

COMPREHENSIVE AGREEMENT FOR SOUTH K STREET PARKING GARAGE

THIS COMPREHENSIVE AGREEMENT FOR SOUTH K STREET PARKING GARAGE (“Comprehensive Agreement” or “Agreement”) is made as of this _____ day of _____, 2025, by and between the **CITY OF LAKE WORTH BEACH** (“City”), a Florida municipal corporation, the **LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY** (“CRA”), a Florida public body, corporate and politic created pursuant to Chapter 163, Florida Statutes, and **SUNSHINE LAKE WORTH DEVELOPMENT, LLC** (“SLWD”), a Florida limited liability company with an address of 16711 Collins Avenue, Sunny Isles Beach, FL 33160.

WITNESSETH:

WHEREAS, Section 255.065, Florida Statutes, provides the City with an alternative process and requirements for public-private partnerships to facilitate the construction of public purpose projects; and

WHEREAS, since at least 2018, the City’s downtown area has been in need of additional parking for the downtown businesses, residents, guests, and for special events; and

WHEREAS, the City utilized its CCNA consultant, WGI Inc. (“WGI”) to conduct a parking study, which WGI completed in 2018 and updated in 2020; and

WHEREAS, based in part on the prior WGI parking study, the City and CRA have been working together to develop a project in the downtown area that would include additional parking for the City, CRA, residents, and guests parking needs including during special events; and

WHEREAS, the CRA along with the City began discussions with SLWD about a potential development containing a mix of uses including the SLWD’s decorative arts museum, a residential use, and other components including a parking garage; and

WHEREAS, on September 30, 2024, SLWD submitted an unsolicited proposal to the City for the construction of a public parking garage at South K Street in downtown Lake Worth Beach pursuant to section 255.065, Florida Statutes (“P3”); and

WHEREAS, the City, CRA, and SLWD formalized their development discussions in a proposed development agreement for the development of the mixed-use project generally referred to as the “WMODA Project”; and

WHEREAS, on October 8, 2024, the Board of Commissioners of the CRA approved the Development Agreement for the WMODA Project (“Development Agreement”) subject to the City’s finding of public benefit for the proposed South K Street parking garage as a P3 component of the WMODA Project; and

WHEREAS, SLWD formally presented the P3 unsolicited proposal to the City Commission on October 15, 2024, along with the proposed Development Agreement; and

WHEREAS, on October 15, 2024, the City Commission approved the Development Agreement, subject to the finding of public benefit for the South K Street parking garage as a P3 component of the WMODA Project; and

WHEREAS, at the October 15, 2024 City Commission meeting, pursuant to section 255.065, Florida Statutes, the City presented and heard public comments regarding the SLWD’s unsolicited proposal for the South K Street parking garage and voted to move the unsolicited proposal to its second publicly noticed meeting; and

WHEREAS, on October 29, 2024, the City Commission pursuant to section 255.065, Florida Statutes, determined that the SLWD’s unsolicited proposal for the South K Street parking garage was in the public’s interest and approved the City, CRA, and the SLWD moving forward with preparation of the agreements necessary to implement all components of the WMODA Project including a comprehensive agreement for the South K Street parking garage as a P3 component of the WMODA Project; and

WHEREAS, on November 18, 2024, the City received an updated parking study from WGI, which included a review of the South K Street parking garage concept and provided basic design limitations, key structured parking points, and an estimated budget of \$8,584,000, which updated parking study is incorporated herein by reference; and

WHEREAS, the real property at issue under the SLWD’s unsolicited proposal for the K Street parking garage is owned by the City (with a small parcel owned by the CRA) and is generally located at 13 South K Street, 19 South K Street, and 25 South K Street (with PCNs: 38-43-44-21-15-019-0220, 38-43-44-21-15-019-0230, and 38-43-44-21-15-019-0290) (“Property”); and

WHEREAS, in further development of the unsolicited proposal and other agreements under the approved Development Agreement, the CRA has agreed that it will contribute the vacant real property at 704 and 710 1st Avenue South (with PCNs: 38-43-44-21-15-019-0301 and 38-43-44-21-15-019-0302) to be utilized for the access to the South K Street parking garage and relocation of contributing structures; and

WHEREAS, consistent with this Agreement, SLWD will hire and execute contracts with certain contractors, engineers, design professionals, and consultants to develop the South K Street Parking Garage; and,

WHEREAS, pursuant to section 255.065, Florida Statutes, the City, CRA, and SLWD are entering this Comprehensive Agreement for the development of the South K Street Parking Garage (“Project”) as the same will serve a valid public purpose and is in the best interests of the City, CRA, and the WMODA Project.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the sufficient of which is hereby acknowledged by each of the parties hereto, the parties hereby agree as follows:

**ARTICLE 1
GENERAL TERMS & DEFINITIONS**

1.1 **Recitals.** The foregoing recitals are incorporated into this Agreement by reference and the parties agree the recitals are true and correct statements.

1.2 **General Provisions.**

1.2.1 This Agreement is based on the City’s minimum design and construction criteria as set forth in the November 18, 2024 updated parking study, which is incorporated herein by reference and such additional criteria as set forth in **Exhibit “A”**, which is attached hereto and incorporated herein, and other criteria that is documented by the parties during the development, entitlements and permitting of the South K Street parking garage (“City’s Criteria”). SLWD shall confirm that the information included in the City’s Criteria

complies with the City's budget, applicable laws, statutes, ordinances, codes, rules, and regulations, or lawful orders of public authorities. If the City's Criteria conflicts with the City's budget, applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, SLWD shall notify the City of the conflict. If there is a change in the City's Criteria, the parties shall discuss the change and, if necessary execute an Amendment to this Agreement.

1.2.2 Design Representative. SLWD will retain design professionals at SLWD's cost to develop the design of the Project based on the City's Criteria ("Design Professionals"). SLWD shall provide a single-point of contact for its design professional(s), who shall be designated as the Design Representative. Unless agreed to the contrary in writing by the City Manager, SLWD shall provide continuity in the assignment of the Design Representative during the design and construction phases for the Project.

1.2.3 City Project Manager. The City shall identify a City Project Manager for the Project and the City Project Manager shall also designate a designee with equal authority to bind and represent the City and other City representatives for the Project (as needed) as such authority is set forth in this Agreement. Unless agreed to the contrary in writing by SLWD, the City shall provide continuity in the assignment of the City Project Manager during the design and construction phases for the Project. The City Project Manager shall be designated as the single point of contact through with all deliverables that will be submitted from SLWD to the City. For avoidance of doubt the date for which deliverables are transmitted to the project manager shall be defined as the date of submission. The City shall keep the SLWD continuously informed of all business telephones, mobile telephones, e-mail addresses, and other means by which the City's Project Manager may be contacted. The City's Project Manager (and designee with equal authority to bind and represent the City) shall be available to be contacted by the City on a continuous basis for emergency response, information, and coordination.

1.2.4 SLWD's Project Manager. SLWD shall provide a Project Manager for the Project and a designee with equal authority to bind and represent SLWD during the Project. Unless agreed to the contrary in writing by the City Manager, SLWD shall provide continuity in the assignment of the SLWD's Project Manager during the design and construction phases for the Project. SLWD shall keep the City continuously informed of all business telephones, mobile telephones, e-mail addresses, and other means by which the SLWD's Project Manager may be contacted. SLWD's Project Manager (and designee with equal authority to bind and represent the SLWD) shall be available to be contacted by the City on a continuous basis for emergency response, information, and coordination. SLWD's Project Manager may identify other SLWD representatives for the Project (as needed).

1.2.5 Standard of Performance. SLWD agrees to furnish its best skill and judgment and to cooperate with the City and CRA in furthering the interests of the City and CRA in the development of the parking garage. SLWD agrees to furnish efficient business administration and superintendence of the Project and to use its best efforts to complete the Project in an expeditious and economical manner consistent with the interests of the City and CRA.

1.2.6 Representations and Warranties.

1.2.6.1 The City and CRA represents and warrants that:

a. **Existence and Powers.** The City is a municipal corporation under the laws of the State and has full legal right, power and authority to execute, deliver and perform its obligations under this Comprehensive Agreement. The CRA is a Florida public body, corporate and politic created pursuant to Chapter 163, Florida Statutes, and has full legal right, power and authority to execute, deliver and perform its obligation under this Comprehensive Agreement.

b. Due Authorization. This Comprehensive Agreement has been duly authorized, executed and delivered by the City and CRA, and constitutes a legal, valid and binding obligation of the City and the CRA, enforceable against the City and/or CRA in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency, or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

c. No Conflict. To the best of the City's and CRA's knowledge, the execution, delivery and performance by the City and CRA of this Comprehensive Agreement does not contravene any law or any contractual restriction binding on or affecting the City or CRA nor does the performance by the City or CRA of their respective obligations in connection with the transactions contemplated hereby or the fulfillment by the City or CRA of the terms or conditions hereof:

(1) conflict with, violate or result in a breach of any constitution, law or governmental regulation applicable to the City or CRA; or

(2) conflict with, violate or result in a material breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, by which the City's or CRA's properties or assets are bound, or constitutes a material default under any of the foregoing.

d. No Litigation Affecting the City or CRA. To the best of the City's and CRA's knowledge, there is no legal proceeding before or by any governmental body pending or overtly threatened or publicly announced against the City or CRA, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Comprehensive Agreement by the City or CRA or the validity, legality or enforceability of this Comprehensive Agreement against the City or CRA, or any other agreement or instrument entered into by the City or CRA in connection with the transactions contemplated hereby or on the ability of the City or CRA to perform their respective obligations hereunder or under any such other agreement or instrument.

e. Information Supplied by the City or CRA. The representations and warranties made by the City or CRA in this Comprehensive Agreement are true, correct and complete in all material respects.

f. Ownership of Project Site. The City and CRA own the Project Site, free and clear of any encumbrances other than: (1) applicable zoning and building bylaws and ordinances, municipal bylaws and regulations existing as of the Effective Date; and (2) recorded covenants, conditions, restrictions and easements.

1.2.6.2 SLWD represents and warrants that:

a. Existence and Powers. SLWD is a limited liability company duly organized, validly existing and in good standing under the laws of the State, and has the authority to do business in the State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Comprehensive Agreement.

b. Due Authorization and Binding Obligation. This Comprehensive Agreement has been duly authorized, executed and delivered by all necessary action of the SLWD and constitutes a legal, valid and binding obligation of SLWD, enforceable against SLWD in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

c. No Conflict.

(1) SLWD represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Section 112.311, Florida Statutes.

(2) SLWD further represents that no person having any such conflicting interest shall be employed for said performance.

(3) To the best of its knowledge, neither the execution nor delivery by SLWD of this Comprehensive Agreement nor the performance by SLWD of its obligations in connection with the transactions contemplated hereby or the fulfillment by SLWD of the terms or conditions hereof:

(i) conflicts with, violates or results in a breach of any constitution, law, governmental regulation, by-laws or certificates of incorporation applicable to the SLWD; or

(ii) conflicts with, violates or results in a material breach of any order, judgment or decree, or any contract, agreement or instrument to which the SLWD or any of its Affiliates is a party or by which SLWD or any of its Affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

d. No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Comprehensive Agreement by SLWD except as such have been duly obtained or made.

e. No Litigation Affecting SLWD. To the best of its knowledge, there is no legal proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the SLWD's knowledge, overtly threatened or publicly announced against the SLWD or any of its Affiliates, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Comprehensive Agreement by the SLWD or the validity, legality or enforceability of this Comprehensive Agreement against the SLWD, or any other agreement or instrument entered into by the SLWD in connection with the transactions contemplated hereby, or on the ability of the SLWD to perform its obligations hereunder or under any such other agreement or instrument.

f. Intellectual Property. SLWD owns, or has express rights to use or can acquire on reasonable terms, all Intellectual Property necessary for the Project without any known material conflict with the rights of others.

g. Information, Design Documents Supplied by SLWD.

(1) The submittals and other documents prepared by or on behalf of SLWD (including specifically design and related submittals) shall reflect a design of the Project that is in accordance with applicable Law, including, but not limited to, the City of Lake Worth Beach Charter and Code of Ordinances, Florida Statutes, Florida Building Code and the City's Criteria.

(2) The information supplied and representations and warranties made by SLWD in the unsolicited proposal with respect to SLWD are true, correct and complete in all material respects.

(3) The information supplied and representations and warranties made by SLWD in all submittals (including specifically design and related materials), including, to the SLWD's knowledge, all information supplied in such submittals and documents with respect to the Project Subcontractors, are true, correct and complete in all material respects.

h. **SLWD Reviews.** SLWD has carefully reviewed the whole of this Comprehensive Agreement and has taken all steps it considers reasonably necessary to satisfy itself that nothing contained herein inhibits or prevents the SLWD from performing and completing the Project in accordance with the Contract Standards.

i. **Compliance with Applicable Law Generally.** SLWD is in compliance in all material respects with applicable Law pertaining to SLWD's business and services.

j. **Financial Solvency and Stability.** SLWD further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Comprehensive Agreement.

k. **Contingent Fees.** SLWD warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for SLWD to solicit or secure this Comprehensive Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for SLWD, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Comprehensive Agreement.

l. **Nondiscrimination.** SLWD warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, sexual orientation or gender identity or expression or genetic information. Further, SLWD shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation, gender identity or expression or genetic information.

m. **Professional Licenses, Responsibility.**

(1) During all periods necessary for the performance of the its obligations herein, (a) SLWD has maintained and will maintain, (b) SLWD shall cause and have caused each Contractor in privity with the SLWD, performing or to perform any portion of the Work, and (c) SLWD shall cause each Contractor to require each Subcontractor (and likewise at lower tiers) in each case, to maintain, in each case, all required authority, license status, applicable licensing standards, certification standards, accrediting standards, professional ability, skills and capacity to perform its portion of the Work.

(2) During all periods necessary for the performance of the Work, (a) SLWD shall cause and have caused each Contractor performing or to perform any portion of the Work, and (b) SLWD shall cause each Contractor to require each Subcontractor (and likewise at lower tiers) in each case, to perform all Work under the supervision of persons or entities, as applicable, that hold all necessary, valid licenses to practice in the State, and who shall assume professional responsibility for the accuracy and responsibility for the completeness of the Design Documents, Construction Documents and Submittals, and other documents prepared or checked by them.

n. **Professional Qualifications.** All services provided by SLWD, its Contractors, and Subcontractor will be by personnel who are skilled, experienced, and competent in their respective trades or professions, and who are professionally qualified to perform the services in accordance with this Comprehensive Agreement.

o. **Ineligibility.** SLWD, its Affiliates, and all Contractors are each not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts by any Governmental Body.

p. Payment Arrears. SLWD, its Affiliates, and all Material Project Subcontractors is not currently in arrears in payment of Taxes, permit fees or other statutory, regulatory or judicially required payments to the City or to the State.

1.2.6.3 Continuing Accuracy of the SLWD's represents and warranties: During the Term, SLWD shall not take any action, or omit to perform any act, that results in a representation and warranty made in this section becoming untrue. SLWD shall promptly notify the City and CRA if any such representation and warranty becomes untrue. From time to time, SLWD shall provide the City and CRA, upon request, with information reasonably requested by the City and CRA to substantiate the continuing accuracy of these representations and warranties.

1.2.7 **Effective date and term.**

1.2.7.1 Term. This Comprehensive Agreement shall become effective, and the term hereof ("**Term**"), shall commence, on date that is the later of the date the CRA's Board of Commissioners and the City's City Commission approvals and the execution by all parties ("**Effective Date**"). SLWD shall approve and execute this Comprehensive Agreement prior to the City and CRA. The Term shall continue to the earlier of completion of the parties' respective obligations unless or the termination date. For avoidance of doubt, no obligation of any party adheres until the Effective Date, and City shall have no obligation specifically to pay any amount for any services performed prior to the Effective Date.

1.2.8 **Time is of the Essence.**

- a. Time is of the essence in this Agreement and SLWD agrees to promptly perform its duties under the Project Documents and will give the Project as much priority as is necessary to cause the Project to be completed on a timely basis in accordance with the Project Documents. All Work shall be performed strictly (not substantially) within the time limitations necessary to maintain the milestones and all deadlines established in the Project Documents.
- b. All dates and periods of time set forth in the Project Documents, including those for the commencement, prosecution, interim milestones, milestones, and completion of the Project, and for the delivery and installation of materials and equipment, are included because of their importance to the City and CRA.
- c. The GMP Amendment shall include a provision regarding Liquidated Damages and the amount(s) for the same.
- d. In agreeing to bear the risk of delays which were or should have been within the SLWD's control for completion of the Project, except for extensions approved in accordance with the Project Documents, SLWD understands that, except and only to the extent provided otherwise in the Project Documents, the occurrence of events of delay within SLWD's control shall not excuse SLWD from its obligation to achieve full completion of the Project according to the Project Schedule, and shall not entitle the SLWD to an adjustment of the GMP Amendment's GMP. All parties under the control of SLWD shall include, but are not limited to, the Design Professional, Contractor, and their Subcontractors. If SLWD has reason to believe that a delay on the part of the City, Design Professional, Contractor or their Subcontractors was not within SLWD's reasonable control, SLWD may present such justification to the City for consideration of an extension of the schedule in accordance with the Project Documents.

1.2.9 **Complete Functional Project.** It is the intent of the parties to describe in the Project Documents a functionally complete project to be constructed in accordance with the Project Documents and in accordance with all codes and regulations governing construction of the Project. Any Work, materials, or equipment that may reasonably be inferred from the Project Documents as being required to produce the

intended result shall be supplied by SLWD whether or not specifically called for. Where words, which have a well-known technical or trade meaning, are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of performance of the Work and SLWD shall comply therewith. The City and CRA shall have no duties other than those duties and obligations expressly set forth within the Project Documents.

1.2.10 **Definitions.** As used in this Agreement, the following capitalized terms have the meanings set forth below. Certain words and expressions are defined within the other Project Documents, and such definitions shall apply within those other Project Documents unless this Section contains a cross-reference to such definitions.

- a. **“Affiliate”** shall have that meaning as set forth in section 15.9 with respect to an assignment by SLWD of its rights and obligations under this Agreement.
- b. **“Amendment”** means a written instrument approved and executed by the parties that modifies this Agreement or other Project Documents. “Amendment” and “Change Order” may be used interchangeably in the Project Documents. Amendments that change the Design Cost and/or Guaranteed Maximum Price under this Agreement, may be approved by the City Manager up to a total of \$50,000. Amendments that change the Design Cost and/or Guaranteed Maximum Price above \$50,000 must be approved by the City Commission. The City Manager and the CRA Executive Director may approve Amendments to the Project Schedule, which do not exceed ninety (90) days in total. The City Manager and CRA Executive Director may approve other changes to this Agreement that are non-material and not adverse to the City and CRA; provided that, the City Manager and CRA Executive Director reserve the right to take all such changes to their respective governing bodies. All Amendments must be in writing and signed by the appropriate authority of the parties.
- c. **“Basic Services”** means SLWD’s basic services described in Article 2 of this Agreement.
- d. **“Capital Improvement Revenue Note”** shall mean a financial instrument issued by the CRA to secure funding for the purpose of financing the costs associated with the design and construction, of the K Street Parking Garage.
- e. **“Change Order”** is also an Amendment and means written orders to SLWD for any changes in the Work.
- f. **“Construction Manager”** means the Contractor contracting directly with SLWD to provide the preconstruction and construction services via the Construction Manager at Risk contractual method of delivery for the Project. Construction Manager and Contractor are used interchangeably in this Agreement.
- g. **“Construction Contingency”** means the amount agreed upon in the GMP Amendment for SLWD’s and its Contractor’s use.
- h. **“Construction Schedule”** means the amount of time the parties agree to in the GMP Amendment (as may be amended) as the Guaranteed Completion Date for the Project.
- i. **“Construction Cost”** means Guaranteed Maximum Price (GMP) for the Project, and the terms will be used interchangeably.
- j. **“Contractor”** shall mean the entity contracting directly with SLWD to provide any aspect of the Work including the Design Professional and the Construction Manager unless the context suggests otherwise.
- k. **“Contractor’s Fee”** has the meaning set forth in Article 6 hereof.
- l. **“Cost of the Work”** has the meaning set forth in Article 8.
- m. **“Critical Path”** has the meaning set forth in Article 2.

- n. **“Days”** shall mean calendar days (as opposed to business days) unless expressly stated otherwise.
- o. **“Design Documents”** means the SLWD’s plans, drawings, shop drawings, record drawings, specifications, sketches, graphic representations, calculations, electronic files, studies, surveys, digital models, and other documents, all Deliverables set forth in Article 7, and similar materials prepared in connection with the SLWD’s obligations under the Project Documents.
- p. **“Design Professional”** means the entity providing design services for SLWD for all or a portion of the Work, and is lawfully licensed to practice architecture, engineering, and other required design services in Florida. The Design Professional is referred to throughout the Project Documents as if singular in number.
- q. **“Design Schedule”** means the timeframes established by the parties for the SLWD to complete the Design Phase consistent with the Critical Path.
- r. **“Design Cost”** has the meaning set forth in Article 7.
- s. **“Governmental Body”** means any federal, State, regional or local legislative, executive, judicial or other governmental board, department, agency, authority, commission, administration, court or other body, including the City, acting in its governmental, regulatory or quasi-judicial capacity (and not in its proprietary capacity as a party to this Comprehensive Agreement), or any official thereof, having jurisdiction in any way over or in respect of any aspect of the performance of this Agreement.
- t. **“Guaranteed Completion Date for the Project”** means the date set forth in the GMP Amendment for the Project to reach Final Completion.
- u. **“Guaranteed Maximum Price” or “GMP”** means the guaranteed price set forth in the GMP Amendment to complete construction of the Project and may be used interchangeably with Construction Cost.
- v. **“GMP Proposal”** the proposal from SLWD’s Construction Manager for the GMP Amendment.
- w. **“Initial Investment”** means the first deposit of funds from the parties for the construction of the K Street Parking Garage. The Initial Investment is separate and apart from the Capital Improvement Revenue Note funding.
- x. **“Liquidated Damages”** has the meaning set forth in the and agreed to by the parties in the GMP Amendment.
- y. **“Project Documents”** shall mean this Agreement, the Design Documents, the Construction Documents, Submittals, Entitlements, and all other documents material to and necessary for the Work and for a complete Project.
- z. **“Subcontractor”** means and includes the Design Professionals and Construction Manager (or Contractor’s) subconsultants, subcontractors, and Trade Contractors. Trade Contractors may be used interchangeably with Subcontractor.
- aa. **“Submittal”** means any submission to the City for review and approval demonstrating how SLWD proposes to conform to the Design Documents and Construction Documents for those portions of the Work for which the Project Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Project Documents unless incorporated into an Amendment but are Design Documents.
- bb. **“Work”** means all the design, preconstruction, construction, and all other services required by the Project Documents and includes all professional services, consulting services, labor, materials, equipment, supervision, and all other services to be provided by and through SLWD to fulfill its obligations for the completion of the Project.

1.2.11 **Extent of Agreement and Conflicts.** This Agreement, the Development Agreement, and the other Project Documents represent the entire agreement between the City and SLWD and supersedes all prior negotiations, representations, or agreements. Except as specifically authorized herein or in the other Project Documents, this Agreement may be amended only by written instrument approved by the City Commission

and the SLWD and signed by both parties. To the extent there is a conflict between this Agreement and the Development Agreement, this Agreement shall take precedence. To the extent that there is a conflict between this Agreement and the other Project Documents, the following order of precedence shall apply: (a) fully-executed Change Order(s) or Amendment(s) of the Project Documents, if any, with those of a later date having precedence over those of an earlier date, including the GMP Amendment with priority therein being given to GMP Qualifications and Assumptions; (b) approved Submittals, Entitlements, Work Authorizations, and Permits; (c) this Agreement and (d) any other Project Documents. In the event that any conflicts cannot be resolved by reference to this section, then the City Manager shall resolve the conflict in any manner which is reasonably acceptable to the City, and which comports with the overall intent of the Project Documents.

ARTICLE 2 SLWD'S BASIC SERVICES, TAXES, CITY FURNISHED MATERIALS, AND DISPUTE RESOLUTION

2.1 In addition to SLWD's other obligations as set forth herein, SLWD shall provide the following basic services:

2.2 **Phases.** SLWD's services under this Agreement include everything required to be furnished and done for and relating to the design, preconstruction, construction, commissioning, and delivery of the Project by SLWD pursuant to this Agreement and the other Project Documents.

2.2.1 SLWD shall complete the K Street Parking Garage in accordance with the Critical Path, attached hereto as **Exhibit "B"** and incorporated herein (subject to amendment by the GMP Amendment).

2.2.2 The obligation of SLWD to construct the K Street Parking Garage is contingent upon the City and CRA satisfying all their respective requirements, as set forth herein.

2.3 The Design Phase.

2.3.1 SLWD shall schedule and conduct meetings with the City's Project Manager and City Representatives and any other necessary individuals or entities to discuss and review the City's Criteria as set forth in **Exhibit "A"**. The discussion(s) and review(s) shall address the development of more specific and additional criteria, alternative approaches to design and construction of the Project, and include SLWD's and its Contractors' recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The discussions shall consider cost information, design, constructability, and procurement and construction scheduling issues.

2.3.2 Based on the discussion(s) with the City, SLWD shall provide a written report to the City, summarizing SLWD's evaluation of the City's Criteria ("Design Report"). The SLWD Design Report shall include, but not be limited to, Site Survey, Testing, Borings/Geo Tech Report, Concept sketchbooks, 3D perspectives - basic wireframes; not photorealistic, preliminary program and preliminary gross areas, concept design level site plan showing utility, point of entry, vehicular and pedestrian access, concept level plans indicating major building core and shell, basic building heights and section showing floor to floor heights. BOD from Consultants. Conceptual Level Budget with two design approach cost options.

2.3.3 The City Commission shall review SLWD's Design Report as further stated in Article 5 hereof, if acceptable, SLWD shall proceed with the development of the Preliminary Design.

2.3.4 SLWD shall develop and the City shall review the Preliminary Design, which shall include an updated Design Schedule if the Critical Path has changed based on the accepted Design Report. The Preliminary Design shall include a report identifying any deviations from the City's Criteria, and shall

include, but not limited to the following: development level documents in drawing form, finalized site plan showing utility, point of entry, vehicular and pedestrian access, finalized plans indicating major building program elements, building core, and shell, developed back of house spaces. (pending award of interior design scope/fees), building section showing floor to floor heights, up to three (3) computer generated electronic renderings finalize plans showing preliminary layouts, exterior elevations with floor-to-floor heights and material selection, schematic package for record submission for Entitlements, physical samples of building materials selection as required for review and approval, and a design development level budget.

The Preliminary Design may include some combination of, perspective sketches, or digital renderings. The City shall review the Preliminary Design consistent with Article 5 hereof and, if acceptable, the City will provide SLWD with written consent to proceed to development of the SLWD's GMP Proposal.

2.3.4 Design Phase Reports Required. SLWD shall provide preconstruction deliverables consisting of electronic copies of reports at schematic design, 100% design development, 50% Construction Documents, and 95% Construction Documents together with SLWD's Construction Manager's GMP Proposal to include the Guaranteed Maximum Price proposal and proposed Guaranteed Completion Date for the Project. The reports shall include a complete discussion and summary of the services provided in accordance with the following subparagraphs including the schedule and a detailed cost estimate.

2.3.5 Design Reviews. During the Design Phase, SLWD shall review designs during their development with its Construction Manager as to constructability, including without limitation bringing to the City's attention to any known observations in the design that appear to be ambiguous, confusing, conflicting or erroneous. With respect to each such issue, SLWD shall submit a written report to the City and at a minimum, each such written report shall contain: (1) a description of the constructability issue with background information; and, (2) written recommendations for addressing the issue. SLWD through its Construction Manager shall proactively advise the Design Representative with regard to the most effective approach for designing the Project regarding issues of onsite use and improvements, selection of materials, building systems and equipment. SLWD shall provide to the City recommendations on relative feasibility of construction methods; compliance with applicable laws, codes, (relating to installation only) design standards, and ordinances; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to cost including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economies, while maintaining the City's Criteria and design objectives. SLWD shall through its Construction Manager conduct the comparisons and reviews to ensure best practices under a Construction Manager at Risk delivery method.

2.3.6 Construction Feasibility Meetings. SLWD shall attend regularly scheduled meetings with the City's Project Manager, City Representatives, Design Representative, Contractor and other Subcontractors to discuss and advise them on matters relating to site use, improvements, selection of materials, building methods, construction details, building systems and equipment, phasing and sequencing. SLWD through its Construction Manager shall provide written recommendations on construction feasibility.

2.3.7 Value Analysis. After a complete review of the schematic design, SLWD's Construction Manager shall evaluate the design and obtain an understanding of the intent of the City and Design Representative, provide an initial value analysis and offer cost savings suggestions, and best value recommendations to the City. All recommendations shall be in writing and must be fully reviewed with the Design Representative and approved by the City's Project Manager prior to implementation.

2.3.8 Value Analysis Includes Operational Costs. Value analysis efforts shall result in a design that is most effective in the first costs as well as long term operational costs relative to issues of energy use and facility maintainability. If required by the City, value analysis studies may be required. Value analysis shall

include life cycle cost analysis, as may be required, to assist the Design Representative to achieve an appropriate balance between costs, aesthetics and function. Value analysis efforts shall also take into consideration applicable constructability issues. All value analysis studies shall be continuous as the design is being developed and must be provided on a timely basis within the design schedule.

2.3.9 Cost Estimates. Based on Design Documents, SLWD shall prepare for the City's approval a detailed estimate of the Construction Cost, developed by using estimating techniques which anticipate the various elements of the Project, and based on Design Documents prepared by the Design Professional. SLWD shall update and refine this estimate as the Design Professional prepares each design phase of the Project including Design Documents and construction documents. SLWD shall advise the City and the Design Representative if it appears that the Construction Cost may exceed the City's Budget. SLWD shall make recommendations for corrective action.

2.3.10 Specification Review. SLWD with its Contractors shall review the drawings and specifications as they are being prepared, recommending alternative solutions whenever design details affect costs, construction feasibility, or schedules. SLWD shall notify the City and Design Representative upon observing any known features in the plans or specifications, which appear ambiguous, confusing, conflicting or erroneous. All ambiguous, confusing, conflicting and/or erroneous features discovered in the plans or specifications by SLWD during the review process shall be corrected and the corrections included in the Guaranteed Maximum Price Amendment.

2.3.11 Industry Accepted Practices. SLWD shall provide a thorough interdisciplinary coordination review of the design and construction drawings and specifications to be submitted for review to the Governmental Body for plan review and building permits before Subcontractor bidding. This review shall be performed utilizing a structured and industry accepted process. SLWD shall review the final documents to see that all comments have been incorporated.

2.3.12 Schedule for Building Components and Systems. SLWD agrees that time is of the essence in maintaining the overall schedule for the Project. In an effort to achieve the Project schedule, the City will rely upon the input and recommendations of SLWD on lead times and availability of equipment and materials in preparing the Project documents, recognizing that cost is one of a number of issues which will influence the selection of building components and systems.

2.3.13 Maintenance of Schedule. It is incumbent upon SLWD to work with its Design Professional on recommended building components and systems before its Design Representative has comprehensively documented the materials, systems and equipment within the Project to maintain the overall schedule and costs of the Project.

2.3.14 Dividing Project into Trades. SLWD, through its Construction Manager, shall advise the City's Representative on the separation of the Project into trades for various categories of the Work. If separate trade contracts are to be awarded, SLWD will review the drawings and specifications, and make recommendations as required to provide that (1) the Work of the separate Trade Contractors is coordinated with that of the other Trade Contractors (2) all requirements for the Project have been assigned to the appropriate separate Trade Contractors, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.

2.3.15 Schedule for Each Trade. SLWD shall develop a preliminary project Construction Schedule in Primavera P6 format or other format acceptable to the City's Project Manager that can be subsequently imported by Microsoft Project, providing for all major elements such as phasing of construction and times of commencement and completion required of each Trade Contractor.

2.3.16 **Long Lead Items.** SLWD shall establish a schedule for the purchase of materials and equipment requiring long lead time procurement and coordinate the schedule with the early preparation of portions of the Construction Documents by its Design Representative. SLWD shall expedite and coordinate delivery of these purchases.

2.3.17 **Opportunities for City of Lake Worth Beach Residents and Businesses.** SLWD shall make commercially reasonable efforts consistent with applicable law to provide Lake Worth Beach residents with opportunities for training and employment in connection with the construction of the Parking Garage. SLWD shall work with the City to make commercially reasonable efforts consistent with applicable law to provide City of Lake Worth Beach business concerns with opportunities in connection with the construction of the Parking Garage, including the utilization of small business, minority/women owned business enterprises, and veteran-owned business enterprises.

2.3.18 The Construction Documents shall establish the quality levels of materials and systems required and shall be developed in accordance with the Design Documents and the Design Schedule.

2.3.19 **Construction Documents.** SLWD shall provide the Construction Documents to the City for the City's review. If the City in its review discovers any deviations between the Construction Documents and the Design Documents or other existing Project Documents, the City shall promptly notify SLWD of such deviations in writing. The Construction Documents shall not modify the Design Documents or other Project Documents unless the City and SLWD execute an Amendment. The failure of the City to discover any such deviations in its review shall not relieve the SLWD of the obligation to perform the Work in accordance with the Project Documents. Such review by the City is in addition to all Governmental Body plans review and permitting for the Project.

2.3.20 **GMP Proposal Submission.** Upon agreement of the City, CRA, and SLWD, SLWD's GMP Proposal including the GMP and Liquidated Damages as it relates to construction may be submitted at any time after completion and approval of the Design Documents and Design Phase, but in no case later than sixty (60) days after submission of the Construction Documents to the Governmental Body for plans review and permitting. SLWD will develop and provide to the City a GMP which will include all construction costs, and all other projected costs including without limitation the Contractor's Fees, the Construction Contingency, the City's Contingency, Direct Purchases, General Conditions allowance, each anticipated Trade Contractor amount, reimbursable costs including on-site field staff, and all Project related costs (i.e., bonds, insurance, personnel, payroll benefit, etc.). For avoidance of doubt, the City requires the GMP Proposal to be a comprehensive and detailed schedule of all values for the Work necessary for SLWD to provide the City with a complete Project.

2.3.21 **Assumptions.** All assumptions made by SLWD in the development of the GMP shall be specifically listed in the GMP Proposal, and the GMP will not be adjusted due to assumptions made by SLWD or its Construction Manager, but not included in the GMP Proposal and the GMP Amendment. At this time, it is assumed by the parties that SLWD will provide a fully functional parking garage that may be utilized upon Final Completion; however, this will not include a parking fee system for the City to charge for parking fees nor electric vehicle charges. The City will be responsible for paying for and installing the parking fee system and EV charges; however SLWD shall provide for the necessary locations, spacing, and utility connections (stub-outs) for the parking system and EV charges.

2.3.22 **Maintenance of the Project Budget.** In the event that the GMP exceeds the Project construction budget or the GMP Proposal's detailed schedule of all values is deemed unreasonable by the City's Project Manager or City Manager in writing with detailed description, the City reserves the right to direct SLWD to (and SLWD shall) work in conjunction with its Design Professional and Construction Manager to adjust

the GMP Proposal and/or redesign the Project as necessary to maintain the Project program and meet the Project construction budget as follows:

- a. After consultation with the City, SLWD shall coordinate with its Contractors to re-evaluate the GMP Proposal consistent with the City's Project Manager or City Representatives written details and alter and redraft the GMP Proposal;
- b. After consultation with the City, SLWD shall coordinate with its Contractors to alter and redraft the Construction Documents as necessary to accomplish the required reduction in cost.
- c. SLWD shall develop and provide to the City a revised GMP Proposal in connection with the redrafted and altered Construction Documents to accomplish the necessary reductions in cost.
- d. SLWD shall analyze its Contractor's and Design Professional's originally submitted and as altered and redrafted Design and Construction Documents and make recommendations to the City as to ways and methods to reduce the costs of constructing the Project to a sum which does not exceed the Project construction budget or otherwise satisfies the City's Project Manager and City Manager as to reasonable Project costs.

2.3.24 City's Right to Reject GMP. The City has the right in its sole discretion to reject any GMP Proposal as originally submitted, or as adjusted. In addition, the City has the right to withhold, in its sole discretion, approval of the Amendment of the Project Documents to reflect any GMP. If the City rejects the GMP proposal and no further adjustments are reasonably feasible, the parties shall agree to mutually terminate this Agreement consistent with the mutual termination provision set forth herein.

2.3.25 Review of Budget, Estimates and GMP. SLWD's detailed construction cost estimates and GMP Amendment will be reviewed by the City for reasonableness and compatibility with the Project construction budget. Meetings and negotiations with SLWD will be held to resolve questions and differences that may occur between the Project construction budget and SLWD's construction cost estimate and the corresponding GMP and any assumptions. If indicated by the Project construction budget limitations or other circumstances, SLWD shall work with the City to reach a mutually acceptable GMP.

2.3.26 Acceptance of GMP; Public Construction Bond Required. If the GMP Amendment is accepted, at a public meeting by the City Commission and duly executed by the City and SLWD, it shall become an Amendment to this Agreement which will establish the GMP, Construction Schedule with Guaranteed Completion Date, and Liquidated Damages for the Construction Phase of the Work for the Project. Within 30 days following the City's and SLWD's execution of the GMP Amendment, SLWD shall provide, or cause to be provided by its Contractor, a Public Construction Bond pursuant to section 255.05, Florida Statutes ("Bond"), which shall satisfy the following minimum qualifications:

- a. The Bond shall name the City as Owner and/or co-obligee and name CRA as co-obligee;
- b. The Bond shall be in the amount of 100% of the GMP;
- c. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida Department of Insurance, authorizing it to write surety bonds in the State of Florida.
- d. The Surety Company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
- e. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- f. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time of SLWD's GMP Proposal is provided to the City.
- g. The Surety Company shall have at least the ratings of A-/Class V in the latest issue of Best's Key Rating Guide.
- h. The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

(i) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.

(ii) In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

i. The Bond shall be in the substantially the same form as the bond form set forth in **Exhibit “C”**, which is incorporated herein by reference. The Bond may identify the City and CRA as co-obligees by rider executed concurrently with the Bond; however, the rider shall not change the terms and conditions as set forth in the format as set forth in **Exhibit “C”**. The City Manager and City Attorney and CRA Executive Director and CRA Attorney may approve revisions to the form of the bond.

j. The executed Bond shall be recorded in the Official Records of Palm Beach County by SLWD or the Contractor and a certified copy of the recorded Bond provided to the City and CRA prior to the commencement of any construction work.

k. If the Surety is declared bankrupt, becomes insolvent, its right to do business in the State is terminated or it ceases to meet the requirements set forth above, SLWD shall within ten Business Days after notification by the City substitute another Bond and surety company, at no cost to the City, meeting the above requirements.

2.4 **Construction Phase.** If the GMP Amendment is approved, SLWD shall promptly commence the Construction Phase. Unless otherwise authorized by the City, all Work shall be performed by SLWD’s Contractor and its Trade Contractors under a contract(s) between SLWD and its Contractor. SLWD’s Contractor’s construction services shall include, but are not limited to:

2.4.1 **General.** SLWD’s Contractor shall administer the Construction Phase as provided in the Project Documents and Construction Schedule.

2.4.2 **Commencement of Work.** SLWD’s Contractor shall commence the Work within thirty (30) days after the latest of the following: (a) receipt of the executed GMP Amendment from the City, (b) receipt of all permits necessary to commence the Work and continue without interruption, and (c) “Notice to Proceed” (NTP) from the City, (d) confirmation that the Initial Investment has been deposited to the Escrow Agent, and (e) confirmation that the Capital Improvement Revenue Note has been issued and the Capital Improvement Revenue Note funds in the amount of THREE MILLION FIVE HUNDRED THOUSAND and NO/100 DOLLARS (\$3,500,000.00) have been deposited into the Escrow Account.

2.4.3 **Awarded Trade Subcontracts.** SLWD’s Contractor shall promptly award and execute trade contracts with approved Trade Contractors. SLWD shall provide copies of fully executed trade contracts, insurance certificates and, if required, bonds to the City, when requested. The Trade Contractor buyout is to be completed within 60 days from the latter of the GMP Amendment approval or NTP and the Contingency reconciled with the savings/overage unless SLWD requests and receives a time extension from the City, which the City Manager may authorize up to sixty (60) days without amendment to this Agreement.

2.4.4 **Management of the Work.** SLWD’s Contractor shall manage, schedule and coordinate the Work, including all work of the Trade Contractors, and coordinate the Work with the activities and responsibilities

of the City's Project Manager and SLWD's Design Representative to complete the Project in accordance with the Construction Schedule and the City's objectives of time and quality. SLWD shall develop, or shall cause to be developed, and maintain a written program, acceptable to the City's Project Manager, to assure quality control of the construction. SLWD's Contractor shall supervise the work of all Trade Contractors so that the Work conforms to the requirements of the Project Documents including, but not limited to, all plans and specifications. Should disagreement occur between SLWD and the City's Project Manager over acceptability of Work and conformance with the requirements of the specifications and plans, the City and SLWD shall agree to appoint a third-party engineer or project manager to be the final judge of performance and acceptability.

2.4.5 SLWD's Contractor Staff. SLWD's Contractor shall maintain exclusively for the Project a superintendent at the Project Site to coordinate and direct the Work and progress of the Trade Contractor on the Project. Upon written notice and with reasonable justification, the City shall have the right to request that SLWD make changes to any of its Subcontractor's on-site personnel whose performance creates a written complaint to the City. In such event, SLWD shall promptly work with its Subcontractor to address the complaint and/or replace such personnel if the complaint cannot otherwise be reasonably resolved.

2.4.6 Inspector. The City may retain or require SLWD to retain a "threshold building" special inspector, if required by Chapter 553, Florida Statutes. If SLWD is required to retain a special inspector, the costs of the same shall be made part of the GMP Amendment.

2.4.7 On-Site Authority. SLWD shall establish on-site organization and lines of authority to carry out the overall plans of the Project. SLWD shall identify an on-site staff member to represent SLWD's Contractor, on a daily basis, with authority to negotiate Change Orders and Amendments on behalf of SLWD's Contractor. SLWD and the City shall make available such executive personnel as necessary to execute Change Orders or other Amendments on behalf of SLWD and/or the City (subject to appropriate authorization levels) so as not to delay the progress of the Work. Along with the City Project Manager and City Representatives, SLWD's Project Manager, SLWD's Design Representative, SLWD's Contractor's on-site staff member shall constitute the "Construction Team."

2.4.8 SLWD's Contractor shall maintain at the site for the City one copy of the Project Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals.

2.4.9 Project Manual. SLWD shall establish procedures for coordination among the City, Design Representative, SLWD's Contractor, and SLWD's Project Manager with respect to all aspects of the Work. SLWD shall implement such procedures, incorporate them into a project resource manual, and distribute manuals to the Construction Team.

- a. **Coordination Drawings.** SLWD's Contractor shall require of the various Trade Contractor such coordination drawings as may be necessary to properly coordinate the Work among the Trade Contractor.
- b. **Processing of Shop Drawings.** In coordination with SLWD's Design Representative, SLWD through its Contractor shall establish and implement procedures for tracking and expediting the processing of shop drawings and samples, as required by the Project Documents.

2.4.10 Progress Meetings. SLWD's Project Manager shall schedule and conduct weekly progress meetings with its Contractor to review matters such as job procedures, job safety, construction progress, schedule, shop drawing status and other information as necessary. SLWD's Project Manager and Contractor shall attend team meetings with the Construction Team as needed or as requested by the City.

2.4.11 **Schedule Updates.** SLWD shall review the Construction Schedule with its Contractor and review, or expand, the level of detail to incorporate specific Trade Contractor input consistent with the overall completion requirements. SLWD through its Contractor shall regularly monitor and update the Construction Schedule and various sub-networks as construction progresses.

2.4.12 **Management of Trade Contractor.** SLWD's Contractor shall determine the adequacy of the Trade Contractors' personnel and equipment, and the availability of materials and supplies to meet the schedule. In consultation with the Construction Team, SLWD shall take necessary corrective actions when requirements of a Trade Contractor(s) or their schedule(s) are not being met.

2.4.13 **City Furnished Material.** If SLWD and/or City desire the City to provide materials or equipment to the Project site for SLWD to have installed and to save on sales taxes, the parties shall follow the process set forth herein for City Furnished Material. SLWD or its Contractor shall be responsible for all such City-Furnished Material until final completion of the Project including any repairs, replacements, and/or warranty issues.

2.4.14 **Cost Control.** SLWD shall develop a cost control process which is satisfactory to the City's Project Manager. SLWD shall revise and refine the initially approved Project construction budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. SLWD shall identify variances between actual and budgeted or estimated costs and advise City's Project Manager and its Design Representative whenever projected costs exceed budgets or estimates. Cost control reports shall be included as part of the monthly Project report outlined herein.

2.4.15 **Records.** SLWD shall maintain a consistent and accurate accounting system. The SLWD shall preserve all accounting records for a period of five (5) years after final payment of the Work or as otherwise requested in writing by the City. Subject to the limitations on auditing of stipulated rates or fixed percentages set forth in the Project Documents, the City shall have access to all such accounting records at any time during the performance of the Work and for a period of five (5) years after final payment of the Work.

2.4.16 **Change Orders.** Consistent with this Agreement, SLWD shall develop and implement a system for the preparation, review, and processing of Change Orders. SLWD shall recommend necessary or desirable changes to the City's Project Manager, review requests for changes, and submit recommendations to the City.

2.4.17 **Change Order Cost Estimates.** When requested by the City, SLWD shall promptly prepare and submit estimates of probable cost for changes proposed in the Work including similar estimates from the its Contractor and relevant Trade Contractors. If directed by the City, SLWD shall promptly secure formal written Change Order proposals from its Contractor and such Trade Contractors.

2.4.18 **SLWD Safety Programs.** SLWD shall be responsible for initiating, maintaining and supervising effective safety programs and require similar programs of the Contractor and Trade Contractors. The OSHA guidelines shall serve as the basis for the construction safety program.

2.4.19 **Notice of Safety Issues.** SLWD shall promptly notify the City and, where applicable, the City's Project Manager, in writing, upon receiving notice of filing of any charge of non-compliance from OSHA, or upon receiving notification that a federal or state inspector shall visit or is visiting the Project site.

2.4.20 **Safety Meetings.** At progress meetings with SLWD's Contractors, SLWD shall conduct a review of job safety and accident prevention and prepare minutes of such meetings that will be available to the

City's Project Manager on request. The minutes of job safety and accident prevention portion of such progress meetings shall be made available to the City's Project Manager upon request.

2.4.21 Security. SLWD shall make provisions for Project security reasonably acceptable to the City, to protect the Project site and materials stored off-site, or on-site, against theft, vandalism, weather, fire and accidents, damage, or injury to person(s) or property, etc., as required by job and location conditions.

2.4.22 Monthly Progress Reports. SLWD shall record the progress of the Project. SLWD shall submit written monthly progress reports to the City and the CRA including information on the Contractor and its Trade Contractors' work, the percentage of completion, current estimating, computerized updated monthly Construction Schedule, and Project accounting reports, including estimated time to completion and estimated cost to complete. SLWD shall keep, or shall cause to be kept, a daily activity log available to the City. SLWD shall report and record such additional information related to construction as may be requested by the City.

2.4.23 Hazardous Materials Disposal. SLWD shall be responsible for the coordination of removal, encapsulation, transportation and disposal of any hazardous material, including, without limitation, any asbestos or asbestos-related products as may be required in connection with the Work (if any). Handling and removal will be performed, if necessary, under separate Project Documents with City. However, hazardous material, described by federal guidelines brought onsite by SLWD's Contractor or the Trade Contractors shall remain their responsibility for proper disposal. Any hazardous material not specifically shown on the Construction Documents shall be considered a concealed condition and may be the responsibility of SLWD in a Change Order increasing the Guaranteed Maximum Price for any additional costs incurred. Such Change Order shall be submitted in as timely a manner as is reasonably possible after discovery of the concealed condition.

2.4.24 Funding Agreements. If the City is able to obtain a grant(s) or other funding agreement(s) to assist in the Construction Costs for the Project, SLWD shall cooperatively work with the City and assist in preparing such reports and making such certifications and representations as may be required by City or required by a funding agency for the Project. City will cooperate with SLWD in identifying any applicable funding agency requirements and provide SLWD with an opportunity to review the same to determine any impact on the Project budget prior to City agreeing to a funding agreement.

2.4.25 Permit Drawings and Specifications.

- a. SLWD shall provide the City with two (2) complete sets of the permitted drawings and addendum within five (5) days of issuance by the appropriate Governmental Bodies. If the permitted set of drawings changes the scope of the Work to be performed, SLWD shall notify the City within twenty (20) days of receipt of the permitted drawings (or within twenty (20) days of the date SLWD actually became aware or reasonably should have become aware of a latent condition). Such notification shall contain a written description of the change and the cost and time associated with the change, if any. Failure to provide such notice as provided herein shall be a complete waiver by SLWD of all additional cost and time, and SLWD shall have the Work performed at its expense and the Work shall be completed in accordance with the schedule and in no event shall SLWD recover delay or consequential damages.
- b. SLWD shall, immediately upon receipt of the permitted drawings, check all drawings furnished and shall promptly notify City of any illegibility, errors, omissions or discrepancies discovered in such drawings. SLWD shall have the Work performed only in accordance with the permitted drawings and any subsequent revisions thereto. SLWD shall maintain at the Project site a copy of the permitted drawings and specifications kept current with all changes and modifications and

shall at all times give City, as well as all the Contractor and Trade Contractors performing at the Project, access thereto.

2.4.26 Ownership of Documents. The Project Documents prepared for the Project (including all Design Documents and Construction Documents and Submittals) shall become the property of the City upon the early termination of the Project Documents or final completion of the Project. After termination or final completion of the Project, SLWD may keep copies or samples thereof and shall have the right to use the same at its sole risk. The City accepts sole responsibility for its reuse of any the aforementioned documents.

2.4.27 Compliance with Applicable Laws.

- a. SLWD, its Contractor, and all Subcontractors shall at all times comply with all Applicable Laws, codes, ordinances, statutes, rules or regulations in effect at the time Work is performed under the Project Documents.
- b. If, during the term of the Agreement, there are any changed or new laws, ordinances or regulations not known or foreseeable at the time of signing this Agreement which become effective and which affect the cost or time of performance of the Agreement, SLWD shall immediately notify the City in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Agreement. Upon concurrence by City as to the effect of such changes, an adjustment in the compensation and/or time of performance will be made.
- c. If any discrepancy or inconsistency should be discovered between the Project Documents and any law, ordinance, regulation, order or decree, SLWD shall immediately report the same in writing to City who will issue such instructions as may be necessary.
- d. However, it shall not be grounds for a change order that the SLWD, its Contractor and/or Subcontractors were unaware of or failed to investigate the rules, codes, regulations, statutes, and all ordinances of all applicable Governmental Bodies having jurisdiction over the Project or the Work.
- e. Except to the extent SLWD is expressly entitled to relief elsewhere in the Project Documents City shall not be liable for any costs, delays or damages which SLWD or its Contractor or Subcontractor incurs as a result of the actions or orders of any other governmental entity or agency.
- f. Normal allowable Project Work hours are from 7:00am to 5:00pm Monday thru Friday. Requests by SLWD to work outside this time frame including weekend and Holiday work shall be made to City's Project Manager at least 3 workdays prior to the requested work time change.

2.4.28 Code Related Inspections. SLWD recognizes that the City's Department of Community Sustainability ("DCS"), which includes the Planning, Zoning, Historic, and Building divisions, is a separate department within the City that is charged with reviewing plans and approving the same for compliance with the City's Charter, Comprehensive Plan, and Code of Ordinances. The improvements to be made by SLWD pursuant to the Project Documents will be subject to review, approval and/or inspection by DCS and SLWD agrees that it will not assert, as a City caused delay or as a defense of any delay on the part of SLWD, any good faith action or series of actions on the part of DCS, including, but not limited to DCS' refusal to accept any portion of the SLWD's proposed Work or the Work. The City will use its best efforts to coordinate with DCS to provide timely reviews, responses, and inspections for SLWD.

2.4.29 Commercial Activities. SLWD shall not establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on lands owned or controlled by City or CRA, without the City or CRA's written consent. SLWD shall not allow its Contractor or Subcontractors to engage in any commercial activities on the Project site.

2.4.30 Cooperation with Others. The City and other contractors and subcontractors may be working at the Project site during SLWD's performance of its obligations under the Project Documents. SLWD shall fully cooperate with the City, City's Project Manager, or designee, and SLWD's Contractor to avoid any delay or hindrance of their Work. City may require that certain facilities be used concurrently by SLWD and other parties and SLWD shall comply with such requirements to the extent reasonably practicable. If any part of the Work depends on proper execution or results from any work performed by the City or any separate contractor, SLWD shall, prior to proceeding with the Work, promptly report to the City any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of SLWD to report such discrepancies or defects shall constitute an acceptance of the City's separate contractor's work as fit and proper to receive its Work, except as to defects which may subsequently become apparent in such work performed by others. Any costs that could have been avoided had notice been given as required herein, shall be borne by SLWD unless SLWD gives written notice to City, if reasonably possible, prior to proceeding with the Work and in any event within three days of commencement of Work. In no event shall the City be liable to SLWD or its Contractor for delay damages where required notice has not been given.

2.4.31 Project Documents Interpretation.

- a. All claims of SLWD and all questions SLWD may have concerning interpretation or clarification of the Project Documents or its acceptable fulfillment shall be submitted immediately or as soon as reasonably possible in writing to City for resolution. City's Project Manager will render its determination concerning such resolution, which determination shall be considered final and conclusive unless SLWD files a written protest pursuant to the Dispute Process. SLWD's protest shall state clearly and in detail the basis thereof. City Manager will consider SLWD's protest and render City Manager's decision thereon within twenty-one (21) calendar days. If SLWD does not agree with the City Manager's decision, SLWD shall immediately deliver written notice to that effect to the City.
- b. SLWD is solely responsible for requesting instructions or interpretations and is solely liable for any cost and/or expenses that could have been avoided had it done so. SLWD's failure to protest City's determinations, instructions, clarifications or decisions within fourteen (14) calendar days after receipt thereof shall constitute a waiver by SLWD of all its rights to further protest, judicial or otherwise.

2.4.32 Site Conditions. SLWD shall have the sole responsibility of satisfying itself concerning the nature and location of Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials; availability, quantity and quality of labor; familiarity with local and regional market and industry conditions including labor skill level and availability, water and electric power; availability and condition of roads; climatic conditions, location of underground utilities as depicted on Project Documents, and through verification with local utility companies and the City, physical conditions of existing construction, topography and ground surface conditions; to the extent identified in the Project Geotechnical Study and Report, Environmental Study and Report, or other documentation actually provided to SLWD or obtained by SLWD, subsurface geology, and nature and quantity of surface and subsurface materials to be encountered; the nature of the ground water conditions; equipment and facilities needed preliminary to and during performance of the Project; and all other matters which can in any way affect performance of the Project, or the cost associated with such performance. The failure of SLWD to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully and timely performing the Project. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Project Documents or (2) unknown physical conditions of an unusual nature, which differ

materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Project Documents, then notice shall be given to the City promptly before conditions are disturbed. Should it be determined that such conditions exist and if they differ materially and cause an increase or decrease in the cost of the work, the SLWD will receive an equitable adjustment in the GMP or Project schedule, or both in accordance with this Agreement.

2.4.33 Access to Work Areas. City, and its duly authorized representatives and employees, and all duly authorized representatives of Governmental Bodies having jurisdiction over work areas or any part thereof shall, at all reasonable times, for the purpose of determining compliance with Project Documents requirements and permits, have access to such areas and the premises used by SLWD. SLWD shall also arrange for City, the City's Project Manager and City's Representatives, to have access at all reasonable times to all places where equipment or materials are being manufactured, produced, or fabricated for use under the Project Documents. SLWD's accesses to the site and storage areas shall be as shown on the plans and as agreed to by the City's Project Manager. Access routes may also be used by City employees, the public and other contractors. No other access points shall be allowed unless approved by the City's Project Manager. All SLWD traffic authorized to enter the site shall be experienced in the route or guided by SLWD personnel. SLWD is responsible for immediate cleanup of any debris deposited along the access route as a result of its construction traffic.

2.4.35 Ingress and Egress. SLWD shall establish maintenance of traffic plan for the Project site. SLWD and its Contractor's and all Subcontractors' access to the Project site will be permitted only through approaches which will be approved by the City's Project Manager, and then only in such manner that SLWD's traffic will not interfere with City's operations. SLWD shall, at all times, maintain free unimpeded ingress and egress at the site. SLWD personnel shall not to enter into any areas of the jobsite other than work areas and areas of designated access.

2.4.36 Dust Control. SLWD shall or shall have its Contractor, for the duration of the Work, maintain, at its expense, all excavations embankments, haul roads, access roads, plant sites, waste disposal areas, borrow areas, and all other Work areas free from dust. Industry-accepted methods of dust control suitable for the area involved and approved by City will be permitted. SLWD shall or shall have its Contractor, for the duration of the Work, protect all fixtures, equipment, devices, and surfaces from any dust or debris within any facility which is affected by the Work and shall comply with the City's direction to ensure dust control is managed and maintained.

2.4.37 Water Pollution. SLWD shall or shall have its Contractor, at its expense, provide suitable facilities to prevent the introduction of any substance or materials into any stream, river, lake or other body of water which may pollute the water or constitute substances or materials deleterious to fish and wildlife.

2.4.38 Air Pollution. SLWD shall or shall have its Contractor, at its expense, so perform its Work as not to discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules and regulations of all Federal, State and local air and water pollution requirements including, but not limited to: registering with the Palm Beach County Health Department, Air Pollution Board, any equipment requiring operating permits by said Board; Adhering to all Palm Beach County Air Pollution Board Regulations.

2.4.39 Inspection: Rejection of Materials and Workmanship.

- a. All materials and equipment furnished and Work performed shall be properly inspected by SLWD, at its expense, and shall at all times be subject to quality surveillance, observations or quality audit by City. The City has the right but not the obligation to perform such quality surveillance, observations or quality audit as the City deems necessary. SLWD shall provide

safe and adequate facilities and all samples, drawings, lists and documents necessary for such quality surveillance, observation or quality audit. For this purpose City, its agents, employees, and designees shall be afforded full and free access to the shops, factories or places of business of SLWD and its Subcontractors for such quality surveillance, observation or quality audit and to determine the status of the Work. City, its agents, employees, and designees shall be entitled to conduct such surveillance, observation, or quality audits in such a manner and with such frequency and for such duration as City, in its sole discretion, shall determine is appropriate. If SLWD covers all or any portion of the Work prior to any quality surveillance or test by City, the cost of any necessary uncovering and replacing shall be borne by SLWD. City has no duty or responsibility to inspect or audit SLWD's work and in doing so does not assume any liability or responsibility for SLWD's materials and workmanship. Neither the failure to make such quality surveillance, observance or quality audit, nor to discover defective workmanship, materials, or equipment, nor acceptance of or payment to SLWD for such Work, materials or equipment shall prejudice the rights of City thereafter to correct or reject the same as hereinafter provided.

- b. If any material, equipment or workmanship is reasonably determined by City, either during performance of the Work or on final quality surveillance, or during any applicable warranty period (expressed or implied), to be defective or not complying with the requirements of the Project Documents, City shall notify SLWD in writing that such material, equipment, or Work is rejected and provide detailed written justification for the basis of the rejection based on defect Thereupon, SLWD shall, at its own expense, immediately remove and replace or correct such defective material, equipment, or Work by making the same comply strictly with all requirements of the Project Documents.

2.4.40 Drawings.

- a. Progress Records - During construction, SLWD shall keep a marked-up and up-to-date set of drawings showing as-built conditions on the site as an accurate record of all deviations between work as shown and work as installed. These drawings shall be available to City for inspection at any time.
- b. Final Records – Prior to request for Substantial Completions, SLWD shall furnish to the City a complete set of marked-up as-builts with RECORD clearly printed on each sheet. City, at its expense, will furnish SLWD with drawings for mark-up by SLWD. SLWD shall, by use of professional draftsman, accurately and neatly transfer all deviations from progress as-builts to final as-builts. Record information necessary to establish utility services shall be provided by the SLWD a minimum of 30 days prior to the needed utility services.

2.4.41 Specifications.

- a. Progress Records - During construction, SLWD shall keep a marked-up and up-to-date set of specifications showing as-is conditions on the site annotated to clearly indicate all substitutions that are incorporated into the Work. Where selection of more than one product is specified, annotation shall show which product was installed. These specifications shall be available to City for inspection at any time.
- b. Final Records Prior to request for Substantial Completion, the SLWD shall furnish to City a complete set of marked-up as-built specifications with RECORD clearly printed on cover. City, at its expense, will furnish SLWD a set of specifications for mark- up by SLWD. SLWD shall accurately and neatly transfer all annotations from progress as-builts to final as-builts.

2.4.42 Manuals and Training.

- a. Manuals - As a condition precedent to Substantial Completion, the SLWD shall furnish to City three complete sets of manuals and applicable operating instructions as referenced in technical specifications.
- b. Training: Where specific training is required for City staff or deemed reasonably necessary by the parties, SLWD or its Subcontractors shall coordinate with City staff on the same as necessary.

2.4.43 Substantial Completion.

- a. The date of Substantial Completion is the date established by SLWD and approved by the City when the Project is sufficiently complete to permit the City to use it for its intended purpose, the City issues a Temporary Certificate of Occupancy, and the items listed below are complete. For the issuance of a Temporary Certificate of Occupancy (Partial Utilization) in accordance with this Agreement, the City will notify the SLWD of which items listed below must be complete for partial utilization. SLWD shall take all action reasonably necessary to ensure the Temporary Certificate of Occupancy does not expire and a final Certificate of Occupancy is timely obtained for the Project.
- b. SLWD shall notify the City in writing when the SLWD considers the Project Substantially Complete and attach a comprehensive list of incomplete work and items needing correction with dates indicating when the items listed will be completed.
- c. Once the City has received notice and attachments from SLWD, the City will promptly inspect the Work. The City may refuse to inspect the Work if the Work is obviously not substantially complete or when the SLWD's list is not complete.
- d. The following items shall be completed prior to a request by the SLWD for inspection for Substantial Completion, subject to the punch list procedures set forth in the Project Documents and/or required by Section 281.735, Florida Statutes.
 - 1. Temporary Certificate of Occupancy or Certificate of Completion, as applicable, shall be obtained from the proper Building Official.
 - 2. All general construction completed.
 - 3. All mechanical, electrical, plumbing, and fire sprinkling work complete, equipment, and fixtures in place, connected, cleaned and ready for use.
 - 4. All electrical circuits shall be scheduled in panels, and all panels and disconnect switches properly labeled.
 - 5. All painting shall be completed; all signs installed.
 - 6. All Project components including floors, glass, and metal work shall be cleaned.
 - 7. All finished hardware shall be installed, and all doors shall be in good working order. All keys and blanks shall have been provided.
 - 8. Project site shall be cleared of the Contractor's and Subcontractors' excess equipment, storage shacks, trailers, and/or building supplies. All temporary construction and utilities shall be removed.
 - 9. All mechanical and electrical systems that are required to be installed by SLWD, must be 100% complete without exception.
 - 10. All operations and maintenance manuals for all equipment shall have been submitted.
 - 11. Manufacturers' certifications and warranties shall be delivered to City.
 - 12. All operations and maintenance training related literature, software and back-up disks shall have been provided.
 - 13. All required spare parts as well as any special tools shall have been provided.
 - 14. All HVAC testing and balancing reports shall have been submitted and approved.
 - 15. The Project record drawings and specifications shall be submitted in accordance with this Agreement.

2.4.44 If Substantial Completion is not obtained at the inspection, called by SLWD, for reasons which are the fault of SLWD, its Contractors, or Subcontractors, the cost of any subsequent inspections requested by SLWD for the purpose of determining Substantial Completion shall be the responsibility of SLWD and shall be assessed against the final payment application.

2.4.45 Once Substantial Completion is achieved and within the time allowed by law, SLWD and/or City will prepare the punch list required by the Local Government Prompt Payment Act. The punch list items shall be corrected by SLWD within 30 calendar days following finalization of the punch list and prior to any request for Final Inspection and Acceptance. The failure to include any corrective work or pending items not yet completed on the list does not alter the responsibility of SLWD to complete the Work pursuant to the Project Documents.

2.4.46 Final Inspection and Acceptance.

- a. When SLWD considers that all Work under the Project Documents is complete, SLWD shall so inform City in writing, "Notice of Final Completion". When items on the punch list as recorded at the Substantial Completion inspection have been corrected and the City is satisfied that all Work under the Project Documents is completed and is in accordance with the requirements of the Project Documents, City shall notify SLWD in writing of final acceptance of its Work under the Project Documents. Final Acceptance shall not occur prior to the issuance of a final Certificate of Occupancy. The City will then make final payment in accordance with the terms of this Agreement of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Project Documents, including the following items, for which a Change Order will be issued:
 1. Liquidated Damages, as applicable.
 2. At the discretion of the City, one and one-half times the value of outstanding items, corrective Work, and incomplete punch list. All such Work shall be completed or corrected to the satisfaction of the City within the time stated on the Certificate of Substantial Completion, or on the "final punch list," or any other "punch list", otherwise SLWD does hereby waive any and all claims to all monies withheld by the City to cover the value of all such uncompleted or uncorrected items.
 3. Neither final acceptance of the Work, nor payment therefore, nor any provision of the Project Documents shall relieve SLWD of responsibility for defective or deficient materials or work or responsibility for full contract and complete Project compliance. If, within one (1) year or as provided for elsewhere in this Agreement or technical specifications after Substantial Completion, any of the Work is found to be defective, deficient or not in accordance with the Project Documents, SLWD shall correct, remove, and replace it promptly after receipt of a written notice from the City and correct and pay for any damage to other Work resulting therefrom as set forth in the "WARRANTY" provisions hereof.

2.5 **Taxes.** SLWD or its Contractors shall pay all taxes, levies, duties and assessments of every nature which may be applicable to any Work under the Project Documents. The Design Costs, GMP, and any agreed Amendments thereof shall include all taxes imposed by law. Except for taxes (if any) related to the Direct Purchase Program) SLWD herein indemnifies and holds the City harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

2.6 City Furnished Materials/ Direct Purchase Program

2.6.1 SLWD shall ensure that Florida State Sales Tax (Sales Tax) and other applicable taxes are included in all costs for material, supplies, and equipment. To enable the City to realize savings of Sales Tax on selected tangible personal property needed for this Project and pursuant to Section 212.08(6) of the Florida Statutes and the Fla. Admin. Code Ann. R. 12A-1.094 and 12A-1.038, the Parties agree to the following procedure regarding City's direct-purchase from vendors of certain materials and equipment to be used in the Project ("City-Furnished Materials").

2.6.2 At such time that the parties may agree but no later than such time as reasonably necessary to avoid Project delays, SLWD will provide to the City a list of all intended Subcontractors for consideration as City-Furnished Materials. SLWD shall submit price quotes from the intended Subcontractor, as well as a detailed description of the materials to be supplied, quantities, and prices. SLWD will evaluate the list to recommend direct purchases where those direct purchases will result in Sales Tax Savings to the City. The City will either accept or reject SLWD's recommendations and purchases will be made according to City procedures. The City will have thirty (30) days to provide written acceptance of SLWD's recommendations, in whole or in part. If the City rejects SLWD's recommendation(s) or fails to respond within thirty (30) days, SLWD shall procure the materials in the normal course for timely completion of the Project.

2.6.3 SLWD shall identify materials which the City will furnish through this City Furnished Materials clause which will achieve a minimum agreed upon goal of tax savings, which shall be included in the GMP. City may agree to furnish materials worth more than the minimum agreed goal. SLWD will provide the necessary clerical and administrative services support required to implement this provision.

2.6.4 In a timely manner, SLWD shall prepare "Purchasing Requisition Request Forms" which shall, in form and detail be acceptable to City, specifically identify the materials which City may, in its discretion, elect to purchase directly. The Purchasing Requisition Request Form shall include:

- a. the name, address, telephone number and contact person for the material supplier
- b. manufacturer or brand, model of specification number of the item
- c. quantity needed as estimated by SLWD
- d. the price quoted by the supplier for the materials identified therein
- e. any sales tax associated with such quote
- f. shipping and handling insurance cost
- g. 100% Performance Bond cost
- h. delivery dates as established by SLWD
- i. any reduction in SLWD's cost for both the Payment Bond and the Performance Bond
- j. detail concerning bonds or letters of credit provided by the supplier if included in its proposal

2.6.5 SLWD shall include copies of vendors' quotations, and specifically reference any terms and conditions which have been negotiated with the vendors concerning letters of credit, terms, discounts, or special payments.

2.6.6 The following procedure will be used for the implementation of this program. After receipt of the Purchasing Requisition Request Form, City shall prepare City Purchase Orders, which includes the City's standard terms and conditions for purchases (hereinafter Purchase Orders) for items of material which the City chooses to purchase directly. Once the Purchase Order has been prepared and executed, it shall be issued directly to the vendor by the City. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to SLWD, less any sales tax associated with such price.

2.6.7 Promptly upon issuance of each Purchase Order by the City, SLWD shall verify the purchase of the items in accordance with the terms of the Purchase Order and in a manner to assure timely delivery of

items. City's Financial Services Director or designated representative shall be the approving authority for the City on Purchase Orders in conjunction with City Furnished Materials. The Purchase Order shall require that the supplier provide the required shipping and handling insurance. The Purchase Order shall also require the delivery of the City Furnished Materials on the delivery dates provided by SLWD in the Purchasing Requisition Request Form. The vendor shall issue its invoice, for all materials supplied pursuant to a City Purchase Order, directly to City of Lake Worth Beach, Florida.

2.6.8 In conjunction with or prior to the execution of the Purchase Orders, SLWD shall execute and deliver to the City one or more deductive Change Orders, in accordance with this Agreement's changes provision, referencing the full direct cost of all City Furnished Materials to be provided by each supplier from whom the City elected to purchase material directly, plus all sales taxes associated with such materials in the GMP. The City Manager or his/her authorized representative shall be the approving authority for the City on deductive Change Orders in conjunction with City Furnished Materials.

2.6.9 SLWD or its Contractor shall be fully responsible for all matters relating to the receipt of materials furnished by City in accordance with this Agreement including, but not limited to, verifying correct quantities, verifying documents of orders in a timely manner, coordinating purchases providing and obtaining all warranties and guarantees required by the Project Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials following acceptance of items by SLWD or its Contractor due to the negligence of SLWD or its Contractor. SLWD or its Contractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by SLWD or its Contractor for the particular materials furnished. SLWD shall provide all services required for the unloading, handling and storage of materials through installation.

2.6.10 As City Furnished Materials are delivered to the jobsite, SLWD or SLWD's Contractor shall visually inspect all shipments from the suppliers and approve the vendor's invoice for material delivered. SLWD's Contractor shall assure that each delivery of City Furnished Materials is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order together with such additional information as the City's Project Manager may require. SLWD will then forward the invoice and documentation to the City through the City's Project Manager for payment.

2.6.11 SLWD shall insure that City Furnished Materials conform to the specifications and determine prior to incorporation into the Work if such materials are patently defective, and whether such materials are identical to the materials ordered and match the description on the bill of lading. If SLWD discovers defective or nonconformities in City Furnished Materials upon such visual inspection, SLWD shall not utilize such nonconforming or defective materials in the Work and instead shall promptly notify the City of the defective or nonconforming condition so that repair or replacement of those materials can occur without any undue delay or interruption to the Project. If SLWD fails to perform such inspection and otherwise incorporates into the Work such defective or nonconforming City Furnished Materials, the condition of which it either knew or should have known by performance of an inspection, SLWD shall be responsible for all damages to City resulting from SLWD's incorporation of such materials into the Project, including Liquidated Damages.

2.6.12 SLWD or its Contractor shall maintain records of all City Furnished Materials incorporated into the Work from the stock of City Furnished Materials in its possession. SLWD shall account monthly to the City through the City's Project Manager for any City Furnished Materials delivered into the SLWD's or its Contractor's possession, indicating portions of all such materials which have been incorporated into the Work.

2.6.13 SLWD shall be responsible for obtaining and managing all warranties and guarantees for all materials and products as required by the Project Documents for all City Furnished Materials until final completion of the Project. All repair, maintenance or damage-repair calls shall be forwarded to SLWD's Contractor for resolution with the appropriate supplier, vendor, or Subcontractor.

2.6.14 Notwithstanding the transfer of City Furnished Materials by the City to SLWD's or its Contractor's possession, the City shall retain legal and equitable title to any and all City Furnished Materials, although SLWD shall maintain both Builders Risk and Inland Marine/Transit insurance on the City Furnished Materials and the Loss Payee endorsement on said policies shall read "City of Lake Worth Beach."

2.6.15 The transfer of possession of City Furnished Materials from the City to SLWD or its Contractor shall constitute a bailment for the mutual benefit of the City and SLWD. The City shall be considered the bailor and SLWD or its Contractor the bailee of the City Furnished Materials. City Furnished Materials shall be considered returned to the City for purposes of their bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project and upon final completion.

2.6.16 The City shall in no way be liable for any interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs or time resulting from any delay in the delivery of, or defects in, City Furnished Materials, unless due to the City's own delay in issuing a Purchase Order.

2.6.17 On a monthly basis, SLWD shall be required to review invoices submitted by all suppliers of City Furnished Materials delivered to the Project sites during that month and either concur or object to the City's issuance of payment to the suppliers, based upon SLWD's records of materials delivered to the site and any defects in such materials.

2.6.18 In order to arrange for the prompt payment to the suppliers, SLWD shall provide to the City a list indicating the acceptance of the goods or materials within 15 days of receipt of said goods or materials. The list shall include a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonable required by the City. Upon receipt of the appropriate documentation, the City shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be released, delivered and remitted directly to the supplier. SLWD agrees to assist the City to immediately obtain partial or final release of waivers as appropriate.

2.6.19 The City shall be entitled to the benefits of any discounts attributable to the early payment of vendor invoices for materials furnished by the City pursuant to these provisions.

2.6.20 The material supplier may be required to provide a Supply Bond in the amount of 100% of the purchase order price. The bond shall be from a qualified surety company authorized to do business in the State of Florida and acceptable to the City. If the supply bond is required, the cost of the bond will be added to the amount of the purchase order.

2.6.21 While the City's Project Manager and City Representatives will review SLWD's submissions for the City to issue Purchase Orders for City Furnished Materials, in no event will any review, approval, comment or evaluation by the City, its Project Manager, or Representatives relieve SLWD of any liability or responsibility under this Agreement; it being understood that the City is at all times ultimately relying upon SLWD's skill, knowledge, and professional training and experience in selecting each vendor, preparing any specifications, plans, drawings, or other documents for the vendor's use, preparing the Purchasing Requisition Request Forms, accepting delivery and verification of all received City Furnished Material and incorporating the City Furnished Materials into the Project.

2.7 **Dispute Process**

2.7.1 No later than thirty (30) days after the commencement of construction, the City and SLWD shall jointly identify a third-party Engineer and/or Construction Project Manager and expedited dispute review timeline that shall be used in the event of a dispute throughout the construction process.

2.7.2 Any dispute relating to the progress of the Work (including, but not limited to, substantial completion or final completion), interpretation of the Project Documents, and/or alleged defective Work (“Work Dispute”) under the Project Documents shall be resolved through good faith efforts upon the part of SLWD and City. At all times, SLWD shall carry on the Work and maintain its progress schedule in accordance with the requirements of the Project Documents pending resolution of any dispute. Any Work Dispute that is not disposed of by mutual agreement of the parties shall be referred to a third-party Engineer and/or Construction Project Manager selected by both parties. The third-party Engineer and/or Construction Project Manager shall reduce such decision to writing, the decision of the third-party Engineer and/or Project Manager shall be final and conclusive. The cost of the third-party Engineer and/or Construction Project Manager shall be shared equally between the City and SLWD.

2.7.3 If a dispute arises that is not a Work Dispute and is grounds for default, the parties agree first to try in good faith to settle the dispute through good faith negotiation. If the matter is not resolved through negotiation, the parties agree to submit the matter to mediation before resorting to litigation. Mediation shall be conducted by a mutually agreed-upon certified mediator, with each party to share equally in the costs.

2.7.4 In no event will any dispute, the filing of a protest, claim or appeal, or the resolution or litigation thereof, relieve SLWD from its obligations to have all Work timely performed in accordance with the Project Documents and to maintain the progress of the Schedule.

ARTICLE 3 ADDITIONAL SERVICES

3.1 Upon the mutual agreement of the City and SLWD, and upon written authorization from the City, the SLWD shall provide additional services which are beyond the scope of the Basic Services described in Article 2 herein. SLWD shall be compensated for such additional services by a fee to be negotiated by the City and SLWD at the time of the additional service request.

ARTICLE 4 CITY'S AND CRA'S RESPONSIBILITIES

4.1 **City's Responsibilities.** In addition to the City's other responsibilities as set forth herein, the City has the following responsibilities:

4.1.1 **City's Project Manager.** The City's Project Manager will act on the City's behalf for the Project. This Project Manager or designee will receive progress reports of the Work, serve as main point of contact with SLWD, its Contractor, and the Design Representative, receive and process communications, pay applications, and paperwork, and represent the City in the day-to-day conduct of the Project.

4.1.2 The City shall enter into a ground lease with the CRA for a period of no less than five (5) years to facilitate the construction of the K Street Parking Garage while the CRA is paying the debt service to SLWD. The ground lease will also contain the City and CRA's repayment schedule of the Revenue Note consistent with **Exhibit "F"**.

4.1.3 No later than forty-five (45) calendar days from the acceptance of the GMP, the City shall deposit with the Escrow Agent the City's share of the Initial Investment to construct the K Street Parking Garage

in the amount of TWO MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,500,000.00).

4.1.4 The City shall use best efforts to expedite all governmental permitting, review, public utility coordination, and community outreach throughout the process.

4.1.5 The City, pursuant to Section 163.385, Florida Statutes, acknowledges that the Capital Improvement Revenue Note to be issued by the CRA must be authorized by a resolution of the CRA and the City. In addition, under 163.346, Florida Statutes, the City acknowledges that the City shall provide Notice to Taxing Authorities, pursuant to Section 163.346, Florida Statutes, no less than 15 days prior to the City Commission's consideration to authorize the CRA's issuance of the Capital Improvement Revenue Note. The CRA shall provide the draft notices to the City.

4.1.6 In the event the obligation of the CRA as evidenced by the Capital Improvement Revenue Note is not satisfied prior to December 31, 2030, the City agrees to use its best efforts to adopt a resolution of necessity, in accordance with Section 163.3755, Florida Statutes, extending the expiration of the CRA until the Capital Improvement Revenue Note obligation is paid in full by the CRA.

4.1.7 The City will review and approve or take other appropriate action on the SLWD's Submittals within a reasonable time.

4.1.8 The City shall be responsible for completing the entitlement application and review process for the K Street Parking Garage contingent upon timely receiving all the necessary documentation from SLWD for the Project's entitlement application.

4.1.9 For purposes of authorizing construction draws, the City hereby authorizes the City Manager to approve any and all draws in accordance with this Agreement.

4.2 **CRA's Responsibilities.** In addition to the CRA's other responsibilities as set forth herein, the CRA has the following responsibilities:

4.2.1 To the extent necessary, the CRA shall work with the City and SLWD to ensure early involvement and collaboration in the design and construction of the K Street Parking Garage.

4.2.2 The CRA shall enter into a ground lease with the City for a period of no less than five (5) years to facilitate the construction of the K Street Parking Garage while the CRA is paying the debt service to SLWD. The ground lease will also contain the City's and CRA's repayment schedule of the Revenue Note consistent with **Exhibit "F"**.

4.2.3 No later than thirty (30) calendar days from the acceptance of the GMP, the CRA will issue the Capital Improvement Revenue Note providing for the covenant to budget and appropriate amounts necessary for the payment to SLWD in the amount of THREE MILLION FIVE HUNDRED THOUSAND and NO/100 DOLLARS (\$3,500,000.00) for a maximum of five (5) years at a fixed interest rate of four percent (4%), to be paid annually in equal principal and interest payments commencing on January 1, 2026, in accordance with the amortization schedule attached hereto **as Exhibit "D."**

4.2.4 The CRA agrees that to satisfy its obligation under the Capital Improvement Revenue Note, the CRA shall budget and appropriate, each year, monies sufficient to pay the principal and interest obligation debt to SLWD.

4.2.5 No later than forty-five (45) calendar days from the acceptance of the Guaranteed Maximum Price (GMP), the CRA shall deposit with the Escrow Agent its share of the Initial Investment to construct the K Street Parking Garage in the amount of ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000.00) and the Capital Improvement Revenue Note funds in the amount of THREE MILLION FIVE HUNDRED THOUSAND and NO/100 DOLLARS (\$3,500,000.00).

4.2.6 Within thirty (30) calendar days of formal acceptance of the GMP, CRA shall enter into a ground lease with the City for a period of no less than five (5) years to facilitate the construction of the K Street Parking Garage while the CRA is paying the Capital Improvement Revenue Note's debt service to SLWD.

4.2.7 Pursuant to Section 163.385, Florida Statutes, the CRA acknowledges that the Capital Improvement Revenue Note must be authorized by a resolution of the CRA and the City. In addition, pursuant to Section 163.346, Florida Statutes, the CRA shall cooperate with the City to insure that Notices to Taxing Authorities are provided no less than 15 days prior to the City Commission's consideration of authorization for the CRA to issue the Note.

4.2.8 For purposes of authorizing construction draws, the CRA hereby authorizes the CRA Executive Director to approve any and all draws in accordance with this Agreement.

4.2.9 The CRA agrees, in accordance with Section 163.3755, F.S. that the Capital Improvement Revenue Note shall be deemed a "bond" for purposes of extending the CRA's termination date until such time as the Capital Improvement Revenue Note has been paid in full.

4.2.10 In the event that the CRA's termination date is not extended, the CRA agrees to make all payments to SLWD to pay all outstanding monies consistent with the Capital Revenue Note Payment on or before December 1, 2030.

4.3 Budget and Appropriation of Project Fund. Based upon the timeframes set forth in this Agreement, the City agrees to propose in each of their applicable fiscal year budgets an amount to cover the City's financial obligations as stated herein commencing with the Fiscal Year 2025-2026 budget; however, the City's financial obligations as stated herein are all subject to the City's annual budgeting and appropriation process. SLWD understands and agrees (and will advise its Contractors) that the City's financial obligations hereunder are payable exclusively from duly appropriated or otherwise legally available funds and shall not be construed to be debt, liability or obligation within the meaning of any applicable constitutional or statutory limitation or requirement. Neither the City nor the State of Florida nor any political subdivision or agency thereof has pledged any of its full faith and credit or its taxing power to make any payments under this Agreement.

ARTICLE 5 SCHEDULE

5.1.1 No later than ninety (90) calendar days from the Effective Date of this Agreement, SLWD shall provide a Design Report to the City and the CRA in accordance with Section 2.3.2. The City Commission shall have forty-five (45) calendar days to review the SLWD Design Report and provide SLWD with consent to proceed to the development of the SLWD's Preliminary Design. Consent to proceed shall be deemed granted upon approval by the City Commission of the Design Report.

5.1.2 If the City Commission does not approve the Design Report and directs that certain revisions be made to the same, the City and SLWD shall work together to revise the Design Report and resubmit it to the City Commission (if required by the City Commission). If the City Commission does not approve a

revised Preliminary Design within ninety (90) calendar days of the initial rejection, this Agreement shall terminate under the Mutual Termination provision unless otherwise agreed in writing by the Parties.

5.1.3 No later than ninety calendar (90) days from consent to proceed with the Preliminary Design, SLWD shall provide the City with the Preliminary Design in accordance with Section 2.3.4.

5.1.4 The City shall have thirty (30) calendar days to review SLWD's Preliminary Design to ensure all City Commission directives are addressed and the Entitlement Documentation is ready for Entitlement Application by the City. If the City approves the Preliminary Design, written consent from the City shall be provided to SLWD to proceed with development of the GMP Proposal.

5.1.5 No later than (15) calendar days after SLWD received written consent to proceed with GMP development, the City shall prepare the entitlement application and submit the Entitlement Documentation for the K Street Parking Garage's entitlement review and approval.

5.1.6 No later than seventy-five (75) calendar days from the submittal of the Entitlement Documentation, the City shall use its best efforts to obtain/complete all entitlement approvals for the K Street Parking Garage.

5.1.7 No later than sixty (60) calendar days from entitlement approvals, SLWD shall submit construction documents and construction permit applications to the City's Project Manager and all Governmental Bodies for jurisdictional reviews. SLWD shall use its best efforts to obtain all permits for the K Street parking garage within sixty (60) calendar days of the submission.

5.1.8 No later than sixty (60) calendar days after SLWD submits permit applications to all Governmental Bodies, SLWD shall provide the GMP Proposal to the City and the CRA.

5.1.9 No later than forty-five (45) calendar days after SLWD submits GMP Proposal, the City Commission and the CRA shall consider the GMP Proposal and, if approved by both the City Commission and CRA, consent to proceed shall be assumed and the GMP Amendment shall be executed by all parties.

5.1.10 No later than twenty (20) days after the City's and CRA's approval and execution of the GMP Amendment, the City and CRA shall enter a long term lease agreement for the Parking Garage Property and provisions for the repayment of the Capital Improvement Revenue Note.

5.1.11 No later than thirty (30) calendar days after the City's and CRA's approval and execution of the GMP Amendment, the CRA shall issue a Capital Improvement Revenue Note for the construction of the K Street Parking Garage. SLWD shall provide Three Million, Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00) in capital improvement revenue to the CRA for the Capital Improvement Revenue Note as a loan for a term of five (5) years at a fixed interest rate of 4%, to be paid annually in equal principal and interest payments beginning on the issuance of the Revenue Note.

5.1.12 No later than forty-five (45) calendar days from approval and execution of the GMP Amendment by the City and CRA, the City and CRA shall deposit into the K Street Garage Construction Escrow Account (as described in Article 7 below) the Initial Investment for the K Street Parking Garage. SLWD shall fund the \$3.5 Million Capital Improvement Revenue Note to the CRA, and the balance of SLWD's Initial Investment in accordance with Section 7.1.2, which shall be placed in the K Street Parking Garage Construction Escrow Account

5.1.13 No later than thirty (30) calendar days from Initial Investment and Revenue Note funding deposits in the Escrow Account, SLWD shall commence construction on the K Street Parking Garage. SLWD shall not be obligated to commence construction of the K Street Parking Garage if the Ground Lease between the City and CRA is not executed and Initial Investments are not made by the City and CRA.

5.1.14 No later than fourteen (14) months from construction commencement of the K Street Parking Garage, SLWD shall obtain Final Completion and final Certificate of Occupancy for the K Street Parking Garage (“Guaranteed Completion Date”), which shall be set forth in the GMP Amendment and subject to allowable delays (as set forth herein) and the parties’ mutual agreement to extend the time for Final Completion.

5.2 **Construction Phase.** The number of days for performance of the Work under the Construction Phase of the Project shall be established as the Guaranteed Completion Date in the GMP Amendment.

5.3 **Critical Dates Established.** If the GMP Amendment is approved, as provided for in Article 6, the Project Substantial Completion date, the Project Final Completion date, and a City occupancy date in accordance with the Construction Schedule, shall also be established by the Construction Team for the Project. SLWD agrees to complete the construction in accordance with the agreed upon substantial completion date, final completion date, and City occupancy date for the Project. SLWD acknowledges that failure to complete the Project within the construction time set forth in the approved Construction Schedule will result in substantial damages to the City. Liquidated Damages as provided for in the GMP Amendment shall be assessed at a rate to be agreed upon by the parties in the GMP Amendment.

5.4 **Use or Occupancy Ahead of Schedule.** Subject to approval of applicable insurance carriers, the City shall have the right to occupy, or use, any portion of the Work ahead of schedule. If use or occupancy ahead of schedule affects the cost of the Project or the schedule for the Work, SLWD shall so notify the City in writing and the use or occupancy will be treated as a change to the Work in accordance with Article 9 herein.

ARTICLE 6 GUARANTEED MAXIMUM PRICE

6.1 **GMP.** The GMP includes the Cost of the Work required by the Project Documents as defined in Article 8 of this Agreement, and SLWD’s Contractor’s lump sum fee as defined in this Article 6. The GMP for the Project will be established based on Construction Documents prepared by SLWD’s Design Representative and as reviewed by SLWD’s Contractor, the City’s Project Manager and City Representatives. The GMP is subject to modification for City changes in the Work as provided in Article 9 herein.

6.2 **Taxes.** The GMP will only include those taxes in the Cost of the Work which are legally enacted at the time the GMP is established.

6.3 **Construction Contingency.** In addition to the Cost of Work, the GMP will include an agreed upon sum as the Construction Contingency which is included for use by SLWD’s Contractor for the purpose of defraying the expenses due to unforeseen circumstances relating to construction that could not reasonably have been anticipated. The amount of the Construction Contingency will be set in the GMP Amendment. SLWD will be required to furnish documentation reasonably evidencing expenditures charged to the Construction Contingency prior to the release of funds by the City. Documentation for use of the Construction Contingency shall be reasonably determined by the City. If SLWD’s Contractor’s Trade Subcontracts are executed below the applicable line items in the GMP (e.g. buyout savings), the surplus will be added to the Construction Contingency. If Trade Subcontracts are above the applicable line items in the GMP, the deficiency will be aggregated against buyout savings from other line items within the GMP. If a deficiency remains, it may be taken from the Construction Contingency, however such events shall not be cause to increase the GMP. The Construction Contingency is included to adjust the estimate for eventualities which have not been taken into precise account in the establishment of the GMP, including without limitation (1) documented scope gaps between Trade Contractor unless work is shown on drawings,

(2) contract default(s) by Trade Contractor(s), (3) reconciliation of allowances and sales tax savings estimate, (4) unforeseen field conditions, and (5) unforeseeable material escalation costs. The Construction Contingency shall not be used for design errors and omissions which a prudent Construction Manager should reasonably have detected during the Design Phase and reasonable due diligence by SLWD, its Design Representative and/or Contractor.

6.4 **City Contingency.** In addition to the Construction Contingency, the GMP will include an agreed upon sum as a City Contingency which is included for use solely by the City for the purpose of defraying expenses due to unforeseen circumstances, design changes, cost overruns on allowance items (if any), escalation costs, funding of Change Orders, construction change directives, or other additions or modifications to the Work called for in this Agreement. The amount of the City Contingency will be set in the GMP Amendment. The City's Contingency may be utilized by authorization of the City Manager and the City's Project Manager.

6.5 To the extent that any portion of the Construction Contingency or City Contingency remains unallocated on the date of Final Completion of the Project and after the issuance of Final Payment for the Project, the remaining, unused portions shall become Cost Savings. If Liquidated Damages are assessed, such amounts shall to the extent not otherwise required by the City to pay for other costs related to this Agreement, be utilized by the City to pay down the cost of the parking garage.

6.6 **SLWD's Contractor Fee.** SLWD's Contractor Fee during the Construction Phase will be agreed upon in the GMP Amendment as a fixed percentage to be applied, and paid in addition to, the reimbursable Cost of the Work set forth in Article 8, and will include only the following categories of expenses:

6.6.1 The cost of its home or branch office employees or consultants not at the project site, including the cost of all benefits, insurance, and taxes attributable to wages and salaries and other company overhead expenses for said home office employees.

6.6.2 The cost of its field employees identified in this Agreement, or their approved replacements, including the cost of all benefits, insurance, and taxes attributable to wages and salaries for said field employees.

6.6.3 General operating expenses of the Contractor's principal and branch offices, other than the field office.

6.6.4 Contractor's capital expenses.

6.6.5 Overhead and profit.

6.6.6 All costs for computers, networks, wiring of networks, printers, support, software including project management software system for the Project, e.g., Pro-Log, including fees to have the Design Representative, the City, and SLWD part of the system.

6.6.7 Travel and per diem costs of Contractor's employees and consultants if calculated in accordance with section 112.061, Florida Statutes.

6.6.8 Expenses such as internet service fees, long distance telephone calls, telephone, water, and electrical service at the Contractor's field office at the site, postage, office supplies, expressage, and similar items in connection with the Work.

6.6.9 Cost of equipment such as field office tablets, cameras, radios, computers, pagers, copiers, facsimile equipment, telephones, cell phones, trailers, vehicles and furniture used, purchased or rented by the Contractor, including costs of installation, permits, installation of utilities, utility consumption charges, mobilization, storage and demobilization.

6.6.10 All costs for water for office personnel, coffee and other provisions for office complex, lunches for meetings and miscellaneous job site expenses.

6.6.11 All costs for Contractor staff, Design Representative staff, SLWD's staff, City's Representative's staff and visitors for hard hats, vests, and safety glasses.

6.6.12 Direct project overhead incurred at the jobsite for control, supervision and administration of the Work that is not otherwise a Cost of the Work.

6.6.13 All costs for weekly cleaning the Contractor's site office complex as well as the site office complex of Design Representative and other consultants.

The stipulated rate for Contractor's Fee is exclusive of the Contractor's bond costs and insurance costs which shall be billed at the stipulated rates set forth in Article 8..

6.7 **Payment Requests.** Request for compensation for the Contractor's Fee shall be submitted with such detail as the parties agree in the approved Schedule of Values for the Construction Phase. However, the Contractor's Fee will be treated as a lump sum or fixed percentage amount within the GMP and administered accordingly such that the Contractor will not be required to submit detailed backup documentation to for the expenses incurred by the Contractor within the Contractor's Fee.

6.8 **Certification.** By submitting payment requests to City, SLWD will have its Contractor certify that all costs supporting the fees allowable under the Project Documents are accurate, complete and current at the time of submission; and that any other costs that may be furnished to the City in the future to support any additional fees that may be authorized will also be accurate, complete, reasonable. The fees allowable under the Project Documents and any additional fees that may be authorized in the future shall be adjusted to exclude any sums by which the City determines the fee was increased due to inaccurate, incomplete, or non-current costs.

6.9 **No Inconsistent Positions.** SLWD's Contractor role in providing Design Phase services has allowed/caused the SLWD's Contractor to formulate positions with respect to specific scope of work and Project Documents interpretation issues. In that the SLWD's Contractor is familiar with aspects of the scope of work and the Project Documents for the Project during the Design Phase, SLWD agrees that it will not authorize its Contractor to request an increase in the GMP for any substantially similar issue based upon a theory of recovery which is inconsistent with written advice or consultation previously discussed pursuant to the aforesaid Design Phase services, this includes, but is not limited to, errors or omissions in the Design-Documents, which are the responsibility of SLWD's Design Representative.

6.10 **GMP Adjustments.** Adjustments to the GMP will be made as described in this Agreement or the other Project Documents.

6.11 **No Overhead and Profit on City Contingency.** When summarizing the cost of the GMP, the Contractor's Fee multiplier and the multipliers for liability insurance, builder's risk insurance and bond shall not be calculated on the City Contingency, nor will SLWD's Contractor be due any additional overhead and profit on the use of the City Contingency except as provided for in a Change Order agreed upon by the parties.

6.12 **Cost Savings.** All Cost Savings that are not subject to the parties' agreed to Trade Contractor Incentive provisions in the GMP Amendment shall be utilized by the City in accordance with the WMODA Development Agreement and associated documents and retained by the CRA when final accounting is submitted upon final completion of the Work, or at such earlier time as agreed to by the City and SLWD. "Cost Savings" are the net difference obtained by deducting from the GMP (as may be amended), the Construction Contingency balance, and the actual expenditures representing the "Cost of the Work" as defined in Article 8 herein. Liquidated Damages, if any, are different from, and are not a part of, this calculation. The City and CRA shall split all Cost Savings on a pro-rata basis of each parties' total payments towards the construction of the Parking Garage and payment of the Revenue Note. The City's Cost-Savings shall be applied in accordance with the WMODA Development Agreement and associated agreements.

6.13 **Trade Contractor Incentive.** SLWD may propose in the GMP Proposal certain Trade Contractor incentives for the Trade Contractors to complete their work under budget and prior to the scheduled date for completion. Such incentives will be negotiated with the City and CRA as part of the GMP Amendment

**ARTICLE 7
FINANCING AND PAYMENTS**

7.1 The City, SLWD, and CRA agree to contribute the following amounts towards the Project:

7.1.1 Upon the Effective Date of this Agreement, SLWD shall begin expending funds towards completion of the Design Phase of the Parking Garage not to exceed the following amounts for the identified deliverables:

| Milestone | Schedule | Soft Costs Cash Flow | Total Cumulative Soft Costs | Deliverables |
|---|-----------------|-----------------------------|------------------------------------|---|
| Preliminary Cost Analysis (<u>Design Report</u>) | 90 days | \$150,000 | \$150,000 | Site Survey, Testing, Borings/Geo Tech Report, Concept sketchbooks, 3D perspectives - basic wireframes; not photorealistic, preliminary program and preliminary gross areas, concept design level site plan showing utility, point of entry, vehicular and pedestrian access, concept level plans indicating major building core and shell, basic building heights and section showing floor to floor heights. BOD from Consultants. Conceptual Level Budget with two design approach cost options |
| Detailed Design (<u>Preliminary Design</u>) | 210 Days | \$250,000 | \$400,000 | Design development level documents in drawing form, Develop and finalize site plan showing utility, point of entry, vehicular and pedestrian access. Develop and finalize plans indicating major building program elements, building core and shell. Develop and back of house spaces. (pending award of Interior Design scope/fees). Building section showing floor to floor heights. Prepare up to three (3) computer generated electronic renderings finalize plans showing preliminary layouts. Exterior Elevations with floor-to-floor heights and material selection. prepare and submit schematic package for record submission to the city and planning board agents. select and submit physical samples of building materials selection as required for review and approval. Design Development Level Budget |

| | | | | |
|--------------------|----------|-----------|-----------|--|
| GMP | 375 days | \$275,000 | \$675,000 | GMP Documents - Architectural site plan, floor plans, building sections, wall section, exterior elevations, enlarged exterior elevations, enlarged interior and exterior design, details, door, finish hardware, window and louver schedule. CSI Master Spec Divisions for Architecture, Engineering and Specialty Consultants. Drawing list compilation. Construction Document Level Budget |
| Design Contingency | | \$75,000 | \$750,000 | Design Costs Contingency |

The above soft costs include above as Design Costs are the estimated costs for the Architect, MEP Engineer, Structural Engineer, Geo-Technical Engineer, Site/Civil Engineer, Expediting, Preservation Consultant, and Threshold Inspections, and SLWD’s Administrative Costs for Project Management, Administration, and reasonable Attorney’s Fees. The above Design Contingency amount may be utilized by the parties for unforeseen Design Costs inclusive of soft costs not set forth above.

In the event that Design Costs (inclusive of the above soft costs) are anticipated to exceed the amount estimated above (\$675,000), SLWD shall notify the City’s Project Manager in writing of the need to utilize the Design Contingency and provide justification for the additional funds needed to complete the GMP Proposal. The City’s Project Manager shall have ten (10) calendar days to review the additional costs for sufficiency and notify SLWD of their ability to either; (1) proceed as requested; or (2) proceed with amendments. If the additional funding request exceeds the Design Contingency the City Manager shall have the authority to approve additional funds not to exceed \$50,000.00.

7.1.2 No later than forty-five (45) calendar days after the acceptance of the GMP, SLWD shall deposit SLWD’s Initial Investment less the expended Design Costs specified in Section 7.1.1 into the Construction Escrow Account.

7.1.3 The City and CRA shall deposit their Initial Investments and the CRA shall deposit the funds from the Revenue Note in accordance with Article 5 (above) into the Construction Escrow Account.

7.1.4 The Parties’ Construction Escrow Account shall be evidenced by an Escrow Agreement substantially in the same format as the Escrow Agreement attached as **Exhibit “E”** hereto. The Parties shall mutually agree on an Escrow Agent at least thirty (30) days prior to the Initial Investments are to be deposited. Draws from the Escrow Agreement shall be authorized consistent with the Progress Payment Procedures (set forth below in this Article 7) and then paid directly to the Construction Manager for the Construction Phase.

7.2 The City shall retain any parking revenues and operate and maintain the K Street Parking Garage during the CRA’s lease period with the City and upon expiration of said lease period.

7.3 **Construction Phase.** Upon acceptance of the GMP Amendment for the Project, the GMP, which includes the “Contractor’s Fee” as described in Article 6, and the “Cost of the Work” as described in Article 8, is to be paid monthly as described in the Project Documents with payments coming from the parties’ escrow account directly to SLWD’s Contractor. With its first application for payment, SLWD’s Contractor shall be entitled to bill, and be reimbursed for, the full amount of its liability insurance, builder’s risk insurance, and Bond costs at the rates set forth in Article 8 or agreed upon in the GMP Amendment, with no retainage withheld on the same. The Contractor’s Fee will be paid in accordance with each construction

draw proportionally on a percentage complete basis of the Work in place, less retainage in accordance with the GMP.

7.4 Payment of Trade Contractors. SLWD's Contractor shall provide its Trade Contractors hired or utilized by the Contractor with a written notice of disputed invoice within five (5) business days after receipt of invoice which clearly states the reasons for the disputed invoice. As required by section 218.735, Florida Statutes, within ten (10) working days from receipt of payment from the parties' escrow account, the Contractor shall pay each Trade Contractor out of the amount paid to the Contractor on account of such Trade Contractor's work, the amount to which said Trade Contractor is entitled reflecting the percentage actually retained, if any, from payments to the Contractor on account of said Trade Contractor's work. The Contractor shall, by appropriate agreement with each Trade Contractor, require each Trade Contractor to make payments to its subcontractors in a similar manner consistent with Florida Statutes.

7.5 Pay Applications. Pay requests for Design Phase and Construction Phase Services shall be documented in accordance with this Agreement and timely submitted to the City's Project Manager and CRA in detail sufficient for a proper audit thereof.

7.6 Progress Payment Procedures.

7.6.1 SLWD shall prepare a schedule of values by phases of the Work during the Construction Phase to show a breakdown of the GMP corresponding to the payment request breakdown and progress schedule line items. The schedule of values must also show dollar value for each unit of Work scheduled. Change Orders shall be added as separate line items.

7.6.2 Prior to the initial GMP payment request, the following must be submitted and approved by the City's Project Manager:

1. List of principal Subcontractors including suppliers.
2. Schedule of values.
3. Shop drawing log.
4. Construction schedule.
5. Certified copy of recorded bond. City will not make any payment from the GMP to SLWD until SLWD has complied with this requirement.

7.6.3 SLWD will prepare and submit electronic copies of invoices for Work completed during the construction draw period. Pay applications shall be submitted in the format and wording of the form agreed to by the parties. All information must be completed for the pay application to be accepted. City's account number(s) for the Project will be given at the pre-construction meeting and will be placed at the top right-hand corner of each application. These payment applications will be reviewed by all parties in attendance at the monthly meetings. Prior to formal submission of the application, SLWD shall submit a rough draft plus two extra copies for the City Project Manager and City Representative (if any designated) to review. SLWD shall submit final approved electronic copies to the Project Manager, whose approval is required prior to submission to the City Manager and CRA Executive Director who will authorize the escrow agent to pay SLWD's Contractor in accordance with Local Government Prompt Payment Act (section 218.70, Florida Statutes).

7.6.4 If the pay estimate and support data are not approved, SLWD is required to submit new, revised or missing information according to the City's instructions. Otherwise, SLWD shall prepare and submit an invoice to City and CRA in accordance with the estimate as approved. City's Project Manager's approval is required prior to submission to the City Manager and CRA Executive Director who will authorize the escrow agent to pay SLWD's Contractor in accordance with Local Government Prompt Payment Act (section 218.70, Florida Statutes). City shall provide SLWD with a written notice of disputed pay request

within 10 days after receipt of such pay request which clearly states any and all deficiencies in SLWD's pay request that will prevent prompt processing and issuance of payment. To the extent there is an undisputed portion of the pay request that can be paid, the City shall proceed with prompt notice to the escrow agent to release payment of that portion of the pay request. In the event any dispute with respect to any payment or pay request cannot be resolved between SLWD and City's Project Manager, SLWD may, demand in writing a meeting with and review by the City Manager. Such meeting and review shall occur within ten (10) business days of receipt by City of SLWD's written demand. The City Manager shall issue a written decision on the dispute within ten (10) business days of such meeting. This decision shall be deemed the City's final decision for the purpose of the Local Government Prompt Payment Act.

7.6.5 SLWD must remit undisputed payment due for labor, services, or materials furnished by SLWD's Contractor for its Trade Contractors and other Subcontractors utilized by SLWD's Contractor, within 10 days after SLWD's Contractor's receipt of payment from the escrow account pursuant to Section 218.70, Florida Statutes. SLWD's Contractor shall provide its Trade Contractors and other Subcontractors utilized by SLWD's Contractor with a written notice of disputed invoice within five (5) business days after receipt of invoice which clearly states the reasons for the disputed invoice.

7.6.6 Retainage, in the amount of 5%, will be withheld on the calculated value of any Work, with the exception of stored materials which may be paid at the Subcontractor's invoiced cost and those items specified in the Project Documents as being exempt from the retainage requirements (e.g. SLWD's bond costs, insurance costs, and a portion of the SLWD's Fee as specified in this Agreement). SLWD may request at any point the release of retainage from the City attributable to the labor, services, or materials supplied by one or more Subcontractors if the work of the Subcontractors has been successfully completed or if the materials of the supplier have been inspected and accepted by the SLWD. SLWD must submit the request in writing to the City. Notwithstanding the foregoing, in no instance can the amount retained be less than the value of City's good faith claims plus the value of the Work the City determines remains to be put in place or required to be performed as remedial activities. For the purposes of this section, 50% completion shall be that point in time when the City determines that half of the Work required by the Project Documents has been completed. In no event shall the Work be determined to be 50% complete before the City has paid 50% of the Project Documents amount and 50% of the Construction schedule has expired. All retainage released by the City via the escrow account to SLWD's Contractor, which is attributable to the labor, services or materials supplied by one or more Subcontractors must be timely remitted by SLWD's Contractor to those Subcontractors.

7.6.7 Each application for payment shall be accompanied by the following:

1. A notarized "Affidavit of Disbursement of Previous Periodic Payments to Subcontractors" from SLWD's Contractor for the portion of work up to the date of that particular pay application.
2. A conditional partial release of lien will be required from SLWD's Contractor for the portion of work being applied up to the date of that particular pay application from SLWD's Contractor as the prime contractor and all Subcontractors, and an unconditional release for all amounts paid to SLWD's Contractor through the date of the prior application for payment.
3. A City approved construction schedule update.

7.6.8 So long as the City and CRA have authorized payment to SLWD's Contractor from the escrow account in accordance with the Project Documents, if one or more "Notice of Non-Payment" is received by the City and CRA, no further payments will be approved until non-payment(s) have been satisfied and an original "Release of Claim" for each "Notice" has been submitted to the City and CRA. Upon request, SLWD shall furnish acceptable evidence that all such claims or liens have been satisfied. On bonded

projects only, the City and CRA may allow, with consent of Surety and indemnification of the City and CRA against any claims, payment for Work on which there is an outstanding Notice of Non-Payment.

7.6.9 Any amount otherwise payable under the Project Documents may be withheld, in whole or in part if:

1. Any claims are made against SLWD or its Contractor by City or the CRA or third parties, including claims for liquidated damages, or if reasonable evidence indicates the probability of the making of any such claim, unless the claim or potential claim is the result of a good faith dispute between SLWD or its Contractor and a third party; or
2. SLWD is declared by the City and the CRA in default under the Project Documents; or
3. There is reasonable doubt that the Project can be completed within the time specified or for the balance then unpaid; or
4. Defective work or material is not remedied in accordance with the terms of the Project Documents; or
5. SLWD or its Contractor persistently fails to carry out the Work in accordance with the Project Documents; or
6. SLWD fails to submit the information required by this Project Documents;
7. SLWD fails to submit a City approved updated Construction schedule with each Application for Payment.

7.6.10 So long as the City and CRA has authorized payment to SLWD's Contractor in accordance with the Project Documents if claims or liens filed against SLWD or SLWD's Contractor or property of City connected with performance under the Project Documents are not promptly removed by SLWD or its Contractor after receipt of written notice from City to do so, City may remove such claims or liens and all costs (including all reasonable attorney's fees) in connection with such removal shall be deducted from withheld payments or other monies due, or which may become due, to SLWD or its Contractor. If the amount of such withheld payments or other monies due SLWD or its Contractor under the Project Documents is insufficient to meet such costs, or if any claim or lien against SLWD or its Contractor is discharged by City after final payment is made, SLWD and its surety or sureties shall promptly pay City all costs (including reasonable attorney's fees) incurred thereby regardless of when such claim or lien arose.

7.6.11 Following issuance, by the City, of a Certificate of Substantial Completion, SLWD may submit a special payment request, provided the following have been completed:

1. Obtain permits, certificates of inspection and other approvals and releases by governing authorities, required for the City's occupancy and use of the Project.
2. Complete final cleaning of the Work.
3. Submit record documents (record drawings).
4. Submit listing of Work (punch list) to be completed before final acceptance.
5. Settle liens and other claims.
6. Obtain Consent of Surety for partial release of retainage.
7. Settle Liquidated Damages due to City, if any.
8. Conditional Final Waiver and Release of Claim signed by SLWD's Contractor.

7.6.12 Upon receipt by City of SLWD's written Notice of Final Completion of its Work under the Project Documents, in accordance with this Agreement, the City shall verify all Work has been completed on the Project. When all Work has been verified as complete, and the SLWD completes and submits the items listed below, SLWD may submit a final invoice.

1. Complete all work listed on the punch list prepared in accordance with these General Conditions and passage of all final inspections by all agencies with jurisdiction over the Project or the Work.
2. Submit proof of payment on fees, taxes or similar obligations.

3. Transfer operational, access, security and similar provisions to City; remove temporary facilities, tools and similar items.
4. Obtain Consent of Surety for final payment and/or partial release of retainage.
5. All information otherwise required herein.
6. Obtain certification of as-built (record) drawings from Design Representative.
7. Final Waiver and Release of Claim signed by SLWD's Contractor.

ARTICLE 8 COST OF THE WORK

8.1 **Definition.** The term "Cost of the Work" shall mean costs including "general conditions" costs, incurred in the Work as described and defined in Paragraph 8.2, below, and paid or incurred by SLWD's Contractor, which are not included in Article 6, less any reimbursement for scrap value and cash or trade discounts, subject to Article 10, herein. The term "wages" as used herein shall include the straight time and overtime pay and the cost of associated employee benefit, all of which shall be included within the stipulated rates agreed to by SLWD and the City in the GMP Amendment. Employee benefits include, but are not limited to, unemployment compensation, social security, incentive compensation, profit sharing, compensated absences, and other mandatory and customary contributions and fringe benefits insofar as such costs are based on wages, salaries, or other remuneration paid to employees of SLWD's Contractor.

8.2 **Cost Items.** Cost of the Work includes and is limited to actual expenditure (or stipulated rates or fixed percentages where applicable) for the following cost items:

8.2.1 Subject to prior approval by the City, wages paid for labor in the direct employ of SLWD's Contractor, other than those provided under Article 6 herein as a part of SLWD's Contractor's Fee in the performance of the Work.

8.2.2 The cost of all materials, supplies and equipment incorporated in the Work or stored on site, including cost of transportation and storage thereof. At the City's sole discretion, the City may make payment for materials, supplies and/or equipment stored off-site and bonded.

8.2.3 Payments made by SLWD's Contractor to Trade Contractor for their work performed pursuant to trade contracts with SLWD's Contractor. SLWD shall ensure that the value of each Trade Contractor's contracts includes the costs associated with providing Trade Contractor's payment and performance bonds (if any).

8.2.4 Cost of the premiums for all insurance or bonds including Trade Contractor's bonds which SLWD's Contractor is required to procure in accordance with the Project Documents, or other insurance or bonds subsequently deemed necessary by the City and agreed upon by SLWD. The stipulated rates for insurance and bond costs are as follows:

- a. Bond Costs: To be agreed upon in the GMP Amendment;
- b. Insurance costs (all coverage other than Builders Risk): To be agreed upon in the GMP Amendment; and
- c. Builders Risk Insurance: To be agreed upon in the GMP Amendment.

8.2.5 Sales, use, gross receipt, or similar taxes related to the Work imposed by any governmental authority and for which SLWD's Contractor is liable.

8.2.6 Deposits lost for causes other than SLWD's Contractor's own negligence.

8.2.7 Cost of removal and disposal of all debris including clean-up and trash removal, not including SLWD's Contractor's office trailers.

8.2.8 Cost incurred due to an emergency affecting the safety of persons and/or property for causes other than SLWD's Contractor's own negligence.

8.2.9 Subject to prior written approval by City, reasonable legal costs reasonably and properly resulting from prosecution of the Work for the City; provided, however, that they are not the result of SLWD's Contractor's own negligence or malfeasance. Legal costs incurred in connection with disputes solely

between SLWD's Contractor and Trade Contractor are the responsibility of SLWD's Contractor and shall not be included in the Cost of the Work.

8.2.10 Cost of temporary electric power, lighting, water, sanitary facilities, and heat required for the performance of the Work, or required to protect the Work from weather damage, not including SLWD's Contractor's office trailers.

8.2.11 Cost of temporary safety-related protection including barricades and safety equipment, temporary roads and parking, dust control, pest control, installation and operation of temporary hoists, scaffolds, ladders and runways, and temporary project signs and costs of permits and fees pursuant to this Agreement of the Project Documents.

8.2.12 Cost of watchmen or similar security services.

8.2.13 Cost of surveys, measurements and layout work reasonably required for the execution of the Work or the requirements of the Project Documents.

8.2.14 Cost of preparation of shop drawings, coordination plans, or as-built documents not included in trade contracts.

8.2.15 All costs for reproduction of documents to directly benefit the Work.

8.2.16 Costs directly incurred in the performance of the Work and not included in SLWD's Contractor's Fee as set forth in Article 6, herein.

8.2.17 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities not owned by the workmen which are employed or consumed in the performance of the Work, not including job site offices.

8.2.18 Rental charges of all necessary machinery and equipment, including hand tools used in the performance of the Work, whether rented from SLWD's Contractor or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, not including job site office equipment.

8.2.19 Costs associated with setting up and demobilizing tool sheds, temporary fences, temporary roads, and temporary fire protection.

8.2.20 Costs associated with conducting any field testing of materials and equipment which SLWD is obligated to perform under the Project Documents.

8.2.21 Costs for signage used on the Project, including without limitation, the signage required by this Agreement.

8.2.22 Costs of fees associated with providing all permits that SLWD is obligated to obtain pursuant to this Agreement.

8.3 **SLWD Administrative Cost.** SLWD may recover administrative costs as stated in Section 7.1.1 and may also include administrative costs in the GMP Amendment in accordance with the performance of the Work.

8.4 **Defective Work.** No costs shall be paid to SLWD's Contractor for any expense related to correcting defective workmanship or defective Work not in conformance with the Project Documents including, but not limited to, Submittals or other plans or specifications, except in circumstances where SLWD's Contractor makes a reasoned decision that it is time-critical and more cost-effective to perform the corrective work than to obtain correction from the Subcontractor or other party responsible for the defect, in which case SLWD may submit for reimbursement of said costs to the extent there are funds available in the Construction Contingency.

8.4 **Costs Not Reimbursable.** Except as otherwise expressly approved by the City or otherwise permitted under the Project Documents, costs, expenses, and fees SLWD incurs in connection with the following will not be Cost of the Work, and no payment will be made by City in connection therewith:

8.4.1 Home and branch office overhead and general expenses of SLWD, except as may be expressly included as a Cost of the Work in this Article;

- 8.4.2 Expenses (including interest) of SLWD's capital employed for the Project;
- 8.4.3 Professional or business licenses of SLWD or any Subcontractor;
- 8.4.4 Except as directly applicable for performance of the Work hereunder, amounts required to be paid by SLWD for federal, state or local income or franchise taxes, sales, use, or gross receipts tax, payroll taxes and state, county and municipal taxes, and fees;
- 8.4.5 Except to the extent there are available funds in the Construction Contingency, cost of repairing or replacing damaged Work that is caused by SLWD, Subcontractor or other for whose acts SLWD may be liable;
- 8.4.6 Except to the extent there are available funds in the Construction Contingency, costs to repair or replace defective Work resulting from the failure of SLWD, Subcontractor or other for whose acts SLWD may be liable to perform the Work in accordance with the Project Documents;
- 8.4.7 Costs of warranty Work;
- 8.4.8 Any additional premiums for payment and performance bonds obtained by Trade Contractor beyond those expenses included in the value of each subcontract as provided in Article 8, above, unless otherwise approved by the City;
- 8.4.9 Costs incurred to the extent that such costs result in the GMP being exceeded;
- 8.4.10 Costs to persuade employees to join, or not to join, any trade union or other association of organized labor or political activity;
- 8.4.11 Salaries and other compensation of SLWD's Contractor's personnel stationed at SLWD's Contractor's principal offices or other than the site office, except as part of SLWD's Fee;
- 8.4.12 Wrongfully caused damage caused by SLWD or Subcontractor to completed or partially completed the Work or to property of the City or separate contractors. The term "wrongfully" includes, but is not limited to, damage caused by negligence, carelessness, or oversight.
- 8.4.13 Any other costs or expenses not specifically included as a Cost of the Work under Section 8.2 hereof; and
- 8.4.14 Any and all costs that are duplicative of those set forth in Article 6.

8.5 **Cost Recovery.** Whenever SLWD's Contractor has been paid, as a Cost of the Work, amounts that are recoverable from any other source (e.g., a Subcontractor, its insurer or other third parties), SLWD must diligently pursue such recovery and must credit the City with any amounts actually recovered (less SLWD's Contractor's reasonable attorneys' fees and other costs of collection (if any)).

8.6 SLWD's Contractor shall reimburse the parties for costs the parties incur that are payable to a separate contractor because of SLWD's Contractor's delays, improperly timed activities, or defective construction. The City and/or CRA shall be responsible to SLWD's Contractor for costs SLWD's Contractor incurs because of a City or CRA separate contractor's delays, improperly timed activities, damage to the Work or defective construction. Nothing contained in this provision shall be deemed or otherwise interpreted as waiving the City's or CRA's sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in section 768.28 Florida Statutes, by contract or law.

8.7 **Credits against Costs.** The Cost Savings will be entitled to a credit for all unused equipment and materials for which SLWD's Contractor has been compensated as a Cost of the Work for the greater of (a) the market value of the unused equipment and materials (in Palm Beach County, Florida) or (b) the salvage value of such equipment or materials, unless the City or CRA elects by providing SLWD notice of City's or CRA's intent to retain such unused equipment and materials. With respect to any equipment rented to the Project for which the parties have paid as a Cost of the Work, an amount equal to the market value of such equipment, the Cost Savings will be entitled to a credit for the greater of (a) depreciated market value of the equipment (in Palm Beach County, Florida) following completion of its use on the Project or (b) the salvage value of such equipment.

ARTICLE 9
CHANGES IN THE WORK AND DISCOUNTS

9.1 The City, without invalidating the Project Documents, may order changes in the Work within the general scope of the Project Documents consisting of additions, deletions, or other revisions. All changes in the Work shall be authorized as described in this Agreement and the Project Documents (as applicable). Except in cases of emergency endangering life or property, SLWD shall allow no changes in the Work without the prior written approval of the City.

9.2 City may, at any time, without invalidating the Project Documents and without noticing the surety(ies), make changes in the Work by issuing a Change Order.

9.3 City's Project Manager will issue written orders to SLWD for any changes except that in the event of an emergency which City's Project Manager determines endangers life or property, City's Project Manager may issue oral orders to SLWD for any Work required by reason of such emergency. Such orders will be confirmed in writing as soon as practicable. Such orders, whether written or oral, may be accompanied by drawings and data as are necessary to show the extent of such ordered Work.

9.4 SLWD shall commence such changed Work so that all dates set forth in SLWD's current construction schedule as accepted by City will be met subject to an adjustment for the additional time necessary to complete the changed Work. In the event of an emergency which City determines endangers life or property, SLWD shall immediately commence such changes as required by City in order to mitigate or remove the emergency condition. Failure to commence any such change in timely fashion shall entitle City to invoke the termination for default provision.

9.5 Unless otherwise required, SLWD shall, within twenty-one (21) calendar days following receipt of a written field bulletin, submit in writing to City a SLWD change proposal for accomplishing such change, which proposal shall reflect the increase or decrease, if any, in cost to City of performing the change under the Project Documents in comparison to what the cost would have been, had such change not been offered.

9.6 The proposal shall state the SLWD's Contractor's added and/or deleted compensation in detail, including but not limited to:

- a. Material quantities and unit prices
- b. Labor man-hours and wages by craft
- c. Equipment type and size and rental rate
- d. Overhead and profit percentage
- e. Subcontractor costs with back-up detail as specified in items A, B, C, and D above.
- f. Time extension, if any;
- g. A detailed description of any impacts this change will have on any activities on the Project schedule which would affect any of the milestone dates;
- h. Proof of payment of any tax liability resulting from a specific change (if requested by City).

9.7 Under no circumstances shall SLWD apply for or be entitled to recover consequential damages including, but not limited to, extended home office overhead costs associated with a change in the Work, whether or not calculated in accordance with the Eichleay Formula. Therefore, SLWD should reflect this in pricing all requested changes related to the Project Documents substantial completion date.

9.8 If SLWD does not propose the method of compensation for such change or any part thereof within the time required, or if any proposed method is not acceptable, or if a method of compensation for such change, or any part thereof cannot be agreed upon, City's Project Manager in consultation with the City

Manager may direct and SLWD shall proceed upon direction (Construction Change Directive) with such change.

9.9 A Construction Change Directive (CCD) is a written order prepared by the City and signed by the City Project Manager in consultation with the City Manager, directing a change in the Work and stating a proposed basis for adjustment, if any, in the GMP or Construction Schedule or both. A CCD may be used in the absence of total agreement on the terms of Change Order or to complete Work which, if not accomplished, could adversely affect a critical path activity. Upon receipt of the CCD, SLWD's Contractor shall promptly proceed with the change in the Work involved and advise the City of the SLWD's agreement or disagreement with the method, if any, provided in the CCD for determining the proposed adjustment in the GMP or Construction Schedule, or both. When the City and SLWD reach an agreement concerning the adjustments in the GMP and/or Construction schedule, such agreement shall be recorded by the preparation of a Change Order. SLWD shall be entitled to seek payment for Work performed pursuant to a CCD to the extent any portion of the CCD is not disputed.

9.10 If, at any time after SLWD commences such change, a method of compensation other than time and material is agreed upon, such compensation will be made in accordance with such agreement. In any event, SLWD shall keep accurate records of the actual cost to SLWD for such change. Costs for which SLWD shall be entitled to compensation on a time and material basis as described above, are as follows:

Direct Labor Cost - Payment will be made for all manual classifications up to and including foremen, but shall not include superintendents, assistant superintendents, general foremen, office personnel, timekeepers and maintenance mechanics. The time charged to changes will be subject to the daily approval of City and no charges shall be accepted unless evidence of such approval is submitted by SLWD's Contractor with its billing.

Labor rates used to calculate the direct labor costs shall be those rates in effect during the accomplishment of the change or at stipulated rates agreed to by the City and SLWD. In addition to the direct payroll costs, the direct labor costs shall include payroll taxes and insurance, vacation allowance, subsistence, travel time and overtime premium and any other payroll additives required to be paid by SLWD's Contractor by law or collective bargaining agreements. Copies of pertinent payrolls demonstrating the actual labor costs incurred shall be submitted to City.

Equipment Costs - Payment for the rental and operation of the equipment furnished and used by SLWD's Contractor shall be made for all construction and automotive equipment or tools with a new cost greater than one thousand dollars each. Equipment time charged to changes will be subject to daily written approval of City and no charges will be accepted unless evidence of such approval is submitted with SLWD's Contractor's billing. The equipment rental and operation rates include costs for rental, fuel, oil, grease, repair parts, service and maintenance of any kind, and necessary attachments. Such charges do not include costs for operating labor and transportation to and from the location of the change. Equipment rental rates for SLWD-owned equipment used in the Project shall be those contained in the RENTAL RATE BLUE BOOK as published by Equipment Watch, 1735 Technology Drive, Suite 410, San Jose, California 95110-1333, (800-669-3282) and current at the time work for any specific change is performed. When equipment is used for time and materials changes, which does not reasonably resemble Blue Book rental rates, the rental rate shall be negotiated and agreed upon in writing.

If SLWD's Contractor-owned equipment is not available and equipment is rented from outside sources, payment will be computed on the basis of actual invoice cost. Rental rates for non-owned equipment must be approved in advance by City.

When the operated use of equipment is infrequent and, as determined by City, such equipment need not remain at the site of the work continuously, payment shall be limited to actual hours of use. Equipment not operating but retained at the location of changes at City's direction shall be paid for at a standby rate.

Unless otherwise provided in the Project Documents, all equipment rental rates shall be agreed upon in writing before commencing any change. When a specific piece of rental equipment, normally used to perform unchanged contractual work is used for time and material changed work, the applicable rental rate shall be the actual rate paid by SLWD's Contractor at the time the work is performed.

Transportation costs for bringing equipment to the jobsite and for returning equipment to the point of origin, exclusively for use on time and material work, will be reimbursed to SLWD based on invoices, provided that prior written approval has been given to SLWD.

Overtime shall be paid as per Method 2 described in said RENTAL RATE BLUE BOOK.

No compensation will be made to the SLWD for equipment repair or equipment maintenance.

Material Costs - Payment for the cost of materials furnished by SLWD's Contractor for use in performing the change will be made, provided such furnishing and use of materials was as specifically authorized and the actual use was verified by City. Payment will be the net cost to SLWD's Contractor delivered at the job and vendor's invoice shall accompany the billing along with the verification by City of such use of such materials.

Subcontract and Outside Service Costs - Payment for work and services of the Subcontractors by SLWD's Contractor in the performance or completion of the change will be made only when both the Subcontractor and the terms of payment to such subcontractor have been approved in writing by City before the Subcontractor starts to work on the change.

Tools and Equipment - Payment will be made for tools and equipment with a new cost of One Thousand Dollars, or less, each, only upon approval by the City.

For purposes of any and all changes made pursuant to this provision (whether lump sum or time and material) as to all supplies, overhead, supervision and profit, SLWD's Contractor is entitled to an overhead and profit fixed fee not to exceed a maximum percentage that is to be agreed upon by the parties in the GMP Amendment (the Maximum Percentage) of the estimated direct labor and material costs pertaining to each change which amount will be converted to a lump sum before Work begins. The agreed upon percentage (not to exceed the Maximum Percentage), including, but not limited to, overhead and profit which may be added to the estimated Change Order costs for changes in the Work shall be as follows:

- a. If SLWD's Contractor is authorized by the City to perform work with its own forces, SLWD's Contractor may add an overhead and profit fixed fee as agreed upon with City up to 10% of its estimated Change Order costs which amount will be converted to a lump sum before the Change Order is issued and before Work begins.
- b. For all Work done by the Subcontractors, the respective Subcontractors may add an overhead and profit fixed fee as agreed upon up to 10% of their estimated costs which amount will be converted to a lump sum before the Change Order is issued and before Work begins. SLWD's Contractor may add an overhead and profit fixed fee as agreed upon in the GMP Amendment of the Subcontractors' total estimate, which amount will be converted to a lump sum before the Change Order is issued and before Work begins.

9.11 For any changes involving deductive items, the following shall apply to the amount of allowable overhead and profit:

- a. For deductive changes only (those which contain no additive items), there will be no reduction in overhead and profit and, likewise, no addition by SLWD for processing.
- a. For changes containing both additions and deductions covering related Work or substitutions, the overhead and profit shall be figured on the net increase if any, with respect to that change.

9.12 No Change Order or CCD shall be valid until approved and signed by the City Manager (or Mayor depending on the total amount and whether a Change Order or CCD). If a proposed change is deemed beneficial to the Project and is within the limits set forth in the GMP Amendment, the City may cause an appropriate Change Order to be issued by the City Manager to the GMP Amendment with or without the SLWD's or its Contractor's signature.

9.13 The City will have the authority to order minor changes in the Work which do not involve adjustment to the GMP or Construction schedule and are consistent with the intent of the Project Documents. Such changes shall be effected by written order and shall be binding on the City and SLWD. SLWD's Contractor shall carry out such written orders promptly, and SLWD's Contractor shall receive no additional compensation therefore, nor shall there be any change in the Construction schedule. The City shall immediately provide notices of all minor changes in the Work to SLWD.

9.14 Execution of change order acknowledges final settlement of, and releases, all claims for costs and time associated, directly or indirectly, with the stated modification(s), including all claims for cumulative delays or disruptions resulting from, caused by, or incident to such modification(s), and including any claim that the modification(s) constitutes, in whole or part, a cardinal change to the Project Documents.

9.15 All quantity discounts shall accrue to the Cost Savings. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment shall be credited to the Cost Savings.

ARTICLE 10 WARRANTY

10.1 Unless otherwise provided elsewhere in the Project Documents, all materials and equipment incorporated into any Work covered by the Project Documents shall be new unless specified otherwise, and all workmanship shall be in accordance with construction drawings and specifications.

10.2 Unless otherwise provided in the Project Documents, SLWD warrants all equipment, materials, and labor furnished or performed under the Project Documents, against defects in design, materials and workmanship for a period of twelve months (unless longer guarantees or warranties are provided for elsewhere in the Project Documents in which case the longer periods of time shall prevail) from and after final completion of the Work under the Project Documents, regardless of whether the same were furnished or performed by SLWD or by its Contractor or Subcontractors. In the event that the City assumes partial utilization of portions of the Work prior to completion of all Work, the Warranty for that portion shall also extend for twelve months from substantial completion of that portion of the Work, if and only if the City has exclusive use of the area. If the City does not have exclusive use of the area, the warranty period shall extend for twelve months from final completion of the last portion of the Work.

10.3 Upon receipt of written notice from the City of any defect in any such equipment, materials, or labor during the applicable warranty period, due to defective design, materials or workmanship, the affected

item or parts thereof shall be redesigned, repaired or replaced by SLWD at a time and in a manner acceptable to City.

10.4 Pursuant to Section 558.005(1), City and SLWD agree that the provisions of Florida Statute Chapter 558 (governing construction dispute resolution) shall not apply to the Project Documents. Disputes under the Project Documents shall be governed by the Dispute Process set forth herein.

10.5 SLWD warrants such repaired or replaced Work against defective design, materials and workmanship for a period of twelve months from and after the date of final completion. Should SLWD fail to promptly make the necessary repair, replacement and tests, City may perform or cause to be performed the same at SLWD's expense. SLWD shall perform such tests as City may require verification that such repairs and replacements comply with the requirements of this Project Documents. All costs incidental to such repair, replacement and testing, including the removal, replacement and reinstallation of equipment and materials necessary to gain access, shall be borne exclusively by SLWD.

10.6 SLWD shall commence Work to remedy or replace the defective, deficient Work within five (5) calendar days after receiving written (including transmittals by email) notice from the City. If SLWD fails to remedy or remove or replace that Work or material which has been found to be defective, then the City may remedy or replace the defective or deficient Work at SLWD's expense; provided, however, all repairs to utility services and all emergency services shall be commenced within forty-eight (48) hours of notification, and SLWD shall complete the repairs in an expeditious manner befitting the nature of the deficiency. SLWD shall immediately pay the expenses incurred by the City for remedying the defects. If the City is not paid within ten (10) calendar days, the City may pursue any and all legal or equitable remedies it may have against SLWD.

10.7 SLWD is required to provide a designated telephone number for warranty related emergencies which occur outside the normal workday. SLWD is solely responsible for ensuring that all warranty Work is completed in the manner described above. If the City agrees, in writing, SLWD's Contractor or a Subcontractor may be the point of contact for notices regarding warranty items, but such agreement shall not absolve SLWD of its responsibility.

10.8 The terms of this section shall not modify, restrict or limit the City's other available remedies or restrict, limit or be construed as the sole or exclusive remedy for defective performance or failure to meet all of SLWD's obligations under the Project Documents. This section shall not relieve SLWD of its responsibilities for the performance of the original Work in accordance with the requirements of the Project Documents and will not limit the City's remedies at law, in equity or under the Project Documents. Additionally, the terms of a later signed manufacturer's warranty shall not modify or abridge the SLWD's warranties (express or implied), SLWD's performance, or SLWD's duties and liabilities under the Project Documents and the warranties therein and shall not limit or restrict the City's remedies or damages at law, in equity, or under Project Documents.

10.9 SLWD and its surety or sureties shall be liable for the satisfaction and full performance of the SLWD, completion of the Projects and the warranties therein and any damage to other parts of the Work caused by SLWD's failure to perform pursuant to the Project Documents and these General Conditions.

10.10 For avoidance of doubt, the provisions of this Article shall survive the termination or expiration of the Project Documents.

ARTICLE 11 INSURANCE

11.1 General Requirements. Unless otherwise specified in the Project Documents or granted by City's Project Manager, SLWD shall, at its sole expense, maintain in full force and effect at all times during the life of the Project Documents or the performance of Work hereunder, insurance coverage as described herein at limits, including endorsements, set forth in the Insurance Coverage & Limit Table below. SLWD shall deliver to City certificate(s) of insurance evidencing that such policies are in full force and effect, not later than fourteen (14) calendar days after receipt of the Effective Date of the Agreement; however, for insurance specific to the Construction Phase, (e.g., Contractor's insurance and builder's risk insurance) evidence of such insurance shall be provided prior to the commencement of Work under the GMP Amendment. Such certificate(s) shall adhere in every respect to the conditions set forth herein. The requirement contained herein as to types and limits, as well as City's approval of insurance coverage to be maintained by SLWD are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by SLWD under the Project Documents.

11.2 Commercial General Liability. SLWD shall maintain a standard ISO version Commercial General Liability policy form CG-00 01 (12 19) or its equivalent providing coverage for, but not be limited to, Bodily Injury and Property Damage, Premises/Operations Liability, Products/Completed Operations Liability (to be maintained for a period of at least 5 years following Substantial Completion of the Project); Independent Contractor Liability, Contractual Liability, including insurable obligations assumed under the indemnification provisions of the Project Documents; Broad Form Property Damage Liability, including damage to third-party property caused in whole or in part by construction operations; Explosion, Collapse, and Underground (X-C-U) Hazards (if applicable), Severability of Interest including Cross Liability Clause, and be in accordance with all of the limits, terms and conditions set forth herein. SLWD agrees this coverage shall be provided on a primary basis.

11.3 During the Design Phase, the SLWD shall require the Design Representative to also maintain professional liability insurance at a \$1,000,000 per occurrence basis (to be maintained for a period of at least 5 years following Substantial Completion of the Project).

11.4 Business Automobile Liability. SLWD shall and shall require its Design Representative and Contractor to maintain a standard ISO version Business Automobile Liability coverage form CA 00 01 (10 13), or its equivalent, providing coverage for all owned, non-owned and hired automobiles, Bodily-Injury and Property Damage Liability arising out of the ownership, maintenance, or use of any vehicle and in accordance with all of the limits, terms and conditions set forth herein. SLWD agrees this coverage shall be provided on a primary basis. Notwithstanding the foregoing, should SLWD not own any automobiles, the business auto liability requirement shall be amended to allow SLWD to agree to maintain only Hired & Non-Owned Auto Liability either through a separate policy or by endorsement to the Commercial General Liability policy. If work involves transportation of hazardous materials, an endorsement shall be included equivalent to ISO form CA 99 48 (Hired Auto Specified as Covered Autos You Own) MCS -90 or their functional equivalent. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form.

11.5 Worker's Compensation & Employer's Liability. SLWD shall and shall require its Design Representative and Contractor to maintain Worker's Compensation Insurance & Employers Liability, for all Work covering all of their respective employees and anyone else utilized in performance of the Work for the Project. This coverage shall be in accordance with all of the limits, terms and conditions set forth herein. Proof of worker's compensation coverage provided by an employee leasing arrangement shall not satisfy this requirement. SLWD's Contractor shall require all Subcontractors to similarly comply with this requirement unless such Subcontractors' employees are covered by SLWD's Contractor's Worker's Compensation insurance policy. SLWD agrees this coverage shall be provided on a primary basis.

11.6 Additional Required Insurance. SLWD shall, or shall cause, to be maintained the following additional required insurance coverages with respect to any Work involving property, operations, or type of equipment for which each insurance coverage described below have been designed specifically to provide coverage for:

11.6.1 Builder's Risk. With respect to any of the Work involving the construction of real property (buildings and improvements other than buildings) during the Construction Phase, SLWD shall maintain Builders Risk insurance providing coverage for the entire Work at the Project site and will also cover portions of Work located away from the site but intended for use at the site, and will also cover portions of the Work in transit. Coverage shall be written on an All-Risk, Replacement Cost, and Completed Value Form basis in an amount at least equal to the projected completed value of the Project as well as subsequent modifications of that sum. If a sublimit applies to the perils of wind or flood, the sublimit shall not be less than 25% of the projected completed value of the Project.

11.6.2 Pollution Liability. If work involves transportation, dissemination, use or release of pollutants, SLWD shall maintain a Contractors' Pollution Liability (CPL) insurance policy, providing coverage for bodily injury, property damage, and environmental damage arising from the accidental release, escape, discharge, or dispersal of pollutants related to the performance of Work under the Project Documents. This policy shall include coverage for Sudden and Accidental pollution events, Gradual pollution events, On-site and off-site clean-up costs, including remediation expenses, Third-party bodily injury and property damage, including loss of use, Environmental damage and natural resource restoration costs, Non-owned disposal site coverage (if applicable). The minimum coverage limits shall be not less than \$5,000,000 per occurrence and \$5,000,000 aggregate or as otherwise required in the Insurance Coverage & Limit Table. This coverage shall be maintained on a primary, non-contributory basis, and any insurance maintained by the City shall be excess and non-contributory. If SLWD engages its Contractor or any Subcontractors performing Work where pollution exposure exists, SLWD shall require such parties to procure and maintain Contractors' Pollution Liability coverage with terms and limits acceptable to the City. To enhance coverage, the following endorsements shall be incorporated into the Pollution Liability policy: Additional Insured Endorsement – including the City, its officials, officers, employees, and agents as additional insureds; Waiver of Subrogation Endorsement – Waiving the insurer's rights of recovery against the City; Primary and Non-Contributory Endorsement – Ensuring that coverage applies before any other insurance maintained by the City; Extended Reporting Period (ERP) Endorsement – Providing coverage for completed operations pollution-related claims, extending for a period of at least five (5) years following Substantial Completion.

11.6.3 Partial Occupancy or use of the Work shall not commence until insurance company or companies providing insurance as required have consented to such partial occupancy or use. SLWD shall take reasonable steps to notify and obtain consent of the insurance company or companies, and agree to take no action, other than upon mutual consent, with respect to occupancy or use of the Work that could lead to cancellation, lapse, or reduction of insurance.

11.6.4 The coverage shall be kept in force until Substantial Completion has been obtained, or until no one but the City and the CRA has any property interest in the Project, or until SLWD, the City and CRA mutually consent to the termination, whichever occurs first. SLWD agrees and understands the City shall not provide any Builder's Risk insurance on behalf of SLWD for loss or damage to Work, or to any other property of owned, hired, or borrowed by SLWD, its Contractors or any Subcontractor.

11.7 Satisfying Limits under an Umbrella Policy. If necessary, SLWD or its Contractor may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under an Umbrella or Excess Liability. The underlying limits may be set at the minimum amounts required by the Umbrella or Excess Liability provided the combined limits meet at least the

minimum limit for each required policy. The Umbrella or Excess Liability shall have an Annual Aggregate at a limit not less than the highest per occurrence minimum limit required above for any of the required coverages. The City and CRA shall be included as an "Additional Insured" on the Umbrella or Excess Liability, unless the Umbrella or Excess Liability provides continuous coverage to the underlying policies on a complete "Follow-Form" basis without exceptions and stated as such on the Certificate of Insurance.

11.8 Additional Insured. SLWD agrees to endorse or otherwise include the City and CRA as Additional Insured on each insurance policies required to be maintained by SLWD, the Design Representative and the Contractor, except for Worker's Compensation, and the Design Representative's Professional Liability. The City and CRA shall be included as additional insured on a primary and non-contributory basis utilizing an ISO standard endorsement at least as broad as CG 2010 04 13 and CG 2037 04 13 or their equivalent to include coverage for ongoing operations as well as products and completed operations. Other policies, when required, such as for pollution, builder's risk, or transit insurance, shall provide a standard Additional Insured endorsement offered by the insurer providing coverage with respect to liability arising out of the operations of SLWD. SLWD shall agree that the Additional Insured endorsements provide coverage on a primary basis. Endorsement shall be in accordance with all of the limits, terms and conditions set forth herein.

11.9 Second Named Insured. SLWD shall agree to add the City as a Second Named Insured on the Builder's Risk Insurance, when required to be maintained by SLWD or its Contractor. The Second Named Insured shall read "City of Lake Worth Beach". The Policy shall be in accordance with all of the limits, terms and conditions set forth herein.

11.10 Waiver of Subrogation. SLWD agrees by entering into the Project Documents to a Waiver of Subrogation for each required policy (providing coverage during the life of the Project Documents). When required by the insurer or should a policy condition not permit an Insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then the SLWD shall agree to notify the respective insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should the insured enter into such an agreement on a pre-loss basis. The Waiver of Subrogation shall be in accordance with all of the limits, terms and conditions set forth herein (or applicable). The City, SLWD, and SLWD's Contractor shall waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Design Professional(s); and (3) Subcontractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The City, SLWD, or SLWD's Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Design Professional(s), other Subcontractors and their subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this paragraph shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

11.11 Right to Review & Adjust. SLWD shall agree, notwithstanding the foregoing, that the City, by and through its Project Manager, in cooperation with the City's Risk Manager, reserves the right to periodically review, reasonably reject or accept all required policies of insurance, including limits, coverages, or endorsements, hereunder from time to time throughout the life of the Project Documents. Furthermore, the City reserves the right to review and reasonably reject any insurer providing coverage because of poor

financial condition or because it is not operating legally. In such event, City shall provide SLWD written notice of such adjusted limits, and SLWD shall agree to comply within thirty (30) days of receipt thereof and to be responsible for any premium revisions as a result of any such reasonable adjustment.

11.12 No Representation of Coverage Adequacy. The coverages and limits identified in the table have been determined to protect primarily interests of the City and CRA only, and SLWD agrees in no way should the coverages and limits in the table be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect SLWD against any loss exposures, whether as a result of the design and/or construction of the Project or otherwise.

11.13 Certificate of Insurance. Certificates of Insurance must provide clear evidence that SLWD's Insurance Policies contain the minimum limits of coverage and terms and conditions set forth herein. A minimum of thirty (30) days' notice of cancellation or non-renewal of coverage shall be identified on the certificate. In the event the City is notified that a required insurance coverage will cancel or non-renewed during the period of the Project Documents, SLWD shall agree to furnish at least seven (7) days prior to the expiration of such insurance, an additional certificate of insurance as proof that equal and like coverage for the balance of the period of the Project Documents and any extension thereof is in effect. SLWD shall agree not to continue to work pursuant to the Project Documents (or allow its Contractor or any Subcontractor) unless all required insurance remains in effect. The City shall have the right, but not the obligation, of prohibiting SLWD, its Contractor, or any Subcontractor from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and accepted by the City. The City reserves the right to withhold payment, but not the obligation, to SLWD until coverage is reinstated. If SLWD fails to maintain the insurance as set forth herein, the City shall have the right, but not the obligation, to purchase said insurance at SLWD's expense.

11.14 ADDITIONAL REQUIREMENTS FOR CERTIFICATES OF INSURANCE

11.14.1 Shall clearly identify the City of Lake Worth Beach, a political subdivision of the State of Florida, its officers, agents and employees, and Lake Worth Beach Community Redevelopment Agency, a Florida public body, corporate and politic created pursuant to Chapter 163, Florida Statutes, its officers, agents and employees, as Additional Insured for all required insurance coverages, except Workers Compensation and the Design Representative's Professional Liability.

11.14.2 Shall clearly indicate Project name to which it applies.

11.14.3 Evidence of renewal coverage must be provided at least seven (7) days in advance of any policy that may expire during the term of the Project Documents.

11.14.4 Shall clearly identify the City of Lake Worth Beach and Lake Worth Beach Community Redevelopment Agency as Named Insured on the Builder's Risk and any applicable Inland Marine coverages.

11.14.5 SLWD shall provide a certificate of insurance with respect to each required policy provided under this Article. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate. Certificates need to show the following as Certificate Holder: City of Lake Worth Beach and Lake Worth Beach Community Redevelopment Agency.

11.14.6 SLWD shall deliver original Certificate(s) of Insurance to the City's Project Manager and CRA.

11.14.7 Renewal Policies – SLWD shall promptly deliver to City and CRA certificates of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to City and to CRA not less than five (5) business days before to the expiration date of any policy.

11.15 Deductibles, Coinsurance Penalties, & Self-Insured Retention. SLWD shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.

11.16 SLWD shall agree to cause each Contractor and each Subcontractor employed by SLWD's Contractor to purchase and maintain insurance of the type specified herein, (except for Builder's Risk and pollution liability, which shall be the responsibility of SLWD only). When requested by the City or CRA, SLWD shall agree to obtain and furnish copies of certificates of insurance evidencing coverage for each Subcontractor upon request from the City.

11.17 Insurance Coverage & Limit Table. SLWD shall agree to maintain the coverages, endorsements, and limits of liability in accordance with and set forth by the Insurance Coverage & Limit Table below:

| INSURANCE COVERAGE & LIMIT TABLE | |
|--|--|
| TYPE OF COVERAGE | COVERAGE AMOUNTS |
| COMMERCIAL GENERAL LIABILITY: Limit of Liability not less than: Additional Insured endorsement required: | \$2,000,000 per occurrence and aggregate. Yes |
| WORKERS COMPENSATION & EMPLOYER'S LIABILITY: Coverage not less than: Employers Liability Limits: | Statutory \$1M/ \$1M/\$1M |
| AUTOMOBILE LIABILITY: Limit of Liability not less than: Additional Insured endorsement required: | \$1,000,000 combined single limit Yes |
| UMBRELLA / EXCESS LIABILITY: Limit of Liability not less than: General Aggregate Additional Insured endorsement required: | Yes |
| BUILDERS RISK (if provided by SLWD): Limit not less than: Endorsement to waive coverage termination from Occupancy Clause. Endorsement cover until final acceptance of the Project by Certificate of Occupancy by the City. Additional Insured endorsements required: | 100% of the completed total insurable value of the Project. Yes Yes Yes |
| POLLUTION LIABILITY: | |

| INSURANCE COVERAGE & LIMIT TABLE | |
|---|-------------------------------|
| Limit not less than: | \$5,000,000 per occurrence |
| General Aggregate | \$5,000,000 |
| Additional Insured endorsements required: | Yes |
| | |

**ARTICLE 12
FINANCIAL BOOKS AND RECORDS**

Recordkeeping Requirements; Record Maintenance and Retention of Records. SLWD shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles. During the performance of the Work and for a period of five (5) years after final payment, City and CRA and their representatives shall be afforded access from time to time, upon reasonable notice, to SLWD's records, books, correspondence, receipts, including those retained by SLWD of SLWD's Contractor and Subcontractors, purchase orders, vouchers, memoranda and other data, including but not limited to electronic schedules and other electronic data (all collectively referred to as "**Books and Records**") relating to: (a) changes in the services performed on a cost basis; or (b) any request by SLWD for an adjustment to the GMP or Guaranteed Completion Date. SLWD shall preserve all of its Books and Records for a period of five years after final payment.

**ARTICLE 13
SUSPENSION, DEFAULT, TERMINATION**

13.1 Suspension.

13.1.1 City may, at its sole option, decide to suspend at any time the performance of all or any portion of Work to be performed under the Project Documents. SLWD will be notified of such decision by City in writing. Such notice of suspension of Work may designate the amount and type of plant, labor and equipment to be committed to the work site. During the period of suspension, SLWD shall use its best efforts to utilize its plant, labor and equipment in such a manner as to minimize costs associated with suspension.

13.1.2 Upon receipt of any such notice, SLWD shall, unless the notice requires otherwise:

- a. immediately discontinue Work on the date and to the extent specified in the notice;
- b. place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;
- c. promptly make every reasonable effort to obtain suspension, upon terms satisfactory to City, of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended;
- d. continue to protect and maintain the Work including those portions on which work has been suspended, and
- e. take any other reasonable steps to minimize costs associated with such suspension.

13.1.3 As full compensation for such suspension, SLWD will be reimbursed for the following verifiable costs (without profit), without duplication of any item, to the extent that such costs directly result from such suspension of Work:

- a. A standby charge to be paid to SLWD's Contractor during the period of suspension of Work which standby charge shall be sufficient to compensate SLWD for keeping, to the extent required in the notice, its organization and equipment committed to the Work in a standby status;
- b. All reasonable costs associated with mobilization and demobilization of SLWD's Contractor's plant, forces and equipment;
- c. An equitable amount to reimburse SLWD's Contractor for the cost of maintaining and protecting that portion of the Work upon which Work has been suspended; and
- d. If as a result of any such suspension of Work the cost to SLWD's Contractor of subsequently performing Work is increased or decreased, an equitable adjustment will be made in the cost of performing the remaining portion of Work.

13.1.4 In no event shall the City be liable to SLWD for a claim for home office overhead in accordance with the Eichleay Formula or otherwise, in the event of a City suspension. Upon receipt of notice to resume suspended work, SLWD shall have its Contractor immediately resume performance of the suspended Work to the extent required in the notice. Any claim on the part of SLWD for time and/or compensation arising from suspension shall be made within twenty-one (21) calendar days after receipt of notice to resume Work and SLWD shall submit for review a revised construction schedule. No adjustment shall be made for any suspension to the extent that performance would have been suspended, delayed, or interrupted by any SLWD's or its Contractor non-compliance with the requirements of the Project Documents.

13.1.5 The failure of the City and CRA to review, approve, or state in writing reasons for rejection of any Application for Payment within fourteen (14) days after it is properly submitted in accordance with Article 7 of this Agreement shall be sufficient grounds for SLWD to find the City in substantial default and that sufficient cause exists to terminate the Agreement. If the CITY fails to pay SLWD within thirty (30) days after presentation to the Project Manager, or to notify SLWD in writing of any objection to the Application for Payment, then the SLWD may give written notice to the CITY of such delay, neglect or default, specifying the same. If the CITY, within a period of fourteen (14) calendar days after such notice fails to remedy the delay, neglect, or default upon which the notice is based, then SLWD may stop work or terminate this Contract and recover from the CITY payment for all Work executed and reasonable expenses sustained therein plus reasonable termination expenses.

13.1.6 If the City suspends the Project or any portion of the Work under this section, the City's suspension shall not prevent or preclude SLWD from constructing the other components of the WMODA Project in accordance with the Development Agreement and SLWD's Entitlements and Permits.

13.2 Declaration of Default.

13.2.1 SLWD Default. The failure of SLWD to supply enough properly skilled professionals, workers, or material, or for SLWD's Contractor to make prompt payment to Subcontractors without sufficient justification under the subject agreements with those parties' contracts, or to obey laws, ordinances, rules, regulations, or orders of public agencies having jurisdiction, or to comply in any material way with the Project Documents, or to maintain the schedule and duly prosecute the Work shall be sufficient grounds for the City to find SLWD in substantial default and that sufficient cause exists to terminate the Project Documents and to withhold payment or any part thereof until the cause or causes giving rise to the default have been eliminated by SLWD and approved by the City. If a declaration of default is made, SLWD and its surety shall remain responsible for performance of the requirements of the Project Documents unless and until the City terminates the Project Documents. Upon a finding of default, the City shall set a reasonable time within which SLWD and its surety shall eliminate the cause or causes of default, but in no

event shall such period of time be less than seven (7) calendar days. Notice of a finding of default shall be sent to SLWD and its surety by the City or CRA. When the basis for finding of default no longer exists, the City shall notify SLWD and its surety in writing that the default has been corrected and that SLWD is no longer in default. If SLWD fails to correct the default within the time allowed, the City may terminate the Project Documents and this Agreement , without otherwise waiving its rights against SLWD or its surety.

13.2.2 City and/or CRA Default. The City or CRA shall be in substantial default if the City or CRA shall fail to observe, satisfy or perform any material term, covenant or agreement contained in this Agreement and such failure shall continue unremedied for twenty (20) calendar Days after written notice thereof from SLWD to the City or CRA; provided, however, that if such failure is capable of cure but cannot reasonably be cured within twenty (20) calendar Days, such failure shall not constitute an Event of Default, so long as the City or CRA provides SLWD with written notice within ten (10) calendar days of receipt of SLWD's default notice advising the SLWD that the default cannot be reasonably cured within twenty (20) calendar Days and specifying the reasons therefore and, within the twenty (20) calendar Day period, commences and thereafter is in good faith proceeding diligently and continuously to remedy such failure, but in no event shall any additional time to cure granted hereunder exceed sixty (60) calendar days in the aggregate after City or CRA's receipt of the original written default notice.

13.3 **Termination for Default of SLWD.**

13.3.1 Notwithstanding any other provisions of the Project Documents, SLWD shall be considered in default of its contractual obligations under the Project Documents if it or its Contractor:

- A. Repeatedly performs Work which fails to conform to the requirements of the Project Documents;
- B. Fails to meet the Project Documents schedule or fails to make progress so as to endanger performance of the Project;
- C. Abandons or refuses to proceed with any or all Work including modifications directed through duly issued changes;
- D. Fails to fulfill any of the material terms of the Project Documents; or,
- E. Fails to timely cure a substantial default.

13.3.2 Upon the occurrence of any of the foregoing, City or its authorized representatives shall notify SLWD in writing of the nature of the failure and of City's intention to either terminate the Project Documents for default, or to declare the SLWD to be in default and, if during the Construction Phase, make demand upon its surety to perform, at its sole option.

13.3.3 If SLWD or its surety(ies) does not commence to cure such failure within ten (10) calendar days from receipt of notification, or sooner if consideration of safety to persons is involved, or if SLWD or its surety(ies) fails to provide satisfactory evidence that such default will be timely corrected, City may, with additional notice to SLWD's surety(ies) (as applicable), terminate in whole or in part SLWD's right to proceed with Work by written notice and prosecute the Work to completion by Project Documents or by any other method deemed expedient. City may take possession of and utilize any deliverables, documents, materials, plant, tools, equipment, and property of any kind furnished by SLWD and necessary to complete the Work.

13.3.4 SLWD and its sureties (as applicable) shall be liable jointly and severally for all costs in excess of the Construction Costs for such terminated Work reasonably and necessarily incurred in the completion of the Work as scheduled, including reasonable attorney's fees, cost of administration of any contracts awarded to others for completion, project management costs, additional design costs, and for liquidated damages.

13.3.5 Upon termination for default SLWD shall:

- a. immediately discontinue Work on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of Work terminated;
- b. inventory, maintain and turn over to City all materials, plant, tools, equipment, and property furnished by SLWD or its Contractor or provided by City for performance of Work;
- c. promptly obtain cancellation upon terms satisfactory to City of all purchase orders, subcontracts, rentals, or any other agreements existing for performance of the terminated Work or assign those agreements to City as directed;
- d. cooperate with City in the transfer of information and disposition of Work in progress so as to mitigate damages;
- e. comply with other reasonable requests from City regarding the terminated Work; and
- f. continue to perform in accordance with all of the terms and conditions of the Project Documents such portion of Work that is not terminated.

13.3.6 If, upon termination pursuant to this clause, it is determined for any reason that SLWD was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause entitled "TERMINATION FOR CONVENIENCE".

13.3.7 If this Agreement is terminated for SLWD's default prior to the approval and execution of the GMP Amendment, all of SLWD's remaining Initial Investment (less paid Design Costs (inclusive of SLWD's Administrative Costs) as of the date of termination) shall be promptly paid to the City. SLWD shall also be liable to the City and CRA for all of the City's and CRA's administrative costs in the development and furtherance of this Agreement including, but not limited to, all costs for administration, project management, and reasonable attorney's fees (but not consequential indirect, special, incidental or speculative damages including, without limitation, lost profits, lost opportunities and punitive damages), which administrative costs shall not exceed One Hundred Thousand Dollars (\$100,000). Reasonable substantiation for all such administrative costs shall be provided to the City and CRA along with a demand for payment. All such amounts shall be paid by SLWD to the City and CRA within thirty (30) days of receipt of the demand. Upon receipt of said amounts, SLWD's "payment in lieu of parking fee" shall be deemed to have been satisfied. If such amounts are not timely paid, SLWD's "payment in lieu of parking fee" shall be an outstanding liability of SLWD, which the City and/or CRA may take all necessary lawful action to collect inclusive of all related collection costs including, but not limited to, reasonable attorneys' fees.

13.3.8 If this Agreement is terminated for SLWD's default after approval and execution of the GMP, all remaining funds in Escrow Account shall be disbursed to the CRA and City in proportion to each parties contribution inclusive of the SLWD's remaining Initial Investment (less paid Design Costs), which shall be split on a pro-rata basis between the City and CRA (depending on their Initial Investment and all funds deposited in escrow and paid towards the Revenue Note). The City and CRA shall still be responsible for payment of the Revenue Note; however, such payment shall be off-set consistent with the City's rights under Section 13.3.4 above and the Parties shall revise the Revenue Note to reflect such set-off. Upon receipt of the Escrow Account funds and once the Revenue Note is revised (as applicable), SLWD's "payment in lieu of parking fee" shall be deemed to have been satisfied. If such amounts are not timely received and/or the Revenue Note is not revised, SLWD's "payment in lieu of parking fee" shall be an outstanding liability of SLWD, which the City and/or CRA may take all necessary lawful action to collect inclusive of all related collection costs including, but not limited to, reasonable attorneys' fees.

13.4 Termination for Default of City or CRA.

13.4.1 Notwithstanding any other provisions of the Project Documents, the City or CRA shall be in default of their contractual obligations under the Project Documents if the City or CRA fail to observe, satisfy or

perform any material term, covenant or agreement contained in this Agreement, which has not been resolved by either the City or CRA upon notice from SLWD of a declaration of default for the same.

13.4.2 Upon the occurrence of the foregoing, SLWD shall notify the City and CRA that the Agreement is terminated for the City's and/or CRA's default. In such event, SLWD shall be entitled to the following remedies:

13.4.2.1 **If such termination for default is prior to the approval and execution of the GMP Amendment**, SLWD shall be entitled to be paid all outstanding Design Costs (inclusive of SLWD's Administrative Costs) through the date of termination and SLWD's "payment in lieu of parking fee" shall be deemed to have been satisfied.

13.4.2.2 **If such termination for default is after the approval and execution of the GMP Amendment**, SLWD shall recovery of the sum of SLWD's actual and direct damages incurred, including but not limited to, reasonable attorney's fees (but not consequential indirect, special, incidental or speculative damages including, without limitation, lost profits, lost opportunities and punitive damages), which damages shall not exceed One Hundred Thousand Dollars (\$100,000). This amount is in addition to any payments due to SLWD's Contractor for Work under the Project Documents through the date of termination, which shall include all costs set forth in Section 13.5.1(b) subsections 1, 2, and 3 (Termination for Convenience costs to SLWD's Contractor). Reasonable substantiation for all such damages shall be provided to the City and CRA along with a demand for payment, which must be paid within thirty (30) days of receipt by the City and/or CRA. In addition, if the Revenue Note has been issued, a default by the City or the CRA under this agreement shall constitute a default of the CRA under the terms of the Revenue Note to be issued which shall result in an advancement of the payment due thereunder. The \$3.5M Revenue Note funding shall be released from the CRA or Escrow Account (as applicable) and the City and CRA shall be responsible for any interest accrued as of the date of the termination. If a portion of the \$3.5M Revenue Note funding has been expended on the Project, the remaining amount shall be disbursed to SLWD and City and CRA shall continue to pay the Revenue Note (which shall be modified by the parties to reflect the new principal amount).

13.4.3 If this Agreement is terminated for the City's default, the termination shall not impact SLWD's ability to construct the WMODA Project in accordance with the existing Development Agreement and based on WMODA's Entitlements and Permits for the same.

13.5 Termination for Convenience

13.5.1 City may, at its option, terminate the Project Documents, in whole or in part at any time for any reason or for no reason by giving ten (10) business days written notice thereof to SLWD, whether or not SLWD is in default. Upon any such termination, SLWD hereby waives any claims for damages from the termination for convenience, including loss of anticipated profits, on account thereof, but as the sole right and remedy of SLWD, City shall pay SLWD in accordance with the subparagraphs below, provided, however, that those provisions of the Project Documents which by their very nature survive final acceptance under the Project Documents shall remain in full force and effect after such termination.

- a. Upon receipt of any such notice, SLWD and its surety shall, unless the notice requires otherwise:
 1. Immediately discontinue Work on the date and to the extent specified in the notice;
 2. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of Work under the Project that is not terminated;
 3. Promptly make every reasonable effort to obtain cancellation upon terms satisfactory to City of all orders and subcontracts to the extent they relate to the

- performance of Work terminated or assign to City those orders and subcontracts and revoke agreements specified in such notice;
4. The SLWD's Contractor shall agree to assign all subcontracts required for performance of the Project to the City;
 5. The SLWD's Contractor shall include in all subcontracts, equipment leases and purchase orders, a provision requiring the Subcontractor, equipment lessor or supplier, to consent to the assignment of their subcontracts to the City;
 6. Assist City, as specifically requested in writing, in the maintenance, protection and disposition of property acquired by City under the Project Documents; and
 7. Complete performance of any Work which is not terminated.
- b. Upon any such termination, City will pay to SLWD's Contractor an amount determined in accordance with the following (without duplication of any item):
1. All amounts due and not previously paid to SLWD's Contractor for Work completed in accordance with the Project Documents prior to such notice, and for Work thereafter completed as specified in such notice.
 2. The reasonable cost of demobilizing from the Project, along with the reasonable costs of settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in subparagraph a.3. above.
 3. Any other reasonable costs which can be verified to be incidental to such termination of Work.
 4. SLWD shall provide the City with the balance of the \$1M contribution less all Design Costs incurred as of the date of termination for the Design Phase and SLWD's "fee in lieu of parking" obligation shall be deemed satisfied..
 5. In addition, if the Revenue Note has been issued, the \$3.5M Revenue Note funding shall be released from the CRA or Escrow Account (as applicable) and the City and CRA shall be responsible for any interest accrued as of the date of the termination. If a portion of the \$3.5M Revenue Note funding has been expended on the Project, the remaining amount shall be disbursed to SLWD and City and CRA shall continue to pay the Revenue Note (which shall be modified by the parties to reflect the new principal amount).
 6. The City and CRA will endeavor to return all funds in their possession to SLWD within fifteen (15) calendar days of notice of termination for convenience but no later than thirty (30) calendar days.

13.5.2 The foregoing amounts will include a reasonable sum, under all of the circumstances, as profit for all Work satisfactorily performed to date of termination by SLWD.

13.5.3 SLWD shall submit within 30 days after receipt of notice of termination for convenience, a proposal for an adjustment to the GMP including all costs incurred described herein. City shall review, analyze, and verify such proposal, and negotiate an equitable adjustment, and the Project Documents shall be amended in writing accordingly.

13.5.4 If the City terminates for convenience under this section, the City's termination shall not prevent or preclude SLWD from constructing the other components of the WMODA Project in accordance with the Development Agreement and SLWD's Entitlements and Permits.

13.6 **Mutual Termination.** If during the Term, the parties decide that they want to terminate this Agreement for any reason (e.g., the GMP Proposal is not accepted by the City Commission or lack of appropriations to move forward), the parties shall mutually agree to terminate and shall prepare a written amendment to this Agreement to address the amounts in escrow (if any), disbursement thereof, and resulting impact (if any) on the remaining WMODA Project components. The termination of this agreement shall

not impact the SLWD's ability to construct the WMODA project, and Developer shall be released from its obligation to construct the K Street Parking Garage. Unless otherwise agreed in the amendment to mutually terminate this Agreement, upon termination SLWD shall provide the City with the remaining balance of the Initial Deposit for the K Street Parking Garage construction less all Design Costs incurred and expended, and the remaining balance shall be deemed the Developer "in lieu of payment" for necessary parking which shall fully satisfy the Developer's parking requirement under the City Code.

13.7 Extension of Time/No Damages for Delay.

13.7.1 If SLWD's performance of the Project is delayed, which delay is beyond the reasonable control and without the fault or negligence of the SLWD, its Contractor or Subcontractors (which shall include but not be limited to delays resulting from unforeseeable supply chain disruption and/or unavailability of material or equipment that could not reasonable have been anticipated), or by changes ordered in the Work, and in either event where such delay or change in the Work impacts the Project schedule, then the Project schedule shall be extended by Change Order as determined by the City.

13.7.2 SLWD must request an extension of time in writing and must provide the following information within the time periods stated hereafter. Failure to submit such information and in compliance with the time requirements hereinafter stated shall constitute a waiver by the SLWD and a denial of the claim for extension of time:

- a. Nature of the delay or change in the Work;
- b. Dates of commencement/cessation of the delay or change in the Work, if known;
- c. Activities on the progress schedule current as of the time of the delay or change in the Work affected by the delay or change in the Work;
- d. Identification and demonstration that the delay or change in Work impacts the Project schedule;
- e. Identification of the source of delay or change in the Work;
- f. Anticipated impact extent of the delay or change in the Work; and
- g. Recommended action to minimize the delay.

13.7.3 SLWD acknowledges and agrees that the evaluation of time extensions will be based upon the following criteria:

- a. All schedule updates, submittals and other requirements of this Project Documents have been met;
- b. The delay must be beyond the control of SLWD, its Contractor and Subcontractors and due to no direct or indirect fault of SLWD, its Contractor or Subcontractors;
- c. The delay, which is the subject of the time extension must result in a direct delay to the Project schedule;
- d. The schedule must clearly display that SLWD has used, in full, all the float time, except for City initiated changes. Float time is not for the exclusive use of either SLWD or the City; and
- e. If adverse weather conditions are the basis for a claim for additional time, such claim shall be submitted within **thirty (30) days** of occurrence and shall be documented to demonstrate that the requirements of adverse weather conditions (below) (as applicable) have been satisfied.

13.7.4 The City's determination as to the total number of days of extension will be based upon the latest Project schedule current at the time of the delay event.

13.7.5 Except for adverse weather conditions, SLWD shall not be entitled to any extension of time for delays resulting from any cause unless it notified the City in writing within **seven (7) days** after the commencement of such delay or knowledge of a potential delay.

13.7.6 Except as provided in this section 13.7, SLWD shall not be entitled to and hereby waives, any and all damages which it may suffer by reason of Act of God, unforeseen condition, delay, acceleration, cardinal changes, loss of efficiency or any other impacts to the Work or time of performance and further. Other than the compensation provided in below, SLWD hereby waives all damages which it may suffer by reason of these events, including, but not limited to lost profits, overhead (whether determined by the Eichleay Formula or otherwise), increased insurance costs, loss of bonding capacity or lost profits on alternate or unperformed subcontracts, supervision, or home office expense. SLWD hereby affirms that the extension of time granted herein and the amounts permitted by this Section 13.7 are SLWD's sole and exclusive remedy. Apart from extension of time and the amounts provided in this Section 13.7 below, no payment of claim for damages shall be made as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the Work whether such delay are avoidable or unavoidable.

13.7.7 For all changes in the Work in which the SLWD claims entitlement to a time extension, SLWD shall provide to the City the same information as required above within seven (7) days of the issuance of the request for Change Order or direction to change the scope of the Work and SLWD's failure to provide such information shall constitute a waiver by SLWD and a denial of any time extension for that change in the Work. Further, upon execution by the City and SLWD of any Change Order where no time extension has been requested and/or granted, that Change Order shall constitute a complete waiver of all claims for dollars or for any extension of time related to that Work, or any Work impacted by the change.

13.7.8 SLWD has not included in its schedule delays arising out of adverse weather conditions, including Rain Days, inclement weather, or other weather-related delays beyond that set forth herein. A "Rain Day" is any day in which rain, adverse weather, an inclement weather event, or other weather-related delays occur at the Project site and is sufficient to prevent SLWD's Contractor and/or any Subcontractor from performing scheduled activities for at least four (4) consecutive hours. Accordingly, to the extent one (1) Rain Day occurs in a given week, SLWD's Contractor or its Subcontractor(s) shall not be able to claim additional time or costs. To the extent additional Rain Days beyond those thresholds occur in any given week, the additional Rain Day(s) shall constitute an adverse weather condition ("Adverse Weather") not reasonably anticipated, and SLWD shall be entitled to an equitable extension of the Project schedule and an adjustment in the GMP for a compensable delay as provided in this Section.

13.7.9 The imminent threat of a tropical storm, hurricane or severe inclement weather event that may impact the Project for multiple days including time to secure the Project site shall constitute an "Excessive Wind Event" that cannot be reasonably anticipated by SLWD. In the event a severe weather warning is issued for the area where the Project is located as a result of an Excessive Wind Event, construction activities will cease and the job site will be secured. Construction activities will restart within 24 hours of the warning being lifted if there ultimately was no Excessive Wind Event at the Project site or within 72 hours of the warning being lifted if an Excessive Wind Event occurred at the Project site, so long as roads are clear, utilities have been restored, fuel is available, and the area surrounding the job site is clear of debris. The time period between the issuance of the warning and the time when construction activities can reasonably return to the levels they were before the warning shall constitute a basis for a compensable delay for which SLWD shall be entitled to an extension of the Project schedule and an adjustment in the GMP as provided for in this Section.

13.7.10 In the event SLWD establishes that the performance of the Project schedule was delayed in a manner that meets the conditions of this Section 13.7, and so long as SLWD also satisfies the notice and documentation requirements set forth therein, then in addition to an extension of the Project schedule, SLWD shall also be entitled to an adjustment of the GMP. The GMP shall be increased by an amount equal to the daily general conditions rates agreed to by the parties as part of the GMP Amendment multiplied by the number of days of delay (as determined above) plus any increased labor, material, or equipment costs

that are directly attributable to the delay, except to the extent that SLWD has caused or contributed to the delay or has failed to take reasonable steps to mitigate the impacts (including costs) of the delay.

ARTICLE 14 INDEMNIFICATION AND LIMITATION OF LIABILITY

14.1 SLWD shall indemnify, defend, and hold harmless the City and the CRA, and their officers and employees, against any actions, claims, injuries, costs (including all attorney's fees), or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of SLWD or any of its officers, employees, or other persons utilized by SLWD in undertaking any action with respect to the design and/or construction of the K Street Parking Garage. The foregoing indemnification shall not constitute a waiver of the City's or CRA's sovereign immunity beyond the limits set forth in section 768.28, Florida Statutes, nor as consent by the City or CRA to be sued. The foregoing indemnification shall also not be construed to constitute agreement by SLWD to indemnify, defend, and hold harmless the City and/or CRA for the negligent or wrongful act(s) of the City and/or CRA, or their officers, agents, employees, or third parties.

14.2 SLWD agrees to include the following indemnification in all contracts with the SLWD's Design Representative and Contractor undertaking any action with respect to the design and/or construction of the K Street Parking Garage:

“To the extent provided by law, [Contractor] shall indemnify, defend, and hold harmless SLWD, the City of Lake Worth Beach (CITY), the Lake Worth Beach Community Redevelopment Agency (CRA), and their officers and employees, against any actions, claims, injuries, costs (including all attorney's fees), or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of [SLWD's Contractor] or any of its officers, employees, or other persons utilized by [SLWD's Contractor], in undertaking any action with respect to the construction of the K Street Parking Garage.

The foregoing indemnification shall not constitute a waiver of the CITY's or CRA's sovereign immunity beyond the limits set forth in section 768.28, Florida Statutes, nor as consent by the CITY or CRA to be sued. The foregoing indemnification shall also not be construed to constitute agreement by [SLWD's Contractor] to indemnify, defend, and hold harmless the CITY and/or CRA for the negligent or wrongful act(s) of the CITY and/or CRA, or their officers, agents, employees, or third parties.”

14.3 Nothing in this Agreement shall be deemed or treated as a waiver by the City or CRA of any immunity to which the City or CRA are entitled to by law, including but not limited to sovereign immunity as set forth in Section 768.28, Florida Statutes.

14.4 To the extent permitted by Section 725.06, Florida Statutes, SLWD hereby indemnifies and shall defend and hold City and its representatives harmless from and against all claims, losses, costs, damages, and expenses, including attorney's fees, incurred by City, CRA and their representatives, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any intellectual property and arising out of the use of the equipment or materials furnished under the Project Documents by SLWD, or out of the processes or actions employed by, or on behalf of SLWD in connection with the performance of the Project. In such event, SLWD shall, at its sole expense, promptly defend against any such claim or action unless directed otherwise by City, CRA or their representatives; provided that City, CRA, or their representatives shall have notified SLWD upon becoming aware of such claims or actions, and provided further that SLWD's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by City or City's representatives. SLWD shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials, or processes, or to modify such infringing equipment, materials and processes so they become non-infringing,

or obtain the necessary licenses to use the infringing equipment, material or processes, provided that such substituted and modified equipment, materials and processes shall meet all the requirements and be subject to all the provisions of the Project Documents.

14.5 None of the parties shall be liable to one another, whether in contract, tort, warranty or under any statute or on any other basis, for any consequential, incidental, indirect, special, punitive or exemplary damages suffered or incurred in connection with the Project, even if that party has been advised of the possibility of such damages. Consequential damages shall include, by way of example and without limitation, opportunity costs, loss of use of facilities or other assets, consequential damage claims of Contractors or Subcontractors, lost profits, lost savings, lost business, lost bonding capacity, lost financing, lost reputation or lost goodwill. Notwithstanding the foregoing, this waiver shall not apply to any consequential damages that a) are covered and paid for by any insurance policy that SLWD is required to provide pursuant to the Agreement; or b) result from the parties' misconduct, fraud, gross negligence or recklessness.

14.6 For the avoidance of doubt, this Article shall survive the termination or expiration of the Project Documents. SLWD's obligation to indemnify the City and CRA as set forth herein shall expire five (5) years after the date of Final Completion of the Parking Garage or the earlier date of termination.

ARTICLE 15 MISCELLANEOUS

15.1 **Validity, Severability and Reformation:** The validity, interpretation, construction, and effect of this Agreement shall be in accordance with and be governed by the laws of the State of Florida. Any provision or part of this Agreement held to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the parties. The parties agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

15.2 **Headings:** The headings of the articles, sections or paragraphs of this Agreement and capitalizations are for the purpose of convenience only and shall not be deemed to expand or limit the provisions contained in such sections.

15.3 **Waiver:** No waiver of any of the terms or conditions of the Project Documents shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in the Project Documents.

15.4 **Waiver of Jury Trial: To encourage prompt and equitable resolution of any litigation, each party hereby waives its rights to a trial by jury in any litigation, claim, or proceeding related to or arising from the Project Documents.**

15.5 **Counterparts and Digital Execution:** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument. The City, CRA, and SLWD may digitally execute this Agreement.

15.6 **Preparation:** This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

15.7 Survivability: Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

15.8 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Each of the Parties irrevocably submits to the jurisdiction of any Florida State or Federal court sitting in Palm Beach County, Florida, in any action or proceeding arising out of or relating to this Agreement. The Parties hereby each irrevocably agree that all claims in respect of any such action or proceeding may be heard and determined in any such Florida State court or in such Federal court and irrevocably waive, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of any such action or proceeding.

15.9 Assignment: Except as specifically provided in this provision, this Agreement or any interest herein, shall not be assigned, transferred, or otherwise encumbered under any circumstances by SLWD without the prior written consent of CRA and the CITY, which consent may be given or refused in their sole discretion, and only by an Amendment executed of equal dignity herewith.

15.9.1 Notwithstanding section 15.9, an assignment of this Agreement by the SLWD to any corporation, limited partnership, limited liability company, general partnership, or other legal business entity authorized to do business in the State of Florida, in which SLWD is the general partner or has either the controlling interest or through a joint venture or other arrangement shares equal or has controlling management rights with a financial institution or joint venture party and maintains such controlling interest or management rights for the Term of this Agreement (such entities being referred to in this Agreement as an "Affiliate" of SLWD) shall not be deemed an assignment or transfer subject to any restriction on or approvals of assignments or transfers imposed by this Section 15.9, provided, however, that notice of such assignment shall be given by SLWD to the City and CRA no less than thirty (30) days prior to such assignment being effective and the assignee shall be bound by the terms of this Agreement to the same extent as would SLWD in the absence of such assignment. The City and CRA, upon receipt of such notice, may request such reasonable assurances as necessary to confirm that SLWD has the request control of the assigned Affiliate. All other transfers in title, interest and obligations other than as stated hereinabove shall constitute an assignment of SLWD's right, title, interest or obligations under this Agreement for purposes of this provision requiring the prior approval of the CRA and City in their sole discretion.

15.10 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of hereof shall be predicated upon any prior representations or agreements whether oral or written. If there are any conflicts between this Agreement and the Development Agreement regarding the design and construction of the K Street Parking Garage, this Agreement shall take precedence.

15.11 It is further agreed that no modification, amendment, or alteration of the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

15.12 The parties agree that each shall cooperate with the other in good faith and shall correct any mathematical errors, execute such further documents, and perform such further acts as may be reasonably necessary or appropriate to carry out the purpose and intent of this agreement.

15.13 All capitalized terms used by not defined herein shall be ascribed the meaning as in the Development Agreement.

15.14 All notices, requests, consents, demands, approvals or other communications required or permitted under this Agreement shall be in writing, addressed to the appropriate person at the receiving party, and shall be (as elected by the person giving such notice): (a) hand delivered, (b) delivered by overnight courier by a nationally recognized courier, with all fees prepaid; (c) delivered by Registered or Certified Mail, in each case, return receipt requested and postage prepaid; or (d) delivered by email with "FORMAL NOTICE UNDER K STREET PARKING GARAGE AGREEMENT" in the subject line (but only if a party's email address is included in its notice address and a hard copy is delivered via one of the other methods described in (a) through (c)), addressed to:

If to the CITY:

City of Lake Worth Beach, Florida
Attn: Jaime Brown , Interim City Manager
1749 3rd Avenue South
Lake Worth Beach, Florida 33460

With copies to:

Torcivia, Donlon, Goddeau, and Rubin, PA
Attn: Christy Goddeau, Esq.
701 Northpoint Parkway, 209
West Palm Beach, FL 33407
Email: christy@torcivialaw.com

If to the CRA:

Lake Worth Beach Community Redevelopment Agency
Joan Oliva, Executive Director
1121 Lucerne Avenue
Lake Worth Beach, FL 33460
joliva@lakeworthbeachfl.gov

With copies to:

Weiss, Serota, Helfman, Cole, and Bierman
Attn: David N. Tolces, Esq.
2255 Glades Road, Suite 200 E
Boca Raton, FL 33431
DTolces@wsh-law.com

If to SLWD:

Sunshine Lake Worth Development, LLC
c/o: United Management Corporation
166 Montague Street
Brooklyn, New York 11201

With copies to:

R. Miller Consulting Group
ATTN: Renee Miller
reneem@rmcglc.com

Goren, Cherof, Doody and Ezrol, PA
3099 East Commercial Boulevard, Suite 200

Fort Lauderdale, FL 33308
Attn: Donald J. Doody, Esq.
Email: ddoody@gorencherof.com

David Kastner
United Management Corp.
166 Montague Street
Brooklyn, New York 11201
david@unitedmgmt.com

Each such notice shall be deemed delivered: (i) if delivered by hand, the date the receipt is signed; (ii) if sent by overnight courier, on the courier's confirmation of delivery date, (iii) if sent by Registered or Certified Mail, upon receipt as indicated by the date on the signed return receipt; (iv) if sent by email, the date the notice was emailed (but only if a party's email address is included in its notice address and a hard copy is delivered via one of the other methods described in (i) - (iii) above); or (v) if the notice is rejected or refused at a physical notice address shown above, or to such other address as either party may designate by notice to the other party from time to time (as long as such rejection or refusal of delivery occurs on a business day).

15.15 SLWD represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and Palm Beach County's Code of Ethics. SLWD further represents that no person having any such conflicting interest shall be employed for said performance. SLWD shall promptly notify the CITY and CRA, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence SLWD's judgment or quality of performance being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that SLWD may undertake and request an opinion of the CITY and CRA as to whether the association, interest or circumstance would, in the opinion of the CITY and CRA, constitute a conflict of interest if entered into by SLWD. The CITY and CRA agree to notify SLWD of their opinion(s) within thirty (30) days of receipt of notification by SLWD. If, in the opinion of the CITY and/or CRA, the prospective business association, interest or circumstance would not constitute a conflict of interest by SLWD, the CITY and CRA shall so state in the notification and SLWD may, at its option, enter into said association, interest or circumstance.

15.16 PUBLIC ENTITY CRIMES, SCRUTINIZED COMPANIES, E-VERIFY AND HUMAN TRAFFICKING.

15.16.1 As provided in Sections 287.132-133, Florida Statutes, as amended from time to time, by entering into this Agreement or performing any of its obligations and tasks in furtherance hereof,, SLWD certifies that it, its affiliates, suppliers, subcontractor, and any other contractors who will perform hereunder, have not been placed on the convicted contractor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof.

15.16.2 As provided in Section 287.135, Florida Statutes, as amended from time to time, by entering into this Agreement, SLWD certifies that it is not participating in a boycott of Israel. SLWD agrees that the CITY will have the right to terminate this Agreement is found to have been placed on the Scrutinized Companies that Boycott Israel List or as otherwise set forth in Section 287.135, Florida Statutes.

15.16.3 To the extent applicable, SLWD shall comply with the E-Verify requirements of section 448.095, Florida Statutes.

15.17 By signing this Agreement as set forth below, SLWD's authorized representative swears or affirms under penalty of perjury that SLWD does not use coercion for labor or services as defined in section 787.06, Florida Statutes.

15.18 Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes, but is not limited to, the power to review past, present and proposed City contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the City and its agents in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a breach of this Agreement and may result in termination of this Agreement or other sanctions or penalties as set forth in the Palm Beach County Code.

15.19 This Agreement is not and shall not be construed as a development agreement under Chapter 163, Florida Statutes, nor a development permit, Government Approval or authorization to commence development.

15.20 The provisions of this Agreement are for the exclusive benefit of the parties to this Agreement and no other party (including without limitation, any creditor of the City, CRA or SLWD) shall have any right or claim against the City, CRA or SLWD by reason of those provisions or be entitled to enforce any of those provisions against the City, CRA or SLWD.

15.21 One or more waivers of the breach of any provision of this Agreement by any party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Agreement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

15.22 If during the term of this Agreement, any party is provided access to any records or other information that is confidential or proprietary in nature, the other party shall maintain the confidentiality of such information consistent with Florida's Public Records laws including, but not limited to, any building plans or GIS information provided to or by SLWD's Representatives. SLWD shall ensure SLWD's Representatives are also contractually required to maintain the confidentiality of such information.

15.23 Status as an Independent Contractor: The status of the SLWD under the Project Documents is that of an independent contractor. Nothing in the Project Documents shall create or be construed as creating a partnership or joint venture between the City and the SLWD. The SLWD does not have the power or authority to bind the CITY in any promise, Project Documents or representation other than as specifically provided for in this Agreement (if any).

15.24 PUBLIC RECORDS. SLWD shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes (§119.0701), and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

15.24.1 Keep and maintain public records required by the City to perform the service.

15.24.2 Upon request from the City's custodian of public records or designee, 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 Chapter 119, Florida Statutes, or as otherwise provided by law.

15.24.3 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 this Agreement and following completion of this Agreement if SLWD does not transfer the records to the City.

15.24.4 Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of SLWD or keep and maintain public records required by the City to perform the service. If SLWD transfers all public records to the City upon completion of the Agreement, SLWD shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If SLWD keeps and maintains public records upon completion of the Agreement, SLWD 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 or designee, in a format that is compatible with the information technology systems of the City.

IF SLWD HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO SLWD'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV, OR BY MAIL AT CITY OF LAKE WORTH BEACH, ATTN: CITY CLERK, 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

15.24.5 The CRA shall have the same rights as the City under the above public records provisions.

15.25 REQUEST FOR SECTION 179D ALLOCATION: Under 26 USC 179D (Section 179D), a building owner may take an income tax deduction for improvements meeting certain energy savings criteria. Section 179D allows the City to allocate this income tax deduction to the firm primarily responsible for designing the qualifying property or allocate the deduction among the firms who contributed to the creation of the technical specifications. If applicable and if the SLWD considers it may be eligible for an allocation of the 179D deduction, then the SLWD must apply to the City through the Design Representative for the project. The Design Representative is responsible for applying to the City for the Section 179D deduction on behalf of all firms who created the technical specifications and recommending to the City the allocation of the deduction. The City's Project Manager will provide to SLWD the Department's policy and forms related to the Section 179D deduction when requested.

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SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties have made and executed this Comprehensive Agreement for the South K Street Parking Garage on the respective dates under each signature: the City of Lake Worth Beach signing by and through the Mayor or authorized designee, the Lake Worth Beach Community Redevelopment Agency, signing by and through its Chair, or other, duly authorized designee, and Sunshine Lake Worth Development, LLC, a Florida limited liability company, signing by and through its managing member, authorized to execute same.

SUNSHINE LAKE WORTH DEVELOPMENT, LLC,
a Florida limited liability company

By: _____
Arthur Wiener, Manager

Date: _____, 2025

STATE OF _____)

COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of ___ physical presence or ___ online notarization on this ___ day of _____ 2025, by _____, as the _____ [title] of Sunshine Lake Worth Development, LLC, who is personally known to me or who has produced _____ as identification, and who did take an oath that the facts stated with regard to section 787.09, Florida Statutes, are true and correct, and he or she is duly authorized to execute the foregoing instrument and bind Sunshine Lake Worth Development, LLC, to the same.

Notary Public Signature

Notary Seal:

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CITY AND CRA SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have made and executed this Comprehensive Agreement for the South K Street Parking Garage on the respective dates under each signature: the City of Lake Worth Beach signing by and through the Mayor or authorized designee, the Lake Worth Beach Community Redevelopment Agency, signing by and through its Chair, or other, duly authorized designee, and Sunshine Lake Worth Development, LLC, a Florida limited liability company, signing by and through its managing member, authorized to execute same.

CITY:

ATTEST:

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Melissa Coyne, MMC, City Clerk

By: _____
Betty Resch, Mayor

Approved as to form and legal sufficiency:

Approved for financial sufficiency:

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CRA:

LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY

By: _____
Carla Blockson, Chair

By: _____
Joan Oliva, Executive Director

Date: _____

Approved as to form and legal sufficiency:

By: _____
David N. Tolces, CRA Attorney

**EXHIBIT “A”
CITY’S CRITERIA**

1. A four-level parking structure on South K Street measuring 117’-9” from east to west, and 190’ from north to south, with approximately 22,373 square feet per level, providing up to 280 parking spaces.
2. Vehicular access to the parking structure shall be provided via First Avenue South
3. The parking spaces within the parking structure shall include eight (8) accessible/ADA spaces, 55 compact spaces (21% of capacity), and 205 standard parking stalls.
4. Pedestrian access to South K Street from the parking structure via two (2) separate stairwells and a single (1) elevator.
5. Space allocation and utility connections necessary for electrical vehicle charges.
6. Space allocation and utility connections necessary for a parking system to charge parking fees.

EXHIBIT “B” - CRITICAL PATH

EXHIBIT B:CRITICAL PATH PARKING GARAGE

| Critical Path Draft Timeline | Estimated START DATE | Estimated END DATE | Garage Timeline Notes |
|--|----------------------|--------------------|---|
| Joint Workshop CRA and City Commission | 10/07/2024 | 10/07/2024 | Completed |
| CRA Approval of Development Agreement and PSA | 10/08/2024 | 10/08/2024 | Completed |
| City Commission Approval of the Development Agreement and the P3 process | 10/15/2024 | 10/15/2024 | Completed |
| City Commission Final Reading of the P3 | 10/29/2024 | 11/20/2024 | Completed |
| City Commission Posts Advertisement of the P3 in State P3 Registry | 11/1/2024 | 11/8/2024 | Completed |
| 90 Days from Contract Execution Deadline for the City, CRA, and Developer to Execute Construction Agreement for K Street lots, and Contributing Structure Relocation Agreement | 11/20/2024 | 3/18/2025 | Inspection Extended to 3/31/2025 |
| No later than ninety (90) calendar days from the Effective Date of K Street Agreement, SLWD shall provide a Design Report to the City and the CRA | 3/18/2025 | 6/16/2025 | |
| The City shall have <u>forty-five (45) calendar days</u> to review the SLWD Design Report and provide SLWD with written consent to proceed to the development of the SLWD’s Preliminary Design. | 6/16/2025 | 7/31/2025 | |
| No later than ninety calendar (90) days from written consent to proceed is received, SLWD shall provide the City with the Preliminary Design; | 7/31/2025 | 10/29/2025 | |
| The City shall have thirty (30) calendar days to review Preliminary Design to ensure all City commission directives are and addressed and the documents are ready for Entitlement Application; if approved, consent to WMODA to proceed to GMP. | 10/29/2025 | 11/28/2025 | |

| | | | |
|--|------------|------------|--|
| No later than (15) calendar days after SLWD received written consent to proceed with GMP development, the City shall prepare the entitlement application | 11/28/2025 | 12/13/2025 | |
| No later than seventy-five (75) calendar days from the submittal of the Entitlement Documentation, the City shall use its best efforts to obtain/complete all entitlement approvals for the K Street Parking Garage | 12/13/2025 | 2/26/2026 | |
| No later than sixty (60) calendar days from entitlement approvals, SLWD shall submit construction documents and construction permit applications to the City's Project Manager and all Governmental Bodies for jurisdictional reviews. | 2/26/2026 | 4/27/2026 | |
| SLWD shall use its best efforts to obtain all permits for the K Street parking garage within sixty (60) calendar days of the submission. | 4/27/2026 | 6/26/2026 | |
| No later than sixty (60) calendar days after SLWD submits permit applications to all Governmental Bodies, SLWD shall provide the GMP Proposal to the City and the CRA | 4/27/2026 | 6/26/2026 | |
| No later than forty-five (45) calendar days after SLWD submits GMP Proposal, the City and the CRA shall notify SLWD if GMP is approved. | 6/26/2026 | 8/10/2026 | |
| No later than twenty (20) calendar days after the City's and CRA's approval and execution of the GMP Amendment, the City and CRA shall enter a long term lease agreement for the Parking Garage Property and provisions for the repayment of the | 8/10/2026 | 8/30/2026 | |
| No later than thirty (30) calendar days after the City's and CRA's acceptance of the GMP, the CRA shall issue a Capital Improvement Revenue Note for the construction of the K Street Parking Garage | 8/10/2026 | 9/9/2026 | |
| from GMP acceptance by the City and CRA, the City and CRA shall deposit into the K Street Garage Construction Escrow Account the initial (1st) construction draw period for the K Street Parking Garage. SLWD shall fund the \$3.5 Million Revenue Note to the CRA, and the balance of SLWD's initial investment | 8/10/2026 | 9/24/2026 | |

| | | | |
|---|------------|------------|---|
| initial deposits, SLWD shall commence construction on the K Street Parking Garage. SLWD shall not be obligated to commence construction of the K Street Parking Garage if the Ground Lease between the City and CRA is not executed and Initial Investments are not made by the City and CRA. | 9/24/2026 | 10/24/2026 | CRA - \$1.5M / CITY - \$2.5M / WMODA - \$1M (less Design Costs); \$3.5M from Revenue Note = Total of at least \$7.5M |
| Second Construction Draw Period due at Start of the Precast Structure Erection | | | \$1,575,000.00 |
| Third Construction Draw Period due at Top out of the Structure | | | \$1,575,000.00 |
| Final (4th) Construction Draw Period due at Substantial Completion/Temporary Certificate of Occupancy | | | \$350,000.00 |
| 12 months from construction commencement : Substantial Completion - Temporary Certificate of Occupancy | 10/24/2026 | 10/24/2027 | |
| 14 months from construction Commencement: Final Completion- Certificate of Occupancy | 10/24/2026 | 12/23/2027 | |
| | | | |

EXHIBIT "C"
PUBLIC CONSTRUCTION BOND

Prepared by and return to:

PUBLIC CONSTRUCTION BOND
(Pursuant to sec. 255.05, Florida Statutes)

Surety Bond No. _____

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

PRINCIPAL/CONTRACTOR:

Name:

[Principal Business Address]

Telephone Number:

SURETY:

Name:

[Principal Business Address]

Telephone Number:

OWNER:

CONTRACT:

Date:

Amount:

Description (Name and Location):

BOND:

Date (Not earlier than Contract Date):

Amount:

This Bond is issued in favor of the _____, as Owner and Obligee and _____ as Co-Obligee, conditioned on the full and faithful performance of the Contract.

1. Principal/Contractor has entered into a contract with _____ for the project generally identified as the "_____" ("Contract"), with conditions and provisions as are further described in the aforementioned Contract, which Contract, including all of its attachments, exhibits, and incorporated documents (hereinafter, collectively, the "Contract Documents") is incorporated by reference and made a part hereof in its entirety.

2. Principal and Surety are bound to the Owner and Co-obligee in the sum of the Contract Amount set forth above for payment of which we bind ourselves, our heirs, personal representatives, executors, administrators, successors, and assigns, jointly and severally.

3. THE CONDITION OF THIS BOND is that if Principal:

a. Performs the Work required of and in accordance with the Contract Documents at the times and in the manner prescribed in the Contract Documents, which are made a part of this bond by reference; and

b. In accordance with Section 255.05, Florida Statutes, promptly makes payments to all claimants, as defined in Section 255.05, 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 Documents; and

c. Pays Owner and Co-obligee all losses, damages (including liquidated damages), expenses, costs, and professional fees, including but not limited to attorneys' fees, including appellate proceedings, that the Owner and/or Co-obligee sustain because of a default by Principal under the Contract Documents; and

d. Performs the warranty and guarantee of all work and materials furnished under the Contract Documents for the time specified in the Contract Documents, then this bond is void; otherwise it remains in full force.

4. Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes do not affect Surety's obligation under this bond and Surety waives notice of such changes. Any increase in the total Contract amount as authorized by the Owner shall accordingly increase the Surety's obligation by the same dollar amount of said increase. Principal/Contractor shall be responsible for notification to Surety of all changes to the Contract amount.

5. Principal and Surety expressly acknowledge and agree to be bound by all terms and conditions of the Contract Documents related to liquidated, delay, and time or impact-related damages. Surety shall be bound by the warranty or warranties contained in the Contract Documents and shall be responsible for any and all warranty obligations or damages as a result of latent defects or deficiencies in the work performed under the Contract Documents. The Surety waives all rights against Owner and Co-obligee and their agents and employees for damages or other causes of loss by the Surety's performance of its obligations under this Bond, including claims by Surety against the Owner or Co-obligee for costs it asserts were not warranted by the Contract Documents, excluding only such rights as the Surety shall have to proceeds of such insurance held by Owner as fiduciary (if any). Principal and Surety acknowledge that any such provisions lie within their obligations and within the policy coverage's and limitations of this instrument.

6. Section 255.05, Florida Statutes, as amended, together with all notice and time provisions contained therein, is incorporated herein, by reference, in its entirety. 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. This instrument regardless of its form, shall be construed and deemed a statutory bond issued in accordance with Section 255.05, Florida Statutes.

7. Any action brought under this instrument shall be brought exclusively in the state court of competent jurisdiction in Palm Beach County, Florida, and not elsewhere.

Surety and Contractor, intending to be legally bound hereby, subject to the terms included herein and as required under Florida Statutes, do each cause this Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

Signed and sealed this _____ day of _____, 20__.

Witness
Address: _____

Principal

Title

(Corporate Seal)

Witness
Address:_____

Surety

Attorney-in-Fact
(Attach Power of Attorney)

Print Name

(Corporate Seal)

IMPORTANT: Surety companies executing bonds must appear and remain on the U.S. Treasury Department's most current list (Federal Register) during construction, guarantee, and warranty periods, and be authorized to transact business in the State of Florida.

BOND MUST CONTAIN ORIGINAL SIGNATURES. NO COPIES WILL BE ACCEPTED.

**EXHIBIT “D”
AMORTIZATION SCHEDULE**

Amortization Schedule – Developer Financing Scenario

| Year | Beginning Balance | Interest | Principal | Ending Balance |
|-------------|--------------------------|-----------------|------------------|-----------------------|
| 2026 | \$ 3,500,000.00 | \$ 128,468.30 | \$ 633,569.85 | \$ 2,866,430.15 |
| 2027 | \$ 2,866,430.15 | \$ 102,655.69 | \$ 659,382.46 | \$ 2,207,047.69 |
| 2028 | \$ 2,207,047.69 | \$ 75,791.43 | \$ 686,246.72 | \$ 1,520,800.98 |
| 2029 | \$ 1,520,800.98 | \$ 47,832.68 | \$ 714,205.47 | \$ 806,595.51 |
| 2030 | \$ 869,887.71 | \$ 18,945.82 | \$ 806,595.50 | \$ - |

EXHIBIT “E” - ESCROW AGREEMENT

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (“Escrow Agreement”) is made this _____ day of _____, 2025 by and between the **CITY OF LAKE WORTH BEACH** (“City”), a Florida municipal corporation, the **LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY** (“CRA”), a Florida public body, corporate and politic created pursuant to Chapter 163, Florida Statutes, **SUNSHINE LAKE WORTH DEVELOPMENT, LLC** (“SLWD”), a Florida limited liability company with an address of 16711 Collins Avenue, Sunny Isles Beach, FL 33160, and _____ (“Escrow Agent”). The City, CRA, the SLWD and Escrow Agent are collectively referred to as the “Parties.”

WITNESSETH

WHEREAS, the City, CRA, and SLWD are parties to that certain Comprehensive Agreement for South K Street Parking Garage (“Comprehensive Agreement”) for the development of a parking garage in the City of Lake Worth Beach; and

WHEREAS, the Parties wish to enter into this Escrow Agreement to provide funds for the completion of the construction Work under the Comprehensive Agreement; and

WHEREAS, the City, CRA, SLWD and the Escrow Agent finding entering this Agreement serves a valid public purpose.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sufficient of which is acknowledged by each of the Parties, the Parties hereto agree as follows:

Recitals. The above recitals are true and correct and are hereby incorporated into and made a part hereof.

Appointment. The parties do hereby agree and affirm that _____ is hereby appointed Escrow Agent with respect to the subject matter of this Escrow Agreement, specifically the disbursement of funds for the construction of the South K Street Parking Garage in accordance with the terms and conditions hereinafter set forth and the Comprehensive Agreement.

Escrow Funds. As provided in the Comprehensive Agreement, within forty-five (45) calendar days of the City’s and CRA’s approval the GMP Amendment under the Comprehensive Agreement, the City shall deposit TWO MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,500,000.00), the CRA shall deposit ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000.00), and the SLWD shall deposit ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) less the approved amount of advancement paid by SLWD for the Design Costs under the Comprehensive Agreement (“Initial Investment”) and SLWD shall fund to the CRA and the CRA shall deposit the Capital Improvement Revenue Note funds in the amount of THREE MILLION FIVE HUNDRED THOUSAND and NO/100 DOLLARS (\$3,500,000.00), all with the Escrow Agent. Escrow Agent hereby agrees to hold the total sum of EIGHT MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$8,500,000.00) less the Initial Investment (“Escrow Funds”) in an interest bearing account, which Escrow Funds are to be paid in accordance with the Payment Schedule and Article 7 of the Comprehensive Agreement (for payments to SLWD’s Contractor) and other provisions of the Comprehensive Agreement (as applicable) and under the terms of this Escrow Agreement. Interest earned on the Escrow Funds shall accrue to the benefit of the City and CRA, who have provided a completed and executed W-9 form to Escrow Agent. **THE ESCROW FUNDS WILL NOT BE PLACED INTO AN INTEREST-BEARING**

ACCOUNT UNTIL AND UNLESS ESCROW AGENT HAS RECEIVED THE COMPLETED W-9 FROM THE CITY AND CRA. Escrow Agent shall not be responsible for any fluctuation in the rate on interest accruing on the deposited Escrow Funds.

Disbursements. Once administratively approved by the CRA and the City, SLWD may submit a payment request of the Escrow Funds from the Escrow Agent. The Escrow Agent shall make approved payments directly to SLWD's Contractor during the Construction Phase.

Prior to each disbursement the following shall be required to be submitted to the Escrow Agent:

- A. SLWD's Contractor's Sworn Statement, amended to and including date of disbursement, setting forth in detail the names, addresses, and telephone numbers of all contractors with whom it has contracted, , amounts of the contracts (including extras and credits), amounts previously paid to date, amounts of current request, accumulative retainages to date, and balances due;
- B. An executed authorization for the requested disbursement by the CRA's Project Manager and City's Project Manager;
- C. Evidence from SLWD that sufficient funds are available to cover the requested disbursements and to pay for the completion of the improvement, including extras, change orders, and non-construction items for which waivers have not been deposited and for which funds have not previously been deposited;
- D. Escrow Agent may, at its option, verify information submitted by SLWD and SLWD's Contractor or may require SLWD and SLWD's Contractor to furnish to Escrow Agent verification by contractors, subcontractors, and material suppliers who have contracted with SLWD's Contractor
- E. All parties to this Escrow Agreement shall have the right to audit all payments made by the Escrow Agent including, but not limited to, all documentation submitted to the Escrow Agent for disbursement of funds to SLWD's Contractor.
- F. All costs, fees and expenses of this Escrow Agreement shall be charged to the Escrow Funds or SLWD, City and CRA (on a pro-rata basis) if the Escrow Funds are insufficient to pay all costs, fees and expenses of this Escrow Agreement.

Escrow Agent Duties.

- A. In performance of duties hereunder, Escrow Agent shall give consideration only to the provisions of this Escrow Agreement and the Comprehensive Agreement. The Escrow Agent is not a party to, nor is it bound by, nor need it give consideration to, the terms and provisions of any other agreements or undertakings between the Parties, their agents or representatives, and any other third parties, and Escrow Agent has no duty to determine or inquire into the happening or occurrence of any event or contingency or the performance or failure of performance with respect to other arrangements, agreements or contracts. Escrow Agent's sole duty hereunder shall be to comply with the terms and provisions of this Escrow Agreement and the Comprehensive Agreement, which is incorporated herein by reference. If there is a conflict between this Escrow Agreement and the Comprehensive Agreement, this Escrow Agreement shall prevail.
- B. The Escrow Agent is authorized and agrees by acceptance of the Escrow Agreement to hold and deliver the same or the proceeds thereof in accordance with the terms hereof and the Comprehensive Agreement. Escrow Agent is acting as a stakeholder only with respect to the Escrow Funds and Escrow Agent's duties are purely ministerial in nature. In the event of doubt as

to its liabilities or duties, Escrow Agent may, in its sole discretion (i) continue to hold the Escrow Funds until the parties mutually agree to the disbursement thereof, or until a judgment of a court of competent jurisdiction in Palm Beach County, Florida, shall determine the rights of the parties thereof, or (ii) deliver the Escrow Funds and the proceeds thereof to the Clerk of the Circuit Court for Palm Beach County or other court of competent jurisdiction in Palm Beach County, Florida, and upon notifying all parties concerned of such action, any liability on the part of the Escrow Agent shall fully terminate except to the extent of accounting for monies or documents previously delivered out of escrow. In the event of any suit wherein Escrow Agent is made a party by virtue of acting as agent, or in the event of any suit initiated by or against Escrow Agent, Escrow Agent may interplead any money held by Escrow Agent. Escrow Agent shall be entitled to recover reasonable attorneys' fees and costs incurred in negotiation, at trial and upon appeal, said fees and costs to be charged and assessed as court costs in favor of Escrow Agent and immediately paid by the non-prevailing party. The parties agree that Escrow Agent shall not be liable to anyone for misdelivery of monies unless such misdelivery shall be due to willful breach of this Escrow Agreement or gross negligence on the part of Escrow Agent. Escrow Agent shall not be liable for any loss resulting from any default, error, action or omission, loss or impairment of funds in the course of collection or while on deposit resulting from failure or suspension of the depository institution or Escrow Agent's compliance with any legal process, order or judgment of any court, whether or not subsequently vacated or modified.

6. **Limitations of Liability.** Without limitation, Escrow Agent shall not be liable for any loss or damage resulting from the following:

- A. The financial status or insolvency of any other party or any misrepresentation made by any other party.
- B. Any legal effect, validity, insufficiency, or undesirability of any instruction and notice deposited with or delivered by or to Escrow Agent or exchanged by the parties hereunder, whether or not Escrow Agent prepared such instrument.
- C. The default, error, action or omission of any other party to the escrow.
- D. Any loss or impairment of Escrow Funds that have been deposited in escrow while those funds are in the course of collection or while those funds are on deposit in a financial institution if such loss or impairment results from failure, insolvency or suspension of a financial institution, or any loss or impairment of funds due to a invalidity of any draft, check, document or other negotiable instrument delivered to the Escrow Agent.
- E. The expiration of any time limit or other consequence of delay, unless a properly executed settlement instruction, accepted by Escrow Agent has instructed the Escrow Agent to comply with said time limit.
- F. Escrow Agent's compliance with any legal process, subpoena, writ, order, judgment or decree of any court, whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed.
- G. Any mistakes of fact or errors in judgment, or any acts or omissions of any kind, unless caused by its willful misconduct or gross negligence.

7. **Completion of Escrow.** Upon completion of the disbursement of the Escrow Funds and delivery of instruments, if any, and after receiving written approval from both parties, Escrow Agent shall be automatically released and discharged of its escrow obligations hereunder.

8. **Benefit.** These conditions of escrow shall apply to and be for the benefit of agents of the Escrow Agent employed by it for services in connection with this escrow, as well as for the benefit of Escrow Agent. There are no third party beneficiaries to this Escrow Agreement.

9. **Attorney's Fees.** In the event that litigation is initiated relating to this escrow, the parties hereto agree that Escrow Agent shall be held harmless from any attorney's fees, court costs and expenses relating to that litigation to the extent that litigation does not arise as a result of the Escrow Agent's fault. To the extent that Escrow Agent holds Escrow Funds under the terms of this escrow, the parties hereto, other than Escrow Agent agree that the Escrow Agent may charge those Escrow Funds with any such attorney's fees, court costs and expenses as they are incurred by Escrow Agent. In the event that conflicting demands are made on Escrow Agent, or Escrow Agent, in good faith, believes that any demands with regard to the Escrow Funds are in conflict or unclear or ambiguous, Escrow Agent may bring an interpleader action in an appropriate court in Palm Beach County, Florida. Such action shall not be deemed to be the "fault" of Escrow Agent, and Escrow Agent may lay claim to or against the Escrow Funds for its reasonable costs and attorney's fees in connection with same, through final appellate review.

10. **Dispute.** In the event of a dispute or controversy between the parties to with regard to the Escrow Funds, the Escrow Agent reserves the right to resign as Escrow Agent, upon thirty days written notice by Escrow Agent to all parties to this Escrow Agreement. Escrow Agent shall transfer Escrow Funds to a successor Escrow Agent upon joint written instruction from all parties to this Escrow Agreement within said thirty-day period. Failure of any notice of replacement Escrow Agent shall cause Escrow Agent to interplead the Escrow Funds as provided herein.

11. **Escrow Fee.** Escrow Agent will be entitled to a fee in the amount of \$_____ for performing its duties hereunder. The parties hereto agreed that the fee will be subtracted from the Escrow Funds at time of disbursement to either Owner or Owner's lender (as applicable).

NOTICES. Except as otherwise provided herein, all notices under this Agreement shall be mailed to the parties at the following respective addresses:

If to the CITY:

City of Lake Worth Beach, Florida
Jaime Brown, Interim City Manager
1749 3rd Avenue South
Lake Worth Beach, Florida 33460

With copies to:

Torcivia, Donlon, Goddeau, and Rubin, PA
Attn: Christy Goddeau, Esq.
701 Northpoint Parkway, 209
West Palm Beach, FL 33407
Christy@torcivialaw.com

If to the CRA:

Lake Worth Beach Community
Redevelopment Agency
Joan Oliva, Executive Director
1121 Lucerne Avenue
Lake Worth Beach, FL 33460

With copies to:

Weiss, Serota, Helfman, Cole, and Bierman
Attn: David N. Tolces, Esq.
2255 Glades Road, Suite 200 E
Boca Raton, FL 33431

If to SLWD:
Sunshine Lake Worth Development, LLC
c/o: United Management Corporation
166 Montague Street
Brooklyn, New York 11201

With copies to:

R. Miller Consulting Group
ATTN: Renee Miller
reneem@rmcglc.com
Phone: 786-253-8436

Goren, Cherof, Doody and Ezrol, PA
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, FL 33308
Attn: Donald J. Doody, Esq.
Email: doodo@gorencherof.com

All notices, consents or other instruments or communications provided for under this notice provision shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (a) when actually delivered and received personally, by messenger service, or by fax or telecopy delivery; (b) on the next business day after deposited to delivery in an overnight courier service such as Federal Express; or (c) three (3) business days after deposit in the United States mail, by registered or certified mail with return receipt requested. All notices or other instruments shall be transmitted with delivery or postage charges prepaid, addressed to the parties at the address above for the party(s) or to such other address as such party(s) may designate by written notice to the other party (s).

LACK OF APPROPRIATIONS. Based upon the timeframes set forth in this Escrow Agreement and the Comprehensive Agreement, the City agrees to propose in each applicable fiscal year budget an amount to cover the City's obligations as stated herein commencing with the Fiscal Year 2026-2027 budget; however, the City's funding of its obligations as stated herein are all subject to the City's annual budgeting and appropriation process. SLWD understands and agrees that the City's funding of its obligations hereunder are payable exclusively from duly appropriated or otherwise legally available funds and shall not be construed to be debt, liability or obligation within the meaning of any applicable constitutional or statutory limitation or requirement.

WAIVER OF TRIAL BY JURY. IT IS MUTUALLY AGREED BY AND BETWEEN CITY, CRA, THE ESCROW AGENT, AND SLWD THAT THE RESPECTIVE PARTIES HERETO SHALL, AND THEY HEREBY DO, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ONE OF THE PARTIES AGAINST THE OTHER(S) ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE RELATIONSHIP OF CITY, CRA, ESCROW AGENT, AND SLWD HEREUNDER, OR BY ANY COURSE OF CONDUCT OR COURSE OF DEALING.

GOVERNMENTAL FUNCTIONS. Nothing in this Agreement shall be deemed or treated as a waiver by the City or CRA of any immunity to which it is entitled by law, including but not limited to, sovereign immunity as set forth in Section 768.28, Florida Statutes.

AMENDMENT & EFFECTIVE DATE. This Agreement or any modification, amendment or alteration

thereto, shall not be effective or binding upon any of the parties hereto until it is approved and executed by SLWD and approved by the governing boards of the City and CRA and executed by the City's Mayor or designee and the CRA's Executive Director or designee. Upon all parties approval and execution, this Agreement shall become effective.

COOPERATION: The Parties agree that each shall cooperate with the other in good faith and shall correct any mathematical errors, execute such further documents, and perform such further acts as may be reasonably necessary or appropriate to carry out the purpose and intent of this Agreement.

NO WAIVER. One or more waivers of the breach of any provision of this Agreement by any party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Agreement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

Counterparts - This Escrow Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute and be one and the same instrument.

Captions - The paragraph headings of this Escrow Agreement are for convenience or reference only and shall not be construed as defining or limiting the scope of any provisions hereof.

Controlling Law - This Escrow Agreement shall be construed and enforced in accordance with the laws of the State of Florida. Venue for any dispute arising out of this Escrow Agreement shall be exclusively in Palm Beach County, Florida.

PUBLIC ENTITY CRIMES, SCRUTINIZED COMPANIES, E-VERIFY AND HUMAN TRAFFICKING.

A. As provided in Sections 287.132-133, Florida Statutes, as amended from time to time, by entering into this Escrow Agreement or performing any of its obligations and tasks in furtherance hereof, SLWD and Escrow Agent certify that it, its affiliates, suppliers, subcontractor, and any other contractors who will perform hereunder, have not been placed on the convicted contractor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof.

B. As provided in Section 287.135, Florida Statutes, as amended from time to time, by entering into this Escrow Agreement, SLWD and Escrow Agent certify that it is not participating in a boycott of Israel. SLWD and Escrow Agent agree that the City and/or CRA will have the right to terminate this Escrow Agreement if the SLWD or Escrow Agent are found to have been placed on the Scrutinized Companies that Boycott Israel List or as otherwise set forth in Section 287.135, Florida Statutes.

C. To the extent applicable, SLWD and Escrow Agent shall comply with the E-Verify requirements of section 448.095, Florida Statutes.

D. By signing this Escrow Agreement as set forth below, SLWD's Manager and Escrow Agent swear or affirm under penalty of perjury that SLWD and Escrow Agent do not use coercion for labor or services as defined in section 787.06, Florida Statutes.

Palm Beach County Office of Inspector General. Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes, but is not limited to, the power to review past, present and proposed City contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the City and its agents in order to ensure compliance with contract

requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a breach of this Escrow Agreement and may result in termination of this Escrow Agreement or other sanctions or penalties as set forth in the Palm Beach County Code.

If during the term of this Escrow Agreement, any party is provided access to any records or other information that is confidential or proprietary in nature, the other party shall maintain the confidentiality of such information consistent with Florida's Public Records laws including, but not limited to, any building plans or GIS information provided to or by SLWD or Escrow Agent. SLWD shall ensure SLWD's Contractor is also contractually required to maintain the confidentiality of such information.

PUBLIC RECORDS. SLWD and Escrow Agent shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes (§119.0701), and, if determined to be acting on behalf of the City or CRA as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- A. Keep and maintain public records required by the City or CRA to perform the service.
- B. Upon request from the City's or CRA's custodian of public records or designee, 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 Chapter 119, Florida Statutes, 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 this Escrow Agreement and following completion of this Escrow Agreement if SLWD or Escrow Agent do not transfer the records to the City and CRA.
- D. Upon completion of this Escrow Agreement, transfer, at no cost, to the City and CRA all public records in possession of SLWD or Escrow Agent or keep and maintain public records required by the City and CRA to perform the service. If SLWD and Escrow Agent transfer all public records to the City and CRA upon completion of the Escrow Agreement, SLWD and Escrow Agent shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If SLWD and Escrow Agent keep and maintain public records upon completion of the Escrow Agreement, SLWD and Escrow Agent shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City and CRA, upon request from the City's or CRA's custodian of public records or designee, in a format that is compatible with the information technology systems of the City and CRA.

IF SLWD OR ESCROW AGENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO SLWD'S OR ESCROW AGENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS ESCROW AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV, OR BY MAIL AT CITY OF LAKE WORTH BEACH, ATTN: CITY CLERK, 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

Capitalized terms used but not defined herein shall have the meaning ascribed in the Comprehensive Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hand and seals on this Escrow Agreement this ____ day of _____, 202_.

ATTEST:

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
 , City Clerk

By: _____
 , Mayor

Date: _____

Approved as to form and legal sufficiency:

Approved for financial sufficiency:

By: _____
 , City Attorney

By: _____
 , Financial Services Director

SLWD:

SUNSHINE LAKE WORTH DEVELOPMENT, LLC,
a Florida limited liability company

By: _____
 Arthur Wiener, Manager
Date: _____, 202_

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of __ physical presence or __ online notarization on this ____ day of _____ 202_, by _____, as the _____ [title] of Sunshine Lake Worth Development, LLC, who is personally known to me or who has produced _____ as identification, and who did take an oath that the facts stated with regard to section 787.09, Florida Statutes, are true and correct, and he or she is duly authorized to execute the foregoing instrument and bind Sunshine Lake Worth Development, LLC, to the same.

Notary Seal:

Notary Public Signature

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
ESCROW AGENT AND CRA SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have hereunto set their hand and seals on this Escrow Agreement this ____ day of _____, 202_.

ESCROW AGENT:

_____,
a Florida _____

By: _____
_____, Agent

Date: _____, 202_

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of __ physical presence or __ online notarization on this ____ day of _____ 202_, by _____, as the _____ [title] of _____, who is personally known to me or who has produced _____ as identification, and who did take an oath that the facts stated with regard to section 787.09, Florida Statutes, are true and correct, and he or she is duly authorized to execute the foregoing instrument and bind _____, to the same.

Notary Seal:

Notary Public Signature

LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY

Attest:

By: _____
CHAIR

By: _____
Board Clerk

Date: _____

Approved as to form and legal sufficiency:

By: _____
CRA Attorney

**EXHIBIT “F”
PAYMENT SCHEDULE**

Payment Schedule:

| Payment Milestones | Responsible Party | Amount |
|--|--|----------------------------------|
| 45 Days from Guaranteed Maximum Price - City , CRA, and SLWD Deadline to fund initial (1st) construction Draw | City of Lake Worth Beach | \$2,500,000.00 |
| | City of Lake Worth Beach - Community Redevelopment Agency | \$1,500,000.00 |
| | Sunshine Lake Worth Development, LLC | ** Balance of: \$1,000,000.00 |
| Second Construction Draw due at Start of the Precast Structure Erection, other construction methodology that achieves guaranteed max price. | City of Lake Worth Beach - Community Redevelopment Agency | \$1,575,000.00* |
| Third Construction Draw due at Top out of the Structure | City of Lake Worth Beach - Community Redevelopment Agency | \$1,575,000.00 |
| Final (4th) Construction Draw due upon Substantial Completion/Temporary Certificate of Occupancy | City of Lake Worth Beach - Community Redevelopment Agency | \$350,000.00 |
| Total Proposed Cost | | \$8,500,000.00 |

*NOTE – of the \$3.5M to be paid to the SLWD, the City of Lake Worth Beach is required to transfer up to \$1.5M to the CRA before the second draw. The CRA is only responsible to pay up to \$2.5M towards the remaining debt after the 1st construction draw is completed.