

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
MAN-CON, 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 project entitled:

**ITBC NO.: 2024-040
Thomas Street Stormwater Pump Station Replacement
PROJECT NO.: 18-017**

- 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 SIXTEEN MILLION, SIXTY-FOUR THOUSAND, THREE HUNDRED SEVENTY-FOUR dollars **(\$16,064,374.00)**, 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 **five hundred and eighty (580)** 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 will be made in an amount equal to 95% of the work completed, less the aggregate of payments previously made and less such amounts as CONSULTANT shall determine, or the CITY may withhold, in accordance with paragraph 15.7 of the General Conditions.
 - 6.1.2 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 0% as established by the Schedule of Values.
 - 6.1.3 The CITY is entitled to withhold amounts due CONTRACTOR for any defective or non-conforming work as well as for liquidated damages.
 - 6.1.4 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.

- 6.1.5 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 GMP 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 GMP, 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 GMP 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.
- 6.1.6 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.
- 6.1.7 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.
- 6.1.8 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.

No more than fifty percent (50%) of the dollar value of the total Work under the Contract Documents may be accomplished by subcontractors. The balance of Work must be accomplished by selected CONTRACTOR'S own forces.

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 GMP 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 Advertisement for Bids.
- 10.3 Instructions to Bidders.
- 10.4 Bid Submittal.
- 10.5 Bid Bond.
- 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 Technical Specifications.
- 10.15 Construction Plans dated _____.

with each sheet bearing the following general title:

**ITBC NO.: 2024-040
Thomas Street Stormwater Pump Station Replacement
PROJECT NO.: 18-017**

- 10.16 Exhibits to this Agreement.
- 10.17 Addenda number _____ to _____, inclusive.
- 10.18 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.
- 10.19 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.

Article 15. FDEP PROVISIONS.

- 15.1 This project includes State funding via two (2) Florida Department of Environmental Protection grants. The selected Contractor will be required to comply with all State requirements noted in the two (2) attached grant agreements. The funding source for 22FRP134 was recently changed from Federal to State (refer Exhibit H-1).

Article 16. PALM BEACH COUNTY CASE NO. 50-2024-CA-007120-XXXX-MB

- 16.1 Contractor is aware of pending Palm Beach County Case No. 50-2024-CA-007120-XXXX-MB (the "Eminent Domain Action"), an eminent domain action filed by the City to acquire easements necessary for the completion of the work defined herein. Contractor agrees to adhere to any requirements imposed by the Court or otherwise agreed to by the parties in the Eminent Domain Action.

[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 _____

SAMPLE SURETY PERFORMANCE AND PAYMENT BOND

Bond No _____

By this Bond, We _____, as Principal, whose principal business address and phone number are _____, as Contractor under the contract dated _____, 20____. Between Principal and the City of Delray Beach, whose principal address and phone number are _____ for the construction of:

**ITBC NO.: 2024-040
Thomas Street Stormwater Pump Station Replacement
PROJECT NO.: 18-017**

(hereinafter referred to as "Contract") the terms of which Contract are incorporated by reference in its entirety into this Bond and _____, as Surety, whose principal business address and telephone number are _____ the sum of (U.S. dollars) \$ _____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that Principal:

1. Performs, all the work under the Contract, including but not limited to guarantees, warranties and the curing of latent defects, said Contract being made a part of this bond by reference, and in the times and in the manner prescribed in the Contract, including any and all damages for delay; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1) Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract and
3. Pays City all losses, damages, including damages for delay, expenses, costs and attorney's fees, including appellate proceedings, that City sustains because of a default by Principal under the Contract, including but not Limited to a failure to honor all guarantees and warranties or to cure latent defects in its work or materials within 5 years after completion of the work under the Contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the Contract, including all warranties and curing all latent defects within 5 years after completion of the work under the Contract;

then this bond is void; otherwise it remains in full force.

In the event that Principal shall fail to comply fully with, carry out and perform the terms and conditions of the Contract the Surety, following receipt of a written demand by the Obligee to correct Principal's default(s), and having failed to correct such default (s) within a reasonable time , shall be deemed to be in default fifteen (15) days after receipt of an additional written demand by the Obligee to correct the Principal's default, and the Obligee shall be entitled to enforce any remedy against Surety available to the Obligee including, but not limited to recovery of damages for the Surety's delay.

If no specific periods of warranty are stated in the Contract for any particular item or work, material or equipment, the warranty shall be deemed to be a period of one (1) year from the date of final acceptance by the City. This Bond does not limit the City's ability to pursue suits directly with the Principal seeking damages for latent defects in materials or workmanship, such actions being subject to the limitations found in Section 95.11(3) include, Florida Statutes.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05 (2), Florida Statutes.

Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect Surety's obligation under this Bond.

IN WITNESS WHEREOF, the above bounden parties have caused this Bond to be executed by their appropriate officials as of the _____ day of _____, 20____.

CONTRACTOR: _____
(Contractor Name)

WITNESS: _____ BY: _____
(President, Managing Partner, or Joint Venturer)

(SEAL)

SURETY: _____

FLORIDA AGENT OF SURETY: _____

(Copy of Agent's current Identification Card as issued by State of Florida Insurance Commissioner must be attached)

WITNESS: _____ BY: _____
(Attorney-in-Fact)

(CORPORATE SEAL)

LETTER OF CREDIT FORMAT

LETTER OF CREDIT NO.: _____

ISSUANCE DATE: _____

APPLICANT:
{Name of Corporation}
{Address}
{City, State, Zip}

BENEFICIARY:
CITY OF DELRAY BEACH
100 N.W. 1ST AVENUE
DELRAY BEACH, FL 33444

FOR U.S.D. \$ _____
DATE OF EXPIRATION: _____

WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. _____ IN FAVOR OF THE BENEFICIARY, THE CITY OF DELRAY BEACH, FLORIDA FOR THE ACCOUNT OF THE ABOVE-REFERENCED APPLICANT, AVAILABLE BY YOUR DRAFTS DRAWN ON **{Name of Bank}** PAYABLE AT SIGHT FOR ANY SUM OF MONEY NOT TO EXCEED A TOTAL OF **{Amount of Money}**, THE AMOUNT REFERENCED ABOVE.

DEMANDS OF THE LETTER OF CREDIT MUST BE ACCOMPANIED BY A STATEMENT FROM THE CITY MANAGER OF THE CITY OF DELRAY BEACH CERTIFYING EITHER: (1) THAT SAID LETTER OF CREDIT IS ABOUT TO EXPIRE AND HAS NOT BEEN RENEWED, OR (2) THAT WORK HAS NOT BEEN COMPLETED IN ACCORDANCE WITH THE PLANS, SPECIFICATIONS, AND AGREEMENTS (INCLUDING ANY AMENDMENTS THEREOF) FOR THE FOLLOWING PROJECT: **{Name of Project}** (THE 'PROJECT').

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED FOR PERIODS OF ONE YEAR FROM EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, WITHOUT ANY AMENDMENT, UNLESS THIRTY (30) DAYS BUT NO MORE THAN SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE WE SHALL NOTIFY THE CITY OF DELRAY BEACH IN WRITING BY CERTIFIED MAIL RETURN RECEIPT REQUESTED, OR BY COURIER VIA HAND DELIVERY AT THE ABOVE-LISTED ADDRESS, THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH ADDITIONAL PERIOD.

WE HEREBY AGREE WITH THE DRAWERS, ENDORSERS, AND BONA FIDE HOLDERS OF ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THE CREDIT THAT SUCH DRAFTS WILL BE DULY HONORED UPON PRESENTATION TO **{Name of Bank}** (THE 'BANK'), WHICH IS DULY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF FLORIDA IN ACCORDANCE WITH THE TERMS HEREOF. IF A DRAFT, AS DESCRIBED IN THIS LETTER OF CREDIT, IS PRESENTED PRIOR TO THE EXPIRATION DATE AND IN CONFORMITY WITH THE TERMS OF THIS LETTER OF CREDIT AND UPON PRESENTATION IT IS WRONGFULLY DISHONORED BY THE BANK, THE BANK AGREES TO PAY REASONABLE ATTORNEYS FEES AND COSTS, INCLUDING FEES AND COSTS ON APPEAL, INCURRED BY THE CITY OF DELRAY BEACH TO ENFORCE THIS LETTER OF CREDIT SHOULD THE CITY PREVAIL.

DOCUMENTS MUST BE PRESENTED FOR PAYMENT TO:

{Name of Bank Branch}

{Address}

{City, State, Zip}

ATTN: **{Department}**

ALL DRAWINGS UNDER THIS LETTER OF CREDIT MUST BE ACCOMPANIED BY THE ORIGINAL LETTER OF CREDIT INSTRUMENT WHICH WILL BE RETURNED TO THE BENEFICIARY AFTER ENDORSING THE BACK OF SAME WITH THE AMOUNT OF EACH DRAWING BY US.

PARTIAL DRAWINGS ARE PERMITTED.

THE AMOUNT OF ANY DRAFT DRAWN UNDER THIS CREDIT MUST BE ENDORSED ON THE REVERSE OF THE ORIGINAL CREDIT. ALL DRAFTS MUST BE MARKED "DRAWN UNDER **{Name of Bank}** LETTER OF CREDIT NUMBER _____ DATED _____, 20__.

THIS CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600", AND TO THE PROVISIONS OF FLORIDA LAW. IF A CONFLICT BETWEEN THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS AND FLORIDA LAW SHOULD ARISE, FLORIDA LAW SHALL PREVAIL. IF A CONFLICT BETWEEN THE LAW OF ANOTHER STATE OR COUNTRY AND FLORIDA LAW SHOULD ARISE, FLORIDA LAW SHALL PREVAIL. VENUE FOR ANY DISPUTES RELATING TO THE ENFORCEMENT OF THIS LETTER OF CREDIT SHALL BE PALM BEACH COUNTY, FLORIDA.

{Name of Bank}

BY: _____

{Name}

{Title}

LIMITED POWER OF ATTORNEY

_____ and _____
(Principal) (Surety)

hereby grants the City Clerk of the City of Delray Beach Power of Attorney to insert the date of execution on the contract, surety bonds to the contract and agreement entitled, _____

In Witness Whereof, we have hereunto set our hand and seal this _____ day of _____, 20____.

Principal (SEAL)

Surety (SEAL)

WITNESS: _____

PRINT NAME: _____

WITNESS: _____

PRINT NAME: _____

[remainder of this page left blank intentionally]

[remainder of this page left blank intentionally]

NOTICE OF INTENT TO AWARD

DATE: _____

TO: _____
(Bidder)

ADDRESS: _____

**ITBC NO.: 2024-040
Thomas Street Stormwater Pump Station Replacement
PROJECT NO.: 18-017**

You are notified that your Bid dated _____, for the above Contract has been considered. You are the apparent Successful Bidder. Accordingly, notice is hereby given of the Tentative Award of this contract to you.

The Contract Price of your contract is: \$ _____

Dollars

Cents

Five (5) copies of each of the proposed Contract Documents, (except Drawings) accompany this Notice of Intent to Award.

You must comply with the following conditions precedent within fifteen (15) days of the date of this Notice of Intent to Award (that is by _____):

1. You must deliver to the CITY five (5) fully executed counterparts of the Agreement including all the Contract Documents. Each of the Contract Documents must bear your signature on the cover page of each set of Contract Documents.
2. You must deliver with the executed Agreement, Insurance Certificates and the Contract Security Bonds as specified in the Instructions to Bidders and in Article 6 of the General Conditions together with Power of Attorney for use by the City for the purpose of inserting the date of execution of the Contract Surety Bonds and the Agreement, within fifteen (15) calendar days from the date of this Notice to you.
3. You should have the following prepared for the preconstruction conference.
 - (a) A preliminary project construction progress schedule.
 - (b) An itemized schedule of payment and values.

(c) A detailed shop drawing submission plan.
Failure to comply with these conditions within the time specified will entitle the CITY to consider your bid abandoned, to annul this Notice of Intent to Award and to declare your Bid Security forfeited.

Within forty-five (45) days after you comply with those conditions, if the contract is approved by the City Commission, the CITY will return to you one fully signed counterpart of the Agreement with the Contract Documents attached.

City of Delray Beach

By: _____

Print Name: _____

Title: _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF INTENT TO AWARD is hereby acknowledged by
_____ this the _____ day of _____, 20____.

By: _____

Print Name: _____

Title: _____

Copy to: City of Delray Beach
(Use Certified Mail, Return Receipt Requested)

NOTICE TO PROCEED

DATE: _____

TO: _____
(Contractor)

ADDRESS: _____

**ITBC NO.: 2024-040
Thomas Street Stormwater Pump Station Replacement
PROJECT NO.: 18-017**

You are notified that the Contract time under the above contract will commence to run on the _____ day of _____, 20____. By that date, you are to start performing your obligations under the Contract Documents. In accordance with the Agreement the dates of Substantial Completion and Final Completion are the _____ day of _____, 20____ and the _____ of _____, 20____, respectively.

City of Delray Beach

By: _____

Print Name: _____

Title: _____

Copy to _____
(Use Certified Mail, Return Receipt Requested)

cc: Chief Procurement Officer
Project file

CERTIFICATE OF SUBSTANTIAL COMPLETION

DATE: _____

TO: _____
(Contractor)

ADDRESS: _____

ITBC NO.: 2024-040
Thomas Street Stormwater Pump Station Replacement
PROJECT NO.: 18-017

CONTRACT DATE: _____

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

TO: City of Delray Beach, Florida

AND TO: _____
(CONTRACTOR)

The Work to which this Certificate applies has been inspected by authorized representatives of the CITY, CONTRACTOR and CONSULTANT, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on:

(Date of Substantial Completion)

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by CONTRACTOR within _____ days of Substantial Completion.

The responsibilities between the CITY and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance, and warranties shall be as follows:

RESPONSIBILITIES:

CITY:

CONTRACTOR:

The following documents are attached to and made a part of this Certificate:

This certificate does not constitute an acceptance of Work not in accordance with the Contract documents nor is it a release of CONTRACTOR'S obligation to complete the Work in accordance with the Contract Documents.

Executed by CONSULTANT on this ____ day of _____, 20__.

By: _____

Print Name: _____

Title: _____

CONTRACTOR accepts this Certificate of Substantial Completion on this ____ day of _____, 20__.

By: _____

Print Name: _____

Title: _____

The CITY accepts this Certificate of Substantial Completion on this ____ day of _____, 20__.

By: _____

Print Name: _____

Title: _____

WARRANTY OF TITLE
(For Periodic Progress Payments)

STATE OF _____)

) SS

COUNTY OF _____)

CONTRACTOR: _____

ITBC NO.: 2024-040
Thomas Street Stormwater Pump Station Replacement
PROJECT NO.: 18-017

BEFORE ME, the undersigned authority, personally appeared _____
(the "Affiant"), who after being duly sworn, says that he is the "CONTRACTOR", pursuant to a Contract (the
"Contract") dated the ____ day of _____, 20____, with the CITY OF DELRAY BEACH, FLORIDA,
(the "OWNER"), for the supply of certain labor and/or materials (the "Work"), to certain property, as shown
and described in the Contract Documents, subsequent Addenda or Change Orders, and on behalf of the
Contractor makes the following warranties:

- I. The CONTRACTOR warrants that it has fully completely in accordance with the plans and specifications therefore, that portion of the Work, pursuant to the Contract (the "Completed Work") covered by the attached Periodic Progress Payment Request.
- II. The CONTRACTOR further warrants and represents that:
 1. All subcontractors, vendors, material men, suppliers, and other parties of whatever kind of nature who are entitled to payment from the CONTRACTOR for providing labor and/or materials to the CONTRACTOR pursuant to the Contract as of the date in the last previous request for payment have been paid in full and therefore have delivered to the CONTRACTOR validly executed Partial Release of claims with respect thereto.
 2. Title to all materials and equipment covered by the attached Periodic Pay Request for Payment dated the ____ day of _____, 20____, passes to the City at the time of payment free and clear of all liens.

By: _____

Print Name: _____

Title: _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Signature and Stamp of Notary Public

My Commission Expires:

FINAL RECEIPT

STATE OF _____)
) SS
COUNTY OF _____)

_____ being first duly sworn, deposes and says as follows:

1. HE/SHE is _____ of _____
(Title) (Name of Corporation or Firm)
a _____ corporation which is named in Construction Contract dated the
_____ day of _____, 20____, between said corporation as the CONTRACTOR and the CITY OF
DELRAY BEACH, FLORIDA (the CITY) as the OWNER for the construction of:

**ITBC NO.: 2024-040
Thomas Street Stormwater Pump Station Replacement
PROJECT NO.: 18-017**

2. CONTRACTOR has fully completed all construction and work under the Contract and Title to all work, materials and equipment under the Contract passes to the CITY at the time of final payment, free and clear of all liens, and all labors, and material men and subcontractors have been paid in full for performing or furnishing the work, labor or materials under the Contract.

3. Receipt by CONTRACTOR of the final payment from CITY in the amount of
_____ dollars (\$_____)

shall constitute a full release and discharge by CONTRACTOR to the CITY of all claims or liens of CONTRACTOR against OWNER arising out of, connected with, or resulting from performance of the Contract, including full payment for all extra work and material furnished by the undersigned in the construction of said improvements.

4. The undersigned further certifies that all non-exempt taxes imposed by Chapter 212, Florida Statutes (Sales and Use Tax Act), as amended, have been paid and discharged.

5. This statement under oath is given in compliance with Sections 713.05 and 713.06, Florida Statutes.

Signed and sealed in
the presence of:

Affiant Contractor

By: _____

Print Name: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Signature and Stamp of Notary Public

My Commission Expires: