

AGREEMENT

THIS AGREEMENT is dated as of the _____ day of _____, 20____,
by and between the CITY OF DELRAY BEACH, FLORIDA, hereinafter called the CITY or OWNER, and
MBR Construction Inc, hereinafter called CONTRACTOR.

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree
as follows:

Article 1. WORK.

- 1.1 CONTRACTOR **shall** complete all Work as specified or indicated in the Contract Documents for
the two (2) projects entitled:

ITBC NO. 2024-037
Replacement of Beach Master Plan Showers and Fountains
PROJECT NO. 24-009

ITBC NO. 2024-038
Beach Access Improvements
PROJECT NO. 24-008

- 1.2 The Contractor, in full and complete satisfaction of its role as general contractor, hereby accepts
responsibility for the completion of the Work as provided by the Contract Documents, and will
perform the procurement of materials and equipment required by the Contract Documents,
construction coordination, construction, supervision and project management as may be required
in order to construct the Work in accordance with the Contract Documents such that the finished
Work **shall** be performed and completed and the Work will be performed in accordance with all
required state and local code requirements as are described in the Contract Documents.
Notwithstanding, the foregoing **shall** not be construed to impose any design responsibility on
Contractor except where such design responsibility is an existing contractual requirement of the
Contractor pursuant to Florida law in performance of the Work or the Contract Documents.
- 1.3 The Contractor **shall** schedule and attend regular meetings with the City and Consultant as
required for the timely and proper completion of the Project, but in no event less than twice a week.
The following people **shall** attend the meeting on behalf of Contractor: Project Executive and
General Superintendent.
- 1.4 The Contractor hereby represents and warrants to the City that the Contractor has and will
continue, to the extent appropriate during the Project: (1) to evaluate the scope, schedule and
budget established by the City, for the Project in order, among other things, (a) to assess the quality
and soundness of such program, schedule and budget, (b) to identify and evaluate alternatives to
the City's schedule so as to reduce the time required for construction, (c) to evaluate and
recommend alternative materials and systems and methods of achieving the City's program
schedule and cost requirements or other design parameters, and (2) as and when requested by
the City or the Consultant, to discuss and review the cost, scope and schedule any suggested
revisions to same.
- 1.5 The Contractor hereby represents and warrants to the City that (a) the Contractor has carefully
reviewed and **shall** continue to review the Drawings (including all notes and specifications
contained in the Drawings), designs and other Contract Documents, (b) the responsibilities of the
Contractor are properly identified and assigned therein, and (c) the Contractor will timely bring to

the attention of City (via written notification) if it discovers that the Drawing (including all notes and specifications contained in the Drawings) contain any errors, omissions, inconsistencies, or areas of conflict or overlap in the Work to be performed by the Contractor, with sufficient advanced notice so as not to delay the progress of the Work.

- 1.6 The Contractor **shall** coordinate and integrate the activities of the Consultant, Contractor, the City, and other persons or entities participating in the construction of the Project.
- 1.7 The Contractor hereby represents and warrants that the Contractor has particular expertise and experience in the construction of projects similar to the Project and in the performance of the Work and other services required hereunder.
- 1.8 The Contractor **shall** not be relieved of its obligations to perform the Work in accordance with the Contract Documents and applicable Florida Law, either by tests, inspections, approvals, activities, duties, actions or inactions of the Threshold inspectors, special inspectors, the Consultant, building department inspectors, building department officials or by persons or entities other than the Contractor.
- 1.9 No recovery for changed market conditions.
In entering into the Agreement, the Contractor represents and warrants that it has considered all impacts and potential impacts associated with the following: (1) COVID-19, Monkey Pox, and related worldwide pandemics ("Pandemics"); and (2) the current military conflict involving Russia and the Ukraine (the "Ukraine Military Conflict"). The Contractor further represents and warrants that in entering into this Agreement, it has accounted for any and all labor or material shortages, delivery lead time, or price increases that may be caused by local and or national conditions, including but not limited to impacts from the Pandemics and the Ukraine Military Conflict. The Contractor also represents and warrants that in determining time requirements for procurement, installation, and construction completion, Contractor has taken into account these impacts from the Pandemics and the Ukraine Military Conflict, and has included all of those factors in the Project Schedule and Contract Sum.

The Contractor will not seek any price increases or time extensions relating to or arising from any impacts from the Pandemics or Ukraine Military Conflict.

The City **shall** not be required to make any adjustment in the Contract Sum or grant an extension to the Contract Time in connection with any failure by the Contractor to comply with the requirements of this Article.

Article 2. CONSULTANT.

The Project will be administered by a third-party construction engineering and inspection firm, who is hereinafter called CONSULTANT and who will assume all duties and responsibilities and will have the rights and authority assigned to CONSULTANT in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. ENTIRE AGREEMENT.

- 3.1 The Contract Documents consist of this Agreement, all terms and conditions of the solicitation, General and Supplementary Conditions, the City's Bid Package (including M/WBE Program Requirements and Project Manual), Drawings and Specifications, Addenda issued prior to execution of this Agreement, other documents and exhibits listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein (the "Contract Documents").

- 3.2 The Contract Documents represent the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent or in conflict with any of the terms of this Agreement, this Agreement **shall** govern. The parties **shall** not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. NO CHANGES, AMENDMENTS OR MODIFICATIONS OF ANY OF THE TERMS OR CONDITIONS OF THE CONTRACT DOCUMENTS **SHALL** BE VALID UNLESS REDUCED TO WRITING AND SIGNED BY BOTH PARTIES.
- 3.3 Any of the Contract Documents not attached hereto but expressly identified in this Agreement are hereby incorporated by reference and **shall** be deemed to be of the same force and effect as if actually attached hereto.
- 3.4 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. On the Drawings, given dimensions **shall** take precedence over scaled measurements and large-scale drawings over small-scale drawings.
- 3.5 In the event of any conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities, keeping in mind that the better quality or greater quantity of Work **shall** be provided in accordance with the City's interpretation:
- (1) This Agreement, the General Conditions, and all Exhibits hereto, as modified;
 - (2) Addenda, with those of later date having precedence over those of earlier date;
 - (3) City's Bid Package; and
 - (4) Drawings and Specifications.
- 3.6 In the case of an inconsistency between the Drawings and Specifications or within either document not clarified by an Addendum, the better quality or greater quantity of Work **shall** be provided in accordance with the City's interpretation.

Article 4. CONTRACT SUM.

- 4.1 The City **shall** pay, and the Contractor **shall** accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder, the Contract Price (including all Contractor fees) of **Five Hundred Thirty Thousand Dollars (\$530,000)**, subject to additions and deductions by Change Order as provided in the Contract Documents. The Contract Price **shall** include Contractor's Fee for the proper performance of the Work. Contractor agrees and represents that the level of staffing, administrative resources, and other conditions of General Conditions **shall** be sufficient for the Project throughout completion of the Work.
- 4.2 It is the intent and understanding of Contractor in providing a Contract Price for this Work, that the Contract Documents provide for the construction of the Work by the Contractor, including all devices, fasteners, materials or other work not shown in the Drawings but which are reasonably inferable therefrom and any and all incidental accessories necessary to complete the Work (even if not specified in the description of the Work, but necessary for proper installation and operation (not arising from a design deficiency in the design criteria of the equipment) of the Work as required by the Contract Documents), all of which **shall** be included as part of the Cost of the Work. The expression "reasonably inferable" and similar terms in the Contract Documents **shall** be interpreted to mean reasonably inferable by a contractor familiar with the Work and exercising the care, skill and diligence of the Contractor by the Contract Documents. Notwithstanding, the foregoing **shall** not be construed to impose any design responsibility on Contractor except where such design responsibility is contractually required or an existing requirement of Florida law in the performance of the Work or the Contract Documents.

- 4.3 To the extent that the Drawings and Specifications are anticipated to require further development by the Consultant, Contractor **shall** include in the Contract Price for such further development consistent with the Contract Documents and reasonably inferable therefrom as necessary to produce the indicated results (not arising from a design deficiency in the design criteria). Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, **shall** be incorporated by Change Order. Contractor will construct the Project in strict accordance with the Contract Documents.
- 4.4 Subcontractor Buyout/Value Engineering
- 4.4.1 Contractor **shall** work with the City to negotiate the most complete and economical deals with the Subcontractors that have not been “bought out” as of the date of this Agreement in order to establish and or achieve the Contract Price.
- 4.4.2 In addition, in order to control costs, the Contractor **shall** submit to the City, for the City’s review for any unbought scope of Work, (i) a bid analysis and list of proposed Subcontractors for the performance of the several portions of the Work, (ii) the scope of Work to be performed under each respective subcontract, (iii) a detailed estimate of the Cost of the Work based on such bids, (iv) a list of alternate selections of persons or entities for each proposed Subcontractor and their respective bids, along with a list of the differences between the alternate bids and those set forth in the bid analysis, and (v) the instructions, clarifications, written responses, and other information given to or submitted by the bidders. The Contractor **shall** consult with the City before awarding the subcontract and **shall** provide the City with a copy of each proposed subcontract for the City’s review. The Contractor **shall** provide the City with a complete copy of each executed subcontract.
- 4.4.3 Until the Subcontractor Buyout is complete, Contractor **shall** provide City with written ongoing budget updates on a weekly basis or as requested by City.
- 4.4.4 Contractor **shall** participate in Value Engineering the Contract Documents with the City and/or Consultant with the goal of finding acceptable means for reducing the Cost of the Work. Upon acceptance by City of recommendation for Value Engineering, the Contract Documents **shall** be modified to reflect such changes. All savings in connection with Value Engineering of the Work **shall** revert to City.
- 4.5 Contractor represents to City that prior to execution of this Agreement, Contractor has compared and reviewed all general and specific details on the Drawings and that all conflicts, discrepancies, errors, and omissions, which are within the commonly accepted knowledge base of a licensed general contractor and subcontractors, or which a reasonably prudent licensed general contractor or subcontractor would have discovered, have been disclosed to the City. Contractor **shall** represent the same upon inspection of any Drawings prepared after execution of this Agreement. Therefore, Contractor warrants that 1) the Contract Price includes, without limitation, the cost of correcting all conflicts, discrepancies, errors, or omissions which Contractor identified; 2) that Contractor’s review and comparison of all drawings has been taken into consideration the Project can be constructed in accordance with the Contract Documents and therefore, the Contractor represents that the Contract Price represents the total cost of the Work; 3) that Contractor can complete the Project in the time set forth in the Agreement and the approved Project Schedule; and 4) that Contractor has considered all customary issues that could impact price and time, including the inefficiencies pertaining to the Pandemics as well as the Ukrainian Military Conflict.
- 4.6 Schedule of Values. The Contractor **shall** provide to City, for City’s written approval, a written Schedule of Values with supporting Subcontractor bids and scope of work used to establish each line item in the Contract Price, which Schedule of Values **shall** be used for all payment applications going forward.

Article 5. CONTRACT TIME; LIQUIDATED DAMAGES.

5.1 The work will be substantially completed within **one hundred and seventy (170)** calendar days from the date of the issuance of the Notice to Proceed and completed and ready for final payment in accordance with paragraph 15.13 of the General Conditions within **thirty (30) calendar days** from the date of Substantial Completion.

5.2 Liquidated Damages. The CITY and CONTRACTOR recognize that time is of the essence of this Agreement and that the CITY will suffer financial loss if the Work is not completed within the times specified in paragraph 5.1 above, plus any extensions thereof allowed solely in accordance with Article 13 of the General Conditions.

They also recognize that the actual loss suffered by the CITY if the Work is not completed on time is not readily ascertainable at the time of entering this Contract. Accordingly, instead of requiring any such proof, the CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR **shall** pay the CITY for each calendar day that expires after the time specified in paragraphs 5.1 for substantial completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR **shall** neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the CITY, CONTRACTOR **shall** pay the CITY for each calendar day that expires after the time specified in paragraph 5.1 for completion and readiness for final payment. CONTRACTOR expressly acknowledges that such sum is not payable as a penalty but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, and additional overhead and costs likely to be sustained by the CITY, estimated at the time of executing the Contract. If the CITY reasonably believes in its discretion that Substantial Completion will be delayed, it **shall** be entitled, but not required to withhold from any amounts otherwise due the CONTRACTOR an amount then believed by the CITY to be adequate to recover liquidated damages applicable to such delays. Partial use or occupancy of the Work **shall** not result in the Work deemed substantially completed, and such partial use or occupancy **shall** not be evidence of Substantial Completion.

5.2.1 Amount of Liquidated Damages. Applicable liquidated damages are the amounts established in the following schedule:

<u>Original Contract Amount</u>	<u>Daily Charge Per Calendar Day</u>
\$299,999 and under.....	\$980
\$300,000 but less than \$2,000,000.....	\$1,699
\$2,000,000 but less than \$5,000,000.....	\$2,650
\$5,000,000 but less than \$10,000,000.....	\$3,819
\$10,000,000 but less than \$20,000,000.....	\$4,687
\$20,000,000 but less than \$40,000,000.....	\$7,625
\$40,000,000 and over.....	\$10,467 plus 0.00005 of any amount over \$40 million (rounded to nearest whole dollar)

5.2.2 The above liquidated damages provision **shall** not affect the City's right to terminate this Agreement as provided in this Agreement nor **shall** it limit any of the other remedies as provided in the Contract Documents. The City's exercise of its right to terminate this Agreement **shall** not release City's claim for liquidated damages in the amount set forth herein or Contractor's defenses thereto.

5.2.3 Assessments of liquidated damages **shall** be immediately due and payable to the City or, at the City's option, may be deducted from payments that may be due and owing to Contractor. To the extent the City agrees in writing to phased Substantial Completion, the above-referenced liquidated damages will apply as to each respective phase of Substantial Completion.

- 5.2.4 Any Subcontract Agreements providing for liquidated damages at a per diem amount lower than the per diem amount set forth in this Agreement is subject to City's prior written approval.
- 5.3 Recovery of Damages Suffered by Third Parties. In addition to the damages provided for in paragraph 5.2.1 and pursuant to Section 337.18 of the Florida Statutes, when the CONTRACTOR fails to complete the work within the Contract Time the CITY may recover from the CONTRACTOR amounts that the CITY pays for damages suffered by third parties unless the failure to timely complete the work was caused by the CITY's act or omission.
- 5.4 In addition to the liquidated damages set forth above, City **shall** also be entitled to proceed directly against Subcontractors and suppliers (in Contractor's name) responsible for delays in achieving Substantial Completion for the full amount of damages City has incurred, plus any and all acceleration and/or Extraordinary Measures costs as provided in the General and Supplementary Conditions. Said pass-through claim **shall** be at Contractor's sole cost and expense.

Further, Contractor **shall** make appropriate claim(s) against all available insurance and the Subcontractor, supplier, and/or manufacturer responsible for delays in achieving Substantial Completion, and if the Subcontractor, supplier and/or manufacturer fails to pay costs incurred by Contractor and the City for the City's actual damages, acceleration, and/or Extraordinary Measures costs, Contractor **shall** default or terminate such Subcontractor and/or supplier and Contractor **shall** make and diligently pursue, at Contractor's sole cost and expense, the appropriate claim against its Subcontractors, for the benefit of City. Any recovery from Contractor's Subcontractors and suppliers **shall** be included in fully compensating City, and not in place of City's recovery of liquidated damages from Contractor. To assist City with claims against Subcontractors and suppliers as set forth above, Contractor **shall** provide City with Project Records as determined by City to assist City in identifying Contractor's Subcontractors and suppliers responsible for delays in achieving Substantial Completion and or Final Completion.

Article 6. PAYMENT PROCEDURES.

CONTRACTOR **shall** submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by the CONSULTANT as provided in the General Conditions.

**ATTN: Engineering Division Manager
Engineering Division, Public Works Department
Swinton Operations Complex
434 South Swinton Avenue
Delray Beach, Florida 33444**

- 6.1 Progress Payments. The CITY **shall** make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by CONSULTANT, on or about the First day of each month during construction as provided below and to the extent Contractor's Applications for Payment are timely submitted pursuant to the Contract Documents. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values initially submitted by the Contractor and approved by the City as established in Paragraph 3.6.3 of the General Conditions and in the case of Unit Price Work based on the number of units completed or, in the event there is no schedule of values, as provided in the General Requirements. Each Application for Payment submitted by the Contractor **shall** be accompanied by substantiating data and lien waivers as provided in the Contract Documents.
- 6.1.1 Prior to Substantial Completion, progress payments for materials and equipment not incorporated in the Work but delivered and suitably stored and accompanied by documentation satisfactory to the CITY, as provided in paragraph 15.2 of the General

Conditions, will be made in an amount equal to 50% as established by the Schedule of Values.

- 6.1.2 The CITY is entitled to withhold amounts due CONTRACTOR for any defective or non-conforming work as well as for liquidated damages.
- 6.1.3 In addition, as a further condition to payment of each progress payment, Contractor **shall** submit to the City and Consultant: (i) a sworn and certified Progress Payment Affidavit, which recites that all laborers, material suppliers and Subcontractors dealing with the Contractor have been paid in full through the date of the prior application for payment which has been received by Contractor from City, with the exception of disputed payments; (ii) a partial release of lien conditioned upon payment from Contractor for the current Application for Payment, (iii) partial releases of lien from all lienors providing Work on the applicable Application for Payment through the date of the last payment made, (iv) partial releases of lien conditioned only upon payment from all lienors providing Work on the applicable Application for Payment, through the date of the current Application for Payment, (v) any evidence of payment of any indebtedness incurred with respect to the Work of Contractor, as may be required by the Consultant and such other evidence that Consultant may reasonably require substantiating that all Work which is the subject of each such Application for Payment has been performed, and (vi) where required by any manufacturers for extended warranties, inspection certificates or other acceptable documentation confirming the acceptable completion of any and all required inspections for the Work performed for which payment is being made.
- 6.1.4 Each Application for Payment **shall** be based on the Schedule of Values approved by the City unless subsequently amended by Change Order in accordance with the Contract Documents. If the Schedule of Values is subsequently amended by Change Order in accordance with the Contract Documents, then each subsequent Application for Payment **shall** be based on the Amended Schedule of Values. The Schedule of Values **shall** allocate the entire Contract Price among the various portions of the Work. As individual subcontracts are executed, the actual subcontract value will be identified separately in the Schedule of Values in place of any estimates that made up the original Contract Price, with any remaining portion of the line item carried in the same scope of Work, to complete the Work in any particular division, as long as the Contract Price is not increased. The Schedule of Values **shall** be prepared in such form and supported by such data to substantiate its accuracy as the City or Consultant may require. This Schedule of Values and each update approved by the City **shall** be used as a basis for reviewing the Contractor's Applications for Payment.
- 6.1.5 In taking action on the Contractor's Application For Payment, the Consultant and the City **shall** be entitled to reply on the accuracy and completeness of the information furnished by the Contractor and **shall** not be deemed to represent that the City and/or Consultant has made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with this Article or other supporting data; that the Consultant and/or the City has made exhaustive or continuous on-site inspections; or that the City and/or Consultant has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Agreement. Such examinations, audits, and verifications, if required by City, will be performed by the City's auditors acting in the sole interest of the City.
- 6.1.6 For each progress payment made prior to Substantial Completion of the Work as defined in the Contract Documents, determined and certified by Consultant and/or the City, the City may withhold the following amount, as retainage, from the payment otherwise due: Five Percent (5%) of all payments until the Work reaches Final Completion as defined in the

Contract Documents and determined and certified by Consultant and City. Contractor **shall** include a similar retainage provision pertaining to its subcontractors and suppliers.

- 6.1.7 In the event of any default by the Contractor under the Contract Documents for which the Contractor has not cured or commenced to cure, the City may withhold any payment or part of any payment in the amount of the costs and damages incurred by City to correct, remedy and/or mitigate any Contractor defaults or the amount of the costs of damages, including Liquidated Damages (provided the Contract Time has expired), reasonably estimated to be incurred to correct, remedy and/or mitigate any Contractor defaults including, but not limited to: (1) defective Work not remedied; (2) claims or liens filed; (3) failure of the Contractor to make payments in accordance with the terms of this Agreement and the subcontract agreements for properly performed Work by the Subcontractors or for labor, materials, or equipment; (4) failure to provide waivers of lien for all lienors giving notices; (5) damage to the City's property caused by Contractor, its Subcontractors or anyone working for Contractor, notwithstanding insurance coverage as required by the Contract Documents; (6) failure of the Work to progress satisfactorily or according to schedule; and (7) failure to carry out the Work in accordance with the Contract Documents.
- 6.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 15.13 of the General Conditions, the CITY **shall** pay the remainder of the Contract Price as recommended by CONSULTANT as provided in said paragraph 15.13.
- 6.3 The making of progress payments or Final Payment **shall** not constitute or be deemed to be a waiver by the City of any claims which the City may have against the Contractor under the provisions of this Agreement or otherwise: and provided, further, that the making of the Final Payment **shall** not be deemed a waiver by the City of any claims which the City may have against the Contractor for latent defects or any other defect or an incomplete item which is not readily apparent at the time such Final Payment is made; and provided further, that the making of Final Payment **shall** not be deemed a waiver by the City of any obligation of the Contractor under the provisions of the Contract Documents or otherwise to repair or correct any Work or materials that prove defective as a result of faulty materials, equipment or workmanship.
- 6.4 Acceptance of Final Payment by the Contractor, a Subcontractor or material or equipment supplier **shall** constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment or as provided in this Agreement.

Article 7. SUBCONTRACTS.

INTENTIONALLY OMITTED

Article 8. CONTRACTOR'S REPRESENTATIONS.

In order to induce the CITY to enter into this Agreement CONTRACTOR makes the following representations:

- 8.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 8.2 CONTRACTOR has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract

Documents, including specifically the provisions of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

- 8.3 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.3 of the General Conditions
- 8.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 8.5 CONTRACTOR has given CONSULTANT prompt written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents no later than seven (7) calendar days from discovery of such, and the written resolution thereof by CONSULTANT is acceptable to CONTRACTOR.

Article 9. NO DAMAGES FOR DELAY.

- 9.1 All time in the Contract Documents is calculated on a consecutive calendar day basis.
- 9.2 Time is of the essence in this Agreement, and any breach of same **shall** go to the essence hereof, and CONTRACTOR, in agreeing to complete the Work within the time herein mentioned, has taken into consideration and made allowances for all reasonable hindrances and delays incident to Contractor's Work.
- 9.3 CONTRACTOR agrees to commence the Work when directed by the CITY and to diligently and continuously perform such Work and to coordinate the Work with other Work being performed on the Project by other trades and/or Separate Contractors, if any, so that the CITY **shall** not be delayed by any act or omission of CONTRACTOR in completion of the Project within the time specified above.
- 9.4 CONTRACTOR **shall** not be entitled to any claim for damages on account of hindrance or delays from any cause whatsoever, but if caused by any act of God or active interference on the part of the CITY, such act, hindrance or delay may only entitle the CONTRACTOR to receive an extension of time as its sole and exclusive remedy for such delay, as set forth in Article 13 of the Contract General Conditions. Contractor **shall** not be entitled to an increase in the Contract Price or to payment of any other additional monies from the City for costs incurred as a result of such delay, including additional or extended General Conditions costs or General Requirements costs. The City's exercise of its rights under this Agreement **shall** in no way be considered active interference.
 - 9.4.1 An extension of time to complete the Work **shall** be determined by the CONSULTANT provided the CONTRACTOR provides CONSULTANT and CITY with notice in writing of the cause of said act, hindrance, or delay within twenty (20) calendar days after its occurrence.
 - 9.4.2 In the event the request for extension is not made in writing within that twenty-day time period, CONTRACTOR acknowledges and agrees it has forever waived any and all rights to such an extension.

- 9.4.3 All extensions of time **shall** be authorized only by a written change order executed by the CITY, CONSULTANT, and CONTRACTOR; in the absence of a written and fully executed change order, CONTRACTOR **shall** not be entitled to any claim for additional time.
- 9.4.4 This “no damage for delay” provision **shall** encompass any damages for delay or disruption even if the CONTRACTOR completes construction of the Work in a timely fashion in accordance with this Agreement.
- 9.4.5 Damages as referenced in this “no damage for delay” provision **shall** include any type of damages that are or could be awarded by any court or arbitration panel such as, by way of general example, but not limitation, tort, contract, strict liability, consequential damages, liquidated damages and/or punitive damages.
- 9.4.6 The CONTRACTOR recognizes and specifically acknowledges the terms and conditions of this “no damage for delay” clause upon execution of this Contract.

Article 10. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between the CITY and CONTRACTOR concerning the Work consist of the following:

- 10.1 This Agreement.
- 10.2 ITBC 2024-037 and ITBC 2024-038 Advertisement for Bids.
- 10.3 ITBC 2024-037 and ITBC 2024-038 Instructions to Bidders.
- 10.4 ITBC 2024-037 and ITBC 2024-038 Bid Submittals.
- 10.5 ITBC 2024-037 and ITBC 2024-038 Bid Bonds.
- 10.6 Florida Performance and Payment Bonds.
- 10.7 Certificates of Insurance.
- 10.8 Notice of Intent to Award.
- 10.9 Notice to Proceed.
- 10.10 Certificate of Substantial Completion.
- 10.11 Warranty of Title.
- 10.12 Final Receipt.
- 10.13 Standard General Conditions.
- 10.14 ITBC 2024-037 and ITBC 2024-038 Technical Specifications.
- 10.15 ITBC 2024-037 Exhibits B, C and D
- 10.16 ITBC 2024-038 Construction Plans dated 01-29-24.
- 10.17 Exhibits to this Agreement.

- 10.18 ITBC 2024-037 Addenda number ____1____ to ____1____, inclusive.
- 10.19 ITBC 2024-037 Addenda number ____1____ to ____1____, inclusive.
- 10.20 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 4.4 and 4.5 of the General Conditions.
- 10.21 The documents listed above are attached to this Agreement (except as expressly noted otherwise above). There are no Contract Documents other than those listed above in this Article 10. The Contract Documents may only be amended, modified, or supplemented as provided in paragraphs 4.4 and 4.5 of the General Conditions.

Article 11. INDEMNITY.

- 11.1 In consideration of Ten Dollars (\$10.00) in hand paid and other valuable consideration, receipt of which is hereby acknowledged, CONTRACTOR agrees to defend, indemnify, and hold harmless the CITY, their agents, and employees in accordance with this Article 11 and paragraph 7.28 of the General Conditions which is incorporated herein and made a part hereof as if fully set forth herein. It is the specific intent of the parties hereto that the foregoing indemnification complies with Florida Statutes 725.06, as amended. It is further the specific intent and agreement of said parties that all of the Contract Documents on this Project are hereby amended to include the foregoing indemnification and the "Specific Consideration" therefore.
- 11.2 To the fullest extent permitted by law, the Contractor **shall** defend, indemnify and hold harmless the City, the Consultant, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees (at the trial and appellate levels), arising out of or resulting from performance of the Work, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation **shall** not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Article 11.
- 11.3 In any and all claims against the Indemnified Parties by any employee of the Contractor, or anyone for whose acts any of them may be liable, the indemnification obligation under this provision of this Agreement **shall** not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or on behalf of the Contractor or any Subcontractor under Workers Compensation Acts, Disability Benefit Acts or other employee benefit acts.
- 11.4 The Parties hereto acknowledge and agree that, to the extent any portion of the indemnification provisions contained herein is deemed void or unenforceable in any action or proceeding, then such portion **shall** be considered severed such that it will not affect the remaining portions of these indemnification provisions.
- 11.5 The Indemnitors' indemnity obligations under this Section **shall** also specifically include, without limitation, all claims, fines, penalties, damages, liability, costs, fees, expenses (including, without limitation, reasonable attorneys' fees and expenses), and punitive and consequential damages (if any) arising out of, or in connection with or attributable to, any claims made against the Indemnified Parties for (i) bodily injury, sickness, disease, death, or destruction of tangible property caused by Contractor and/or any of its Subcontractors and/or Sub-subcontractors, (ii) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by the Contractor, and/or any of the Indemnitors, or any person or entity for whom they are responsible, (iii) Contractor's failure to comply with any

provision of the Contract Documents including Warranty obligations, and obligations to correct damaged and defective work, (iv) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and/or (v) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under this Agreement and/or the other the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible. Moreover, and without limiting the foregoing, the Indemnitor's indemnity obligations under this Section include any and all claims by third parties against Indemnified Parties for consequential damages arising from and/or in connection with this Agreement and/or the performance and/or failure of the Work.

- 11.6 The Contractor **shall** indemnify and hold harmless all of the Indemnified Parties from and against any costs and expenses (including reasonable attorneys' fees for all trial and appellate levels) incurred by any of the Indemnified Parties in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Agreement.
- 11.7 The Contractor **shall** include in all Subcontracts provisions by which each Subcontractor agrees to defend, indemnify, and hold harmless Contractor and the Indemnified Parties from and against liability, damages, losses and costs, including, but not limited to, reasonable attorneys' fees for all trial and appellate levels, arising out of, in connection with, or resulting from the performance of the Work or any Subcontractor's obligations under the Contract Documents to the same extent and in the same manner as the Contractor is liable to the City pursuant to this provision.
- 11.8 The provisions of this Section **shall** survive Final Completion and Final Payment or termination of this Agreement.

Article 12. REIMBURSEMENT OF CONSULTANT EXPENSES.

Should the completion of this Agreement be delayed beyond the specified or adjusted time limit authorized by the City, CONTRACTOR **shall** reimburse the CITY for all expenses of CONSULTING and inspection incurred by the CITY during the period between said specified or adjusted time and the actual date of final completion. All such expenses for CONSULTING and inspection incurred by the CITY will be charged to CONTRACTOR and be deducted from payments due CONTRACTOR as provided by this Contract. Said expenses **shall** be further defined as CONSULTANT charges associated with the construction contract administration, including resident project representative costs.

Article 13. MISCELLANEOUS.

- 13.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meaning indicated in the General Conditions.
- 13.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 13.3 The CITY and CONTRACTOR each binds itself, its partners, its successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.
- 13.4 The agreement **shall** be void if not signed by both the CITY and the CONTRACTOR.

- 13.5 No change or modification of this Agreement **shall** be valid unless in writing and signed by City and the duly authorized representative of Contractor. No waiver of any of the provisions of this Agreement **shall** be valid unless in writing and signed by the party against whom it is sought to be enforced.
- 13.6 The partial or complete invalidity of any one or more provisions of this Agreement **shall** not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, **shall** not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

Article 14. CITY PROVISIONS.

- 14.1 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.**

14.2.1 Contractor **shall** comply with public records laws, specifically to:

- 14.2.1.1 Keep and maintain public records required by the City to perform the service.
- 14.2.1.2 Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
- 14.2.1.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City.
- 14.2.1.4 Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor **shall** destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor **shall** meet all applicable requirements for retaining public records. All records stored electronically **must** be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- 14.2.1.5 If the Contractor does not comply with this section, the City **shall** enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

- 14.2 Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract and may demand and obtain records and testimony from Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractors and lower tier

subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

- 14.3 The continuation of this Agreement beyond the end of any fiscal year **shall** be subject to both the appropriation and the availability of funds in accordance with Florida law.
- 14.4 By entering into this Agreement Contractor acknowledges its obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Contractor affirms and represents it is registered with the E-Verify system, utilizing same, and will continue to utilize same as required by law. Compliance with this section includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply with this section will result in the termination of this Agreement, or if your subcontractor knowingly violates the statute, the subcontract **must** be terminated immediately. Any challenge to termination under this provision **must** be filed in the Circuit Court no later than 20 calendar days after the date of termination. If terminated for a violation of the statute by Contractor, the Contractor may be prohibited from conducting future business with the City or awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs **shall** be the responsibility of the Contractor.
- 14.5 This Agreement **shall** be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement **shall** only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party **shall** pay their own attorney's fees and costs, including appellate fees and costs.
- 14.6 Pursuant to Florida Statute §787.06(13), Contractor has provided to the City an affidavit executed by an officer or representative of the nongovernmental entity under penalty of perjury attesting that Contractor does not use coercion for labor or services as defined in the statute.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the CITY and CONTRACTOR have caused this Agreement to be executed the day and year shown above.

ATTEST:

CITY OF DELRAY BEACH

Alexis Givings, City Clerk

By: _____
Thomas F. Carney, Jr., Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

CONTRACTOR

By: _____

Print Name: _____

Title: _____

(SEAL)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by _____ (name of person), as _____ (type of authority) for _____ (name of party on behalf of whom instrument was executed).

Personally known ____ OR Produced Identification ____

Type of Identification Produced _____

Notary Public – State of _____