

## **MATERIALS AND/OR SERVICE CONTRACT**

**THIS CONTRACT** made and entered into this \_\_\_\_\_ day of November, 2018 by and between **ALL-SITE CONSTRUCTION, INC.**, hereinafter referred to as **“Independent Contractor,”** whose mailing address is 2915 E. Tamarind Avenue, West Palm Beach, FL 33407 and the **CITY OF RIVIERA BEACH, FLORIDA**, a municipal corporation, hereinafter referred to as **“City,”** whose address is 600 West Blue Heron Boulevard, Riviera Beach, Florida, 33404.

**WHEREAS**, Palm Beach County posted a Request for Proposals, to wit, RFP No.: PROJECT NO. 18209& 18210, hereinafter the “RFP” for CONSTRUCTION MANAGER AT RISK SERVICES FOR VARIOUS CAPITAL IMPROVEMENT PROJECTS ON A CONTINUING CONTRACT BASIS, the terms of which are incorporated herein by reference; and

**WHEREAS**, Independent Contractor was the successful responsible submittal; and

**WHEREAS**, the RFP allowed for and encouraged the successful bidder to extend such terms and conditions to other governmental agencies; and

**WHEREAS**, Independent Contractor desires to extend such to the City.

**NOW THEREFORE**, in consideration of the mutual covenants and promises set forth herein, the parties to this Contract do hereby agree as follows:

1. Independent Contractor agrees to be bound by all the terms and conditions as set forth in the RFP.

2. To the extent that there exists a conflict between the RFP and this Contract, the terms, conditions, covenants, and/or provisions of this Contract shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

3. That the City does hereby retain the services of the Independent Contractor for the purpose of CONSTRUCTION MANAGER AT RISK SERVICES FOR VARIOUS CAPITAL IMPROVEMENT PROJECTS ON A CONTINUING CONTRACT BASIS as set forth more fully in Exhibit “A” attached hereto and incorporated herein by reference.

4. Work must begin within ten (10) calendar days from the date of receipt of official notice to proceed and shall be carried on at a rate to insure its full completion within 100 days from the date of official notice to proceed, the rate of progress and time of completion being essential conditions of this contract.

5. If the contract work is not fully complete according to the terms of this Contract within the limits herein stipulated, the Independent Contractor shall pay the City, not as a penalty, but as liquidated damages, a sum equal to one hundred dollars (\$100) for each day elapsing between expiration of such time limit and the date of full completion, providing, however, that the time limits herein stated are subject to extension without payment of damages, as provided in section 21, herein.

6. The City agrees to compensate the Independent Contractor in the amount as set forth in more detail in the fee proposal, attached hereto as Exhibit "B". The total and cumulative amount of this contract shall not exceed the amount of funds annually budgeted for these services. The City shall not reimburse the Independent Contractor for any travel costs incurred as a direct result of the Independent Contractor providing deliverables to the City in pursuance of the scope of work contained in herein or in an exhibit.

7. Independent Contractor hereby represents that it has complied and shall continue to comply with all applicable Federal and State statutes and local ordinances. Further, Independent Contractor shall be solely responsible for obtaining and complying with all necessary permits, approvals and authorizations, required for the work to be performed pursuant to the terms of this Contract from any federal, state, regional, county, or city agency.

8. The Independent Contractor represents that it has, or will secure at its own expense, all necessary personnel, equipment and materials required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City.

9. All of the services required hereunder shall be performed by the Independent Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. All of the Independent Contractor's personnel (and all Subcontractors) while on City premises will comply with all City requirements governing conduct, safety and security.

10. The Independent Contractor agrees that that it is fully responsible to the City for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Independent Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the City.

11. All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the CITY shall be mailed (and emailed) to:

CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT  
C/O LEIGHTON C. WALKER, INTERIM EXECUTIVE DIRECTOR  
600 WEST BLUE HERON BLVD.,

RIVIERA BEACH, FL 33404

and if sent to the Independent Contractor shall be mailed (and emailed) to:

EZRA SAFFOLD, OWNER  
ALL-SITE CONSTRUCTION, INC.  
2915 E. TAMARIND AVENUE  
WEST PALM BEACH, FL 33407

12. The City is exempt from payment of Florida State Sales and Use Taxes. The City will sign an exemption certificate submitted by the Independent Contractor. The Independent Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City, nor is the Independent Contractor authorized to use the City's Tax Exemption Number in securing such materials.

13. Prior to execution of this Contract by the City the Independent Contractor shall provide certificates evidencing insurance coverages as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the Independent Contractor has obtained insurance of the type, amount, and classification as required for strict compliance with this ARTICLE and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the City's representative. Compliance with the foregoing requirements shall not relieve the Independent Contractor of its liability and obligations under this Contract.

14. The Independent Contractor shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$500,000 per occurrence to protect the Independent Contractor from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the Independent Contractor or by anyone directly employed by or contracting with the Independent Contractor.

15. The Independent Contractor shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$500,000 combined single limit for bodily injury and property damages liability to protect the Independent Contractor from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Independent Contractor or by anyone directly or indirectly employed by the Independent Contractor.

16. The Independent Contractor shall maintain, during the life of this Contract, adequate Workers' Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by law for all of its employees per Florida Statute 440.02.

17. All insurance, other than Workers' Compensation, to be maintained by the Independent Contractor shall specifically include the City as an "Additional Insured."

18. The Independent Contractor shall indemnify and save harmless and defend the City, its agents, servants, and employees from and against any and all claims, liability, losses, and/or causes of action which may arise from any negligent act or omission of the Independent Contractor, its agents, servants, or employees in the performance of services under this Contract.

19. The Independent Contractor further agrees to indemnify, save harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the Independent Contractor not included in the paragraph above and for which the City, its agents, servants or employees are alleged to be liable. Nothing contained in this provision shall be construed or interpreted as consent by the City to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

20. The Independent Contractor shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the Independent Contractor or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions. Upon the Independent Contractor's request, the City shall consider the facts and extent of any failure to perform the work and, if the Independent Contractor's failure to perform was without it or its subcontractors fault or negligence, as determined by the City, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the City's rights to change, terminate, or stop any or all of the work at any time. If the Independent Contractor is delayed at any time in the process of the work by any act or neglect of the City or its employees, or by any other contractor employed by the City, or by changes ordered by the City or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Independent Contractor's control, or by delay authorized by the Engineer pending negotiation or by any cause which the Engineer shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the City may decide. In the case of continuing cause of delay, only one (1) claim is necessary.

21. The Independent Contractor does not have the power or authority to bind the City in any promise, agreement or representation other than as specifically provided for in this Contract.

22. The City reserves the right to make changes in the scope of work, including alterations, reductions therein or additions thereto. Upon receipt by the Independent Contractor of the City's notification of a contemplated change, the Independent Contractor shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the City of any estimated change in the completion date, and (3) advise the City if the contemplated change shall effect the Independent Contractor's ability to meet the completion dates or schedules of this Contract. If the City so instructs in writing, the Independent Contractor shall suspend work on that portion of the work affected by a contemplated change, pending the City's decision to proceed with the change.

23. If the City elects to make the change, the City shall initiate a Contract Amendment and the Independent Contractor shall not commence work on any such change until such written amendment is signed by the Independent Contractor and approved and executed by the City Manager for the City.

24. All materials and/or work to be furnished and/or installed by the Independent Contractor under this Contract shall be guaranteed by the Independent Contractor for a period of one year from the date of final acceptance thereof by the City against defects in design, workmanship, or materials. Upon receipt of notice from the City of failure or defect of any part covered under such warranty/guaranty period, the affected part, parts, or materials shall be replaced promptly with new parts or materials by the Independent Contractor at no expense to the City. In the event the Independent Contractor fails to make the necessary repairs or replacements within 30 days after notification by the City, the City may accomplish the work at the expense of the Independent Contractor.

25. If applicable, the Independent Contractor shall continuously maintain adequate protection of all work from damage, and shall protect such work and the City's property from injury or loss arising during the term of the Contract. Except for any such damage, injury, or loss which may be directly due to errors caused by the City or employees of the City, the Independent Contractor shall adequately protect adjacent property, as provided by the law, and shall provide guard fences, lights, and any other necessary materials to carry out such protection.

26. Until acceptance of the work by the City, the City's property shall be under the charge and care of the Independent Contractor and the Independent Contractor shall take every necessary precaution against injury or damage to the work by the action of elements or from any other cause whatsoever, and the Independent Contractor shall repair, restore and make good, without additional charge any work occasioned by any of the above causes before its completion and acceptance by the City.

27. This Contract and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Any and all legal action necessary to enforce the Contract will be held in Palm Beach County.

28. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

29. All parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract. Moreover, in the event of litigation arising from this Contract, all parties voluntarily

and intentionally waive any right to a trial by jury. The parties hereunder hereby acknowledge that this waiver provision is a material inducement for each party agreeing to enter into this Contract.

30. In accordance with Palm Beach County ordinance number 2011-009, the Independent Contractor understands that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Independent Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance. The contractor further understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the contractor or its subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Contract justifying its termination.

31. This Contract is subject to any and all applicable conflict of interest provisions found in the CITY procurement ordinance (4010), the Palm Beach County Code of Ethics and Ch. 112, Part III, Florida Statutes. During the term of this Contract and any renewals or extensions thereof, Independent Contractor shall continue to disclose to the City any possible conflicts of interests. The Independent Contractor's duty to disclose is of a continuing nature and any conflict of interest shall be immediately brought to the attention of the City.

32. The Independent Contractor shall comply with Florida's Public Records Act, and specifically section 119.0701, Florida Statutes, by agreeing to:

- (a) Keep and maintain all public records that ordinarily and necessarily would be required by the City to keep and maintain in order to perform the services under this Contract.
- (b) Provide the public with access to said public records on the same terms and conditions that the City would provide the records and 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.
- (d) Meet all requirements for retaining said public records and transfer, at no cost, to the City all said public records in possession of the Contractor upon termination of this Contract and destroy any duplicate public records that are exempt or confidential and exempt from public record disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

33. Time is of the essence in all respects under this Contract.

34. Failure of the City to enforce or exercise any right(s) under this Contract shall not be deemed a waiver of City's right to enforce or exercise said right(s) at any time thereafter.

**SIGNATURES ON FOLLOWING PAGE**

**CONTRACT WITH THE UTILITY SPECIAL DISTRICT**

**IN WITNESS WHEREOF**, the Parties unto this Contract have set their hands and seals on the day and date first written above.

CORPORATE SEAL

CITY OF RIVIERA BEACH

ALL-SITE CONSTRUCTION, INC.

BY: \_\_\_\_\_  
TONYA DAVID JOHNSON  
CHAIR

BY: \_\_\_\_\_  
EZRA SAFFOLD  
OWNER

ATTEST:

APPROVED AS TO TERMS AND  
CONDITIONS

BY: \_\_\_\_\_  
CLAUDENE L. ANTHONY  
CERTIFIED MUNICIPAL CLERK  
CITY CLERK

BY: \_\_\_\_\_  
LEIGHTON C. WALKER  
INTERIM EXECUTIVE DIRECTOR

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

BY: \_\_\_\_\_  
ANDREW DEGRAFFENREIDT  
CITY ATTORNEY

Date: \_\_\_\_\_

Purchasing initials \_\_\_\_\_



# EXHIBIT A

# EXHIBIT B