

**DESIGN-BUILD**  
**AGREEMENT**  
**FOSTER PARK PLAZA**

**THIS AGREEMENT** (this "Agreement"), made and entered into the 18 day of May 2016 by and between:

**CLIENT:**

CITY OF HALLANDALE BEACH, FLORIDA  
a municipal corporation, and its assigns  
400 South Federal Highway  
Hallandale Beach, FL 33009  
(hereinafter referred to as "CITY"), and

AND

**DESIGN BUILDER:**

Pioneer Construction Management Services  
3711 SW 47th Ave Suite 203  
Davie, FL 33314  
(hereinafter referred to as "CONTRACTOR")

**PROJECT:**

Foster Park Plaza hereinafter referred to as the "PROJECT" and which shall be further defined in this Agreement)

This Agreement may refer to the CLIENT or CONTRACTOR, individually, or as "Party" or as "Parties."

**WHEREAS**, the CITY, has identified a certain parcels of real property located in the CITY (the "Land" specifically described in Exhibit "A"), which the CITY owns and upon which it intends to have constructed site improvements consisting of a Park Plaza and all incidentals thereto including as further defined in this Agreement;

**WHEREAS**, the CITY wishes to retain the CONTRACTOR to perform all design, construction and other services associated with and/or necessary to timely construct a code compliant Project within the Guaranteed Maximum Price (hereinafter referred to as "Design-Build" services which shall be further defined in this Agreement);

**WHEREAS**, the CONTRACTOR agrees to complete the Design-Build services within the contract times and for a specified and fixed contract price as set forth in this Agreement; and

**WHEREAS**, CITY has determined that entering into this Agreement with CONTRACTOR to provide the Design-Build services for this Project is in the best interests of the health, safety, and welfare of the citizens and residents of Broward County and of the CITY of Hallandale Beach, Florida; and

**NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants and undertakings

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and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties do mutually covenant and agree as follows:

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

Wherever used in this Agreement or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.1 Agreement - The written agreement between the CITY and CONTRACTOR covering the Work to be performed including other Contract Documents that are attached to the Agreement or made a part thereof.

1.2 Building Department - The Building Department of the CITY of Hallandale Beach, Florida, or its authorized employees.

1.3 Change Order - A document which is signed by the CONTRACTOR and CITY, through its duly designated and formally authorized agent, which authorizes the performance of the Extra Work. The CONTRACTOR shall not perform Extra Work of any kind, however characterized, for which it expects to claim additional compensation without written authorization from the CITY. If the CITY authorizes the CONTRACTOR to perform Extra Work, then prior to performing the Extra Work, the CITY and CONTRACTOR shall enter into a written Change Order specifying the services or work to be performed, the additional Contract Time that may be required and the compensation to be paid for this Extra Work. Any Extra Work performed by the CONTRACTOR without the CITY'S prior written approval shall not be compensable, without exception. The CONTRACTOR intentionally, knowingly and voluntarily waives any claim for unjust enrichment or quantum meruit with respect to any work performed in the absence of a written Change Order. Any waiver of this provision must be in writing and signed by both Parties and in no event shall such written waiver extend to any subsequent event.

1.4 CITY - The CITY Commission of the CITY of Hallandale Beach, Florida and its designated official authorized to provide approval or consent with respect to this Agreement.

1.5 City Manager- City Manager of the City of Hallandale Beach or his/her designee.

1.6 Contract Documents - The Contract Documents consist of the Drawings, Plans and Specifications, Non-Collusive Affidavit, Public Entity Crimes Form, this Agreement, Notice of Award, Notice to Proceed, Certificate(s) of Insurance, Payment and Performance Bonds and any additional documents which are required to be submitted under this Agreement, and all Written Amendments and Change Orders issued on or after the effective date of the Contract.

1.7 Defective - An adjective which when modifying the Work refers to Work that is defective under Applicable Building Codes and General Industry Standards, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to final payment.

1.8 Design-Build Work - Shall be defined to include Park Plaza, all design services associated with and/or necessary to timely construct the code compliant Project and construction



services associated with and/or necessary to timely complete the Project within the Guaranteed Maximum Price, including, but not limited to, all site related work without limitation, furnishing all labor and services, the procurement of all equipment and materials reasonably inferable from the Contract Documents that will be used and/or incorporated into the Project.

1.9 Drawings (also referred to as "Plans") – shall be defined to mean the "Issued for Construction" design package, which are signed and sealed by a Florida Licensed Engineer and which are sufficient to secure a permit, that the CONTRACTOR is obligated to produce to the complete satisfaction of the CITY and which is deemed one hundred percent (100%) complete for the construction of the entire Project.

1.10 Effective Date of the Agreement - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

1.11 Extra Work - shall be defined to mean work totally outside the scope of the Drawings, Specifications and/or the contemplation of the Contract Documents. All extra work shall require an executed change order from the designated official authorized to provide the approval. Any Extra Work performed by the CONTRACTOR without the CITY'S prior written approval shall not be compensable without exception. Any waiver of this provision must be in writing and signed by both Parties and in no event shall such written waiver extend to any subsequent event.

1.12 Field Order - A written order issued by City Manager or designee which orders minor changes in the work but which does not involve a change in the Guaranteed Maximum Price or the Contract Time.

1.13 Guaranteed Maximum Price – shall be defined to mean that the CONTRACTOR warrants and guarantees that the maximum price to the CITY for all of the Design-Build Work on the Project shall be Dollars (\$0) (hereinafter referred to as "GMP" and/or "Contract Price"). The GMP is deemed to include costs, fees, prices, expenses, overhead, profit, including all sales, use, consumer and other taxes mandated by applicable law, and any escalation associated therewith with respect to all equipment material and labor through the completion of the entire Project. A portion of the GMP shall be attributed to the design phase of the Project and the remainder attributed to the construction phase.

1.14 Notice of Award - The written notice by CITY to the CONTRACTOR stating that the CONTRACTOR is awarded the privilege to design and construct the Project on the condition that the Parties are able to negotiate, to the CITY'S complete satisfaction, and execute an Agreement for the design and construction of the entire Project.

1.15 Notice to Proceed - A written notice given by CITY to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start the design and construction phases under this Agreement.

1.16 Specifications – Shall be defined to mean the written technical descriptions, that



accompany the Drawings of all materials, equipment and other construction systems, including the quantity and quality associated therewith, as well as other standards and workmanship as applied to the Work and certain administrative details applicable thereto that the CONTRACTOR is obligated to prepare to the complete satisfaction of the CITY which is deemed one hundred percent (100%) complete for the construction of the entire Project

1.17 Project – The Project means the total and complete design and construction a Park Plaza consistent with structural design and aesthetic standards of City Community Center located at Foster Park, associated landscape, irrigation work, underground drainage system, and as generally described in a schematic proposal submitted to the CITY on , and all other incidentals thereto identified by the CITY during the design and construction phases of the Project which the CITY concludes, at its sole discretion, are required to be included complete the Project. The schematic proposal is attached hereto as Exhibit “B”, as may be modified in accordance with 5.1 3 of this Agreement.

1.18 Subcontractor - An individual, firm or corporation having a direct Contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.

1.19 Supplier - A manufacturer, fabricator, supplier, distributor, materialman or vendor.

1.20 Work – Shall be defined to include all of the services under the definition of Design-Build.

1.21 Work Change Directive - A written directive to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by CITY and recommended by City Manager or designee ordering an addition, deletion or revision in the Work. A Work Change Directive shall not change the Guaranteed Maximum Price or Time, but demonstrates a desire that the parties expect that the change directed or documented by a Work Change Directive may be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Guaranteed Maximum Price or Contract Time. Notwithstanding the foregoing, the CONTRACTOR understands and agrees that the decision by the CITY to sign a Change Order is completely and totally within the CITY’S discretion and that if the CITY decides not to execute a Change Order, the CONTRACTOR shall not be entitled to recover any compensation whatsoever for the work performed under the Work Change Directive. The CONTRACTOR understands and agrees that any work, however characterized, performed by the CONTRACTOR without the CITY’S prior written approval shall not be compensable, without exception. The CONTRACTOR intentionally, knowingly and voluntarily waives any claim for unjust enrichment or quantum meruit with respect to any work performed in the absence of a written Change Order. Any waiver of this provision must be in writing and signed by both Parties and in no event shall such written waiver extend to any subsequent event.

1.22 Written Amendment - A written amendment of the Contract Documents, signed by CITY and CONTRACTOR on or after the Effective Date of the Agreement.



## **ARTICLE 2 - CONTRACT DOCUMENTS ARTICLE 2 - CONTRACT DOCUMENTS**

### **2.1 Enumeration of Contract Documents.**

The Contract Documents which comprise the entire agreement between CITY and CONTRACTOR are attached to this Agreement, made a part hereof and consist of the following:

- 2.1.1 This Agreement pages 1-40, Exhibits A: Scope of Work, Exhibit B: Detail Scope Cost Breakdown, Exhibit C: Project Schedule and Exhibit D, Community Benefit Plan other items and documents identified on the attached Enumeration of Contract Documents).
- 2.1.2 Construction performance Bond.
- 2.1.3 Construction payment bond.
- 2.1.4 Drawings and Specifications.
- 2.1.5 Insurance certificate.
- 2.1.6 Notice of Award and Notice to Proceed.
- 2.1.7 Clarifications and Exclusions.
- 2.1.8 All applicable provisions of State, Federal or local law.
- 2.1.9 Any modification, including all Change Orders, Field Orders and Written Amendments duly delivered after execution of Agreement.

### **2.2 Entire Agreement and Contract Interpretation.**

The Contract Documents comprise the entire agreement between CITY and CONTRACTOR concerning the Work. This Agreement shall be governed by the laws of the State of Florida, without regard to its conflict of law provisions. The Contract documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with the express qualification that the Contract Documents must be read in such a manner as to afford the greatest possible protection to the CITY, including, but not limited to, ensuring that all of the Design-Build Work for the Project is completed within the warranted Guaranteed Maximum Price.

### **2.3 Amending and Supplementing Contract Documents.**

The Contract Documents may be amended to modify the terms and conditions of the Agreement in one or more of the following ways:

- 2.3.1 A Change Order;



2.3.2 A Written Amendment;

2.3.3 A Work Change Directive.

2.4 Supplements, Minor Variations or Deviations.

CITY will not authorize any Change Orders to the Contract Documents, except in a manner set forth in this Agreement and allowed by law. CONTRACTOR covenants and agrees that CITY shall not be responsible for the costs above those set forth herein unless the same are set forth in a Change Order. Any and all Change Orders issued by the authority of an entity not a party to this Agreement shall not be compensated by CITY, and shall not constitute a Change Order.

2.5 Representation of CONTRACTOR.

Execution of the Contract by the CONTRACTOR is a representation that CONTRACTOR has visited the site and become familiar with the local conditions under which the Work is to be performed.

2.6 Before Commencing Operations.

Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon.

### **ARTICLE 3 – SCOPE OF WORK**

3.1 Scope of Work.

3.1.1 The CONTRACTOR shall provide services for the designing and construction of the Project as described in the Contract Documents with all required minimum standards of construction as required by the Contract Documents. When 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 contract award, except as may be otherwise specifically stated.

3.1.2 The CONTRACTOR agrees to provide each and every item of expense necessary for the design and construction of the Project in accordance with and within the scope of the Guaranteed Maximum Price. It is agreed between the Parties that the Contract Documents describe a functionally complete Project consisting of total design performed by the design professional and construction to be completed in accordance with the Contract Documents. It is further agreed that the CONTRACTOR warrants that any and all Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied by the CONTRACTOR at its own costs within the Guaranteed Maximum Price, whether or not specifically called for. The CONTRACTOR warrants and accepts that any and all repair



work required during the construction phase, irrespective of the cause, shall be deemed the responsibility of the CONTRACTOR and included in the Guaranteed Maximum Price. The CONTRACTOR warrants and accepts that any and all work necessitated by inspections which is not prescribed in the Plans or Specifications, but necessitated to bring the project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures and/or considered inside the contemplation of the Contract Documents shall be deemed the responsibility of the CONTRACTOR and included in the Guaranteed Maximum Price. The CONTRACTOR warrants and accepts that all other work of any kind, however characterized, not prescribed in the Plans or Specifications, but necessitated to bring the project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures and/or considered inside the contemplation of the Contract Documents shall be deemed the responsibility of the CONTRACTOR and included in the Guaranteed Maximum Price. Finally, the CONTRACTOR accepts, understands and agrees that this provision of the Agreement is a material inducement for the CITY to enter into this Agreement and that the CITY has indeed relied on this particular provision in making its decision to enter into this Agreement.

#### **ARTICLE 4 - CONTRACT TIME**

##### **4.1 Time is of the Essence of this Contract.**

CONTRACTOR agrees to submit Project design for approval by the City Commission of the City of Hallandale Beach no later than 7/21/2016 as shown in attached Project Schedule. CONTRACTOR further agrees to apply for a building permit for the Project with the Building Division City of Hallandale Beach no later than 9/19/2016. The Work shall be substantially completed no later than 3/31/2017 or the final inspection and closing of permit, whichever event occurs first. The total project shall be completed and ready for final payment within 60 days from the date certified by the Project Manager as the date of substantial completion. The Notice to Proceed shall be issued for the construction of the Project upon the submittal of an application for building permit for the Project or the approval of 90% percent design by the CITY, whichever occurs first. The CONTRACTOR shall commence on site construction of the Project no later than ninety (90) days after the City's issuance of the Notice to Proceed. CONTRACTOR agrees that all Work shall be prosecuted regularly, diligently and uninterrupted at such rate of progress as will ensure full completion thereof within the time specified. Failure to achieve timely, substantial and/or final completion shall be regarded as a breach of this Agreement and subject to the appropriate remedies including but not limited to, the termination clause of 16.1.8, liability for liquidated damages in accordance with Paragraph 12.3 herein.

4.2 The PARTIES agree that although the formal Notice to Proceed for the construction phase will not be issued until the submittal of a building permit application or approval of 90% percent design by the CITY, the CONTRACTOR, may begin the site preparation work immediately upon the execution of this agreement and the submission to the City of the necessary performance bonds.

#### **ARTICLE 5 CONTRACT SUM - GUARANTEED MAXIMUM PRICE**



5.1 Guaranteed Maximum Price.

5.1.1 CITY shall pay CONTRACTOR in current funds as full compensation for the performance of all the Work for the design and construction of the Project which shall consist of a Park Plaza which is subject to additions and deductions by Change Order or Written Amendment as provided in this Agreement, and subject further to possible reductions as set forth in Article 6.2.1 below, the sum of **\$700,000.00** the "Guaranteed Maximum Price". This Article is subject to the terms and conditions below.

5.1.2 The initial sum total of **\$118,475** Dollars shall be attributed to the design phase, with the remaining amount attributed to the construction phase. Ownership in the signed and sealed 100% "Issued for Construction" set of Plans and Specifications shall vest in the CITY once a permit is issued to commence construction.

**ARTICLE 6 CONTRACTOR'S RESPONSIBILITIES**

6.1 Responsibilities - Construction Phase.

6.1.1 Consultation: CONTRACTOR will schedule and attend regular meetings and will consult with CITY regarding site use and improvements, and the selection of materials, building systems, and equipment.

6.1.2 Subcontractors and Suppliers: CONTRACTOR shall develop subcontractor interest in the Project and shall furnish to the CITY, information, a list of subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design. The receipt of such list shall not require the CITY to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the CITY later to object to or reject any proposed subcontractor or supplier, and is furnished by CONTRACTOR to CITY for informational purposes only. Subject to the rights of the CITY to purchase supplies and materials in furtherance of the sales tax program as described in Article 6.16 hereof, CONTRACTOR shall have authority in awarding subcontractors and purchase orders.

6.1.3 Extent of Responsibility: CONTRACTOR shall be responsible for all field tests, architecture, engineering, construction and completion of the Project, including project closeout as stated in the RFP.

6.2 Guaranteed Maximum Price.

6.2.1 The Guaranteed Maximum Price is also subject to further reduction by an amount calculated by multiplying the applicable Florida sales tax rate times the amount of material and supplies purchased by the CITY under the sales tax program described in Article 6.16 hereof. The Guaranteed Maximum Price may be modified only as herein provided including possible changes as a result of Extra Work as may be documented in a City Commission approved Change Order[s].

6.2.2 The Guaranteed Maximum Price shall include in the Cost of Work only those taxes



which are enacted at the time the Guaranteed Maximum Price is established.

6.2.3 The Guaranteed Maximum Price shall include all direct and indirect costs associated with the design and construction phases of the Project, including but not limited to, procurement of materials and equipment, labor, overhead, profits, contingency, permits, insurance, performance and payment bonds, utilities, fees, and taxes.

### 6.3 Administration.

6.3.1 The CONTRACTOR shall schedule and conduct weekly meetings at which the CITY and CONTRACTOR, and appropriate Subcontractors can discuss the status of the Work. The CONTRACTOR shall prepare and promptly distribute meeting minutes.

6.3.2 The CONTRACTOR shall provide monthly written reports to the CITY and designated consultants on the progress of the entire Work.

6.3.3 The CONTRACTOR may develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes.

### 6.4 Design Responsibilities.

6.4.1 CONTRACTOR shall prepare preliminary design documents consisting of preliminary drawings, specifications and other documents to fix and describe the size, quality, quantity and characters of the Work, it's architectural, structural, mechanical and electrical systems and the materials and other elements of the Work.

6.4.1.1 CONTRACTOR shall submit the preliminary design documents to CITY for review and authorization to proceed with the final design preparation. The CONTRACTOR understands and agrees that the CITY, may at its sole discretion, require changes to the preliminary design. All such changes shall be made at the sole and exclusive cost of the CONTRACTOR and be deemed part of the Guaranteed Maximum Price, except for changes outside the scope of the Work. Upon authorization from the CITY to proceed with the commencement of the entire design, CONTRACTOR shall begin to prepare drawings, schedules, specifications, technical criteria, written descriptions, design data, construction documents and diagrams setting forth in detail the requirements for the complete construction of the Work. The preparation of this work shall be done in three phases: 30% thirty percent, 60% sixty percent and 90% ninety percent.

6.4.1.2 The design services shall be performed by qualified architects, engineers and other professionals duly licensed by the State of Florida and holding current certificates of registration under the laws of the State of Florida.

6.4.1.3 CONTRACTOR shall prepare and submit for review to the CITY a



30% design package consisting of drawings and specifications for the site work, foundations, utilities, irrigations systems and other related incidentals.

The CONTRACTOR understands and agrees that the CITY, may at its sole discretion, require changes to the 30% percent design. All such changes shall be made at the sole and exclusive cost of the CONTRACTOR and be deemed part of the Guaranteed Maximum Price, except for changes outside the scope of the Work. CONTRACTOR understands and agrees that any information provided to it by the CITY as to any aspect of the Project is not guaranteed. In particular, and without limiting the foregoing disclaimer, identifying the location of existing utilities shall be the CONTRACTOR'S responsibility including identifying the location, character and depth of the existing utilities. Extreme caution shall be exercised by the CONTRACTOR to eliminate any possibility of any damage to utilities resulting from the CONTRACTOR'S activities.

Any and all such damage shall be the responsibility of the CONTRACTOR and all work associated with repairs related to such damage shall be completed to the CITY'S satisfaction and at the sole and exclusive cost of the CONTRACTOR and be deemed part of the Guaranteed Maximum Price. The location of all overhead utilities shall be verified. The CONTRACTOR shall be responsible for determining which poles will need shoring during excavation and shall provide such shoring and support as is required. The CITY'S review of the design plans shall not be deemed an acceptance of the plans nor be deemed a pre-approval related to the permitting process that the plans will be required to undergo with the Building Department.

6.4.1.4 CONTRACTOR shall prepare and submit for review to the CITY a 60% design package consisting of drawings and specifications for the structural, architectural and landscaping portion of the Project.

The CONTRACTOR understands and agrees that the CITY, may at its sole discretion, require changes to the 60% percent design. All such changes shall be made at the sole and exclusive cost of the CONTRACTOR and be deemed part of the Guaranteed Maximum Price, except for changes outside the scope of the Work. CONTRACTOR understands and agrees that any information provided to it by the CITY as to any aspect of the Project is not guaranteed. The CITY'S review of the design plans shall not be deemed an acceptance of the plans nor be deemed a pre-approval related to the permitting process that the plans will be required to undergo with the Building Department.

6.4.1.5 CONTRACTOR shall prepare and submit for review to the CITY a 90% design package consisting of drawings and specifications for the mechanical, plumbing, electrical, equipment, instrumentation and all other related work necessary to have a fully functional and completed Project.

The CONTRACTOR understands and agrees that the CITY, may at its sole discretion, require changes to the 90% percent design. All such changes shall be made at the sole and exclusive cost of the CONTRACTOR and be deemed part of the Guaranteed Maximum Price, except of changes outside the scope of the Work. CONTRACTOR understands and agrees that any information provided to it by the CITY as to any aspect of the Project is not guaranteed. The CITY'S review of the design plans shall not be deemed an acceptance of the plans nor be deemed a pre-approval related to the permitting process that the plans will be required to undergo with the



Building Department.

6.4.1.6 CONTRACTOR shall prepare and submit for review to the CITY an "Issued for Construction" design package, which necessarily includes Plans and Specifications, that the CONTRACTOR is obligated to produce to the complete satisfaction of the CITY which is deemed one hundred percent (100%) complete for the construction of the entire Project, which are signed and sealed by a Florida Licensed Engineer and which are sufficient to secure a permit for the construction of the entire Project. The CITY shall not make any changes to the Plans and Specifications at 100% percent design if CONTRACTOR satisfies all comments made by the CITY at 90% percent design. The CITY'S review of the design plans shall not be deemed an acceptance of the plans nor be deemed a pre-approval related to the permitting process that the plans will be required to undergo with the Building Division. The construction phase of the Project shall not commence until the Building Division has issued a permit based on the 100% "Issued for Construction" design package.

6.4.2 Once the 100% completed "Issued for Construction" design package has received a permit from the Building Division to commence construction, these Drawings and Specifications shall then be considered part of the Contract Documents.

6.4.3 The CONTRACTOR agrees that any and all revisions that the Building Division may require to the "Issued for Construction" Drawings and Specifications shall be the responsibility of the CONTRACTOR and be so revised at the sole and exclusive cost of the CONTRACTOR and be deemed part of the Guaranteed Maximum Price.

6.4.4 The CONTRACTOR shall provide to CITY three (3) record sets and three (3) working sets of full size prints of the Drawings and Specifications. CONTRACTOR shall signify, by affixing an endorsement (seal/signature, as appropriate) on every sheet of the record set, that the Work shown on the endorsed sheets was produced by CONTRACTOR. With the record set of prints, CONTRACTOR shall submit a final set of approved design computations to the CITY. The computations shall be bound in an 8 1/2" by 11" format and shall be endorsed (seal/signature as appropriate) by CONTRACTOR. All submitted hard copy documents shall be accompanied by its own electronic format.

6.4.5 All final design documents, plans, reports, studies and other data prepared by CONTRACTOR shall bear the endorsement of a person duly registered in the appropriate professional category. Notwithstanding the foregoing, CONTRACTOR agrees to provide at least ten (10) days' notice to the Project Manager prior to submittal of any plans, or drawings for review by the Building Division.

6.4.6 Prior to final payment, the CONTRACTOR shall furnish all final as-built drawings in electronic and hard copy as designated by the project Manager. All data submitted in electronic media shall utilize CAD Standards as designated by the Project Manager. In addition, 3 sets of hard copies showing the exact locations of all structures and underground site utilities installed by CONTRACTOR, including water, sewer, gas, fuel, telephone, security and electric lines where applicable. Easements location for the mentioned lines shall be shown on the documents. Such surveys shall be prepared by a Florida licensed surveyor who shall certified that the work is



installed and erected entirely upon the project site and within the project restriction lines and does not overcharge or encroach upon any easement of right of way of others.

6.5 Liability for use of Work for Intended Purpose.

As an inducement for CITY to enter into this Agreement, CONTRACTOR represents that it has expertise in professional design services and the construction of public construction projects by qualified and licensed general construction contractors. The CONTRACTOR'S expertise includes estimating the total costs associated with the final completion of an entire design-build job. Such costs associated with the estimation and calculation, include, but are not limited to, consideration of material, equipment and labor and the escalation of the costs of each in association with the realistic estimated duration of the project, the time of year, the weather patterns associated with the location of the project, the labor market for the design and construction associated with the location of the project, the type of facility, and consideration of the time associated with the design and permitting (including all associated delays that accompany a review through a municipal building department) of a complete set of plans and specifications. In reliance upon the above referenced representations, the CITY hired the CONTRACTOR to provide professional design services and complete construction services. CONTRACTOR shall be liable for any defective or negligent design, whether patent or latent, and/or any negligence, strict liability or breach of other legal duty to the extent and in the manner as hereafter set forth.

6.6 Shop Drawings and Samples.

6.6.1 CONTRACTOR shall prepare and submit any submittals or shop drawings required for permitting to the authority having jurisdiction, and shall furnish a copy to the City Manager.

6.6.2 CONTRACTOR shall prepare and maintain shop drawings and submittals referenced in Paragraph 6.6.1 and make them available for review by CITY.

6.6.3 Review of the shop drawings by CITY shall be general and shall not be deemed an acceptance of the shop drawings and shall not relieve the CONTRACTOR of the responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the work, nor for the furnishing of material or work required by the Agreement and not indicated on the drawings.

6.7 Supervision and Superintendence.

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying CONTRACTOR'S best skill, attention and expertise. CONTRACTOR shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall be responsible to see that the finished Work complies with the Contract Documents.

6.8 Project Management.

6.8.1 During the progress of on-site construction, CONTRACTOR shall provide full time (defined to be 8:00 a.m. through 5:00 p.m. Monday through Friday, legal holidays excluded)

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competent project supervision and any necessary assistants who shall not be replaced without written notice to CITY. The superintendent will be CONTRACTOR'S representative at the site.

6.8.2 The day to day management of the Project's subcontractors and vendors, contracts, schedules and requests for payment shall be by a competent project manager to whom the superintendent shall report. The project manager will conduct regularly scheduled project meetings for the purpose of project coordination and communication. The project manager shall be included in the cost of the Work.

6.9 Labor.

6.9.1 Construction services shall be performed only by qualified construction contractors licensed to do business in the State of Florida and suppliers, selected and paid by the CONTRACTOR.

6.9.2 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.

6.10 Materials.

6.10.1 Unless otherwise specified herein, CONTRACTOR shall furnish, pay for and assume full responsibility for all materials, equipment, transportation, machinery, tools, appliances, water, heat, utilities and all other facilities and services necessary for the furnishing, performance, testing, start-up and proper completion of the Work.

6.10.2 CONTRACTOR warrants that all materials and equipment shall be new and of good quality and that the work will be free from defects in material and workmanship whether patent or latent in nature. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents.

6.11 Concerning Subcontractors, Suppliers, and Others.

6.11.1 Prior to the commencement of each phase of the Work hereunder, upon request, CONTRACTOR shall furnish, in writing to CITY, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the relevant phase of the work. CITY shall advise CONTRACTOR, in writing, of any proposed person or entity to which CITY has a reasonable objection. Failure of CITY to reply within seven (7) business days from the date of receipt of the written notice shall constitute notice of no reasonable objection. CONTRACTOR shall not contract with a proposed person or entity to whom CITY has made a reasonable and timely objection. If CITY has reasonable objection to a person or entity proposed by CONTRACTOR, CONTRACTOR shall propose another to whom CITY has no reasonable objection. CONTRACTOR shall not change a subcontractor, person or entity previously selected if CITY makes reasonable objection to such change.



6.11.2 CONTRACTOR shall be fully responsible to CITY and shall indemnify and hold the CITY harmless for all acts and omissions of the CONTRACTOR'S employees, Subcontractors, Suppliers and other persons directly or indirectly employed by his Subcontractors, suppliers and of persons for whose acts any of them may be liable and any other persons and organizations performing or furnishing of the Work under a direct or indirect Contract with CONTRACTOR.

6.11.3 Nothing in the Contract Documents shall create any Contractual relationship between CITY and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of CITY to pay or to see to the payment of any moneys due any such Subcontractor, supplier or other person or organization except as may otherwise be required by laws and regulations.

6.11.4 All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of CITY.

6.12 Patent Fees and Royalties.

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

6.13 Permits.

The CONTRACTOR agrees that it shall obtain and pay for all permits, approvals, licenses, government charges, impact fees, and inspection fees as reasonably inferable from the Contract Documents that will be required to complete the Project, except permit fees or other fees charged by the CITY.

6.14 Laws and Regulations.

CONTRACTOR shall comply with and give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to the performance of the Work. CITY shall not be responsible for monitoring CONTRACTOR'S compliance with any laws and regulations. CONTRACTOR shall promptly notify CITY if the Contract Documents are observed by CONTRACTOR to be at variance therewith.

6.15 Risk of Loss; Title.

The risk of loss, injury or destruction shall be on CONTRACTOR until Final Completion and acceptance of the Project. Title to the Work shall pass to CITY upon Final Completion and acceptance of the Work by CITY.



6.16 Taxes.

CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the laws and regulations of the State of Florida and its political subdivisions. CONTRACTOR is responsible for reviewing the pertinent state statutes involving such taxes and complying with all requirements. CITY and CONTRACTOR shall jointly cooperate so that CITY may order and pay for goods and supplies which will be incorporated into the Work; the goods and supplies that may be purchased by CITY shall be approved in advance by the parties. Even though the CITY may purchase such goods and materials, the same shall be stored at the site in the same manner as goods and materials purchased by the CONTRACTOR, and CONTRACTOR shall bear the risk of loss.

6.17 Use of Premises.

6.17.1 CONTRACTOR shall confine equipment, the storage of materials and equipment and the operations of workers to the Project site and areas identified in and permitted by the Contract Documents and shall not unreasonably encumber the premises with equipment or other materials. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against CITY by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim. The general indemnification provided elsewhere in this Contract specifically applies to claims arising out of CONTRACTOR'S use of the premises.

6.17.2 During the progress of the Work, CONTRACTOR shall at all times keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by CITY. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.17.3 CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.18 Access to Work.

CONTRACTOR shall provide CITY, CITY'S consultants, representatives and personnel, independent testing laboratories and governmental agencies with jurisdictional interests with access to the work at reasonable times for their observation, inspection and testing. CONTRACTOR shall provide them proper and safe conditions for such access; and shall advise them of CONTRACTOR'S site safety procedures and programs so that they may comply therewith.



Safety and Protection.

6.19.1 CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to prevent damage, injury or loss to all employees on the work site and other persons and organizations who may be affected thereby; all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and other property at the site or adjacent thereto.

6.19.2 CONTRACTOR shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

Indemnification.

6.20.1 **GENERAL INDEMNIFICATION:** The parties agree that one percent (1%) of the total compensation paid to CONTRACTOR for the Work under this Agreement shall constitute specific consideration to CONTRACTOR for the indemnification to be provided under this Agreement. CONTRACTOR shall indemnify, defend, save and hold harmless the CITY and the CITY's elected officials, public employees, consultants and separate contractors, any of their subcontractors, sub-subcontractors, agents and employees from and against any and all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or related to and/or resulting from performance of the Work. These indemnification obligations shall include claims, damages, losses or expenses (1) that are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, and/or (2) to the extent such claims, damages, losses or expenses are caused in whole or in part by negligent acts or omissions of the CONTRACTOR'S, anyone directly or indirectly employed by either or anyone for whose acts either may be liable, regardless of whether or not they are caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article.

6.20.2 In claims against the CITY or its consultants and its contractors, their subcontractors, sub-sub-contractors, agents or employees by an employee of the CONTRACTOR, its contractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article 19.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the City, or a CONTRACTOR's contractor, under workers' or workmen's compensation acts, disability benefits acts or other employee benefit acts.

Patent and Copyright Indemnification.

CONTRACTOR agrees to indemnify, defend, save and hold harmless the CITY, its officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against CITY, its officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent and/or for the infringement of any and all copyrights or patent rights claimed by any



person, firm, or corporation. CONTRACTOR shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees and costs. CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith including any costs or fees of an appeal shall be the responsibility of CONTRACTOR under the indemnification agreement. Nothing contained herein is intended nor shall it be construed to waive CITY'S rights and immunities under the common law or Florida Statute 768.28 as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party described in this Paragraph and its subparts.

#### 6.22 Survival of Obligations.

All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the work and termination or completion of this Agreement.

#### 6.23 Correction or Removal of Defective Work.

If required by CITY, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by CITY, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct and indirect costs of such correction or removal (including but not limited to fees and charges of engineers, architects and other professionals) made necessary thereby.

### ARTICLE 7 - CITY'S RESPONSIBILITIES

7.1 CITY shall furnish data required of CITY under the Contract Documents promptly. The CONTRACTOR understands and agrees that any information provided to it by the CITY as to any aspect of the Project is not guaranteed.

7.2 CONTRACTOR shall secure all necessary easements, assessments, and charges required for construction, use, or occupancy of permanent structures or permanent changes in existing facilities.

7.3 If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of CONTRACTOR or any other party.

7.4 CITY may assist CONTRACTOR with expedient processing of permits. The CITY makes no guarantee of approval or waiver of any requirements of the CITY's code of ordinances.



## **ARTICLE 8 – PROJECT MANAGER**

8.1 The Project Manager will be CITY'S contact person during the construction period and until final payment is due to CONTRACTOR.

### **8.2 Visits to Site.**

Project Manager may, at its sole discretion, make visits to the site to observe the progress and quality of the executed work.

### **8.3 Authorized Variations in Work.**

Project Manager may authorize minor variations in the Work from the technical requirements of the Contract Documents which do not involve an adjustment in the Guaranteed Maximum Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on CITY and on CONTRACTOR who shall perform the work involved promptly.

### **8.4 Rejecting Defective Work.**

If Project Manager becomes aware of any fault or default in the Work, he/she may give written notice thereof to CONTRACTOR. The failure to provide notice shall not waive the warranty of the CONTRACTOR that the work is to be free of defect whether latent or patent.

## **ARTICLE 9 - BUILDING DIVISION'S RESPONSIBILITIES**

9.1 It is understood and agreed by the CONTRACTOR that the Building Division and its inspectors are professionals who are dedicated to providing efficient and courteous service to all residents, professionals, contractors and the public at large through plans processing, inspections and building maintenance, which ensures the protection of the citizens and enhances the quality of life within the CITY. For the purposes of this Project the Building Division is not a surrogate of the CITY. All decisions by the Building Division as to whether some aspect of the Project is or is not in compliance with the Florida Building Code, Florida Fire Prevention Code and/or any other applicable codes, regulations, laws and ordinances are independent of and not deemed to be an act or decision by the CITY. The CONTRACTOR agrees that it shall be the responsibility of the CONTRACTOR to ensure compliance with all applicable codes, regulations, law and ordinances. As noted in Article 3 of this Agreement the CONTRACTOR warrants and accepts that any and all work necessitated by inspections which is not prescribed in the Plans or Specifications, but necessitated to bring the project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures and/or considered inside the contemplation of the Contract Documents shall be deemed the responsibility of the CONTRACTOR and included in the Guaranteed Maximum Price.



## **ARTICLE 10 - BONDS AND INSURANCE**

### **10.1 Payment and Performance Bonds.**

10.1.1 Within fifteen (15) calendar days after Notice of Award and in any event prior to commencing work, the CONTRACTOR shall execute and furnish to CITY a performance bond and a payment bond in a form acceptable to the CITY, each written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety shall hold a current certificate of authority from the Secretary of Treasury of the United States as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular No. 570. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular and the excess risks must be protected by coinsurance, reinsurance, or other methods, in accordance with Treasury Circular 297, revised September 1, 1978 (31 DFR, Section 223.10, Section 223.11). Further, the surety company shall provide CITY with evidence satisfactory to CITY, that such excess risk has been protected in an acceptable manner. The surety company shall have at least the following minimum qualification in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858: A to A+.

10.1.2 Two (2) separate bonds are required and both must be approved by the CITY. The penal sum stated in each bond shall be the amount equal to the total amount payable under the terms of the contract. The performance bond shall be conditioned that the CONTRACTOR perform the contract in the time and manner prescribed in the contract. The payment bond shall be conditioned that the CONTRACTOR promptly make payments to all persons who supply the CONTRACTOR with labor, materials and supplies used directly or indirectly by the CONTRACTOR in the prosecution of the work provided for in the Contract and shall provide that the surety shall pay the same in the amount not exceeding the sum provided in such bonds, together with interest at the maximum rate allowed by law; and that they shall indemnify and save harmless the CITY to the extent of any and all payments in connection with the carrying out of said Contract which the CITY may be required to make under the law.

10.1.3 Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, it shall be the duty of the CONTRACTOR to record the aforesaid payment and performance bonds in the public records of Broward County, with the CONTRACTOR to pay all recording costs.



10.2 Bonds, Reduction after Final Payment.

Such bonds shall continue in effect for one (1) year after final payment becomes due except as otherwise provided by law or regulation or by the Contract Documents with the final sum of said bonds reduced after final payment to an amount equal to fifty percent (50%) of the Guaranteed Maximum Price, or an additional bond shall be conditioned that CONTRACTOR shall correct any defective or faulty Work or material which appears within one (1) year after final completion of the Contract, upon notification by the CITY. Notwithstanding the foregoing, after final payment, the CONTRACTOR may request reduction in the bond to 10% of all monies previously earned and all monies earned there after

10.3 Duty to Substitute Surety.

If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other applicable laws or regulations, CONTRACTOR shall within seven (7) days thereafter substitute another bond and surety, both of which must be acceptable to CITY.

10.4 Insurance.

**10.4.1 UPON EXECUTION OF THE CONTRACT, THE CONTRACTOR SHALL SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT THE CITY OF HALLANDALE BEACH IS AN ADDITIONAL NAMED INSURED RESPECT TO THE REQUIRED COVERAGE AND THE OPERATIONS OF THE CONTRACTOR UNDER THE CONTRACT.** The certificates of insurance shall not only name the types of policies provided, but shall also specifically refer to this Agreement and shall state that such insurance is as required by Article 10 and its subparts of this Agreement. CONTRACTOR shall not commence work under this Agreement until after CONTRACTOR has obtained all of the minimum insurance herein described and the policies of such insurance detailing the provisions of coverage have been received and approved by CITY. CONTRACTOR shall not permit any subcontractor to begin work until after similar minimum insurance to cover subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, then in that event, CONTRACTOR shall furnish, at least thirty (30) calendar days prior to expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage and extension thereunder is in effect. CONTRACTOR shall not continue to perform the services required by this Agreement unless all required insurance remains in full force and effect.

10.4.2 Insurance Companies selected must be acceptable to the CITY. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to CITY by certified mail.

10.4.3 The CONTRACTOR shall procure and maintain at its own expense and keep in effect during the full term of the Contract a policy or policies of insurance which must include the



following coverage and minimum limits of liability:

10.4.3.1 Professional Liability (Errors and Omissions) Insurance for architectural and engineering services and the services of any other professional used in the performance of the work of this Agreement in the amount of \$1,000,000.00 with a deductible (if applicable) not to exceed \$5,000.00 per claim. The certificate of insurance for professional liability shall reference any applicable deductible and the work of this Agreement.

10.4.3.2 Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employers' Liability Act and the Homes Act. Employer's Liability Insurance shall be provided with a minimum of One Hundred Thousand and xx/100 dollars (\$100,000.00) per accident. CONTRACTOR agrees to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

10.4.3.3 Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by the CONTRACTOR in the performance of the work with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence

10.4.3.4 Comprehensive General Liability Insurance (occurrence form) with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence

Coverage must be offered in a form no more restrictive than the latest edition of the Comprehensive General Liability Policy without restrictive endorsements, as filed by the Insurance Services Office and shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:

10.4.3.4.1 Premises and Operations;

10.4.3.4.2 Independent Contractors;

10.4.3.4.3 Product and Completed Operations Liability;

10.4.3.4.4 Broad Form Property Damage;

10.4.3.4.5 Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in this Contract; and



10.4.3.4.6 Personal Injury coverage with employment contractual exclusions removed and deleted.

10.4.3.4.7 Explosion, collapse, underground coverage (XC-U)

10.4.4 CONTRACTOR shall maintain the Products/Completed Operations Liability Insurance for a period of at least one (1) years after final payment for the Work and furnish CITY with evidence of continuation of such insurance at final payment.

10.4.5 The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the following minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide.

10.4.6 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.

10.4.7 The CONTRACTOR shall ensure that any company issuing insurance to cover the requirements contained in this Contract agrees that they shall have no recourse against CITY for payment or assessments in any form on any policy of insurance.

10.4.8 The clauses "Other Insurance Provisions" and "Insurers Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which CITY is named as an additional named insured shall not apply to CITY. CITY shall provide written notice of occurrence within fifteen (15) working days of CITY's actual notice of such an event.

10.4.9 The CONTRACTOR shall not commence performance of its obligations under this Agreement until after it has obtained all of the minimum insurance herein described and the same has been approved.

10.4.10 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the parties being that the required insurance coverages protect both parties as the primary coverages for any and all losses covered by the above described insurance.

10.4.11 The CONTRACTOR agrees to perform the work under the Contract as an independent CONTRACTOR, and not as a sub-contractor, agent or employee of CITY.

10.4.12 CONTRACTOR shall require each of its subcontractors of any tier to maintain the insurance required herein for each category, and CONTRACTOR shall provide verification thereof to CITY upon request of CITY. Notwithstanding the foregoing, the CONTRACTOR may provide insurance for subcontractors.

10.4.13 Violation of the terms of this Article and its subparts shall constitute a breach of the



Contract and CITY, at its sole discretion, may cancel the Contract and all rights, title and interest of the CONTRACTOR shall thereupon cease and terminate. Notwithstanding the foregoing, the CONTRACTOR shall be given thirty (30) days to cure any breach.

10.5 CITY'S Liability and Insurance.

CITY shall not be responsible for purchasing and maintaining any insurance to protect the interests of CONTRACTOR, subcontractors or others on the Work. CITY specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Section 768.28, Florida Statutes and Section 95.11, Florida Statutes.

**ARTICLE 11 - WARRANTIES; TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK**

11.1 Warranty of Title.

The CONTRACTOR warrants to the CITY that it possesses good, clear and marketable title to all equipment and materials provided hereunder and there are no pending liens, claims or encumbrances whatsoever against said equipment and materials.

11.2 Warranty of Specifications.

The CONTRACTOR warrants that all equipment, materials and workmanship furnished, whether furnished by the CONTRACTOR or its sub-contractors and suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted and that all services will be performed in a workmanlike manner.

11.3 Warranty of Merchantability.

CONTRACTOR warrants that any and all equipment to be supplied pursuant to the Agreement is new, merchantable, free from defects, whether patent or latent in material or workmanship and fit for the ordinary purposes for which it is intended.

11.4 Correction Period.

CONTRACTOR warrants all material and workmanship for a minimum of one (1) year from the date that CITY accepts occupancy of the park plaza. If within one (1) year after the date of Final Completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents, any work is found to be defective, whether observed before or after acceptance by CITY, CONTRACTOR shall promptly, without cost to CITY and in accordance with CITY'S written instructions, either correct such defective work, or, if it has been rejected by CITY, remove it from the site and replace it with work that is not defective and satisfactorily correct and remove and replace any damage to other work or the work of others resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious



risk of loss or damage, CITY may have the defective workmanship corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR.

11.4.1 Where defective Work (and damage to other work resulting therefrom) has been corrected, removed or replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.

11.4.2 Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations which CONTRACTOR might have under the Contract Documents. Establishment of the time period of one (1) year as described in Paragraph 10.4.1 relates only to the specific obligation of the CONTRACTOR to correct the work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish CONTRACTOR'S liability with respect to the CONTRACTOR'S obligation other than specifically to correct the work.

11.4.3 CONTRACTOR warrants to the CITY that it will comply with all applicable federal, state and local laws, regulations and orders in carrying out its obligations under the Contract.

11.4.4 CONTRACTOR warrants to the CITY that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the Contract.

11.4.5 CONTRACTOR warrants to the CITY that the consummation of the work provided for in the Contract Documents will not result in the breach of any term or provision of, or constitute a default under any indenture, mortgage, contract, or agreement to which the CONTRACTOR is a party.

11.4.6 CONTRACTOR warrants that there has been no violation or copyrights of patent rights either in the United States of America or in foreign countries in connection with the work of the Contract.

11.4.7 No warranty, either express or implied, may be modified, excluded or disclaimed in any way by CONTRACTOR. All warranties shall remain in full force and effect, notwithstanding acceptance and payment by CITY.



## 11.5 Tests and Inspections.

11.5.1 CONTRACTOR shall give the Project Manager and Building Division timely notice of readiness of the work for all required inspections, tests or approvals. CONTRACTOR shall assume full responsibility, pay all costs, except for permit fees or other fees imposed by the CITY, in connection therewith and furnish the Building Division, with courtesy copies to the CITY, the required certificates of inspection, testing or approval for all materials, equipment or the Work or any part thereof unless otherwise specified herein.

11.5.2 Inspectors do have the full authority to order the CONTRACTOR to comply with all applicable codes. The CONTRACTOR shall be responsible for complying with all inspections and all costs associated therewith shall be deemed the responsibility of the CONTRACTOR and included in the GMP.

11.5.3 The payment of any compensation whatever may be its character or form, or the giving of any gratuity or the granting of any favor by the CONTRACTOR to any inspectors, directly or indirectly is strictly prohibited and any such action on the part of the CONTRACTOR will constitute a breach of this Agreement.

## ARTICLE 12 - CONTRACT TIME

### 12.1 Change of Contract Time.

**ALL TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THE AGREEMENT. EXCEPT AS PROVIDED HEREIN, NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE CITY BY REASON OF ANY DELAYS.** CONTRACTOR shall not be entitled to an increase in the construction cost or payment or compensation of any kind from CITY 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, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by CONTRACTOR for hindrances or delays due solely to fraud, bad faith or active interference on the part of CITY or its agents. If CONTRACTOR is delayed at any time in the progress of the Work by labor disputes, fire, unusual delay in deliveries, adverse weather conditions not reasonably anticipated (including strong storms, tropical storms and/or hurricanes which are common between June 1 and November 30), unavoidable casualties or other causes beyond the CONTRACTOR's control, or by other causes which the CITY and CONTRACTOR agree may justify delay, then the Contract Time shall be reasonably extended by Change Order. 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 that extent specifically provided above. No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area which necessarily excludes strong storms, tropical storms and/or hurricanes which are common between June 1 and November 30.



12.2 No Recovery for Early Completion. If the CONTRACTOR submits a schedule or expresses an intention to complete the Work earlier than any required milestone or completion date, the CITY shall not be liable to the CONTRACTOR for any costs incurred because of delay or hindrance should the CONTRACTOR be unable to complete the Work before such milestone or completion date. The duties, obligations and warranties of the CITY to the CONTRACTOR shall be consistent with and applicable only to the completion of the Work and completion dates set forth in this Agreement.

12.3 Liquidated Damages

12.3.1 The CONTRACTOR understands that if the Project or the Work is not substantially completed within 180 days from the date of the Notice to Proceed, then the CITY will suffer damages which are difficult to determine and accurately specify. As such, 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 CITY as a consequence of such delay and both parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of CONTRACTOR to complete the Contract on time.

12.3.2 Upon failure of CONTRACTOR to complete the Work within the time specified for the substantial completion of the Project (plus approved extensions if any), CONTRACTOR shall pay to CITY the sum two hundred and fifty dollars (\$250.00) for each and every calendar day beyond the time specified in this Agreement for completion, as fixed and agreed liquidated damages and not as a penalty. After substantial completion, should CONTRACTOR fail complete the remaining work as stated in the punch list within the time specified in this agreement plus approved time extensions, CONTRACTOR shall pay the CITY the sum of two hundred and fifty dollars (\$250.00) for each and every calendar day beyond the time specified in this Agreement for completion, The Liquidated Damages shall apply regardless of whether or not a single Contract is involved and shall apply separately to each portion of the Work for which a time of completion is given. CITY shall have the right to deduct from and retain out of moneys which may be then due or which may become due and payable to CONTRACTOR, the amount of such liquidated damages and if the amount retained by CITY is insufficient to pay in full such liquidated damages, the CONTRACTOR shall pay in full such liquidated damages.

12.4 Delay.

Any delay caused by the CITY shall extend the date for substantial completion date by the number of days that resulted from the delay.

**ARTICLE 13 - CHANGES IN THE WORK, RESTRICTIONS AND LIMITATIONS**

13.1 After the Plans and Specifications have been approved for construction by the Building Division, the CITY, without invalidating this Agreement, may order additions, deletions or revisions to the Work. Such additions, deletions or revisions shall be authorized by a Written Amendment or Change Order.

13.2 All Change Orders which, individually or when cumulatively increase the cost of



the work, or which extend the time for completion, must be formally authorized and approved by the City Commission prior to their issuance and before work may begin. No claim against CITY for Extra Work in furtherance of such Change Order shall be allowed unless prior approval has been obtained. The CONTRACTOR understands and agrees that any work, however characterized, performed by the CONTRACTOR without the CITY'S prior written approval shall not be compensable, without exception. The CONTRACTOR intentionally, knowingly and voluntarily waives any claim for unjust enrichment or quantum meruit with respect to any work performed in the absence of a written Change Order. Any waiver of this provision must be in writing and signed by both Parties and in no event shall such written waiver extend to any subsequent event.

13.3 The Guaranteed Maximum Price and Contract Time shall be changed only by Change Order or Written Amendment approved by the City Commission.

13.4 Proposed Change Orders shall be prepared by the CONTRACTOR.

13.5 The CONTRACTOR shall not be entitled to an increase in the Guaranteed Maximum Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents as amended, modified and supplemented.

13.6 If notice of any change affecting the general scope of the work or the provisions of the Contract Documents is required by the provisions of any bond to be given to a surety, the giving of any such notice will be CONTRACTOR'S responsibility and the amount of each applicable bond shall be adjusted accordingly.

13.7 Any claim for adjustment in the Guaranteed Maximum Price or time shall be based upon written notice delivered by the party making the claim to the other Parties not later than ten (10) days after the occurrence or event giving rise to the claims and stating the general nature of the claim. No claim for an adjustment in the Guaranteed Maximum Price or an extension of the contract time will be valid if not submitted in accordance with this Paragraph.

13.8 CONTRACTOR understands and agrees that any information provided to it by the CITY, at any time, as to any aspect of the Project is not guaranteed. The CONTRACTOR is solely liable for all site conditions, including those that are subsurface or otherwise concealed physical conditions which may differ, materially or not, from those the CONTRACTOR encountered during its initial site inspection. Upon identifying subsurface physical conditions that do differ materially from those identified during the CONTRACTOR'S initial inspection, the CONTRACTOR shall notify CITY immediately. The CONTRACTOR shall promptly investigate such conditions and, if the CITY agrees that the concealed physical conditions could not have been detected through a reasonable inspection, then the CONTRACTOR shall be entitled to an extension of time for the completion of the Project as its sole remedy. The CONTRACTOR accepts that any costs or expense associated with any differing site conditions encountered shall be the responsibility of the CONTRACTOR and included in the Guaranteed Maximum Price.



## **ARTICLE 14 – NO CHANGES IN GUARANTEED MAXIMUM PRICE**

14.1 The Guaranteed Maximum Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at its expense without change in the Guaranteed Maximum Price.

14.2 The Guaranteed Maximum Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Guaranteed Maximum Price shall be based on written notice delivered to the other Party (but in no event later than ten (10) days) after the occurrence of the event giving rise to the amount of the claim, along with supporting data which shall be delivered within twenty (20) days after the occurrence of the event giving rise to the amount of the claim and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. No resolution of a claim for adjustment in the Guaranteed Maximum Price shall be effective until approved by the City Commission. No claim for an adjustment in the Guaranteed Maximum Price will be valid if not submitted in accordance with this Paragraph. The CONTRACTOR understands and agrees that the CITY shall have the right and discretion to deny the approval of any Change Order, for any reason, despite the CONTRACTOR'S compliance with this Paragraph and/or the existence of an executed written Work Change Directive. If the CITY decides not to approve a Change Order for the work, then the CONTRACTOR will not be entitled to receive compensation under any theory of recovery whether at law or in equity.

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

14.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.

14.3.2 By mutual acceptance of a lump sum (which may include an allowance for overhead and profit including any subcontractor fees). If the negotiated lump sum change order exceeds the percentages set forth for "Cost of Work," it must be accompanied by a detailed explanation justifying the increase.

### **14.4 Cost Breakdown Required.**

Whenever the cost of any Work is to be determined, CONTRACTOR will submit in form acceptable to Project Manager an itemized cost breakdown together with supporting data. Whenever a change in the work is to be based upon mutual acceptance of a lump sum, whether the amount is an addition, credit, or no-change-in-cost, the CONTRACTOR shall submit an estimate substantiated by a complete itemized breakdown. The breakdown shall list quantities and unit prices for materials, labor, equipment and other items of cost.



## **ARTICLE 15 - PAYMENTS TO CONTRACTOR AND COMPLETION OF WORK**

### **15.1 Progress Payments during construction phase.**

15.1.1 CONTRACTOR pay requisition payments for Work completed during the project at intervals of not more than once a month. The CONTRACTOR shall submit a proposed schedule of values in a form acceptable to the CITY and which will be required to be approved by the CITY before any design Work on this Project can commence. The proposed schedule of values shall be broken into two phases for design and for construction.

Once approved all applications for payment shall be submitted in a form that shows a complete breakdown of the project schedule of values, and actual cost incurred as of the date of the application for payment of the work completed, showing a breakdown of the General Conditions, Construction, included a percentage of the Profit as stated in the GMP breakdown. Each application shall be accompanied by supporting evidence as may reasonably be required by the City. All payments applications shall be accompanied by a certification by the CONTRACTOR that the CONTRACTOR has disbursed to all subcontractors and suppliers their pro-rata shares of the payment out of previous progress payments received by the CONTRACTOR for all work completed and materials furnished in the previous period or properly executed releases of liens by all subcontractors, suppliers and materialmen who were included in the CONTRACTOR'S previous applications for payment, and any other supporting documentation as may be required by the CITY. Each requisition shall be submitted in triplicate to the CITY for approval; CITY shall have fifteen (15) days to approve or disapprove the requisition. If the requisition is not approved, the reasons therefore shall be stated with particularity. The CITY shall make payment to the CONTRACTOR within twenty (20) calendar days after approval by the CITY of the CONTRACTOR'S requisition for payment.

15.1.2 Ten percent (10%) of all monies earned by the CONTRACTOR shall be retained by the CITY until the Work is completed in accordance with the requirements of the Contract Documents and accepted by the CITY as provided herein. After fifty percent (50%) of the Work has been completed, the CONTRACTOR may request reduction in the retainage to five percent (5%) of all monies previously earned and all monies earned thereafter.

15.1.3 The contract price includes a 5.87% of the cost of Construction in contingency amount for unforeseen conditions and/ or owner generated requests, which may be authorized in accordance with applicable City policies and procedures

CONTRACTOR has accepted the following payment term for payment of all work provided during this CONTRACT:

\_\_\_\_\_ E-payables – it is an electronic method of payment which deposits funds to a credit card distributed by the City's bank to the Vendor. The City's bank is SunTrust.

\_\_\_\_\_ PCard - it is a Visa credit card payment



X Automated Clearing House (ACH) payment. A direct bank draft to a vendor's bank account. This method will only be authorized by the City if your firm provides a discount to the City for this payment method. **Contractor agrees to a 2% discount for payments received with 20 days of receipt complete invoice documentation as described in section 15.1.1.**

15.2 Final Inspection.

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, CITY will make a final inspection and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is not in accordance with the Contract Documents. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

15.3 Final Application for Payment.

After CONTRACTOR has completed all such corrections to the satisfaction of Project Manager and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection and other documents required by the Contract Documents, and after Project Manager has indicated that the work is acceptable, CONTRACTOR may make application for final payment. The final application for payment shall be accompanied by (1) complete and legally effective final releases or waivers of all liens arising out of or filed in connection with the work; or (2) CONTRACTOR'S receipts in full covering all labor, materials and equipment for which a lien could be filed; or (3) a final affidavit stating that all laborers, materialmen, suppliers and subcontractors who worked for CONTRACTOR under this Contract have been paid in full or if the fact be otherwise, identifying the name of each lienor who has not been paid in full and the amount due or to become due each for labor, services or materials furnished. If any subcontractor or supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a bond satisfactory to CITY to indemnify CITY against any lien.

CONTRACTOR shall submit to CITY within forty-five days (45) of the date of final inspection and closing of building permit for the applicable portion of the Work the completed set of "As-Built" drawings relative to the park plaza for review and approval. The "As-Built" drawings shall be prepared, sealed and certified by the appropriate professional licensed by the State of Florida. Prior to approval, if necessary, the drawings may be returned to CONTRACTOR for changes or modifications if in the opinion of Project Manager, they do not represent correct or accurate "As-built" drawings.



15.4 Final Payment and Acceptance.

15.4.1 If the Work is not acceptable to the CITY, then the CITY shall indicate the reasons for refusing to make final payment, in which case CONTRACTOR shall make the necessary corrections or compliance and resubmit the Application for payment. If the CITY is satisfied that the Work has been completed in accordance with the Contract Documents and the CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, the CITY will agree to make the final payment.

15.4.2 If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, CITY may consider making payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by CITY for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted may be submitted by CONTRACTOR for such payment. The CITY may consider making such payment under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

15.5 Final payment, constituting the entire unpaid balance of the Guaranteed Maximum Price, shall be paid by the CITY to the CONTRACTOR when the Work has been completed in accordance with the Contract Documents, and this Agreement fully performed. The making of final payment shall constitute a waiver of claims by CITY except those arising from:

15.5.1 Liens, claims, security interests or encumbrances arising out of this Agreement and unsettled.

15.5.2 Faulty or defective work and latent defects discovered after acceptance.

15.5.3 Failure of the work to comply with the requirements of the Contract Documents.

15.5.4 Terms of special warranties required by the Contract Documents.

15.5.5 Any of CONTRACTOR'S continuing obligations under this Agreement.

The acceptance of final payment by CONTRACTOR or the Subcontractor for materials and supplies shall constitute a waiver of claims by that payee except those previously made in writing and identified by payee as unsettled at the time of final application for payment.

15.6 CITY'S Right to Withhold Payment.

The CITY may withhold in whole or in part, final payment or any progress payment to such extent as may be necessary to protect itself from loss on account of:

15.6.1 Defective work not remedied.



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

15.6.3 Failure of the CONTRACTOR to make payment to Subcontractors or Suppliers for materials or labor.

15.6.4 Damage to another contractor not remedied.

15.6.5 Liability for liquidated damages has been incurred by the CONTRACTOR.

15.6.6 Reasonable evidence that the work cannot be completed for the unpaid balance of the contract sum.

15.6.7 Reasonable evidence that the work will not be completed within the Contract time.

15.6.8 Failure to carry out the work in accordance with the Contract Documents.

When the above grounds are removed or resolved or the CONTRACTOR provides a surety bond or consent of surety satisfactory to the CITY which will protect the CITY in the amount withheld, payment may be made in whole or in part.

## **ARTICLE 16 - TERMINATION OF THE CONTRACT**

### **16.1 CITY'S Right to Terminate.**

Upon the occurrence of any one or more of the following events:

16.1.1 If CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.

16.1.2 If a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency.

16.1.3 If CONTRACTOR makes a general assignment for the benefit of creditors.

16.1.4 If a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under Contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR'S creditors.

16.1.5 If CONTRACTOR admits in writing an inability to pay its debts generally as they



become due.

16.1.6 If CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled Workers or suitable materials or equipment or failure to adhere to the progress schedule as same may be revised from time to time), provided that CONTRACTOR is provided thirty (30) days to cure any breach.

16.1.7 If CONTRACTOR disregards laws or regulations of any authority with jurisdiction.

16.1.8 If CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents.

CITY may, after giving CONTRACTOR seven (7) days written notice, terminate the services of CONTRACTOR without any liability, of any kind, accruing to the CITY and without prejudice to any right or remedy the CITY may have, and exclude the CONTRACTOR from the site and take possession of the Work and of all tools, appliances, construction equipment and machinery which CITY has paid CONTRACTOR for either stored at the site or which are stored elsewhere, and use the same to full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), for and finish the Work as CITY may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished.

16.1.9 During the design phase, if CONTRACTOR fails to provide its deliverables to the CITY in accordance with the deadline stated in the progress schedule, as may be revised from time to time, the CONTRACTOR shall be deemed to be in default under this contract. The CITY shall provide CONTRACTOR with a notice of default allowing the CONTRACTOR seven (7) days to cure the default. If the CONTRACTOR fails to cure the default within 7 days from receipt of the notice of default, the CITY may consider this a material breach that can only be remedied by immediate termination of this agreement without any liability to the CITY. The CITY shall provide payment for any work performed or delivered up until such time.

16.1.9.1 During the construction phase, the CONTRACTOR shall have thirty (30) days after notification from the CITY of a default to cure it.

## 16.2 Termination for Reasons Other Than Breach of the Agreement:

16.2.1. a Upon seven (7) days written notice to CONTRACTOR, CITY may, with cause, without liability of any kind and without prejudice to any other right or remedy, terminate this agreement for CITY'S reasons that are other than a breach of this Agreement. In such a case, the reasons should be clearly stated. This provision is different from the right to terminate set out in other parts of this Agreement. Where the agreement is terminated for these reasons, the notice of termination to CONTRACTOR must state that the Agreement is being terminated for the stated reason(s) under the termination clause and the effective date of the termination. Upon receipt of the notice of termination, CONTRACTOR shall promptly discontinue all Work at the time and to the extent indicated on the notice of termination, terminate all outstanding Subcontractors and purchase orders to the extent that they relate to the terminated portion of the Agreement, and refrain from placing further orders and Subcontracts. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such

2-1



termination. In the event of a termination under this provision, the CITY shall pay to the CONTRACTOR only those direct costs associated with all Work actually completed. The CONTRACTOR shall be obligated to support its costs with back-up documentation to the CITY'S satisfaction. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE CITY SHALL NOT BE LIABLE TO THE CONTRACTOR FOR ANY DIRECT, INDIRECT, SPECIAL AND/OR CONSEQUENTIAL LOSSES OR DAMAGES WHETHER ARISING IN AGREEMENT, WARRANTY, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY OR ANY OTHER CAUSE OF ACTION AT LAW OR IN EQUITY, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

16.2.1.b. Upon thirty (30) days written notice to CONTRACTOR, CITY, may without further liability of any kind and without prejudice to any other right or remedy, terminate this agreement for the convenience of the CITY.

16.2.2 Once the Plans and Specifications for this Project receive a permit to commence construction, the ownership in the Plans and Specifications shall vest with the CITY. In the event CITY terminates the Agreement and proceeds to design and construct the Project through its employees, agents or other third parties, CONTRACTOR shall remain fully liable for the design of the Plans and Specifications and the CITY shall retain all its rights and remedies related thereto.

### 16.3 Termination by CONTRACTOR.

If CITY fails to make payment thereon for a period of sixty (60) calendar days from payment submittal, CONTRACTOR may, upon thirty (30) additional days' written notice to CITY, terminate the Contract and recover from the Contract payment for work executed and for proven loss with respect to materials, equipment, tools and construction equipment and machinery.

### 16.4 Non-Binding Mediation.

16.4.1 Non-Binding Mediation. In the event a dispute arises, either Party may request that the other party attend non-binding mediation. Mutual written consent is required for the non-binding mediation to take place. To the extent that mediation does occur, the CONTRACTOR is obligated to continue to perform the Work and the CITY shall continue to satisfy its payment obligations pending the resolution of the mediation. Before requesting mediation, the parties shall first attempt to resolve the dispute amicably.

16.4.2 Scope of Dispute Review. Any controversy or claim arising out of or relating to this Agreement or any breach of it may be subject to review under these non-binding dispute resolution procedures.

16.4.3 Mediator. The Parties agree that any mediator shall be jointly selected.

16.4.4 Time of Claim. Claims must be brought within the applicable statute of limitations by notice of a claim to the other party or parties affected thereby. Failure to bring the claim within the specified time shall constitute a waiver of the party's right to assert the claim.



The notice of claim shall provide reasonably sufficient detail of the nature of the claim and the basis for it. The mediator shall be selected by the parties within twenty (20) days following the date that a party requests that the selection process commence. Each mediation hearing shall be held at a location mutually approved by the parties. Unless the parties otherwise agree in writing, mediation may be commenced on or after the thirtieth (30th) calendar day after the mediator is selected. Each party agrees that it will designate a representative, having authority to bind that party, who will attend all mediation hearings. Both parties shall endeavor, in good faith, to reach a resolution of the claim during the mediation. The mediator shall submit a sworn affidavit to both parties indicating that the mediator has no past or present affiliation with either the CONTRACTOR or the CITY.

16.4.5 If the parties cannot agree on the production of documents or information (including rules relating thereto), then the mediator shall make a determination as to the scope and nature of the exchange.

16.4.6 Proceeding Costs and Fees. All parties participating in the non-binding mediation shall be responsible for their own costs, expenses and attorney fees necessary to pursue or defend against claim(s) raised under these provisions; however, the parties shall equally share the costs of any meeting or hearing place and the fees of the mediator.

16.4.7 Enforceability and Form of Decision. The decision resulting from mediation is not binding on any party participating in the mediation unless and until the parties agree to it in writing. In the absence of a written consent accepting the mediator's decision, the decision shall have no force or effect whatsoever.

16.4.8 Florida Law/Venue/Jurisdiction. This Agreement shall be governed by the laws of the State of Florida, without regard to its conflict of law provisions. The Parties hereto hereby submit to the exclusive jurisdiction of the state and federal courts located in Broward County, Florida for any action or proceeding arising out of or relating to this Agreement and the Parties hereto hereby agree that all claims in respect of such action or proceeding shall be heard and determined exclusively in any such state or federal court.

16.4.9 Attorneys' Fees. In the event of any dispute arising under or related to this Agreement, the prevailing party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal until such dispute is resolved with finality.

## **ARTICLE 17 - NOTICE, COMPUTATION OF TIME ARTICLE**

### **17.1 Giving Notice.**

All notices required by any of the Contract Documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested to the following:



**CITY:**

Daniel A. Rosemond  
City of Hallandale Beach  
400 S. Federal Highway  
Hallandale Beach, Florida 33009

**COPY TO:**

Sarita Shamah  
Director, Office of Capital Improvements  
400 S. Federal Highway  
Hallandale Beach, FL. 33009

**AND:**

V. Lynn Whitfield, City Attorney  
City of Hallandale Beach  
400 S. Federal Highway  
Hallandale Beach, Florida 33009

**CONTRACTOR:**

D. Ruel Miles  
President  
Pioneer Construction Management Services Inc.  
3711 SW 47<sup>th</sup> Ave., suite 203  
Davie FL. 33314

**17.2            Computation of Time.**

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation. A calendar day of twenty-four (24) hours measured from midnight to the next midnight shall constitute a day.

**17.3            Force Majeure.**

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Should any party fail to perform its obligations under this Agreement due to a condition of force majeure, as that term is interpreted under Florida Law, and specifically including but not limited to Acts of God (including hurricanes, tropical storms and/or very strong storms which are anticipated by the Parties and taken into consideration when the CONTRACTOR agreed to the substantial completion date) fire, flood, earthquakes, then the time for performance of said obligation hereunder will be extended by a period reasonable commensurate with the cause of such failure to perform or cure. If the Contractor is delayed in performing any obligation under this agreement due to a force majeure condition, the CONTRACTOR shall request a time extension from the CITY within ten (10) working days of said force majeure occurrence. Any time extension shall be subject to mutual agreement and shall not be cause for any claim by the CONTRACTOR for extra compensation. Events of force majeure do not include acts or omissions of sub-contractors.

#### **ARTICLE 18 – MISCELLANEOUS**

18.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guaranties and obligations imposed upon CONTRACTOR and all of the rights and remedies available to CITY thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents, and the provisions of this Paragraph will survive final payment and termination or completion of the Agreement.

18.2 CONTRACTOR shall not assign or transfer the Contract or its rights, title or interests therein without CITY'S prior written approval. The obligations undertaken by CONTRACTOR pursuant to the Contract shall not be delegated or assigned to any other person or firm unless CITY shall first consent in writing to the assignment. Violation of the terms of this Paragraph shall constitute a breach of Contract by CONTRACTOR and the CITY may, at its discretion, cancel the Contract and all rights, title and interest of CONTRACTOR shall thereupon cease and terminate.

18.3 CONTRACTOR and its employees, volunteers and agents shall be and remain an independent contractors and not agents or employees of CITY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties hereto.

18.4 The remedies expressly provided in this Agreement to CITY shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of CITY now or hereafter existing at law or in equity.

18.5 The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. In the event of a dispute arising under or related to this Agreement it shall



be filed in the Eleventh Judicial Circuit in and for Broward County, Florida.

18.6 Should any part, term or provision of this Agreement be by the courts decided to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portion or provision shall not be affected thereby.

#### **ARTICLE 19 - NONDISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYMENT**

19.1 During the performance of this Agreement, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, creed, color or national origin. Such action must include, but not be limited to the following: employment, upgrading; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

19.2 CONTRACTOR shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor Regulations (41 CFR Part 60).

19.3 CONTRACTOR shall comply with the Copeland Anti-Kickback Act (18 USC 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).

19.4 CONTRACTOR shall comply with the Contract Work Hours and Safety Standards Act (40 US 327-330) as supplemented by Department of Labor Regulations (29 CFR Part 5).

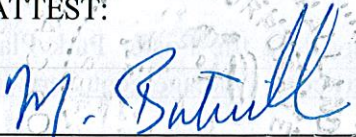
19.5 CONTRACTOR shall comply with the Florida Trench Safety Act.

19.6 CONTRACTOR shall comply with the OSHA Safety Act.

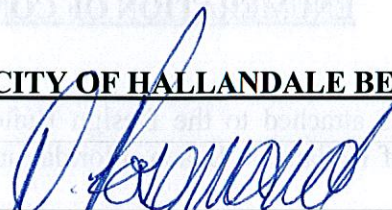


IN WITNESS WHEREOF, CITY and CONTRACTOR have signed this Agreement in triplicate.

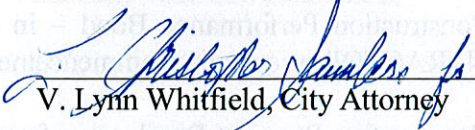
ATTEST:

  
City Clerk


**CITY OF HALLANDALE BEACH, FLORIDA**

  
Daniel A. Rosemond, City Manager

APPROVED AS TO FORM:

  
V. Lynn Whitfield, City Attorney

**CONTRACTOR**

  
By: D. Ruel Miles  
Title: President

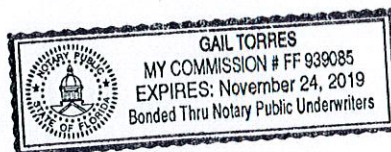
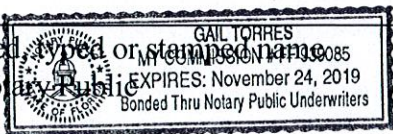
State of Florida )  
) ss:  
County of Miami-Dade )

On this, the 2<sup>nd</sup> day of June, 2016, before me, the undersigned Notary Public of the State of Florida, the foregoing instrument was acknowledged by D. Ruel Miles (name of officer), President (title), of, on behalf of the corporation, who is personally known to me or has produced as identification.

  
Notary Public, State of Florida

My Commission Expires: 11/24/19

Printed, typed or stamped name  
of Notary Public





## **ENUMERATION OF CONTRACT DOCUMENT**

This page is attached to the Design Build Agreement respecting the Foster Park Plaza between the City of Hallandale Beach, Florida, and Pioneer Construction Management Services, Inc.

Article 2.1 lists certain contract documents which are attached to the Agreement, and this page constitutes the attachment as follows:

2.1.2 Construction Performance Bond – in a form acceptable to the CITY and to be supplied by CONTRACTOR prior to the commencement of construction.

2.1.3 Construction Payment Bond - in a form acceptable to the CITY and to be supplied by CONTRACTOR prior to the commencement of construction.

2.1.4 Drawings and Outlines Specifications - to be supplied by CONTRACTOR and reviewed by CITY in accordance with the provisions of the Agreement.

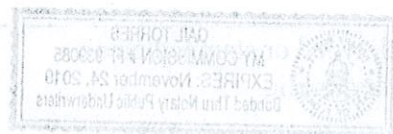
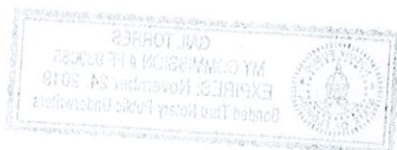
2.1.5 Insurance Certificate - to be supplied by CONTRACTOR before the Work commences.

2.1.6 Notice of Award and Notice to Proceed - to be supplied by the CITY.

2.1.7 Clarifications and Exclusions, if any.

2.1.8 All applicable provisions of Federal, State or Local law - omitted by the parties, and will not be attached, but the foregoing does not relieve CONTRACTOR from complying therewith as provided in this Agreement.

2.1.9 Any modification, including all Change Orders and Written Amendments - none in existence as of the date hereof, but will form part of the Contract Documents.



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## EXHIBIT A

City of Hallandale Beach Florida  
Foster Park Plaza Project

4/26/2016

### SCOPE OF SERVICE FOR FOSTER PARK PLAZA AND PARKING LOT

#### **Foster Park Plaza Project Description**

The project will display a level of quality in design, workmanship and materials to complement the neighboring Foster Park. It will also follow the Foster Road Corridor vocabulary developed by the City. Environmentally friendly and energy/water efficient strategies will be utilized throughout the project, including the consideration of solar lighting where feasible. The goal is to create a pleasant outdoor space that can be appreciated and utilized during both day and night. Specific features of the project include:

#### **Foster Park Plaza (Area = .7 Acres):**

- Decorative Pavement / Hardscape (Design to complement existing pavement at Foster Park)
- Site drainage,
- Decorative Privacy/Heritage Wall (Maximum 6' Height)
- Public Art Element (incorporated into heritage wall, or other element if design team should see fit, we will explore the options for lighting of the wall)
- Bio Swales where applicable.
- Pedestrian Lighting w/ Decorative Banner Arms (light posts as per Foster Road Streetscape standards)
- Site Furnishing (benches & Trash bins, as per Foster Road Streetscape standards)
- Landscaping (featuring drought tolerant and native species Landscape per Code)
- Irrigation (Purple Pipe)
- Location, Infrastructure and installation of drinking fountain
- City of Hallandale to Provide Art to be included in the Heritage Wall

----- Broward -----  
3711 S.W. 47<sup>th</sup> Avenue, Suite 203  
Davie, FL 33314

----- MIAMI-DADE -----  
540 NW 165<sup>th</sup> Street Road, Suite 307  
Miami, FL 33127

Ph. 954.893.6021 Fax. 954.893.8013





- Sidewalk Repair and Resurfacing.
- Design/Construction will encompass the Right of way from the curbing and Gutter to the South Property Line.
- Three (3) Design options to be provided
- Sample Materials and products to be provided within the 30-60% for City approval
- General shall to exercise Care to ensure no damages are done to existing perimeter.
- All damages that occurs during construction shall be restored to pre-existing condition/better.

**New Parking Lot (Area = Approx. 4,858 SF):**

- Paving & Site drainage
- Landscaping (featuring drought tolerant and native species)
- Parking Lot lighting (Meet FBC and local standards, energy efficient)
- Parking Lot Micro plastic marking
- General Contractor to exercise Care to ensure no damages are done to existing perimeter.
- All damages that occurs during construction shall be restored to pre-existing condition/better.

----- Broward -----  
3711 S.W. 47<sup>th</sup> Avenue, Suite 203  
Davie, FL 33314

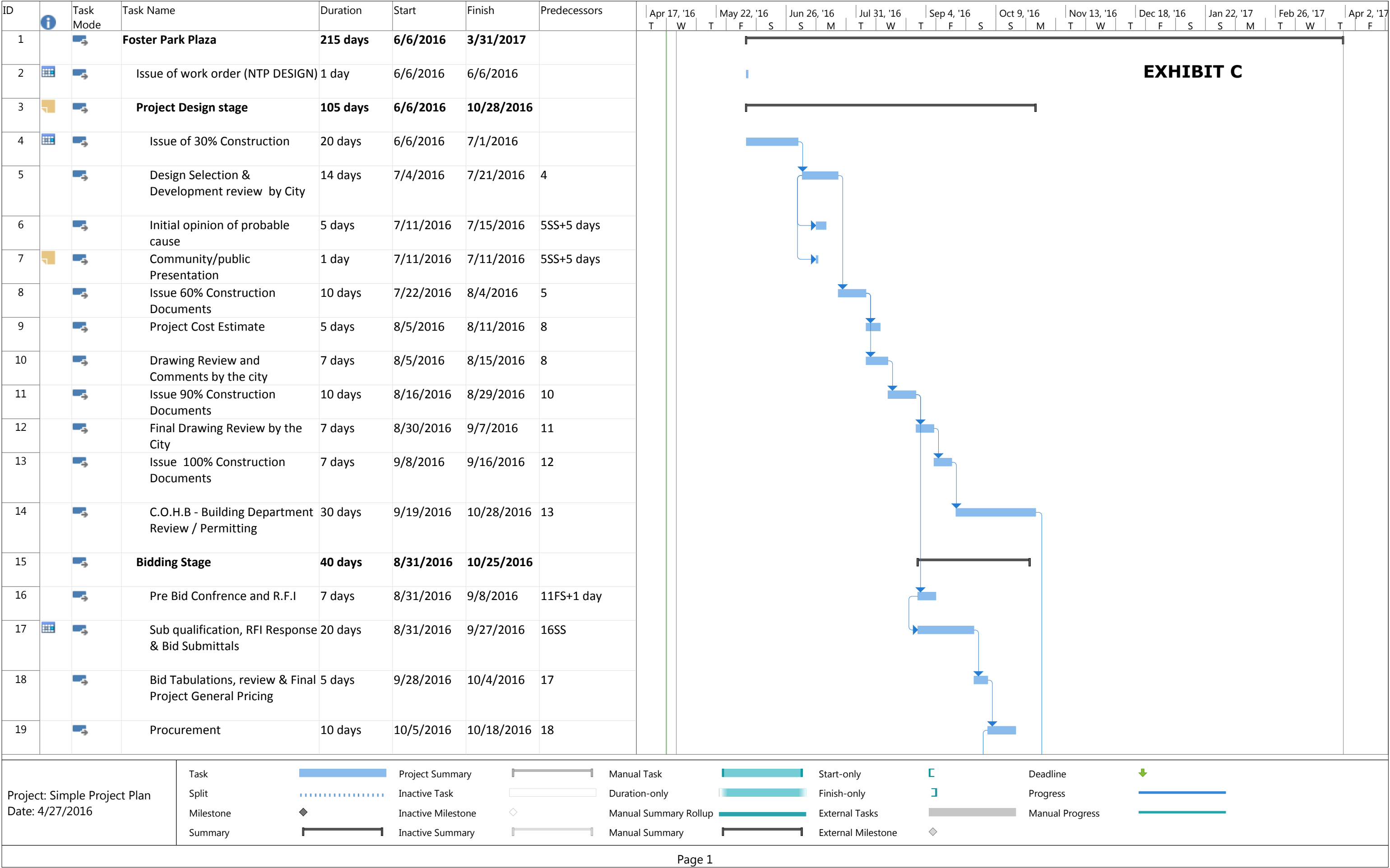
----- MIAMI-DADE -----  
540 NW 165<sup>th</sup> Street Road, Suite 307  
Miami, FL 33127

Ph. 954.893.6021 Fax. 954.893.8013



City of Hallandale Beach FL Foster Park Plaza Design Build Detail Price Estimate						
Date	4/26/2016					
DIV.	ITEMS / DIVISION	DESCRIPTION	Est. Quantity - Takeoff	Unit	Unitary Price	Total
01000	PRE-CONSTRUCTION DESIGN & ESTIMATING COST					
	Design, Construction Document & Print Deliverables	Design2Form	1.00	LS	\$ 69,550.00	\$ 69,550.00
	Construction Deliverables 50%, 100% & GMP Estimate	PCMS Pre-Con	1.00	LS	\$ 16,000.00	\$ 16,000.00
	Survey & Geotechnical Report (by the City of H.B.)	BY the City of H.B.	1.00	LS	\$ 8,200.00	\$ 8,200.00
	Allowance Permit & Inspection Fees	(C.H.B Building Dept)	1.00	LS	\$ 23,000.00	\$ 23,000.00
	Miscellaneous Design and Allowances		1.00		\$ 1,725.00	\$ 1,725.00
	<b>TOTAL PRE-CONSTRUCTION COST</b>					<b>\$ 118,475.00</b>
01000	DIVISION - 1 GENERAL REQUIREMENTS for CONSTRUCTION					
	Project Manager	Gen Cont Staff- Salary	23.00	Weeks	\$ 1,300.00	\$ 29,900.00
	Superintendent	Gen Cont Staff- Salary	23.00	Weeks	\$ 1,500.00	\$ 34,500.00
	Assistant Superintendent/Close-Out	Gen Cont Staff- Salary	9.00	Weeks	\$ 900.00	\$ 8,100.00
	Design Team Construction Activities, Meeting, Submittal, Inspection & Closeout	Design2Form	1.00	LS	\$ 16,100.00	\$ 16,100.00
	Connex Rental (Site Office & Storage)	Mobil Mini or Equal	4.50	Months	\$ 750.00	\$ 3,375.00
	Fuel & Utilities	Phone, Internet & FPL	4.50	Months	\$ 400.00	\$ 1,800.00
	Dumpster - Hauling Mark 786-487-6602	Great Waste or Equal	3.00	Pick-ups	\$ 620.00	\$ 1,860.00
						<b>\$ 95,635.00</b>
02000	DIVISION - 2 SITE CONDITIONS		Quantity - Takeoff	Unit	Unitary Price	Total
	Clearing and Grubbing		35,514.00	SF	\$ 0.65	\$ 23,084.10
	Grading		35,514.00	SF	\$ 0.44	\$ 15,626.16
	Asphalt Paving - Parking Lot		4,000.00	SF	\$ 3.00	\$ 12,000.00
	Concrete Paving / Pavers	2/3 of Plaza Park	21,000.00	SF	\$ 3.80	\$ 79,800.00
	Drainage		300.00	LF	\$ 140.00	\$ 42,000.00
	Landscaping (Park Plaza) ( Tree, Shrub and Sod)	1/3 of Plaza Park	10,000.00	SF	\$ 1.60	\$ 16,000.00
	Landscaping (Parking Lot) ( Shrub and Sod)	Parking Lot	1.00	LS	\$ 2,000.00	\$ 2,000.00
	Irrigation (Park Plaza)	Purple Pipe	1,600.00	LF	\$ 10.50	\$ 16,800.00
	Irrigation (Parking Lot)	Purple Pipe	220.00	LF	\$ 10.50	\$ 2,310.00
	Parking Lot Striping	Thermo Plastic Marking	1.00	LS	\$ 4,500.00	\$ 4,500.00
	MOT & SWWPS	Plan & Barricades	1.00	LS	\$ 1,000.00	\$ 1,000.00
					<b>Sub Total</b>	<b>\$ 215,120.26</b>
03000	DIVISION -3 CONCRETE					
	SideWalks/Curbs	Repair Replace 8 Flags at Plaza Entrance	1.00	LS	\$ 2,500.00	\$ 2,500.00
	Pre-Fab Wall	6-8ft Height Precast Wall	1.00	LS	\$ 43,000.00	\$ 43,000.00
	Sidewalk Replacement in the swale not including the curb & gutters, Wheel Stops & Garbage Can Pads	Repair &/or Replace sidewalk from inside the curb & gutters to the property line to the South	1.00	LS	\$ 26,500.00	\$ 26,500.00
	Footings	Prefab Heritage Wall	1.00	LS	\$ 13,000.00	\$ 13,000.00
					<b>Sub Total</b>	<b>\$ 85,000.00</b>
09000	DIVISION - 9 FINISHES					
	Painting Pre-Fab Wall	Local Participation from CHB	1.00	LS	\$ 2,500.00	\$ 2,500.00
					<b>Sub Total</b>	<b>\$ 2,500.00</b>
10000	DIVISION - 10 SPECIALTIES					
	Art Display on Heritage Wall	Local Participation from CHB	1.00	LS	\$ 10,500.00	\$ 10,500.00
	Art Display on Heritage Wall Furnished By CHB (Installed by PCMS)		1.00	LS	\$ 500.00	\$ 500.00
					<b>Sub Total</b>	<b>\$ 11,000.00</b>
12000	DIVISION - 12 FURNISHINGS					
	Bench	Du Mor Mod# 94-60-3AR	8.00	Ea	\$ 1,673.45	\$ 13,387.60
	Trash	Du Mor Rectacle 17, to match	4.00	Ea	\$ 1,212.35	\$ 4,849.40
	Tree Grates @ Plaza Entrance	Ironsmith via rizo, mod# 6092	4.00	Ea	\$ 1,863.19	\$ 7,452.76
					<b>Sub Total</b>	<b>\$ 25,689.76</b>
15000	DIVISION - 15 MECHANICAL		Quantity - Takeoff	Unit	Unitary Price	Total
	Plumbing for drinking fountain (Not In RFP)	Supply Line for Fountain	1.00	LS	\$ 3,100.00	\$ 3,100.00
	Most Dependable Fountain (Not in RFP) & Bottle Fill	Chill WaterMost Dependable Mod #440-SM	1.00	LS	\$ 6,100.00	\$ 6,100.00
					<b>Sub Total</b>	<b>\$ 9,200.00</b>
16000	DIVISION - 16 ELECTRICAL		Quantity - Takeoff	Unit	Unitary Price	Total
	Electrical Rough Include Service for Drinking Fountain	Plaza and Parking lot	1.00	LS	\$ 10,600.00	\$ 10,600.00
	foster Plaza Light Post	Sternberg Lighting, Monterro	8.00	Ea.	\$ 4,602.17	\$ 36,817.36
	Concrete Poles & Fixtures	Parking Lot lighting	2.00	Ea.	\$ 2,500.00	\$ 5,000.00
					<b>Sub Total</b>	<b>\$ 52,417.36</b>
	DIVISIONS 1 - General Conditions for Construction					<b>\$ 95,635.00</b>
	DIVISIONS 2 THRU 16 CONSTRUCTION COST					<b>\$ 400,927.38</b>
	DIVISIONS 2 THRU 16 CONSTRUCTION COST				<b>Total</b>	<b>\$ 496,562.38</b>
01000	Payment & Performance Bond 1.5%					<b>\$ 10,500.00</b>
01000	Insurance 1.25%					<b>\$ 6,207.03</b>
	Overhead & Profit 9 %					<b>\$ 44,690.61</b>
	<b>TOTAL ESTIMATED CONSTRUCTION COST</b>				<b>TOTAL</b>	<b>\$ 557,960.02</b>
	<b>TOTAL ESTIMATED PROJECT COST PRE-CONSTRUCTION &amp; CONSTRUCTION</b>					<b>\$ 676,435.02</b>
	Contingency 5.87% of the Cost of Construction 2 thru 16					<b>\$ 23,564.98</b>
	Contract Value					<b>700,000.00</b>



Start-onlyFinish-onlyExternal TasksExternal MilestoneDeadlineProgressManual Progress

Page 1







ID	<div><div></div><div>i</div></div> Task Mode	Task Name	Duration	Start	Finish	Predecessors	Apr 17, '16	May 22, '16	Jun 26, '16	Jul 31, '16	Sep 4, '16	Oct 9, '16	Nov 13, '16	Dec 18, '16	Jan 22, '17	Feb 26, '17	Apr 2, '17
							T	W	T	F	S	S	M	T	W	T	F
41	<div><div></div><div>→</div></div>	Electrical Trim	20 days	12/16/2016	1/12/2017	40											
42	<div><div></div><div>→</div></div>	F/D Electrical Fixtures & Equipment	15 days	12/16/2016	1/5/2017	40											
43	<div><div></div><div>→</div></div>	Install Parking Lot Lighting & Linear Park Lighting	15 days	1/13/2017	2/2/2017	41											
44	<div><div></div><div>→</div></div>	Painting	22 days	1/25/2017	2/23/2017												
45	<div><div></div><div>→</div></div>	Microplastic Asphalt Marking/Stripping	7 days	1/25/2017	2/2/2017	35											
46	<div><div></div><div>→</div></div>	Painting / Art Finishes	12 days	2/8/2017	2/23/2017	38SS+3 days											
47	<div><div></div><div>→</div></div>	substantial Completion	1 day	2/24/2017	2/24/2017	38											
48	<div><div></div><div>→</div></div>	Close-Out & Punchlist	25 days	2/24/2017	3/30/2017	38											
49	<div><div></div><div>→</div></div>	Final Inspections	1 day	3/31/2017	3/31/2017	48											



Project: Simple Project Plan Date: 4/27/2016	Task	<div><div></div></div>	Project Summary	<div><div></div></div>	Manual Task	<div><div></div></div>	Start-only	<div><div></div></div>	Deadline	<div><div></div></div>
	Split	<div><div></div></div>	Inactive Task	<div><div></div></div>	Duration-only	<div><div></div></div>	Finish-only	<div><div></div></div>	Progress	<div><div></div></div>
	Milestone	<div><div></div></div>	Inactive Milestone	<div><div></div></div>	Manual Summary Rollup	<div><div></div></div>	External Tasks	<div><div></div></div>	Manual Progress	<div><div></div></div>
	Summary	<div><div></div></div>	Inactive Summary	<div><div></div></div>	Manual Summary	<div><div></div></div>	External Milestone	<div><div></div></div>		





## Exhibit D



# FOSTER PARK PLAZA PROJECT COMMUNITY BENEFITS PLAN

----- Broward -----  
3711 S.W. 47<sup>th</sup> Avenue, Suite 203  
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## ***I. Background-The Importance of the Arts***

In recent years, our schools curriculum has shifted heavily toward common core subjects of reading and math, but what about the arts? Although some may regard art education as a luxury, simple creative activities are some of the building blocks of child development. Learning to create and appreciate visual aesthetics may be more important than ever to the development of the next generation of children as they grow up. The process of creating art itself has many developmental benefits, such as motor skills, language development, decision making skills, cultural awareness, and many others.

Studies also show that the arts build self-confidence and helps individuals learn about themselves, at any age. Building self-awareness, is a key component to bringing communities together. A collaborative art project will be beneficial in tying community together both through artistic expression and cultural heritage.

## ***II. Arts/Drawing Contest & Workshop***

### **Participation:**

PCMS will provide a workshop with the Children/Community to teach them about Design, Architecture, Construction and the opportunities within these fields. This workshop will be conducted within the first Section (30-60%) of the Design Phase which will allow the community to share their views/insight of the Park.

An Art /Drawing Contest will allow community (Children/Residents) to take part in the beautification of their city, by creating a piece of art that expresses Heritage, Culture, Togetherness, Fun and in turn fosters developmental growth and a move toward a "ONE HALLANDALE".

### **Schools Selected to participate and Prizes are:**

Elementary / Middle School Students from the Local Schools: (Hallandale Elementary/Gulfstream)

**Prize:** The Winning Work: upon completion PCMS will provide a Pizza Party to the Wining art class.

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Hallandale High School/Adult Center/Community (At-large):

**Prize:** The Winning Work(s)--(4) four \$100 Visa Gift Cards/Check and Arts Packages (Museum Tours, Arts Class/Course)

#### **The Heritage Wall:**

A mural will be painted by a local artist to include all the winning artwork which will be constructed on the Foster Park Plaza site, building Community pride, new heritage and a sense of ownership to the project from young to old alike.

**The Workshop:** Educational Session where Persons of all ages get an opportunity to interact with the Design, Architecture and construction personnel. To understand key steps in the Design and Construction phased projects.

### ***III. Pioneers of Hallandale Beach Campaign***

#### **City of Hallandale Beach Florida**

Has come a Long way from only “a dozen families in the 1900 – seven Swedish, three English, and two black. The first school was built in 1904 and had only ten students. The first church, Bethlehem Lutheran, was established in 1906. Originally, Hallandale was a farming community, with farmers using the beach only for recreation. Hallandale officially became a town on May 14, 1927. By that time, there were 1,500 residents, street lights, and electricity in the community. In 1947, Hallandale was reincorporated as a city, and was allowed to annex land to the east. In August of 1999, the city officially changed its name to Hallandale Beach.”

We all have seen the growth from then to now and the Heritage wall presents a great opportunity to introduce the Citizens young and old to the Pioneers/People who worked and is still working to make the City of Hallandale Beach the Success it is today. From City Workers, Business owners, past/current City leaders (Mayor's, Commissioner's, Manger's), to the Young or Elderly who have played a significant role in the enhancement of the community/City Collectively.

1. Community/City Nomination
2. Award /Recognition
3. Placement on the Heritage Wall area dedicated to Pioneers of Hallandale Beach

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#### Reaching Out to Stakeholders

- Social Media
- Flyers (Street Team)
- Share event with community calendars
- Community Involvement and Recommendation for “Pioneers”
- Program can be repeated to add more “Pioneers” on an annual basis

By recognizing these important People within the community and motivating all persons to build a better Community/City starting from within. We hope to help direct and/or initiate change to give every resident an opportunity to have a positive say on the future and enhancing themselves to higher-quality citizens.

#### ***IV. Estimated Foster Park Plaza C.B.P Value***

Task Description	Estimated value	Local Labor/Vendor Opportunities
Arts / Drawing Project	\$5,000	DIV 2 Site Conditions
Project Administrator- Facilitation & Contest Fees		DIV 3 Concrete
Marketing & Advertisement + Community Outreach Liaison	\$5,000	DIV 9 Finishes
Campaign of Pioneer recognition on the Heritage wall	\$5,000	DIV 15 Mechanical
CBP management/ overseeing the total project. Local involvement and reporting	\$5,000	DIV 16 Electrical
Local Utilization - (local vendors, suppliers, sub-contractors) LCHBVF	\$165,650	Construction/Consulting D2F
CBP Estimated Total Value	\$185,650	
<b>Total Contract Value</b>	<b>\$700,000.00</b>	
Percent of Contract Value	26.52%	

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## ***V. Local Utilization/Integration***

Consistent with our commitment to utilize local workforce (LBE's), it is imperative that deliberate engagement take place to ensure that local workers are given the opportunity to receive employment from subcontractors and potentially partner(s). PioneerCMS and partner(s) will align the project workforce to comply with the City's Community Benefit Ordinance of 25% of which PCMS & Sub-contractors shall utilize a minimum local workforce of at least 40%.

A number of issues need to be addressed to ensure the success of this endeavor, including employment readiness, subcontractor agreement to participate and train local workforce. PCMS will work with partner to ensure Subcontractor participation and workforce readiness.

a) PCMS will assist Subcontractors in hiring local trained workers and will become a resource for Partner(s) in complying with the City workforce requirement. PCMS has partnered with South Florida Educational development center (SFEDC) and Career Source who have successfully assisted in previous Local hiring Campaigns on Past projects. Because of the close relationship we have built through-out the Years with our Subcontractors PCMS has on several projects taught the importance of hire Local within the Community/City.

b) PCMS has consecutively employed Local Labor / Local Vendor through its previous projects within various City's/County's. These opportunities are not just for the duration of the project but these Local Labor/Vendors have built a long lasting relationship with PCMS and we intend to do the same system/structure on the Foster Park Plaza Project.

### ***Example of PCMS LOCAL WORKFORCE INITIATIVE***

***Overtown Community Center Project through the Southeast Overtown-CRA, Local workforce were utilized on this project upon completion "Wayne Johnson" a Resident of the Overtown Community having gained much experience from the Last Quarter of 2014 to the first Quarter of 2016 at the Overtown project and is now a fulltime Employee of PCMS at our Three (3) years project in The Fort Lauderdale Airport - Terminal four (4).***

#### **Administrative/Community Outreach Deliverables:**

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1. Pioneer Construction Management Services Inc. (PCMS)/South Florida Educational development center (SFEDC) will manage and facilitate all Parts of the Community Benefit Plan. The Scheduled time frame of this Project is 9 Months, the Design Phase of 3 months and a Construction Phase of 6 Months.
2. PCMS/SFEDC will contact the local schools for participation in the Arts/Drawing Contest-Foster Park Plaza Project;
3. PCMS/SFEDC will contact the local schools/community and stakeholders for participation in the Back-to School Campaign-Foster Park Plaza Project;
4. PCMS/SFEDC will provide marketing information/ advertisement and implementation of the City's Community Outreach Plan within a designated timeline of activities and events. This Project is scheduled for 9 Months, the Design Phase (which includes, RFI's, Bidding, Awarding of Sub-Divisions and Initiation of Construction NTP) is 3 months and a Construction Phase of 6 Months. During the Design Phase PCMS/SFEDC will promote to the Residents/Students via Flyers, Viral Media, School Broadcast/Newspaper, Local Community Outreach Meetings and Local Church Congregations. SFEDC Data base provides PCMS with a Wide range of Local residents through Email contacts, Phone calls and Local Walk-ins. Once the information has been distributed the Initiation of the Project and Community Benefits plans shall be simultaneous. SFEDC and Career Source South Florida shall recruit unemployed skill and unskilled staff with the intentions of utilizing and educating them through PCMS Self performed task/training and Subcontractors who require additional staff.
5. The Community Outreach Liaison (Theresa Moore) will reach out, meet and communicate with the stakeholders and advise the public of the upcoming event in preparation for each of the pre-approved Community Outreach Meetings;
6. Coordinate, moderate and participate in (3) COMs – which may include a Contest kick-off, and Winners Circle/Entry-Prize forum. Each of the COMs are expected to last approximately two hours.

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