

AGREEMENT

THIS AGREEMENT is dated as of the 20th day of October, 2021, by and between the **DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY**, a public body, corporate and politic, duly created and operated pursuant to Chapter 163, Florida Statutes, hereinafter called the CRA, and **WAYPOINT CONTRACTING, INC.**, hereinafter called CONTRACTOR.

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

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. For the project entitled:

**98 NW 5th Avenue Renovation
Delray Beach Community Redevelopment Agency (CRA) Project No. 2021-03
Bid Number CRA 2021-03**

Article 2. ENTIRE AGREEMENT.

This Construction Contract, shall include and incorporate the terms, conditions and specifications set forth in the CRA's Invitation to Bid CRA No. 2021-03 that do not directly conflict with this Construction Contract, along with the Contract Documents in Article 9 including this Agreement, Documents contained in the Project Manual, General and Supplementary Conditions, Addenda, Drawings, Specifications and modifications issued after execution of the Contract embodies the entire agreement between CRA and Contractor and supersedes all other writings, oral agreements or representations. 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 SHALL BE VALID UNLESS REDUCED TO WRITING AND SIGNED BY BOTH PARTIES.

Article 3. CONTRACT SUM.

The CRA shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations, labor, materials, equipment, or any costs associated with Contractor's full performance of this Construction Contract hereunder, **the guaranteed maximum price of One Million Nine Hundred Twenty-Five and 00/100 Dollars (\$1,925,000.00)**, which shall constitute the Contract Price. The Contract Price shall be fixed and firm during the performance of this Construction Contract, including the costs of labor, materials, equipment, and any costs associated with Contractor's full performance regardless of any and all price increases, except for any change orders or variations, which must meet the prior approval and authorization of the CRA.

Article 4. CONTRACT TIME; LIQUIDATED DAMAGES.

- 4.1 The work will be substantially completed **within 336 calendar days** from the date of the issuance of the Notice to Proceed, and completed and ready for final payment **within 30 calendar days** from the date of Substantial Completion in accordance with Section 3 Paragraph 5 of the Invitation to Bid.
- 4.2 Liquidated Damages. The CRA and CONTRACTOR recognize that time is of the essence of this Agreement and that the CRA will suffer financial loss if the Work is not completed within the times

specified in paragraph 4.1 above, plus any extensions thereof allowed in accordance Section 3 Paragraph 5 of the Invitation to Bid.

They also recognize that the actual loss suffered by the CRA 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 CRA and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay the CRA five hundred dollars (\$500.00) for each day that expires after the time specified in paragraphs 4.1 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 CRA, CONTRACTOR shall pay CRA five hundred dollars (\$500.00) for each day that expires after the time specified in paragraph 4.1 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 CRA, estimated at the time of executing the Contract. If the CRA 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 CRA 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.

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Section 2 of the Invitation to Bid. Applications for Payment will be processed by CONTRACTOR as provided in the General Conditions.

- 5.1 Progress Payments. The CRA shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment on or about the First day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the CONTRACTOR'S Schedule of Values dated May 13, 2021 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.
 - 5.1.1 Prior to Substantial Completion progress payments will be made in an amount equal to 90% of the work completed until 50% of the work has been completed and installed, then payment may be made in an amount equal to 95% of the work completed, but in each case, less the aggregate of payments previously made and less such amounts as CRA shall determine, or the CRA may withhold, in accordance with Section 5.1.3 of this Agreement.
 - 5.1.2. 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 CRA, as provided in the Invitation to Bid, will be made in an amount equal to 0% as established by the schedule of values.
 - 5.1.3 The CRA is entitled to withhold amounts due CONTRACTOR for any defective or non-conforming work or for liquidated damages.
- 5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with Section 3 of the Invitation to Bid, the CRA shall pay the remainder of the Contract Price.

Article 6. SUBCONTRACTS.

No more than 80% of dollar value of the total contract work may be accomplished by subcontractors. Balance of work must be accomplished by selected CONTRACTOR'S own forces.

Article 7. CONTRACTOR'S REPRESENTATIONS.

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

- 7.1 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.
- 7.2 CONTRACTOR has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, existing vegetation, underground utilities, 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 the Invitation to Bid; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.
- 7.3 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 the provisions of the Invitation to Bid.
- 7.4 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.
- 7.5 CONTRACTOR has given CRA written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by CRA is acceptable to CONTRACTOR.

Article 8. NO DAMAGES FOR DELAY.

- 8.1 All time in the Contract Documents is calculated on a consecutive calendar day basis.
- 8.2 Time is of the essence in this Contract, 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 his work.
- 8.3 CONTRACTOR agrees to commence the Work when directed by the CRA and to diligently and continuously perform such Work and to coordinate the Work with other Work being performed on the Project by other trades so that the CRA shall not be delayed by any act or omission of CONTRACTOR in completion of the Project within the time specified above.

- 8.4 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 CRA, such act, hindrance or delay may only entitle the CONTRACTOR to receive an extension of time as its sole and exclusive remedy, as set forth in Section 3 paragraph 5 of the Invitation to Bid
- 8.4.1 Any extension of time to complete the Work maybe allowed at the sole discretion of the CRA provided the CONTRACTOR provides the CRA with notice in writing of the cause of said act, hindrance, or delay within twenty (20) days after its occurrence.
- 8.4.2 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.
- 8.4.3 All extensions of time shall be authorized only by a written change order executed by the CRA and CONTRACTOR; in the absence of a written and fully executed change order, CONTRACTOR shall not be entitled to any claim for additional time.
- 8.4.4 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 Contract.
- 8.4.5 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.
- 8.4.6 The CONTRACTOR recognizes and specifically acknowledges the terms and conditions of this "no damage for delay" clause upon execution of this Contract.

Article 9. CONTRACT DOCUMENTS.

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

- 9.1. Advertisement for Bids.
- 9.2. Invitation to Bid.
- 9.3. Bid Proposal Form.
- 9.4. CONTRACTOR'S Bid documents.
- 9.5. Bid Bond (if required).
- 9.6. This Agreement.
- 9.7. Exhibits to this Agreement
- 9.8. Florida Performance Bond.
- 9.9. Florida Payment Bond.

- 9.10. Certificates of Insurance.
- 9.11. Notice to Proceed.
- 9.12. Warranty of Title.
- 9.13. Scope of Work prepared CRA contained within the Invitation to Bid.
- 9.14. 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 9. The Contract Documents may only be amended, modified, or supplemented as provided in Section 1 Paragraph 26 of the Invitation to Bid.

Article 10. INDEMNITY.

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 CRA, their agents and employees in accordance with Section 1 Paragraph 24 of the Invitation to Bid 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.

Article 11. REIMBURSEMENT OF CONTRACTOR EXPENSES.

Should the completion of this Contract be delayed beyond the specified or adjusted time limit, CONTRACTOR shall reimburse the CRA for all expenses of consulting and inspection incurred by the CRA 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 CRA will be charged to CONTRACTOR and be deducted from payments due CONTRACTOR as provided by this Contract. Said expenses shall be further defined as contractor charges associated with the construction contract administration, including resident project representative costs.

Article 12. MISCELLANEOUS.

- 12.1. Terms used in this Agreement which are defined in Section 1 of the Invitation to Bid will have the meaning indicated in the General Conditions.
- 12.2. 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.
- 12.3. The CRA 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.
- 12.4. The agreement shall be void if not signed by both the CRA and the CONTRACTOR.

- 12.5 **NONDISCRIMINATION:** CONTRACTOR represents and warrants to the CRA that CONTRACTOR does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with CONTRACTOR's performance under this Agreement on account of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for delivery of services. CONTRACTOR further covenants that no otherwise qualified individual shall, solely by reason of his/her race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for delivery of services, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Agreement.
- 12.6 **ASSIGNMENT:** This Agreement shall not be assigned by CONTRACTOR, in whole or in part, without the prior written consent of the CRA, which may be withheld or conditioned, in the CRA's sole discretion.
- 12.7. **NOTICES:** All notices or other communications required under this Agreement shall be in writing and shall be given by hand-delivery or by registered or certified U.S. Mail, return receipt requested, addressed to the other party at the address indicated herein or to such other address as a party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

TO CONTRACTOR: Katrina Gonzalez
 Waypoint Contracting, Inc.
 7955 NW 12th Street, Ste 400
 Miami, FL 33126
 Telephone No.: 786-608-1406
 kgonzalez@waypointci.com

TO THE CRA Renée A. Jadusingh, Executive Director
 Delray Beach Community Redevelopment Agency
 20 N. Swinton Avenue
 Delray Beach, FL 33444
 Telephone No. (561) 276-8640
 Facsimile No. (561) 276-8558
 With Email Copy to: Kim N. Phan, Esq., Legal Advisor
 Kimp@mydelraybeach.com

WITH A COPY TO: Goren, Cherof, Doody & Ezrol, P.A.
 3099 E. Commercial Blvd., Suite #200
 Fort Lauderdale, FL 33308
 Attn: Donald J. Doody, Esq.
 Telephone No.: (954) 771-4500
 Fax: (954) 771-4923

12.8. **MISCELLANEOUS PROVISIONS:**

A. This Agreement shall be construed and enforced according to the laws of the State of Florida. The parties submit to the jurisdiction of any Florida State or federal court in any action or proceeding arising out of, or relating to, this Agreement. Venue for any action arising out of this agreement shall be in Palm Beach, County, Florida.

B. Title and paragraph headings are for convenient reference and are not a part of this Agreement.

C. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

D. Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or the City of Delray Beach, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

12.9. PUBLIC RECORDS: CONTRACTOR shall comply with the applicable provisions of Chapter 119, Florida Statutes. Specifically, CONTRACTOR shall:

A. Keep and maintain public records required by the CRA to perform the service.

B. Upon request from the CRA's custodian of public records, provide the CRA 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 this chapter or as otherwise provided by law.

C. 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 contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the CRA.

D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the CONTRACTOR or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the CRA upon completion of the contract, 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 contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the CRA's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT

**KIM PHAN
561-276-8640
KIMP@MYDELRAYBEACH.COM
20 NORTH SWINTON AVENUE**

DELRAY BEACH, FLORIDA 33444

The failure of CONTRACTOR to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement.

- 12.10. **CERTIFICATION AND SCRUTINIZED COMPANY REQUIREMENTS:** The CRA shall have the option to terminate this agreement/contract if CONTRACTOR:
- A. Is found to have submitted a false certification as provided under section 287.135 (5) Florida Statutes;
 - B. Has been placed on the Scrutinized Companies that Boycott Israel List;
 - C. Has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or
 - D. Has been engaged in business operations in Cuba or Syria.
- 12.11. **PATRIOT ACT REQUIREMENTS:** Each party shall take any actions that may be required to comply with the terms of the USA Patriot Act of 2001, as amended, any regulations promulgated under the foregoing law, Executive Order No. 13224 on Terrorist Financing, any sanctions program administered by the U.S. Department of Treasury's Office of Foreign Asset Control or Financial Crimes Enforcement Network, or any other laws, regulations, executive orders or government programs designed to combat terrorism or money laundering, if applicable, with respect to the agreement/contract. Each party represents and warrants to the other party that it is not an entity named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury, as last updated prior to the date of this agreement/contract.
- 12.12. **BINDING AUTHORITY; SUCCESSORS AND ASSIGNS:** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement. This Agreement shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors, or assigns.
- 12.13. **INDEPENDENT CONTRACTOR:** CONTRACTOR has been procured and is being engaged to provide services to the CRA as an independent contractor, and not as an agent or employee of the CRA. Accordingly, CONTRACTOR shall not attain, nor be entitled to, any rights or benefits of the CRA, nor any rights generally afforded classified or unclassified employees. CONTRACTOR further understands that Florida Workers' Compensation benefits available to employees of the CRA are not available to CONTRACTOR, and agrees to provide workers' compensation insurance for any employee or agent of CONTRACTOR rendering services to the CRA under this Agreement.
- 12.14. **ENTIRE AGREEMENT:** This instrument and its Exhibits constitute the sole and entire agreement of the parties relating to the subject matter hereof and correctly set forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement, are of no force or effect. No modification or amendment hereto shall be valid unless in writing and executed by properly authorized representatives of the parties herein. The CRA's Executive Director may further approve and amend this Construction Contract by executing a written agreement signed by both parties.

- 12.15. **COUNTERPARTS:** This Agreement may be executed in four (4) or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.
- 12.16 **COSTS AND ATTORNEY’S FEES:** If either CRA or CONTRACTOR is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including but not limited to, costs and reasonable attorney's fees.
- 12.17 **CONFLICT:** In the event of a conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement shall prevail.
- 12.18 **WAIVER:** The waiver by either party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing similar or dissimilar failure.

[Remainder of this page left blank intentionally]

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

This Agreement will be effective on October 20, 2021.

DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY

BY: Shirley E. Johnson
Shirley E. Johnson, Chair

ATTEST:

BY: Renée A. Jadusingh
Renée A. Jadusingh, Esq.
CRA Executive Director

I HEREBY APPROVE THIS AGREEMENT AS TO FORM

[Signature]
CRA Legal Advisor

CONTRACTOR:

BY: Katrina Gonzalez

Print Name: KATRINA GONZALEZ

Title: President

Date: 9/23/2021

ATTEST:

[Signature] SECRETARY
STATE OF FLORIDA)

COUNTY OF Miami-Dade)SS:
)

(CORPORATE SEAL)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Katrina Gonzalez and Dianora Fernandez as _____ and Secretary, respectively, of _____, and acknowledged executed the foregoing Agreement as the proper official of _____, for the use and purposes mentioned in it and affixed the official seal of _____, and that the instrument is the act and deed of _____.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 23 day of September, 2021.

[Signature]
NOTARY PUBLIC

My Commission Expires:

