

CONTRACT

THIS IS A CONTRACT, made and entered into this 30th day of April, 2025, by and between The City of Hallandale Beach, hereinafter referred to as CITY and Maverick United Elevator LLC., hereinafter referred to as the CONTRACTOR.

WITNESSETH, that the CONTRACTOR and the CITY, for considerations hereinafter name, agree as follows:

ARTICLE 1

SCOPE OF WORK

- 1.1 The CONTRACTOR hereby agrees to furnish all of the labor, materials, equipment and services necessary to perform all of the work described in the Bid Project including Drawings (Design Plans), Specifications and Addenda thereto for the project entitled:

The work to be provided is outlined and includes to BID # FY 2024-2025-05 ELEVATOR MODERNIZATION AND MAINTENANCE/REPAIR SERVICES, which is hereby incorporated and made part of this Agreement by reference and Proposal submitted by CONTRACTOR, which is hereby incorporated and made part of this Agreement by reference.

At the April 9th, 2025 City Commission Meeting the City Commission adopted Resolution # 2025-045 awarded through BID # FY 2024-2025-05 ELEVATOR MODERNIZATION AND MAINTENANCE/REPAIR SERVICES. The Contract value and per such Resolution #2025-045 shall not exceed \$200,800.00. The City Commission has also approved an additional \$50,000 contingency amount for the change orders, for a total potential not to exceed amount of \$(250,800) two hundred, fifty thousand, eight hundred dollars which may be authorized in accordance with applicable policies and procedures.

- 1.2 The CONTRACTOR and the City's Project Manager will develop a single list of items required to render complete, satisfactory, and acceptable construction services, if applicable.

The City's Project Manager will contact the CONTRACTOR with the list of required items for this project and will provide a timeline for the CONTRACTOR to respond. The delivery of the list of items for the accomplishment of the construction project will be provided by the City's Project Manager to the CONTRACTOR within five (5) days of contract execution.

- a) For contracts less than \$10 million dollars the parties shall, within thirty (30) days of substantial completion, develop and deliver a list required for accomplishment of the Project. If the contract is more than \$10 million dollars the parties shall accomplish same within sixty (60) days.
- b) The final completion date under the Contract shall be extended at least thirty (30) days after the list is delivered in paragraph a above.

1.4 LOCAL CITY OF HALLANDALE BEACH VENDOR PREFERENCE (LVP)

Contractor has been granted LVP as per Proposal submitted Exhibit C. Contractor includes in the attached Exhibit C and identifies the vendors that are going to be utilized through the LVP participation and delineate for each the specific elements of work each local vendor will be responsible for performing and the dollar value of work as a percentage of the total contract value.

ARTICLE 2

CONTRACT TIME

- 2.1 The work to be performed under this Contract shall be commenced within 15 calendar days after the Project Initiation Date specified in the Notice to Proceed. The CITY shall instruct the CONTRACTOR to commence the work by written instructions in the form of a Notice to Proceed and a Purchase Order. These will not be issued until receipt of all required documents and after execution of the Contract by both parties. The receipt of all necessary permits by the CONTRACTOR is a condition precedent to the initiation of all work under this Contract. If

CONTRACTOR is not in receipt of all necessary permits by the Project Initiation Date set forth in the Notice to Proceed, CONTRACTOR shall so notify CITY in writing immediately. CITY shall then have the option of issuing a revised Notice to Proceed.

- 2.2 Time is of the essence in this Contract. The work shall be substantial completed within two hundred forty five days (245) calendar days from the Project Initiation Date specified in the Notice to Proceed, and completed and ready for final payment in accordance with Article 22 within two hundred sixty days (260) calendar days from the Project Initiation Date specified in the Notice to Proceed.
- 2.3 Upon failure of the CONTRACTOR to substantially complete said Contract within the specified period of time (plus approved extensions, if any) the CONTRACTOR shall pay to CITY the sum of Five Hundred Dollars (\$500.00) for each calendar day after the time specified in

paragraph 2.2 above (plus any approved extensions) for substantial completion. After substantial completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining work within the Contract Time or any approved extension thereof, the CONTRACTOR shall pay to the CITY the sum of Five Hundred Dollars (\$500.00) for each calendar day after the time specified in paragraph 2.2. above (plus any approved extensions) for completion and readiness for final payment. These amounts are not penalties but liquidated damages to the CITY. 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 the 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 the CONTRACTOR to complete the Contract on time.

- 2.4 The CITY is authorized to deduct liquidated damage amount from the monies due to CONTRACTOR for the work under this Contract, or as much thereof as the CITY may, at its own option, deem just and reasonable.

ARTICLE 3

THE CONTRACT SUM

- 3.1 Payments shall be made at the Contract unit prices or lump sum prices applicable to each integral part of the Contract. These prices shall be full compensation for all costs associated with completion of all work in full conformity with the requirements as stated or shown, or both, in the Bid Project.
- 3.2 The CITY reserves the right to add or delete work items from the project to meet its available budget.
- 3.3 In consideration of the work, labor, services and materials to be furnished by the CONTRACTOR, in accordance with the plans and specifications, the City agrees to pay to the CONTRACTOR, upon the completion and acceptance thereof by the City, or its duly authorized agent, the total Contract price of \$(200,800), in words (two hundred thousand, eight hundred dollars).

The Contract price may include a 50,000 contingency amount for change orders, not to exceed City Commission Resolution #2025-045 of \$50,000 which may be authorized in accordance with applicable policies and procedures.

3.4 Sales and Use Taxes. The CITY is exempt from paying sales and use taxes on materials and equipment purchased for, and incorporated into the NAME OF PROJECT. As such, the CITY reserves the right to utilize a tax savings Direct Purchase Program (DPP) for direct purchases where possible and practical for this Project. The CITY shall make direct purchases of all materials and equipment purchased for, or to be incorporated into the Project, as requested by the Contractor and agreed upon by the CITY in the form of a change order. All direct purchases of materials and equipment shall be made by the City with funds specifically allocated for the construction of the Project. The Contractor shall notify the CITY no later than **10 calendar days** after request by City of the requested materials and equipment to be purchased by the CITY for the Project. The standard City of Hallandale Beach Terms and Conditions applicable to this program are included as Attachment A to this section. Each equipment supplier that will supply equipment under the Direct Purchase Program shall be obligated to meet the requirements of the City of Hallandale Beach Terms and Conditions and the Technical Specifications.

The CITY's Project Manager shall manage the sales tax savings earned by the DPP. The credits for the tax savings and payments made directly to the VENDOR under the DPP shall be deducted from the total contract amount awarded, through a deductive change order. The Project Manager shall instruct the Contractor as to the direct purchase process as further described in the special conditions below.

3.4.1 The Contractor shall: (a) compile Contractor's and any Subcontractors' itemized requirement for materials and equipment, including quantities, unit costs, manufacturers' or vendors' catalogue or order numbers, delivery instructions, and other specific terms and information that are required to order the specific materials and equipment, and terms and conditions to be imposed on suppliers regarding delivery and submittal time requirements, and quantities thereof required by Contractor or Subcontractors in accordance with the applicable requirements of the Construction Contract, from time to time, during the construction of the Project, as materials and equipment need to be ordered for the Project, and submit such compilation to the CITY's Construction Project Manager; (b) prepare a requisition for such materials and equipment on the CITY's form of requisition; and (c) deliver any such requisition to the CITY's Project Manager no less than thirty (30) days prior to the date the manufacturer or vendor of the materials or equipment, as the case may be, requires orders for such materials or equipment to be placed to assure delivery of such materials or equipment to the Site in accordance with the Project Schedule (the "Order Date"). The requisition shall identify the Order Date. Upon receipt of any such requisition the CITY's Project Manager shall forward same to the CITY. The CITY shall issue a Purchase Order directly to the vendor of the materials or equipment, prior to the Order Date (a Purchase Order). The CITY shall include with any such Purchase Order, a copy of the CITY's sales and use

tax exemption certificate. The CITY shall make direct payment to the vendor from the CITY's account.

- 3.4.2 The Contractor, upon the delivery of any such materials or equipment, shall verify the conformity of such materials or equipment with the terms of the Purchase Order and the Contract Documents. If the Contractor determines that the materials and equipment are conforming, Contractor shall submit the invoice within twenty-four hours to City's Project Manager for approval. If the delivery of such materials or equipment is approved by the City's Project Manager, the CITY shall take title and possession of such material and equipment before such materials and equipment are incorporated into the Project. If the Contractor determines that the materials and equipment are non-conforming, the Contractor shall immediately notify the CITY in writing and the CITY shall reject such material and equipment.
- 3.4.3 The CITY shall assume all risk of loss on all materials and equipment purchased pursuant to its sales and use tax exemption, subject to the Provisions of Special Condition 3.4.4.
- 3.4.4 The Contractor shall be fully responsible for all matters relating to the receipt of materials and equipment furnished by the CITY in accordance with this Special Condition, including, but not limited to, the responsibility for verifying correct quantities, verifying documents or orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the materials and equipment at the time of delivery, and loss or damage to materials and equipment following acceptance of items due to the negligence of such Contractor or any Subcontractors. The Contractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by such Contractor for the particular materials furnished. The Contractor shall provide or arrange for all services required for the unloading, handling and storage of such materials and equipment through installation.
- 3.4.5 The Contractor shall visually inspect all shipments from material and equipment vendors purchased directly by the CITY in accordance with this Special Condition (the "CITY Furnished Materials") and approve the vendors' invoices for materials or equipment delivered, as CITY-Furnished Materials are furnished to the Site in accordance with this Special Condition. The Contractor shall assure that each delivery of CITY Furnished Materials is accomplished by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the vendor conforming to the Purchase Order, together with such additional information as the CITY may require. The Contractor shall deliver to the CITY's Project Manager all invoices for materials and equipment upon verification by such Contractor that the

materials and equipment conform exactly to the Contract Documents and the Purchase Order. Upon receipt of any invoice for CITY Furnished Materials, the CITY's Project Manager shall verify the conformity of such City Furnished Materials and if conforming approve such City Furnished Materials. Upon approval the CITY's Project Manager shall deliver such invoice to the City for direct payment to the vendor.

- 3.4.6 The Contractor shall inspect all CITY Furnished Materials to determine that such CITY Furnished Materials conform to the Contract Documents, including the Drawings and the Specifications, and to determine prior to incorporation into the Work whether any such CITY Furnished Materials are patently defective, and whether such CITY Furnished Materials are identical to the materials ordered and match the description of the bill of lading and the Purchase Order. If Contractor discovers defective or non-conforming CITY Furnished Materials upon such visual inspection, Contractor shall: (a) not recommend acceptance of such non-conforming materials and equipment, (b) not utilize such non-conforming or defective materials in the Work; (c) not allow Subcontractor to utilize such non-conforming or defective materials in the Work; and (d) **promptly** notify the CITY's Project Manager, in writing, of the defective or non-conforming condition so that repair or replacement of those CITY Furnished Materials can occur without any undue delay or interruption to the Project. In the event that such Contractor fails to perform such inspection or otherwise incorporates into the Work such defective or non-conforming CITY Furnished Materials, the Contractor shall be responsible for the repair and replacement of defective or non-conforming materials, at its sole cost and expense.
- 3.4.7 The Contractor shall maintain records of all CITY Furnished Materials incorporated into the Work from the stock of CITY Furnished Materials. The Contractor shall account monthly to the CITY's Project Manager and CITY for any CITY Furnished Materials delivered to the Site, indicating which CITY Furnished Materials have been incorporated into the Work.
- 3.4.8 The Contractor shall be responsible for obtaining and managing all warranties and guarantees for all CITY Furnished Materials. All repair, maintenance or damage-repair calls shall be forwarded by the CITY or the Contractor to the Contractor for resolution with the appropriate vendor, or Subcontractor.
- 3.4.9 After the CITY takes possession of the CITY Furnished Materials at the Site, possession of the CITY's Furnished Materials shall immediately and automatically transfer to the Contractor without notice. The transfer of possession of CITY Furnished Materials from the CITY to the Contractor shall constitute a bailment for the mutual benefit of the CITY and such Contractor. The CITY shall be considered the bailor and such Contractor the bailee of the CITY Furnished Materials. CITY Furnished Materials shall

be considered returned to the CITY for purposes of their bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project.

- 3.4.10 The Contractor shall purchase and maintain builder's risk insurance, naming the CITY as an additional insured, sufficient to protect against loss of or damage to CITY Furnished Materials. Such insurance shall be in the amount stated elsewhere in the Contract and shall cover the full value of any CITY Furnished Materials between the time the CITY first takes title to and possession of any of such CITY Furnished Materials until final completion of the Work.
- 3.4.11 The CITY shall not be liable for any interruption or delay damages in the Project by virtue of ordering the CITY Furnished Materials, for any defects or other problems with the Project by virtue of ordering the CITY Furnished Materials, or for any extra costs resulting from any delay in the delivery of, or defects in, the CITY Furnished Materials.
- 3.4.12 The Contractor, on a monthly basis, shall review invoices submitted by all vendors of CITY Furnished Materials delivered to the Site during the prior month and either concur or object to the CITY's Issuance of payment to the vendors, based upon such contractor's records of materials delivered to the Site and whether any of the CITY Furnished Materials for which payment has not been made were either non-conforming or defective.
- 3.4.13 In order to arrange for the prompt payment to the vendor, the Contractor shall provide to the CITY's Project Manager a list of the acceptance of the goods or materials within fifteen (15) days of receipt of said goods or materials. Accompanying the list shall be a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the CITY. Upon receipt of the appropriate documentation, the CITY shall prepare a check payable to the vendor based upon the receipt of data provided. This check will be released, delivered and remitted directly to the vendor. The Contractor shall assist the CITY to immediately obtain partial or final release of waivers as appropriate. The CITY shall not make any payment without the appropriate Contractor's concurrence and approval, which shall be delivered to the CITY by the CITY's Project Manager. Furthermore, the CITY shall not make any payment without the appropriate CITY's Project Manager concurrence and approval. There shall be no retention on CITY Furnished Materials against either the vendor, the Contractor(s) or the Subcontractor(s).
- 3.4.14 The Contractor may, in its reasonable discretion, require certain material and equipment vendors to provide a supply bond in the amount of one-

hundred percent (100%) of the Purchase Order price. The supply bond, if required, shall be issued by a qualified surety company authorized to do business in the State of Florida and acceptable to the CITY. If the supply bond is required, the costs thereof will be added to the amount of the Purchase Order. The Contractor shall verify that a vendor can furnish a supply bond. All bonds will name the CITY and the Contractor as additional obliges. To the extent that materials and equipment are purchased pursuant to the CITY's sales and use tax exemption, the Contractor shall reduce the Contract Amount for direct purchases by the CITY.

ARTICLE 4

INDEMNIFICATION

- 4.1 CONTRACTOR agrees to indemnify, save harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend CITY, their officers, agents, servants and employees against any and all claims, losses, liabilities and expenditures of any kind, including attorney's fees, court costs, and other expenses, caused by negligent act or omission of CONTRACTOR, any sub-contractors, their employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature, whatsoever, resulting from injuries or damages sustained by any person or property. CONTRACTOR further agrees to indemnify and save harmless the CITY, their officers, agents and employees, for or on account of any injuries or damages received or sustained by any person or persons resulting from any construction defects, including latent defects. Neither the CONTRACTOR nor any of its sub-contractors will be liable under this section for damages arising out of intentional torts of CITY or their officers, agents or employees. In the event that any action or proceeding is brought against CITY by reason of any such claim or demand, CONTRACTOR, upon written notice from CITY, shall defend such action or proceeding.

CONTRACTOR shall require all of the subcontractors working for it to provide the aforementioned indemnification in all contracts and subcontracts entered into and arising out of work performed by CONTRACTOR in connection with the Project.

- 4.2 To the extent considered necessary by the City Attorney, any sums due to CONTRACTOR under this Agreement may be retained by CITY until all of CITY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by CITY.

- 4.3 In the event that any action or proceeding is brought by CONTRACTOR against CITY, CONTRACTOR hereby waives the right to a jury trial. The provisions of this Article shall survive the expiration or early termination of this Agreement.
- 4.4 Contractor acknowledges that it has received adequate consideration concerning the monetary limitation on the indemnification provided to City, which, shall not be less than \$1 million per occurrence.
- 4.5 To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify and hold-harmless the City, its officers and employees from any claims, liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney fees to the extent caused, in whole or in part, by the professional negligence, error or omission of the CONTRACTOR or persons employed or utilized by the CONTRACTOR in performance of the Agreement.
- 4.6 To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify and hold-harmless the City, its officers and employees from any claims, liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney fees to the extent caused, in whole or in part, by the recklessness or intentionally wrongful conduct, of the CONTRACTOR or persons employed or utilized by the CONTRACTOR in performance of the Agreement.
- 4.7 Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, or of any other immunity, defense, or privilege enjoyed by the City pursuant to Section 768.28 Florida Statutes.

ARTICLE 5

INSURANCE REQUIREMENTS

The contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of any resulting contract the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations *assumed* by Contractor under any resulting contract.

Commercial General Liability Contractor agrees to maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence, **\$2,000,000** Annual Aggregate.

Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

Right to Revise or Reject City reserves the right, but not the obligation, to revise any insurance requirement, not limited to limits, coverages, and endorsements, or to reject any insurance policies which fail to meet the criteria stated herein. Additionally, the City reserves the right, but not the obligation, to review and reject any insurer providing coverage due to its poor financial condition or failure to operate legally.

- 5.2 If the initial insurance expires prior to the completion of the work, renewal copies of policies shall be furnished 30 days prior to the date of their expiration.
- 5.3 Notice of Cancellation and/or Restriction - The policy(ies) must be endorsed to provide the City of Hallandale Beach with 30 days notice of cancellation and/or restriction.
- 5.4 The CONTRACTOR shall furnish to the CITY ENGINEER and the City's Project Manager Certificates of Insurance or endorsements evidencing the insurance coverage specified above within 15 days after notification of award. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Contract, and state that such insurance is as required by this Contract. The Certificate of Insurance shall be in form similar to and contain the information set forth.
- 5.5 The official title of the owner is the "City of Hallandale Beach." This official title shall be used in all insurance documentation.

ARTICLE 6

WEATHER

- 6.1 No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last ten years of weather data as recorded by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration at the Fort Lauderdale Weather Station.
- 6.2 No more than one day of time extension shall be granted for each day the precipitation, in inches exceeds one (1) inch at the Weather Station, and only when fifty percent or more of the scheduled construction work force cannot work due occurrence of such precipitation on the day claimed.

ARTICLE 7

HURRICANE PRECAUTIONS

- 7.1 During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning or alert, the CONTRACTOR, at no

- 9.1 The Bid Project includes drawings (design plans) and specifications. The CITY, through the CITY ENGINEER, shall have the right to modify the details of these drawings (design plans) and specifications, to supplement said design plans and additional design plans, drawings or additional information as the work proceeds, all of which shall be considered as part of the Bid Project. In case of disagreement between the written and graphic portions of the Bid Project, the written portion shall govern.

ARTICLE 10

"OR EQUAL" CLAUSE:

- 10.1 Whenever a material, article or piece of equipment is identified in the Bid Project including drawings (design plans) and specifications by reference to manufacturers' or vendors' names, trade names, catalog numbers, or otherwise, it is intended merely to establish a standard; and, unless it is followed by words indicating that no substitution is permitted because of form fit function and quality. Any material, article, or equipment of other manufacturers and vendors which will perform or serve the requirements of the general design will be considered equally acceptable provided the materials, article or equipment so proposed is, in the opinion of the CITY, equal in substance, quality and function.
- 10.2 The CITY ENGINEER will be the sole judge of acceptability, and no substitute will be ordered, installed or used without the CITY ENGINEER'S prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. CITY may require CONTRACTOR to furnish at CONTRACTOR'S expense a special performance bond or other Surety with respect to any substitute.

ARTICLE 11

DEFECTIVE WORK

- 11.1 The CITY ENGINEER shall have the authority to reject or disapprove work which he finds to be defective. The CONTRACTOR shall promptly either, as directed, correct all defective work or remove it from the site and replace it with nondefective work. CONTRACTOR shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.
- 11.2 If, within one year after substantial completion or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any of the work is found to be

defective or not in accordance with the Contract Documents, the CONTRACTOR shall correct it promptly without cost to the CITY, after receipt of written notice from the CITY to do so. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which the CONTRACTOR might have under the Contract Documents.

- 11.3 Should the CONTRACTOR fail or refuse to remove or correct any defective work performed or to make any necessary repairs in an acceptable manner, and in accordance with the requirements of the Contract with the time indicated in writing, the CITY shall have the authority to cause the unacceptable or defective work to be removed or renewed, or make such repairs as may be necessary to be made at the CONTRACTOR'S expense. Any expense incurred by the CITY in which the CONTRACTOR has failed or refused to make shall be paid for out of any monies due or which may become due to the CONTRACTOR, or may be charged against the Performance and Payment Bond. Continue failure or refusal on the part of the CONTRACTOR to make any or all necessary repairs promptly, fully, and to declare the Contract forfeited, in which case the CITY at its option, may purchase materials, tools, and equipment and employ labor or may contract with other individual, firm or corporation, or may proceed with its own forces to perform the work. All costs and expenses incurred thereby shall be charged against the defaulting CONTRACTOR and the amount thereof deducted from any monies due, or which may become due to him, or shall be charged against the Performance and Payment Bond. Any special work performed, as described herein, shall not relieve the CONTRACTOR in any way from his responsibility for the work performed by him.
- 11.4 Failure to reject any defective work or material shall not in any way prevent later rejection when such defect is discovered, or obligate the CITY to final acceptance.

ARTICLE 12

SUBCONTRACTS

- 12.1 The CONTRACTOR shall, within 15 calendar days after the signing of the Contract, notify the CITY in writing of the names of Subcontractors proposed for the work. Such Subcontractor must be in compliance with the provisions of Chapter 9 of the Broward County Code of Ordinances and/or state law as it relates to Certificates of Competency. The CONTRACTOR shall have a continuing obligation to notify the CITY of any change in Subcontractors.

- 12.2 CONTRACTOR shall not employ any Subcontractor against whom CITY may have a reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor against whom CONTRACTOR has a reasonable objection.
- 12.3 The CONTRACTOR shall be fully responsible for all acts and omissions of his Subcontractors and of persons directly or indirectly employed by his Subcontractors and of persons for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any contractual relationship between any subcontractor and the CITY or any obligation on the part of the CITY to pay or to see the payment of any monies due any Subcontractor. The CITY may furnish to any Subcontractor evidence of amounts paid to the CONTRACTOR on account of specific work performed.
- 12.4 The CONTRACTOR agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the CITY.

ARTICLE 13

SEPARATE CONTRACTS

- 13.1 The CITY reserves the right to let other Contracts in connection with this work. The CONTRACTOR shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate this work with theirs.
- 13.2 If any part of the CONTRACTOR'S work depends for proper execution or results upon the work of any other contractor, the CONTRACTOR shall inspect and promptly report to the CITY ENGINEER any defects in such work that render it unsuitable for such proper execution and results. CONTRACTOR'S failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work, except as to defects which may develop in other contractor's work after the execution of his work.
- 13.3 The CONTRACTOR shall conduct his operations so as to create no interference or impact on any other contractor on the site. Should such interference or impact occur, the CONTRACTOR shall be liable to the affected contractor for the cost of such interference or impact.

- 13.4 To ensure the proper execution of his subsequent work, the CONTRACTOR shall inspect the work already in place and shall at once report to the CITY ENGINEER any discrepancy between the executed work and the requirements of the Bid Project.

ARTICLE 14

DAMAGE TO EXISTING FACILITIES, EQUIPMENT OR UTILITIES

- 14.1 CONTRACTOR shall have full responsibility for reviewing and checking such information and data, for locating all underground facilities shown or indicated in the Contract Documents, for coordination of the work with the owners of such underground facilities during construction, for the safety and protection thereof and for repairing any damage thereto resulting from the work, the cost of all of which will be considered as having been included in the Contract price.
- 14.2 During construction of buildings and/or during improvements, CONTRACTOR covenants and agrees that it shall safely maintain the site of construction activities and protect against damage to persons and property by reason of construction activities and will provide adequate security during non-construction periods. In the case of damage or loss to the building and/or improvements constructed on the property by CONTRACTOR in accordance with this Agreement, CONTRACTOR shall, as soon as possible after the occurrence of such loss or damage, repair or rebuild the buildings and/or improvements in such manner that the buildings and/or improvements after such repairing or rebuilding shall be of the same general character as set forth in this Agreement and the approved Scope of Work and at least equal in value to the buildings and improvements prior to such loss or damage. Such repairs shall begin within ninety (90) calendar days after such occurrence or if rebuilding is required, such rebuilding shall be begun within one hundred eighty (180) calendar days after such occurrence and in either case shall be completed in a reasonable time, subject to extension for Permitted Delays; provided insurance funds are made available to CONTRACTOR for such repair or rebuilding, in which event CONTRACTOR shall commence repairs or rebuilding within one hundred eighty (180) days from the date of occurrence. CONTRACTOR shall have the reasonable right to extend the time period for rebuilding in the event of a major catastrophic event (similar in scope and widespread damage to Hurricane Andrew) which would reasonably affect the ability to secure insurance proceeds, labor, public services, and other required elements to reasonably begin said rebuilding. CONTRACTOR shall pay for all such repairing and rebuilding so that the property and the buildings and improvements shall be free and clear of all liens of mechanics and

materials and similar liens arising out of such repair, rebuilding or reconstruction of the buildings and improvements.

ARTICLE 15

MONITORING REPORTS

- 15.1 CONTRACTOR shall provide the City, in a format reasonably acceptable to the City and CONTRACTOR, information, data and reports to be used by the City in monitoring CONTRACTOR'S performance in carrying out the Project.

ARTICLE 16

CHANGE OF CONTRACT TIME

- 16.1 The "Contract Time" may only be changed by a Change Order. Any claim for an extension of the "Contract Time" shall be based on written notice delivered by the party making the claim to the CITY ENGINEER and the City's Project Manager within 7 calendar days of the beginning of the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within 15 days after the end of such occurrence (unless the CITY allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the "Contract Time" shall be determined by the CITY ENGINEER in accordance with paragraph 16.2, if CITY and CONTRACTOR cannot otherwise agree. No claim for an adjustment in the "Contract Time" will be valid if not submitted in accordance with the requirements of this paragraph.
- 16.2 The CITY ENGINEER and/or City's Project Manager must submit the request of an extension of the "Contract Time" with the written information provided by the CONTRACTOR and with a written explanation as to why the extension shall be allowed to the City Manager for approval.

If the City Manager approves the request, the "Contract Time" will be extended in an amount equal to time lost due to delays beyond the control of and through no fault or negligence of the CONTRACTOR. Such delays shall include, but not limited to, acts or neglect by CITY or the CITY ENGINEER, or by any employee of either, or any separate contractor employed by the CITY, fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

16.3 No Damages for Delay:

Except as provided in Article 1.2(a) and (b) 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. The CONTRACTOR shall not be entitled to an increase in the Contract Sum or payment or compensation of any kind from the 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 or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by the CONTRACTOR for hindrances or delays due solely to fraud, bad faith or active interference on the part of the CITY or its agents. Otherwise, the CONTRACTOR shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

16.4 Changes in the Work or Terms of Contract Documents:

16.4.1 Without invalidating the Contract and without notice to any surety, CITY reserves and shall have the right, from time to time to make such increases, decreases or other changes in the character or quantity of the Work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any extra or additional work within the scope of this Project must be accomplished by means of appropriate Field Orders and Supplemental Instructions or Change Orders. Surety waives its right to notice of changes in the Contract Terms and/or Contract Price.

16.4.2 Any changes to the terms of the Contract Documents must be contained in a written document, executed by the parties hereto, with the same formality and of equal dignity prior to the initiation of any work reflecting such change, except as provided for in Subparagraph 16.4.1, above. This section shall not prohibit the issuance of Change Orders executed only by the City Manager_as hereinafter provided.

16.5 Field Orders and Supplemental Instructions:

The CITY ENGINEER and the City's Project Manager, shall have the right to approve and issue Field Orders setting forth written interpretations of the intent of the Contract Documents and ordering minor changes in Work execution, providing the Field Order involves no change in the Contract Price

or the Contract Time. CITY ENGINEER shall have the right to approve and issue Supplemental Instructions setting forth written orders, instructions, or interpretations concerning the Contract Documents or its performance, provided such Supplemental Instructions involve no change in the Contract Price or the Contract Time.

ARTICLE 17

CHANGE ORDERS

- 17.1 Changes in the quantity or character of the Work within the scope of the Project which are not properly the subject of Field Orders or Supplemental Instructions, including all changes resulting in changes in the Contract Price, or the Contract Time, shall be authorized only by Change Orders approved in advance by the City Manager.
- 17.2 CONTRACTOR shall not start work on any changes requiring an increase in the Contract Price or the Contract Time until a Change Order setting forth the adjustments is approved by the City Manager. Upon receipt of a Change Order, CONTRACTOR shall promptly proceed with the work set forth within the document.
- 17.3 In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, CITY reserves the right at its sole option to either terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed work; to remove the disputed work from the scope of work and to process a unilateral change order reducing the contract price; or submit the matter in dispute to CITY ENGINEER. During the pendency of the dispute, and upon receipt of a Change Order approved by the City Manager, CONTRACTOR shall promptly proceed with the change in the Work involved and advise the CITY ENGINEER and City's Project Manager in writing within seven (7) calendar days of CONTRACTOR's agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Price or Contract Time.
- 17.4 Under circumstances determined necessary by CITY, Change Orders may be issued unilaterally by the City Manager without consent of Surety.

ARTICLE 18

VALUE OF CHANGE ORDER WORK

18.1 The value of any work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

18.1.1. By mutual acceptance of a lump sum which CONTRACTOR and the City Manager acknowledge contains a component for overhead and profit.

18.1.2. On the basis of the "cost of work," determined as provided in Sections 18.2 and 18.3, plus a CONTRACTOR's fee for overhead and profit that is determined as provided in Section 18.4.

18.2 The term "cost of work" means the sum of all direct costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work described in the Change Order. Except as otherwise may be agreed to in writing and approved by the City Manager, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Section 18.3.

18.2.1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the work described in the Change Order under schedules of job classifications agreed upon by CITY and approved by the City Manager and CONTRACTOR. Payroll costs for employees not employed full time on the work covered by the Change Order shall be apportioned on the basis of their time spent on the work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay application thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing the work after regular working hours, on Sunday or legal holidays shall be included in the above to the extent authorized by the City Manager.

18.2.2. Cost of all materials and equipment furnished and incorporated in the work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless CITY deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to CITY. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to CITY and CONTRACTOR shall make provisions so that they may be obtained. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by CITY ENGINEER and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of

any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the work.

18.2.3. Payments made by CONTRACTOR to Subcontractors for work performed by Subcontractors. If required by CITY, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR and shall deliver such bids to CITY ENGINEER who will then determine which bids will be accepted. If the Subcontract provides that the Subcontractor is to be paid on the basis of cost of the work plus a fee, the Subcontractor's cost of the work shall be determined in the same manner as CONTRACTOR'S cost of the work. All Subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable, including but not limited to the CITY'S False Claims Ordinance.

18.2.4. Cost of special engineers, including, but not limited to, engineers, architects, testing laboratories, and surveyors employed for services specifically related to the performance of the work described in the Change Order.

18.2.5. Supplemental costs including the following:

8.2.5.1 The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the work except for local travel to and from the site of the work or to Contractor's home office or branch office.

18.2.5.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workmen, which are consumed in the performance of the work, and cost less market value of such items used but not consumed which remains the property of CONTRACTOR.

18.2.5.3. Sales, use, or similar taxes related to the work, and for which CONTRACTOR is liable, imposed by any governmental authority, provided however, that the Contractor shall not be paid or, or reimbursed, the cost of fines and penalties levied by entities other than the City of Hallandale Beach.

18.2.5.4. Deposits lost for causes other than CONTRACTOR's negligence; royalty payments and fees for permits and licenses.

18.2.5.5. The cost of utilities, fuel and sanitary facilities at the site.

18.2.5.6. Receipted minor expenses such as telegrams, long distance telephone calls (except to Contractor's home office or branch offices), telephone service at the site, expressage and similar petty cash items in connection with the work.

18.2.5.7. Cost of premiums for additional bonds and insurance required because of changes in the work or default by the Contractor.

18.3 The term "cost of the work" shall not include any of the following:

18.3.1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, scheduling consultants, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed or retained by CONTRACTOR or surety, whether at the site or in its principal or a branch office for general administration of the work and not specifically included in the agreed-upon schedule of job classifications referred to in Section 18.2.1., all of which are to be considered administrative costs covered by CONTRACTOR's fee.

18.3.2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.

18.3.3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the work and charges against CONTRACTOR for delinquent payments.

18.3.4. Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same, except for additional bonds and insurance required because of cardinal changes in the work.

18.3.5. Costs due to the negligence or neglect of CONTRACTOR, any Subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective work, disposal of materials or equipment wrongly supplied and making good any damage to property.

18.3.6. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in Section 18.2.

18.4 CONTRACTOR's fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

18.4.1. A mutually acceptable fixed fee or,

18.4.2. If none can be agreed upon, a fee based on the following percentages of the various portions of the cost of the work:

18.4.2.1. For costs incurred under Sections 18.2.1 and 18.2.2, CONTRACTOR's fee shall not exceed ten percent (10%).

18.4.2.2. For costs incurred under Section 18.2.3, CONTRACTOR's fee shall not exceed seven and one half percent (7.5%); and if a subcontract is on the basis of cost of the work plus a fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall not exceed ten percent (10%); and

18.4.2.3. No fee shall be payable on the basis of costs itemized under Sections 18.2.4 and 18.2.5, (except Section 18.2.5.3), and Section 18.3.

18.5 The amount of credit to be allowed by CONTRACTOR to CITY for any such change, which results in a net decrease in cost, will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit, if otherwise allowed, shall be figured on the basis of the net increase or decrease, if any, however, CONTRACTOR shall not be entitled to claim lost profits for any Work not performed.

18.6 Whenever the cost of any work is to be determined pursuant to Sections 18.2 and 18.3, CONTRACTOR will submit in a form acceptable to CITY ENGINEER an itemized cost breakdown together with the supporting data.

18.7 Where the quantity of any item of the Work that is covered by a unit price is increased or decreased by more than twenty percent (20%) from the quantity of such work indicated in the Contract Documents, an appropriate Change Order shall be issued to adjust the unit price, if warranted.

18.8 Whenever a change in the Work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, CONTRACTOR shall submit an initial cost estimate acceptable to CITY ENGINEER and the City's Project Manager.

18.8.1. Breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost.

18.8.2. Whenever a change involves CONTRACTOR and one or more Subcontractors and the change is an increase in the Contract Price, overhead and profit percentage for CONTRACTOR and each Subcontractor shall be itemized separately.

- 18.9 Each Change Order must state within the body of the Change Order whether it is based upon unit price, negotiated lump sum, or "cost of the work."

ARTICLE 19

TERMINATION FOR CONVENIENCE

- 19.1 The CITY may terminate the Contract for its convenience, at any time, with or without cause, upon thirty (30) days written notice to CONTRACTOR.
- 19.2 Upon such notice of termination, CONTRACTOR will immediately terminate its performance and turn over all of its work product (e.g. plans to the CITY).
- 19.2.1 CONTRACTOR will then submit a final statement to the CITY for all services performed (based on percentage of project completion) ten days after the date on the notice of termination for convenience.
- 19.3 The CONTRACTOR is precluded from recovering damages for loss of anticipated, but unearned profit on the Contract, as well as consequential damages.

ARTICLE 20

SHOP DRAWINGS

- 20.1 The CONTRACTOR shall submit Shop Drawings for all equipment, apparatus, machinery, fixtures, piping, wiring, fabricated structures and manufactured articles. The purpose of the Shop Drawings is to show the suitability, efficiency, technique of manufacture, installation requirements, details of the item and evidence of its compliance or noncompliance with the Bid Project.
- 20.2 The CONTRACTOR shall thoroughly review and check the Shop Drawings and each and every copy shall show this approval thereon.
- 20.3 If the Shop Drawings show or indicate departures from the Contract requirements, the CONTRACTOR shall make specific mention thereof in his letter of transmittal. Failure to point out such departures shall not relieve the CONTRACTOR from his responsibility to comply with the Bid Project.
- 20.4 The CITY ENGINEER'S approval of the Shop Drawings will be general and shall not relieve the CONTRACTOR of responsibility for the accuracy of such Drawings, nor for the proper fitting and construction of the work,

nor for the furnishing of materials or work required by the Contract and not indicated on the Drawings. No work called for by Shop Drawings shall be performed until the said Drawings have been approved by the CITY ENGINEER. Approval shall not relieve the CONTRACTOR from responsibility for errors or omissions of any sort on the Shop Drawings.

- 20.5 The CONTRACTOR shall keep one set of Shop Drawings marked with the CITY ENGINEER'S approval at the job site at all times.

ARTICLE 21 PROGRESS PAYMENTS

All invoices and/or bills and/or requests for payments and/or application for payment are to be sent to the City Engineer and the City's Project Manager.

- 21.1 The CONTRACTOR may request payments for work completed at intervals of not more than once a month. The CONTRACTOR'S requisition shall show a complete breakdown of the project components, the quantities completed and the amount due, together with such supporting evidence as may be required by the CITY ENGINEER. Each requisition shall be submitted in triplicate to the CITY ENGINEER for approval. CITY shall make payment to the CONTRACTOR within 25 days after approval by the CITY ENGINEER of CONTRACTOR'S requisition for payment.

- a) Overdue notice. The CONTRACTOR may send the City an overdue notice if the invoice is not paid or rejected within the time frame in Section 21.1, and four (4) business days following the delivery of overdue notice the payment required by the City shall be accepted, rejected or rejected in part.

- 21.2 Retainage: The CONTRACTOR agrees that five percent (5%) of monies earned by CONTRACTOR shall be withheld by CITY as retainage until the completion of the project. The CITY has the right to not process retainage if CONTRACTOR failed to perform contractual responsibilities pursuant to Section 255.078(3). The CITY is not required to pay or release any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to Section 255.05, or otherwise the subject of a claim or demand by the local governmental entity or CONTRACTOR.

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

- 21.3.1. Defective work not remedied.