of materials and the execution of Work under such separate contracts. CONTRACTOR shall properly connect and coordinate this Work with the Work of any other persons or contractors that might contract separately with HBCRA.

A13.4 If any part of CONTRACTOR's Work depends on proper execution or results upon the Work of any other persons, CONTRACTOR shall inspect and promptly report to CONSULTANT any defects in such Work that render it unsuitable for such proper execution and results. CONTRACTOR's failure to so inspect and report shall constitute an acceptance of the other person's Work as fit and proper for the reception of CONTRACTOR's Work, except as to defects which may develop in other CONTRACTOR'S Work after the execution of CONTRACTOR's Work.

A13.5 CONTRACTOR shall conduct its operations and take all reasonable steps to coordinate the prosecution of the Work so as to create no interference or impact on any other contractor on the site. Should such interference or impact occur, and the CONTRACTOR did not take reasonable steps, the CONTRACTOR shall be liable to the affected contractor for the cost of such interference or impact.

A13.6 To ensure the proper execution of subsequent Work, CONTRACTOR shall inspect the Work already in place and shall at once report to CONSULTANT any discrepancy between the executed Work and the requirements of the Contract Documents.

#### **ARTICLE A14** **PERMITS, LICENSES AND IMPACT FEES**

A14.1 The parties agree that the Public Bid Disclosure Act does not apply to this agreement because the HBCRA is reimbursing the CONTRACTOR the actual amount or direct cost of permits, licenses and impact fees required by law for this Project. Accordingly, HBCRA permits, licenses and impact fees are not listed. The CONTRACTOR shall obtain all required permits and licenses as required for commencement and completion of this Project. Such permits and licenses, along with any corresponding general and specific conditions and requirements, shall become a part of the contract documents. The CONTRACTOR shall comply with all conditions and requirements of said permits and licenses.

Payment of all such permits and licenses, and impact fees shall be made by the CONTRACTOR and shall include all Federal, State, and Municipal application, permit, and surcharge fees. The CONTRACTOR shall be directly reimbursed by the HBCRA for all such permits and licenses, and impact fees via an Application for Payment; all such permits and licenses, and impact fees are a 'pass through' to the HBCRA and are excluded from the GMP. The CONTRACTOR shall also be responsible for paying any and all fees, penalties, and fines imposed as a result of the CONTRACTOR's failure to obtain such permits and licenses prior to the commencement of the work and shall pay such costs by deducting them from their fee.

A14.2 Business Tax Receipts must be in effect as required by Florida Statutes 205.065, and must be submitted within ten (10) days of execution of this Contract.

A14.3 It is CONTRACTOR's responsibility to have and maintain appropriate Certificate(s) of Competency, valid for the Work to be performed and valid for the jurisdiction in which the Work is to be performed for all persons working on the Project for whom a Certificate of Competency is required.

A14.4 Impact fees levied by any municipality shall be paid by CONTRACTOR. CONTRACTOR shall be reimbursed only for the actual amount of the impact fee levied by the municipality as evidenced by an invoice or other acceptable documentation issued by the municipality. Reimbursement to CONTRACTOR in no event shall include profit or overhead of CONTRACTOR.

#### **ARTICLE A15** **PERSONNEL**

A15.1 All personnel used or employed by the CONTRACTOR in the performance of the Work shall be qualified by training and experience to perform their assigned tasks. At the request of the HBCRA the CONTRACTOR shall not use in the performance of the Work

any personnel deemed by the HBCRA to be incompetent, careless, or unqualified to perform the work assigned to that person him, or otherwise unsatisfactory to the HBCRA.

A15.2 The CONTRACTOR agrees that in the performance of the Work called for by this Contract, it will employ only such labor, and engage subcontractors that employ only such labor, as will not delay or interfere with the speedy and lawful progress of the Project, and as will be acceptable to and work in harmony with all other workers employed on the Project site or on any other building, structure, or other improvement which the CONTRACTOR or any other contractor may then be erecting or altering on behalf of the HBCRA.

A15.3 CONTRACTOR shall provide and pay a livable wage for competent, suitably qualified personnel to perform the work as required by the Contract Documents. CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. CONTRACTOR shall at all times maintain good discipline and order at the site. The CONTRACTOR agrees that it shall not employ any labor that will interfere with labor harmony at the Project site or with the introduction and storage of materials and the execution of Work by other contractors or by subcontractors.

A15.4 CONTRACTOR shall furnish the PROJECT MANAGER on request, resumes of CONTRACTOR's key personnel involved in the day-to-day Work on the Project.

A15.5 CERTIFIED PAYROLL:

A15.5.1 Upon written request from the HBCRA, the CONTRACTOR and SUBCONTRACTORS shall submit to the HBCRA on a monthly basis, payroll sheets which have been certified under oath, by CONTRACTOR and/or SUBCONTRACTORS as to their accuracy and compliance with the provisions of this Section. The certified payroll sheets shall contain the following: name and address of each employee; his/her current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid. Such records shall be maintained by the CONTRACTOR and his/her SUBCONTRACTORS for a period of at least (3) years following completion of the Work.

A15.5.2 The CONTRACTOR shall insert in any subcontracts such language as is necessary to require all of his/her SUBCONTRACTORS to comply with the requirements of this section. The CONTRACTOR shall be responsible for noncompliance by any of his/her SUBCONTRACTORS. This section shall be deemed part of any contract entered into between the CONTRACTOR and any of his/her SUBCONTRACTORS.

## **ARTICLE A16** **CONTRACTOR'S WARRANTIES**

A16.1 CONTRACTOR warrants to HBCRA that all materials and equipment under this Contract will be new unless otherwise specified and that all of the Work will be of good quality free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized by the Project Manager may be considered defective. If required by the Project Manager, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 23 herein. Warranties shall be a minimum of one year, with the option to have extended warranties of identified equipment/installation. Warranty period shall commence at Substantial Completion,

A16.2 The CONTRACTOR further represents and warrants:

That it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to perform this Contract; that is able to furnish the Materials, and Services; that is experienced in and competent to perform the Work contemplated by this Contract; and it is qualified to do the Work herein and is authorized to do business in the State of Florida.

That the CONTRACTOR holds a license, permit or other special license to perform the services included in this Contract, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license.

The CONTRACTOR agrees that the Work shall be performed in a good and professional manner, free from defects in materials and execution, and that all Materials shall be new and approved by or acceptable to the HBCRA, except as otherwise expressly provided for in the Contract Documents.

## **ARTICLE A17** **DEFECTIVE WORK**

A17.1 The PROJECT MANAGER shall have the authority to reject or disapprove work which the Project Manager finds to be defective. If required by the PROJECT MANAGER, CONTRACTOR shall promptly either correct all defective work or remove such defective work and replace it with proper, conforming work. CONTRACTOR shall pay all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel. Such costs shall be included in the GMP.

A17.2 Should CONTRACTOR fail or refuse to remove or correct any defective work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by the PROJECT MANAGER, HBCRA shall have the authority to cause the defective work to be removed or corrected, or make such repairs as may be necessary at CONTRACTOR's expense. Any expense incurred

by HBCRA in making such removals, corrections or repairs shall be paid for out of any monies due or which may become due to CONTRACTOR and deducted from the GMP, or may be charged against the Performance Bond. In the event of failure of CONTRACTOR to make all necessary repairs promptly and fully, HBCRA may declare a default.

A17.3 If, within one (1) year after the date of substantial completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, any of the work is found to be defective or not in accordance with the Contract Documents, CONTRACTOR, after receipt of written notice from HBCRA, shall promptly correct such defective or nonconforming work within the specified by HBCRA without cost to HBCRA, to do so. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation, which CONTRACTOR might have under the Contract Documents.

A17.4 Failure to reject any defective work or material shall not in any way prevent later rejection when such defect is discovered, or obligate HBCRA to final acceptance.

A17.5 The CONTRACTOR shall (I) replace any part of the work that fails to conform with the requirements of this Contract that appear during progress of the work on the Project; (II) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from the time of Final Completion of the Work or portions thereof hereunder or within such longer period of time as may be set forth in the Contract Documents or as may be required by law; and (III) replace, repair or restore any parts of the Project or furniture, fixtures, equipment or other items placed therein (whether by the HBCRA or any other part) that are injured or damaged by any such parts of the Work that do not conform to the requirements of this Contract or are due to defects in the Work. The provisions of this Article shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor or subcontractor of the HBCRA unless the CONTRACTOR is acting in such capacities. The cost of the CONTRACTOR of performing any of its obligations under Article 5 shall be within the Guaranteed Maximum Price. The CONTRACTOR's responsibility to make repairs and redo work under this Article 20 is in addition to the CONTRACTOR's responsibility to the HBCRA for any other damages of any kind for which the CONTRACTOR would be legally responsible.

A17.6 If the HBCRA and the CONTRACTOR deem it inexpedient to require the correction of work damaged or not performed in accordance with the Contract Documents, an equitable deduction from the Contract Price and the Guaranteed Maximum Price shall be made by agreement between the CONTRACTOR and the HBCRA. Until such settlement, the HBCRA may withhold such sums as the HBCRA deems just and reasonable from monies, if any, due the CONTRACTOR. If no monies are held by the HBCRA, reimbursement shall be made to the HBCRA within thirty (30) days by the CONTRACTOR.

A17.7 The CONTRACTOR's express warranty herein shall be in addition to, and not in lieu of, any other warranties or remedies the HBCRA may have under this Contract, at law, or in equity for defective Work.

#### **ARTICLE A18** **SIGNAGE**

A18.1 All construction signage located at the project location(s) shall be subject to the prior written approval of the PROJECT MANAGER. The CONTRACTOR recognizes that all signage may be disallowed, in the PROJECT MANAGER's sole discretion, and that existing signage or advertising on construction field offices, trailers, construction fences, and other construction elements or aids, may be required to be masked or deleted at no cost or expense to the HBCRA. Such signage will be considered an overhead expense pursuant to Article 5.4 and if allowed shall not be included within the Cost of the Work.

#### **ARTICLE A19** **CONTRACTOR'S REPRESENTATIVE**

A19.1 CONTRACTOR shall advise, the HBCRA, in writing of any limitations on the authority of CONTRACTOR's representative; otherwise, CONTRACTOR's representative shall be considered to have full authority to execute any and all instruments requiring the CONTRACTOR's signature and to act on behalf of the CONTRACTOR with respect to all matters arising out of this Agreement.

#### **ARTICLE A20** **RIGHT TO TERMINATE CONTRACT**

A20.1 If CONTRACTOR fails to begin the Work within the ten (10) calendar days after the Project initiation Date, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Work, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the Work pursuant to the accepted schedule or it's CONTRACTOR shall fail to perform any material term set forth in the Contract Documents or if CONTRACTOR shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, PROJECT MANAGER may give notice in writing to CONTRACTOR and its Surety of such delay, neglect or default, specifying the same.

If CONTRACTOR, within a period of ten (10) calendar days after such notice, shall not proceed in accordance therewith, then HBCRA may upon written certificate from PROJECT MANAGER of the fact of such delay, neglect or default and CONTRACTOR's failure to comply with such notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Project site and take the prosecution of the Work out of the hands of CONTRACTOR, and appropriate or use any or all materials and equipment that are an integral part of the Work on the Project site as may be suitable and acceptable. In



such case, CONTRACTOR shall not be entitled to receive any further payment until the Project is completed.

In addition, HBCRA, may enter into an agreement for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in HBCRA's sole opinion shall be required for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in HBCRA's sole opinion shall be required for the completion of the Project in an acceptable manner. All damages, costs and charges incurred by HBCRA, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to CONTRACTOR. In case the damages and expenses so incurred by HBCRA shall exceed the unpaid balance, then CONTRACTOR shall be liable and shall pay to HBCRA the amount of said excess.

A20.2 If after notice of termination of CONTRACTOR's right to proceed, it is determined for any reason that CONTRACTOR was not in default, the rights and obligations of HBCRA and CONTRACTOR shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause as set forth below.

A20.3 This Contract may be terminated for convenience in writing by HBCRA upon ten (10) days written notice to CONTRACTOR (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, CONTRACTOR shall be paid for all work executed and expenses incurred prior to termination in addition to termination settlement costs reasonably incurred by CONTRACTOR relating to commitments which had become firm prior to the termination. Payment shall include reasonable profit for work and/or services performed. No payment shall be made for profit for work and/or services that have not been performed.

A20.4 Upon receipt of Notice of Termination pursuant to either section above, CONTRACTOR shall promptly discontinue all affected work unless the Notice of Termination directs otherwise and deliver or otherwise make available to HBCRA all data, drawings, specifications, reports, estimates, summaries and such other information as may have been required by the Contract Documents whether completed or in process.

## **ARTICLE A21**

### **CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT**

A21.1 If PROJECT MANAGER fails to review and approve or state in writing reasons for rejection of any Application for Payment within twenty (20) days after it is properly presented, or if HBCRA fails either to pay CONTRACTOR within thirty (30) days after presentation by PROJECT MANAGER of any sum certified by PROJECT MANAGER, or to notify CONTRACTOR in writing of any objection to the Application for Payment, then CONTRACTOR may give written notice to HBCRA of such delay, neglect or default, specifying the same. If HBCRA, within a period of ten (10) calendar days after such notice shall not remedy the delay, neglect, or default upon which the notice is based, then

CONTRACTOR may stop work or terminate this Contract and recover from HBCRA payment for all work executed and reasonable expenses sustained therein plus reasonable termination expenses. Any objection made by HBCRA to an Application for Payment shall be submitted to CONSULTANT in accordance with the provisions of Article A22 hereof.

## **ARTICLE A22** **RESOLUTION OF DISPUTES**

A22.1 To prevent all disputes and litigation, it is agreed by the parties hereto that CONSULTANT shall decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Contract as to the character, quality amount value of any work done and materials furnished, or proposed to be done or furnished under or by reason of, the Contract Documents and CONSULTANT's estimates and decisions upon all claims, questions, difficulties and disputes shall be final and binding to the extent provided in Article 30. Any claim, question, difficulty or dispute which cannot be resolved by mutual agreement of PROJECT MANAGER and CONTRACTOR shall be submitted to CONSULTANT in writing within ten (10) calendar days. CONSULTANT shall notify PROJECT MANAGER and CONTRACTOR in writing of CONSULTANT's decision within ten (10) calendar days from the date of the submission of the claim, question, difficulty or dispute, unless CONSULTANT requires additional time to gather information or allow the parties to provide additional information. All nontechnical administrative disputes shall be determined by the PROJECT MANAGER pursuant to the time periods provided herein. During the pendency of any dispute and after a determination thereof, CONTRACTOR, CONSULTANT, and PROJECT MANAGER shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction.

A22.2 In the event the determination of a dispute under this Article is unacceptable to any of the parties hereto, the party objecting to the determination must notify the other party in writing within ten (10) days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract Price adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) days after Final Completion of the Work, the parties shall participate in mediation to address all objections to any mediator mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. If a party objecting to a determination, fails to comply in strict accordance with the requirements of this Article, said party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

A22.3 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the

Seventeenth Judicial Circuit of Broward County, Florida, the venue sites, and shall be governed by the laws of the State of Florida. By entering into this Contract, CONTRACTOR and HBCRA hereby expressly waive any rights either party may have to trial by jury of any civil litigation related to, or arising out of, the Project. CONTRACTOR shall specifically bind all subcontractors to the provisions of this Contract.

A22.4 Pending resolution of any dispute arising under this Contract, other than termination hereof, the CONTRACTOR shall proceed diligently with performance of this Contract and the HBCRA shall continue to make payments in accordance with the Contract Documents.

### **ARTICLE A23** **HURRICANE PRECAUTIONS**

A23.1 During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning or alert, the CONTRACTOR shall take all precautions necessary to secure the project site in response to all threatened storm events, regardless of whether the HBCRA or CONSULTANT has given notice of same.

A23.2 Compliance with any specific hurricane warning or alert precautions which are within the normal scope of work of the CONTRACTOR, i.e. normal construction clean-up of debris and securing all loose items at the site, will not constitute additional work and will be performed at no additional costs to the HBCRA.

A23.3 Additional work (which is over and beyond removal of debris and securing of loose items) relating to hurricane warning or alert at the project site will be addressed by a Change Order.

A23.4 Suspension of the work caused by a threatened or actual storm event, regardless of whether the HBCRA has directed such suspension, will entitle the CONTRACTOR to additional Contract Time as non-compensable, excusable delay, and shall not give rise to a claim of compensable delay.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the respective dates under each signature. HALLANDALE BEACH COMMUNITY REDEVELOPMENT AGENCY signing by and through its Executive Director, JEREMY EARLE, duly authorized to execute same.

**HBCRA**

HALLANDALE BEACH COMMUNITY  
REDEVELOPMENT AGENCY

\_\_\_\_\_  
Jenorgen M. Guillen  
HBCRA Secretary

By: \_\_\_\_\_  
Jeremy Earle  
Executive Director

Approved as to legal sufficiency and form by:

\_\_\_\_\_  
Spiritus Law LLC  
HBCRA Attorney

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the respective dates under each signature. BURKHARDT CONSTRUCTION, INC. signing by and through its Vice President, MARC KLEISLEY, duly authorized to execute same.

**CONTRACTOR MUST EXECUTE THIS CONTRACT AS INDICATED BELOW. USE CORPORATION OR NON-CORPORATION FORMAT, AS APPLICABLE.** If the Company President does not sign the Contract, there must be a Secretary's Certificate Form provided to the HBCRA indicating designee signing, has the authority to sign.

**CONTRACTOR**

ATTEST:

Burkhardt Construction, Inc.

\_\_\_\_\_  
(Secretary)

By: \_\_\_\_\_  
Marc Kleisley, Vice President

(Corporate Seal)

\_\_\_\_\_  
(Type Name and Title Signed Above)

\_\_\_\_ Day of \_\_\_\_\_, 2021.

OR **(ONLY If not incorporated sign below).**

WITNESSES:

\_\_\_\_\_  
(PRINT NAME)

\_\_\_\_\_  
(PRESIDENT OR VICE-PRESIDENT)

\_\_\_\_\_  
(PRINT NAME)

\_\_\_\_\_  
(TYPE NAME & SIGNED ABOVE)

**NOTARY SEAL**

**Exhibit A.1**

**Approved Guaranteed Maximum Price**

**GUARANTEED MAXIMUM PRICE (GMP)**  
**FOR SIDEWALKS, STREETLIGHTS, STREETScape, LANDSCAPE, TRAILS AND**  
**OTHER PUBLIC PROJECTS**

a) Direct Construction Cost	\$
b) General Conditions Cost	\$
c) Construction Management Fee (including profit)	\$
d) Owner's Contingency	\$
e) Direct Purchase Tax Savings	\$

**Attach Pages for Breakdown of A and B as needed.**