MASTER AGREEMENT

between

CAROLINE STREET CORRIDOR and BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY

and

SEA TECH of the FLORIDA KEYS, INC

for

CONSTRUCTION SERVICES

KEY WEST HISTORIC SEAPORT

September 2023

This is an Agreement between: **Carolina Street Corridor and Bahama Village Community Redevelopment Agency**, its successors and assigns, hereinafter referred to as "**CRA**,"

AND

Sea Tech of the Florida Keys, Inc., a corporation organized under the laws of the State of Florida, its successors and assigns, hereinafter referred to as "**CONTRACTOR**."

W I T N E S S E T H, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CRA and CONTRACTOR agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

1.1. Agreement: This document, Articles 1 through 7, inclusive. Other terms and conditions are included in the CRA'S ITB #23-013 – CONSTRUCTION SERVICES CONTRACT - KEY WEST HISTORIC SEAPORT, CONTRACTOR's Response to REQUEST dated June 14, 2023, exhibits, and supplemental documents that are by this provision expressly incorporated herein by reference.

1.2. Contract Administrator: The ranking managerial employee of the CITY or some other employee expressly designated as Contract Administrator by the City Manager, who is the representative of the CITY. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

1.3. Contract Completion: The "Contract Completion" is the date the CITY accepts the entire work as being in compliance with the Task Order, or formally waives nonconforming work to extent of nonconformity, and issues the final payment in accordance with the requirements set forth in Article 5, "Compensation and Method of Payment" of this Agreement.

14. CONTRACTOR: The firm selected to perform the services pursuant to this Agreement.

1.5. CITY: City of Key West.

1.6. CRA: Carolina Street Corridor and Bahama Village Community Redevelopment Agency. In respect to this Agreement, CRA can mean either the agency or the agency's representative.

1.7. Days: Unless otherwise specifically stated, the term "days" will be understood to mean calendar days. Business day or working day means any day other than Saturday, Sunday, or legal holiday.

1.8. Notice: The term "notice" or the requirement to notify, as used in the Agreement or applicable state or federal statutes, shall signify a written communication delivered in person or by registered mail to the individual, or to a member of the firm, or to an officer of the corporation for whom it is intended. Certified or registered mail shall be addressed to the last business address known to him who gives the notice.

1.9. Or Equal: The term "or equal" shall be understood to indicate that the "equal" product is equivalent to or better than the product named in function, performance, reliability, quality aesthetics, and general configuration. Determination of equality in reference to the project design requirements will be made by the CITY. Such equal products shall not be purchased or installed by the CONTRACTOR without written authorization.

1.10. Specifications: The term "Specifications" refers to those portions of the Task Order consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the work and certain administrative details applicable thereto. Where standard specifications, such as those of ASTM, AASHTO, etc., have been referred to, the applicable portions of such standard specifications shall become a part of this Agreement.

1.11. Task Order: A detailed description of a particular service or services to be performed by CONTRACTOR under this Agreement.

1.12. Work: The word "work" within this Agreement shall include all material, labor, tools, and all appliances, machinery, transportation, and appurtenances necessary to perform and complete the Task Order, and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated and as required by good practice to provide a complete and satisfactory system or structure. As used herein, "provide" shall be understood to mean "furnish and install, complete in-place ".

ARTICLE 2

PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and generally to express the objectives and intentions of the respective parties hereto, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

2.1. The CONTRACTOR is not entitled to receive, and the CRA is not obligated to pay, any fees or expenses in excess of the amount budgeted for Task Orders authorized

under this Agreement in each fiscal year (October 1-September 30) by CRA. The budgeted amount may only be modified per City Ordinance(s).

2.2. The CRA has met the requirements, as set forth in Section 255.20, Florida Statutes, and has selected CONTRACTOR to perform the services hereunder based on the ITB #23-013 – CONSTRUCTION SERVICES incorporated by reference and made a part hereof and the Response to the REQUEST from CONTRACTOR dated June 14, 2023, incorporated by reference and made part of.

2.3. Negotiations pertaining to the services to be performed by CONTRACTOR were undertaken between CONTRACTOR and staff selected by the Commission, and this Agreement incorporates the results of such negotiations.

ARTICLE 3

SCOPE OF SERVICES AND STANDARD OF CARE

3.1. CONTRACTOR's services may include but are not limited to the following in regard to the Agreement:

A. Indefinite quantities for needed maintenance and repairs. The project contemplated consists of general maintenance and repairs for buildings located at the Key West Historic Seaport

B. CONTRACTOR shall provide all necessary, incidental and related activities and services as required.

3.2. CONTRACTOR and CRA acknowledge that the Scope of Services does not delineate every detail and minor work task required to be performed by CONTRACTOR to complete any particular task order. If, during the course of the performance of the services included in this Agreement, CONTRACTOR determines that work should be performed to complete the Task Order which is, in the CONTRACTOR's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONTRACTOR shall notify Contract Administrator in writing in a timely manner before proceeding with the work. If CONTRACTOR proceeds with such work without notifying the Contract Administrator, the work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by CRA to perform the work. Performance of work by CONTRACTOR outside the originally anticipated level of effort without prior written CRA approval or modification of task order is at CONTRACTOR's sole risk.

3.3. The specific services to be provided by the CONTRACTOR and the compensation for such services shall be as mutually agreed to in separate Task Orders to this AGREEMENT. Each Task Order when fully executed shall become a supplement to and a part of this AGREEMENT.

3.3.1. Each Task Order shall be supported by appropriate cost and pricing data and such other documentation as required by the CRA.

3.3.2. Task Orders shall be numbered consecutively as specified by CRA. Each Task Order shall include a description of the scope of services and specified deliverables, time of completion, total estimated costs of services, and method of compensation. Additional information shall be provided to the CRA if required. Amended Task Orders shall include substantially the same information and be submitted to the CRA for approval.

3.3.3. The CRA may make or approve changes within the general Scope of Services in any Task Order. If such changes affect the CONTRACTOR's materials cost or time required for performance of the services, an equitable adjustment shall be made through an amendment to the Task Order.

3.3.4. A Task Order may be terminated at any time, with or without cause, by the CRA upon written notice to CONTRACTOR. CONTRACTOR shall perform no further work upon receipt of this notice unless specifically authorized by the City Manager of the City of Key West. On termination, the CONTRACTOR shall be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CRA, reasonable expenses incurred during the close-out of the Task Order. The CRA shall not pay for anticipatory profits. The termination of this Agreement pursuant to Paragraph 7.2, hereof, shall constitute the termination of any and all outstanding task orders.

3.3.5. The CONTRACTOR shall begin services under any Task Order when authorized by a Purchase Order issued by the CRA and delivered to CONTRACTOR.

3.4. The CRA and CONTRACTOR may negotiate additional scopes of services, compensation, time and material costs, and other related matters for each Task Order as allowed by this Agreement. If CRA and CONTRACTOR cannot contractually agree, CRA shall have the right to immediately terminate negotiations at no cost to CRA and procure services from another source.

3.5. CONTRACTOR shall perform services under this Agreement in accordance with professional industry standards at the time and place where the services are provided. In the event CONTRACTOR does not achieve a competent workmanship standard, CONTRACTOR will correct such work, deficiency, or damage.

3.6. CONTRACTOR is required to perform the task orders consistent with current applicable Federal, State and City laws, codes and regulations that pertain to the Task Order. In all task orders, where changes to any laws, codes or regulations affecting the Task Order have a Task Ordered effective date or are anticipated to be effective at a future date, or if knowledge of anticipated changes is available to CONTRACTOR or any subcontractor, CONTRACTOR shall present options for their use or implementation.

3.7. CONTRACTOR shall examine and become familiar with the Task Order and determine the nature and location of the Work, the general and local conditions, and all other matters which can in any way affect the Work. Failure to make an examination necessary for this

determination shall not release the CONTRACTOR from obligation of the Task Order. No verbal agreement or conversation with any officer, agent, or employee of the CRA shall affect or modify any of the terms or obligation herein contained.

ARTICLE 4

TERM OF AGREEMENT; TIME FOR PERFORMANCE; CONTRACTOR DAMAGES

The term of this Agreement shall be for a period of three (3) years from the effective date of the Agreement with the CRA. The Agreement will be in effect upon execution by both parties. The Agreement may be renewed at the discretion of the CRA and written consent by parties for one (1) additional two (2) year term.

4.1. CONTRACTOR shall perform the services described in each Task Order within the time periods specified. Each such time period shall commence from the date of the purchase order issued for such services.

4.2. CONTRACTOR must receive written approval from the Contract Administrator prior to beginning the performance of services in any subsequent task order. Prior to granting approval for CONTRACTOR to proceed to a subsequent task order, the Contract Administrator may, at his or her sole option, require CONTRACTOR to submit any deliverables/documents for the Contract Administrator's review.

4.3. In the event CONTRACTOR is unable to complete the above services because of delays by CRA or other governmental authorities having jurisdiction over the Task Order, and such delays are not the fault of CONTRACTOR, or because of delays which were caused by factors outside the control of CONTRACTOR, CRA shall grant a reasonable extension of time for completion of the services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of CONTRACTOR to notify CRA within 10 days in writing whenever a delay in approval by a governmental agency, including CRA, is anticipated or experienced, and to inform the Contract Administrator of all facts and details related to the delay.

4.4. In the event the CONTACTOR fails to substantially complete the Task Order on or before the Substantial Completion date specified in its agreement with CRA, or if CONTRACTOR is granted an extension of time beyond said Substantial Completion date, and CONTRACTOR's services are extended beyond the Substantial Completion date, through no fault of CONTRACTOR, CONTRACTOR shall be compensated in accordance with Article 5 for all services rendered by CONTRACTOR beyond the Substantial Completion date.

4.5. In the event CONTRACTOR fails to substantially complete the Task Order on or before the Substantial Completion date specified in its agreement with CRA, and the failure to substantially complete is caused in whole or in part by a negligent act, error or deficiency of CONTRACTOR, then CONTRACTOR shall pay to CRA its proportional share of any claim or damages arising out of the delay. This provision shall not affect

the rights and obligations of either party as set forth in Paragraph 7.8, INDEMNIFICATION OF CITY.

ARTICLE 5

COMPENSATION AND METHOD OF PAYMENT

5.1. AMOUNT AND METHOD OF COMPENSATION FOR CONTRACT WORK

5.1.1. For performing the Work of this Agreement as set forth in any Task Order, the CRA shall compensate the CONTRACTOR an amount not to exceed the Task Order amount set forth in such Task Order.

5.1.2. Unless otherwise agreed upon by the parties, the rates set forth in the proposal ITB #23-013 – CONSTRUCTION SERVICES Unit Price Items Bid Form shall be used to set the compensation amount of a Task Order for one or more of the following purposes:

5.1.2.1. Payment method based on unit prices shall be the basis for determining unit costs for particular Task Order(s), which the CRA shall pay the CONTRACTOR upon completion and acceptance of such Task Order;

5.1.2.2. Payment method basis for determining a lump sum amount, which the CRA shall pay the CONTRACTOR upon completion and acceptance of the Task Order shall be substantiated by documentation with an itemized breakdown of Contractor costs, including labor, material, rentals, approved services, overhead and profit; or

5.1.2.3. Payment method for cost reimbursement compensation shall be understood to mean that payment for work will be made on a time and expense basis, which the CRA shall pay the CONTRACTOR for employment forces time, material, equipment, and other items of costs as required and used to do the work in the Task Order.

To receive partial payments and final payment for cost reimbursement work, the CONTRACTOR shall submit detailed and complete documentation verification of the CONTRACTOR's actual costs involved in the cost reimbursement work. Such costs shall be submitted within 30 days after said work has been performed.

1.1.2.4. The CRA reserves the right to furnish such materials and equipment as deemed expedient, and the CONTRACTOR shall have no claim for profit or added fees on the cost of such materials and equipment.

5.1.3. All rates must be set forth on the ITB #23-013 – CONSTRUCTION SERVICES Unit Price Items Bid Form and shall be inclusive of all labor, transportation, associated benefits, overhead, profit, and appurtenances necessary to perform and complete the Task Order, and such additional items not specifically indicated or

described which can be reasonably inferred as belonging to the item described or indicated and as required by good practice to provide a complete and satisfactory system or structure. Any work, materials, or equipment that may reasonably be inferred from the Task Order as being required to produce the intended result shall be supplied whether or not specifically called for. The term "provide" shall be understood to mean "furnish, and install, complete in-place."

5.1.4. CONTRACTOR unit prices stated in the proposal ITB #23-013 – CONSTRUCTION SERVICES Unit Price Items Bid Form shall be valid for one year. Beginning with the second year of the agreement a CPI rate increase will apply per year through the remainder of the contract as described below. This increase does not apply to percent mark-ups.

Hourly rates shall increase by the average change in the U.S. Department of Commerce Consumer Price Index (CPI) for All Urban Consumers, as reported by the Bureau of Labor Statistics for the 12 months prior to the renewal date.

5.1.5. In the event of a change of scope, the CRA, without notice to the Sureties and without invalidating the Agreement, may order changes in the work within the general scope of the task order by altering, adding to, or deducting from the work, the Task Order being adjusted accordingly. The CRA shall authorize in writing an appropriate decrease or increase in compensation. Quotations for alterations to the work shall include substantiating documentation with an itemized breakdown of Contractor costs, including labor, material, rentals, approved services, overhead and profit. All work shall be executed under the conditions of the original Task Order, except as specifically adjusted at the time of ordering such change.

If the work is reduced by alteration, such action shall not constitute a claim for damages based on loss of anticipated profits.

5.1.6. CONTRACTOR shall submit rates and other actual unit costs supporting the invoicing with certification stating work covered by invoice has been completed in accordance with Contract Documents, that all amounts are accurate and current.

5.1.7. A budgetary amount will be established for each Task Order. This budgetary amount shall not be exceeded unless prior written approval is provided by the CRA. CONTRACTOR shall make reasonable efforts to complete the work within the budget and keep CRA informed of progress toward that end so that the budget or work effort may be adjusted if necessary.

5.1.8. CONTRACTOR is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is the CRA obligated to pay CONTRACTOR beyond these limits.

5.1.9. When any budget has been increased, CONTRACTOR's excess costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approval increase.

5.1.10. Nothing in this Article shall be construed to affect the right, hereby reserved, to reject the whole or any part of the aforesaid work, should such work be later found not to comply with the Task Order. All estimated quantities of work for which partial payments have been made are subject to review and correction on the final estimate. Payment by the CRA and acceptance by the CONTRACTOR of partial payments based on estimates of quantities of work performed shall not, in any way, constitute acceptance of the estimated quantities used as a basis for computing the amounts of the partial payments.

5.1.11. At least 30 days before each progress payment falls due, the CONTRACTOR shall submit to the CRA a detailed estimate of the amount earned during the preceding month for the separate portions of the work, and request payment. The words "amount earned" means the value, on the date of the estimate partial payment, of the work completed in accordance with a task order, and the value of approved materials delivered to the project site suitable stored and protected prior to incorporation into the work. Monthly invoicing will be based on an estimate of the percent of work completed at the end of the preceding month.

Owner may return the request to Contractor indicating in writing reasons for refusing to make payment. CONTRACTOR may, within 7 days, make the necessary corrections and resubmit the request.

Refusal to make payment may be because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended to such an extent as may be necessary to protect the CRA from loss because:

1. The work is defective, or completed work has been damaged requiring correction or replacement;
2. Written claims have been made against CRA or Liens have been filed in connection with the work;
3. The Contract Price has been reduced because of Change Orders;
4. CRA has been required to correct defective work or complete the work in accordance with Article 7;
5. Of CONTRACTOR's unsatisfactory prosecution of the work in accordance with the Task Order; or
6. CONTRACTOR's failure to make payment to Subcontractors or for labor, materials, or equipment.

5.1.12. Qualification for partial payment for materials delivered by not yet incorporated into the work shall be described below:

1. Materials, as used herein, shall be considered to be those items which are fabricated and manufactured material and equipment. No consideration shall be given to individual purchases of less than $200 for any one item.
2. To receive partial payment for materials delivered to the site, but not incorporated in the work, it shall be necessary for the CONTRACTOR to include a list of such materials on the Partial Payment Request. The CRA may approve items for which

partial payment is to be made. Partial payment shall be based on the CONTRACTOR's actual cost for the materials as evidenced by invoices from the supplier. Proper storage and protection shall be provided by the CONTRACTOR, and as approved by the CRA. Final payment shall be made only for materials actually incorporated in the work and, upon acceptance of the work, all materials remaining for which advance payments had been made shall revert to the CONTRACTOR, unless otherwise agreed, and partial payments made for these items shall be deducted from the final payment for the work.

3. CONTRACTOR warrants and guarantees that title to all work, materials, and equipment covered by any Application for Payment, whether incorporated in the project or not, will pass to CRA at the time of payment free and clear of all liens, claims, security interests, and encumbrances.
4. If requested by the CRA, the CONTRACTOR shall provide, with subsequent pay requests, invoices receipted by the supplier showing payment in full has been made.

5.1.13. In any case where the CONTRACTOR deems additional time or compensation will become due him under this Agreement for circumstances other than those defined in Article 7, the CONTRACTOR shall notify the CRA, in writing, of his intention to make claim for such time or compensation before he begins the work on which he bases the claim, in order that such matters may be settled, if possible, or other appropriate action taken. The notice of claim shall be in writing and shall state the circumstances and the reasons for the claim, but not state the amount. If such notification is not given or if the CRA is not afforded proper facilities by the CONTRACTOR for keeping strict account of actual cost, then the CONTRACTOR hereby agrees to waive the claim for such additional time or compensation. Such notice by the CONTRACTOR, and fact that the CRA has kept account of the cost as aforesaid, shall not in any way be construed as proving the validity of the claim.

No extension of time will be granted to the CONTRACTOR for delays resulting from extra work that have no measurable impact on the completion of the total Work under a Task Order. Claims for additional time or compensation shall be made in itemized detail and submitted, in writing, to the CRA within 10 days following completion of that portion of the work for which the CONTRACTOR bases his claim. Failure to make the claim for additional compensation in the manner and within the time specified above shall constitute waiver of that claim. In case the claim is found to be just, it shall be allowed and paid for as provided in paragraph 5.3.7.

5.1.14. The CONTRACTOR shall indemnify and hold harmless the CRA from all claims for labor and materials furnished under this Agreement. Prior to the final payment, the CONTRACTOR shall furnish to the CRA, as part of his final payment request, a certification that all of the CONTRACTOR's obligations on the project have been satisfied and that all monetary claims and indebtedness have been paid. The CONTRACTOR shall furnish complete and legal effective releases or waivers, satisfactory to the CRA, of all liens arising out of or filed in connection with the work.

5.1.15. Upon completion of all the work under a Task Order, the CONTRACTOR shall notify the CRA, in writing, that he has completed his part of the Task Order and shall request final payment. Upon receipt of such notice the CRA will inspect and, if acceptable as to the completed work and the final estimate of the amount due to the CONTRACTOR, and compliance by the CONTRACTOR with provisions regarding release of liens or claims, and other provisions as may be applicable, the CRA shall pay the CONTRACTOR all monies due him under the provisions of the Task Order.

5.1.16. Neither the inspection by the CRA, nor any order by the CRA for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the CRA, nor any extension of time, nor any possession taken by the CRA or its employees, shall operate as a waiver of any provision of this Agreement, or any power herein reserved to the CRA, or any right to damages herein provided, nor shall any waiver of any breach in this Agreement be held to be a waiver of any other or subsequent breach. Acceptance or final payment shall not be final and conclusive with regards to latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the CRA's rights under the warranty.

5.1.17. The acceptance by the CONTRACTOR of the final payment shall release the CRA from all claims and all liability to the CONTRACTOR for all things done or furnished in connection with the work, and every act of the CRA and others relating to or arising out of the work except claims previously made in writing and still unsettled. No payment, however, final or otherwise, shall operate to release the CONTRACTOR or his Sureties from obligations under this Agreement and the Performance Bond, Payment Bond, and other bonds and warranties, as herein provided.

5.2. METHOD OF BILLING

5.2.1. Lump Sum or Unit Cost Compensation
CONTRACTOR shall submit invoicing that identifies the Task Order number or project name on a monthly basis in a timely manner. Invoices shall identify the nature of the work performed and estimate percent of work accomplished, show expenditure of personnel and equipment hours and material quantities and units costs, and a summary of previous invoice costs. Invoices shall itemize and summarize all work performed by total quantity and unit cost for each item of work performed.

5.2.2. If requested, CONTRACTOR shall provide copies of past paid invoices to any subcontractor prior to receiving payment. CRA reserves the right to pay any subcontractor if CONTRACTOR has not paid them timely and the services of the subcontractor are necessary to complete the Task Order or any Task Order.

5.3. METHOD OF PAYMENT

5.3.1. CRA shall pay CONTRACTOR within forty-five (45) calendar days from receipt of CONTRACTOR's proper invoice with documentation as provided above.

5.3.2. In the event CONTRACTOR has utilized a Subcontractor in order to perform the Task Order, CONTRACTOR will be required to provide documentation that subcontractor has been paid prior to payment being made to CONTRACTOR.

5.3.3. Upon completion of all the work under a Task Order, CONTRACTOR shall notify the CRA, in writing, that he has completed the Task Order, furnish release of liens or claims, and request final payment. Upon receipt of notice, the CRA shall inspect the completed work and final estimate of the amount due the CONTRACTOR, and if acceptable, the CRA shall pay to the CONTRACTOR all monies due him under for the Task Order.

5.3.4. Payment will be made to CONTRACTOR at:

Sea Tech of the Florida Keys, Inc.
131 Palomino Horse Trail
Big Pine Key, Florida 33043

5.3.5. Neither the inspection nor any order by the CRA for payment for money, nor any payment for, or acceptance of, the whole or any part of the work by the CRA, nor any extension for time, nor any possession taken by the CRA, shall operate as a waiver of any provision of the Task Order, or any power herein reserved to the CRA, or any right to damages herein provide, nor shall any waiver of any breach in this Agreement be held to be a waiver of any other or subsequent breach. Acceptance or final payment shall not be final and conclusive with regards to latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards to the CRA's rights under the warranty.

5.3.6. The acceptance by the CONTRACTOR of the final payment shall release the CRA from all claims and all liability to the CONTRACTOR for all things done of furnished in connection with the work, and every act of the CRA and others relating to or arising out of the work except claims previously made in writing and still unsettled. No payment, however, final or otherwise, shall operate to release the CONTRACTOR or his Sureties from obligations under this Agreement and warranties, as herein provided.

5.3.7. The CRA's request for quotations on alterations to the work shall not be considered authorization to proceed with the work prior to issuance of a formal Change order, nor shall such request justify any delay in existing work. Quotations for alterations to the work shall include substantiating documentation with an itemized breakdown of CONTRACTOR and Subcontractor costs, including labor, material, rentals, approved services, overhead, and profit. CRA may require detailed cost data in order to substantiate the reasonableness of the proposed costs.
Any compensation paid in conjunction with the terms of a Change Order shall comprise total compensation due the CONTRACTOR for the work or alteration defined in the Change Order. By signing the Change Order, the CONTRACTOR acknowledges that the stipulated compensation includes payment for the work or alteration plus all payment for the interruption of schedules, extended overhead,

delay, or any other impact claim or ripple effect, and by such signing specifically waives any reservation or claim for additional compensation in respect to the subject Change Order.

At the CRA's option, payment or credit for any alterations covered by a Change Order shall be determined by one or a combination of the methods set forth in A, B, or C below, as applicable:

A. UNIT PRICES
Those unit prices stipulated in the proposal ITB #23-013 – CONSTRUCTION SERVICES Unit Price Items Bid Form shall be utilized where they are applicable. In the event the Change Order results in a change in the original quantity that is materially and significantly different from the original bid quantity, a new unit price shall be negotiated upon demand of either party. Unit prices for new items included in the Change Order shall be negotiated and mutually agreed upon.

B. LUMP SUM
A total lump sum for the work negotiated and mutually acceptable to the CONTRACTOR and the CRA.

Lump sum quotations for modifications to the work shall include substantiating documentation with an itemized breakdown of CONTRACTOR and Subcontractor costs, including labor, material, rentals, approved services, overhead, and profit, all calculated as specified under "C" below.

C. COST REIMBURSEMENT WORK
The term "cost reimbursement" shall be understood to mean that payment for the work will be made on a time and expense basis, that is, on an accounting of the CONTRACTOR's forces, materials, equipment, and other items of cost as required and used to do the work.

If the method of payment cannot be agreed upon prior to the beginning of the work, and the CRA directs by written Change Order that the work be done on a cost reimbursement basis, then the CONTRACTOR shall furnish labor, and furnish and install equipment and materials necessary to complete the work in a satisfactory manner and within a reasonable period of time. For the work performed, payment will be made for the documented actual cost of the following:

1. Labor including foremen for those hours they are assigned and participating in the cost reimbursement work (actual payroll cost, including wages, fringe benefits as established by negotiated labor agreements, labor insurance, and labor taxes as established by law). No other fixed labor burdens will be considered, unless approved in writing by the CRA.

2. Material delivered and used on the designated work, including sales tax, if paid by the CONTRACTOR or his Subcontractor.

3. Rental or equivalent rental cost of equipment, including necessary transportation for items having a value in excess of $100.

   Rental or equivalent rental cost will be allowed for only those days or hours during which the equipment is in actual use. Rental and transportation allowances shall not exceed the current rental rates prevailing in the locality. The rentals allowed for equipment will, in all cases, be understood to cover all fuel, supplies, repairs, and renewals, and no further allowances will be made for those items, unless specific agreement to that effect is made.

4. Additional bond, as required and approved by the CRA.

5. Additional insurance (other than labor insurance) as required and approved by the CRA.

In addition to items 1 through 5 above, an added fixed fee for general overhead and profit shall be negotiated and allowed for the CONTRACTOR (or approved Subcontractor) actually executing the Cost Reimbursement work.

An additional fixed fee shall be negotiated and allowed the CONTRACTOR for the administrative handling of portions of the work that are executed by an approved Subcontractor. No additional fixed fee will be allowed for the administrative handling of work executed by a Subcontractor of a Subcontractor, unless by written permission from the CRA.

The added fixed fees shall be considered to be full compensation, covering the cost of general supervision, overhead, profit, and any other general expense. The CONTRACTOR's records shall make clear distinction between the direct costs of work paid for on a cost reimbursement basis and the costs of other work. The CONTRACTOR shall furnish the CRA report sheets for each day's cost reimbursement work no later than the working day following the performance of said work. The daily report sheets shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the CONTRACTOR, Subcontractor or other forces. The daily report sheets shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type, and identification number of equipment and hours operated.

Material charges shall be substantiated by valid copies of vendors' invoices. Such invoices shall be submitted with the daily report sheets, or, if not available, they shall be submitted with subsequent daily report sheets. Said daily report sheets shall be signed by the CONTRACTOR or his authorized agent.

The CRA reserves the right to furnish such materials and equipment as he deems expedient and the CONTRACTOR shall have no claim for profit or added fees on the cost of such materials and equipment. To receive partial payments and final payment for cost reimbursement work, the CONTRACTOR shall submit to the CRA, detailed

and complete documented verification of the CONTRACTOR's and any of his Subcontractors' actual costs involved in the cost reimbursement work. Such costs shall be submitted within 30 days after said work has been performed.

5.4. CORRECTION OF DEFECTIVE WORK DURING WARRANTY PERIOD

5.4.1. Any defective work or nonconforming materials or equipment that may be discovered at any time prior to expiration of the warranty period shall be removed and replaced by work which shall conform to the provisions of the Task Order. Any material condemned or rejected shall be removed at once from the project site.

5.4.2. Failure on the part of the CRA to condemn or reject bad or inferior work or to note nonconforming materials or equipment on CONTRACTOR submittals shall not be construed to imply acceptance of such work. The CRA shall reserve and retain all of its rights and remedies at law against the CONTRACTOR and its Surety for correction of any and all latent defects discovered after the guarantee period.

5.4.3. The CONTRACTOR hereby agrees to make, at his own expense, all repairs or replacements necessitated by defects in materials or workmanship, provided under terms of this Agreement, and pay for any damage to other works resulting from such defects, which become evident within 2 years after the date of final acceptance of the work or within 2 years after the date of substantial completion, or within such longer period as may be prescribed by law or by the terms of any applicable special guarantee required by a Task Order. Un-remedied defects identified for correction during the warranty period but remaining after its expiration shall be considered as part of the obligations of the warranty shall subject the remedied portion of the work to an extended warranty period of 2 years after the defect has been remedied.

5.4.4. The CONTRACTOR further assumes responsibility for a similar guarantee for all work and materials provided by subcontractors or manufacturers of packaged equipment components. The effective date for the start of the guarantee or warranty period for qualifying equipment shall be from the time of substantially complete.

5.4.5. The CONTRACTOR also agrees to hold the CRA harmless from liability of any kind arising from damage due to said defects. The CONTRACTOR shall make all repairs and replacements promptly upon receipt of written order for same from the CRA. If the CONTRACTOR fails to make the repairs and replacements promptly, or in an emergency where delay would cause serious risk, or loss, or damage, the CRA may have the defective work corrected or the rejected work removed and replaced, and the CONTRACTOR and his Surety shall be liable for the cost thereof.

5.4.6. The CRA may issue a written notice of substantial completion for the purpose of establishing the starting date for specific equipment guarantees, and to establish the date that the CRA will assume the responsibility for the cost of operating such equipment. Said notice shall not be considered as final acceptance of any portion of the work or relieve the CONTRACTOR from completing the remaining work within the specified time and in full compliance with the Task Order.

ARTICLE 6

CRA 'S RESPONSIBILITIES

6.1. CRA shall assist CONTRACTOR by placing at CONTRACTOR's disposal all information CRA has available pertinent to the Task Order including previous reports and any other data relative to design or construction of the Task Order.

6.2. CRA shall arrange for access to, and make all provisions for, CONTRACTOR to enter upon public and private property as required for CONTRACTOR to perform its services.

6.3. CRA shall review the CONTRACTOR's Work, including materials and methods of installation, identified in the task orders and respond in writing with any comment within the time set forth in the Task Order or within a reasonable time.

6.4. CRA shall give prompt written notice to CONTRACTOR whenever CRA observes or otherwise becomes aware of any development that affects the scope or timing of CONTRACTOR's services or any defect in the work of any Contractor.

ARTICLE 7

MISCELLANEOUS

7.1. OWNERSHIP OF THE WORK

7.1.1. SUBMITTALS

After checking and verifying all field measurements CONTRACTOR shall submit to CRA shop drawings, electrical diagrams, and catalog cuts for fabricated items and manufactured items (including mechanical and electrical equipment), which shall bear a stamp or specific written indication that Contractor has satisfied Contractor's responsibilities with respect to the review of the submittal. The data shown shall be complete with respect to quantities, dimensions specified, performance and design criteria, materials, and similar data to enable CRA to review the information. Contractor shall also submit to CRA for review, with such promptness as to cause no delay in work, all samples required by the Contract Documents. All samples shall have been checked by and accompanied by a specific written indication that Contractor has satisfied Contractor's responsibilities with respect to the review of the submission and shall be identified clearly as to material, supplier, pertinent data such as catalog numbers and the use for which intended.

Before submission of each submittal, Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed or coordinated each submittal with other submittals and with the requirements of the work.

At the time of each submission, CONTRACTOR shall give CRA specific written notice of each variation that the submittal may have from the requirements of the Task Order, and, in addition, shall cause a specific notation to be made on each shop drawing submitted to CRA for review and approval of each variation.

CRA will review submittals with reasonable promptness, but CRA's review will be only for conformance with the design concept of the project and for compliance with the Task Order and shall not extend to means, methods, techniques, sequences, or procedures of construction (except where a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Task Order) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item functions. CONTRACTOR shall make corrections required by CRA, and shall return the required number of corrected copies of shop drawings and submit as required new samples for review. Contractor shall direct specific attention in writing to revisions other than the corrections called for by CRA on previous submittals.

CRA's review of submittals shall not relieve CONTRACTOR from the responsibility for any variation from the requirements of the Task Order unless CONTRACTOR has in writing called CRA's attention to each such variation at the time of submission and CRA has given written approval of each such variation by a specific written notation thereof incorporated therein or accompanying the shop drawing or sample approval; nor will any approval by CRA relieve CONTRACTOR from responsibility for errors or omissions in the shop drawings or from responsibility for having complied with the provisions herein.

Where a shop drawing or sample is required by the specifications, any related work performed prior to CRA's review and approval of the pertinent submission shall be at the sole expense and responsibility of the CONTRACTOR.

7.1.2. MATERIALS AND APPLIANCES

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, heat, light, fuel, power, transportation, construction equipment and machinery, appliances, telephone, sanitary facilities, temporary facilities and other facilities and incidentals necessary for the execution and completion of the work.

Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. The CONTRACTOR shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

In selecting and/or approving equipment for installation in the project, the CRA assumes no responsibility for injury or claims resulting from failure of the equipment to comply with applicable federal, state, and local safety codes or requirements, or the safety requirements of a recognized agency, or failure due to faulty design concepts, or defective workmanship and materials.

7.1.3. CONTRACTOR AND MANUFACTURER COMPLIANCE WITH STATE SAFETY, OSHA, AND OTHER CODE REQUIREMENTS

The completed work shall include all necessary permanent safety devices, such as machinery guards and similar ordinary safety items required by the state and federal (OSHA) industrial authorities and applicable local and national codes. Further, any features of the work subject to such safety regulations shall be fabricated, furnished, and installed (including CRA-furnished equipment) in compliance with these requirements. Contractors and manufacturers of equipment shall be held responsible for compliance with the requirements included herein. CONTRACTOR shall notify all equipment suppliers and Subcontractors of the provisions of this Article.

7.1.4. SUBSTITUTION OF MATERIALS

Except for CRA-selected equipment items, and items where no substitution is clearly specified, whenever any material, article, device, product, fixture, form, type of construction, or process is indicated or specified by patent or proprietary name, by name of manufacturer, or by catalog number, such specifications shall be deemed to be used for the purpose of establishing a standard of quality and facilitating the description of the material or process desired. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers where fully suitable in design, and shall be deemed to be followed by the words "or equal". The CONTRACTOR may, in such cases, submit complete data to the CRA for consideration of another material, type, or process which shall be substantially equal in every respect to that so indicated or specified. Substitute materials shall not be used unless approved in writing. The CRA will be the sole judge of the substituted article or material.

7.1.5. PERFORMANCE TESTING

Operating equipment and systems shall be performance tested in the presence of the CRA to demonstrate compliance with the specified requirements. Performance testing shall be conducted under the specified design operating conditions or under such simulated operating conditions as recommended or approved by the CRA. Schedule such testing with the CRA at least one week in advance of the planned date for testing.

The CONTRACTOR shall furnish, without extra charge, the necessary test pieces and samples, including facilities and labor for obtaining the same, and as requested by the CRA. When required, the CONTRACTOR shall furnish certificates of tests of materials and equipment made at the point of manufacture by a recognized testing laboratory.

The CRA, and authorized government agents, and their representatives shall at all times be provided safe access to the work wherever it is in preparation or progress, and the CONTRACTOR shall provide facilities for such access and for observations, including maintenance of temporary and permanent access.

If the Specifications, laws, ordinances, or any public authority require any work, to be specially tested or approved, the CONTRACTOR shall give timely notice of its readiness for observations. If any work should be covered up without approval or consent of the CRA, it shall, if required by the CRA, be uncovered for examination at the CONTRACTOR's expense.

Reexamination of questioned work may be ordered by the CRA, and, if so ordered, the work shall be uncovered by the CONTRACTOR. If such work is found to be in accordance with the Task Order, the CRA will pay the cost of uncovering, exposure, observation, inspection, testing and reconstruction. If such work is found to be not in accordance with the Task Order, the CONTRACTOR shall correct the defective work, and the cost of reexamination and correction of the defective work shall be paid by the CONTRACTOR.

7.1.6. CUTTING AND PATCHING

The CONTRACTOR shall do all cutting, fitting, or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other Contractors shown upon or reasonably implied by the Task Order.

7.1.7. CLEAN UP

The CONTRACTOR shall, at all times, keep property on which work is in progress and the adjacent property free from accumulations of waste material or rubbish caused by employees or by the work. Upon completion of the construction, the CONTRACTOR shall remove all temporary structures, rubbish, and waste materials resulting from his operations.

7.1.8. SAFETY

The CONTRACTOR shall be solely and completely responsible for conditions of the jobsite, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to U.S. Department of Labor (OSHA), and all other applicable federal, state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. The CONTRACTOR's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations and penalties set forth therein.

The CONTRACTOR shall develop and maintain for the duration of the Task Order, a safety program that will effectively incorporate and implement all required safety provisions. The CONTRACTOR shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program.

The duty of the CRA to conduct construction review of the work does not include review or approval of the adequacy of the CONTRACTOR's safety program, safety supervisor, or any safety measures taken in, on, or near the construction site.

The CONTRACTOR, as a part of his safety program, shall maintain at his office or other well-known place at the jobsite, safety equipment applicable to the work as prescribed by the aforementioned authorities, all articles necessary for giving first-aid to the injured, and shall establish the procedure for the immediate removal to a hospital or a doctor's care of persons (including employees) who may be injured on the jobsite.

If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to CRA. In addition, the CONTRACTOR must promptly report in writing to the CRA all accidents whatsoever arising out of, or in connection with, the performance of the work whether on, or adjacent to, the site, giving full details and statements of witnesses.

If a claim is made by anyone against the CONTRACTOR or any Subcontractor on account of any accident, the CONTRACTOR shall promptly report the facts in writing to the CRA, giving full details of the claim.

7.1.9. PROTECTION OF WORK AND PROPERTY

The CONTRACTOR shall at all times safely guard and protect from damage the CRA's property, adjacent property, and his own work from injury or loss in connection with a Task Order. All facilities required for protection by federal, state, or municipal laws and regulations and local conditions must be provided and maintained.

The CONTRACTOR shall protect his work and materials from damage due to the nature of the work, the elements, carelessness of other contractors, or from any cause whatever until the completion and acceptance of the work. All loss or damages arising out of the nature of the work to be done under a Task Order, or from any unforeseen obstruction or defects which may be encountered in the prosecution of the work, or from the action of the elements, shall be sustained by the CONTRACTOR.

7.1.10. RESPONSIBILITY OF CONTRACT TO ACT IN AN EMERGENCY

In case of an emergency which threatens loss or injury of property, and/or safety of life, the CONTRACTOR shall act, without previous instructions from the CRA, as the situation may warrant. The CONTRACTOR shall notify the CRA thereof immediately thereafter. Any claim for compensation by the CONTRACTOR, together with substantiating documents in regard to expense, shall be submitted to the CRA and the amount of compensation shall be determined by agreement.

7.1.11. CRA'S USE OF PORTIONS OF THE WORK

Following issuance of the written notice of substantial completion, the CRA may initiate operation of the facility. Such use shall not be considered as final acceptance of any portion of the work, nor shall such use be considered as cause for an extension of the Task Order completion time, unless authorized by a Change Order issued by the CRA.

7.1.12. CRA'S RIGHT TO RETAIN IMPERFECT WORK

If any part or portion of the work completed under this Agreement shall prove to be defective and not in accordance with a Task Order, and if the imperfection in the same shall not be of sufficient magnitude or importance as to make the work dangerous or unsuitable, or if the removal of such work will create conditions which are dangerous or undesirable, the CRA shall have the right and authority to retain such work but will make such deduction in the final payment therefore as may be just and reasonable.

7.1.13. CRA'S RIGHT TO DO WORK

Should the CONTRACTOR neglect to prosecute the work in conformance with the Task Order or neglect or refuse at his own cost to remove and replace work rejected by the CRA, then the CRA may notify the Surety of the condition, and after 10 days written notice to the CONTRACTOR and the Surety, or without notice if an emergency or danger to the work or public exists, and without prejudice to any other right which the CRA may have under Agreement, or otherwise, take over that portion of the work which has been improperly or non-timely executed, and make good the deficiencies and deduct the cost thereof from the payments then or thereafter due the CONTRACTOR.

7.1.14. CRA'S RIGHT TO TRANSFER EMPLOYMENT

If the CONTRACTOR should abandon the work or if he should persistently or repeatedly refuse or should fail to make prompt payment to Subcontractors for material or labor, or to persistently disregard laws, ordinances, or to prosecute the work in conformance with the Task Order, or otherwise be guilty of a substantial violation of any provision of the Agreement or any laws or ordinance, then the CRA may, without prejudice to any other right or remedy, and after giving the CONTRACTOR and Surety 10 days' written notice, transfer the employment for said work from the CONTRACTOR to the Surety. Upon receipt of such notice, such Surety shall enter upon the premises and take possession of all materials, tools, and appliances thereon for the purpose of completing the work included under the Task Order and employ by contract or otherwise, any qualified person or persons to finish the work and provide the materials therefor, in accordance with the Task Order, without termination of the continuing full force and effect of this Agreement. In case of such transfer of employment to such Surety, the Surety shall be paid in its own name on estimates according to the terms hereof without any right of the CONTRACTOR to make any claim for the same or any part thereof.

If, after the furnishing of said written notice to the Surety, the CONTRACTOR and the Surety still fail to make reasonable progress on the performance of the work, the CRA may terminate the employment of the CONTRACTOR and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method he may deem expedient and charge the cost thereof to the CONTRACTOR and the Surety. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the work is finished. If the expense of completing the Task Order, including compensation for additional managerial and administrative services, shall exceed such unpaid balance, the CONTRACTOR and the Surety shall pay the difference to the CRA.

7.1.15. DELAYS AND EXTENSION OF TIME

If the CONTRACTOR is delayed in the progress of the work by any act or neglect of the CRA, or by any separate Contractor employed by the CRA, or by strikes, lockouts, fire, adverse weather conditions not reasonably anticipated, or acts of Nature, and if the CONTRACTOR, within 48 hours of the start of the occurrence, gives written notice to the CRA of the cause of the potential delay and estimate of the possible time extension involved, and within 10 days after the cause of the delay has been remedied, the CONTRACTOR gives written notice to the CRA of any actual time extension requested as a result of the aforementioned occurrence, then the Task Order time may be extended by change order for such reasonable time as the CRA determines. It is agreed that no claim shall be made or allowed for any damages, loss, or expense which may arise out of any delay caused by the above referenced acts or occurrences other than claims for the appropriate extension of time.

No extension of time will be granted to the CONTRACTOR for delays occurring to parts of the work that have no measurable impact on the completion of the total work under a task order. No extension of time will be considered for weather conditions reasonably anticipated for the area in which the work is being performed. Reasonably anticipated weather conditions will be based on official records of monthly precipitation and other historical data. Adverse weather conditions, if determined to be of a severity that would impact progress of the work, may be considered as cause for an extension of a task order completion time.

Delays in delivery of equipment or material purchased by the CONTRACTOR or his Subcontractors, including CRA-selected equipment shall not be considered as a just cause for delay, unless the CRA determines that for good cause the delay is beyond the control of the CONTRACTOR. The CONTRACTOR shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials.

The CONTRACTOR shall submit to the CRA a written request for an extension of time and recommendation as to the number of days for time extension. The CRA will make the final decision on all requests for extension of time.

7.1.16. OTHER CONTRACTS

The CRA reserves the right to let other Contracts in connection with the work. The CONTRACTOR shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs.

If any part of the work under this Agreement depends, for proper execution or results upon the work of any other Contractor, utility service company or Owner, the CONTRACTOR shall inspect and promptly report to the CRA in writing any patent or apparent defects to deficiencies in such work that render it unsuitable for such

proper execution and results. The CONTRACTOR's failure to so report shall constitute and acceptance of the work by others as being fit and proper for integration with work under this Agreement, except for latent or non-apparent defects and deficiencies in the work.

7.1.17. USE OF PREMISES

The CONTRACTOR shall confine his equipment, the storage of materials and the operation of his workers to project area limits, as indicated by law, ordinances, permits, or directions of the CRA, and shall not unreasonably encumber the premises with his materials. The CONTRACTOR shall provide, at his own expense, the necessary rights-of-way and access to the work which may be required outside the project area limits and shall furnish the CRA copies of permits and agreements for use of property outside that provided by the CRA.

The Contractor shall not load nor permit any part of the structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the work or adjacent property to stresses or pressures that will endanger it.

7.2. TERMINATION

7.2.1. This Agreement may be terminated with or without cause by CRA at any time.

7.2.2. Notice of termination shall be provided in accordance with paragraph 7.12 of this Agreement.

7.2.3. In the event this Agreement is terminated, CONTRACTOR shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 7.1 of this Agreement are provided to the CRA. Upon being notified of CRA's election to terminate, CONTRACTOR shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CRA make payment of profit for services that have not been performed.

7.2.4 CONTRACTOR'S RIGHT TO TERMINATE TASK ORDER

If the work should be stopped under an order of any court or other public authority for a period of more than three months, through no act or fault of the CONTRACTOR, its Subcontractors, or respective employees, or if the CRA should fail to make payment on an approved properly submitted pay request or return payment request to Contractor for revision within 30 days after it is due, or if the CRA should fail to pay the CONTRACTOR within 45 days after time specified in Article 5, then the CONTRACTOR may, upon 15 days' written notice to the CRA, stop work or terminate the Task Order and recover from the CRA payment for all acceptable work performed and reasonable termination expenses, unless said default has been remedied.

7.3. AUDIT RIGHT AND RETENTION OF RECORDS

7.3.1. CRA shall have the right to audit the books, records, and accounts of CONTRACTOR that are related to this Task Order. CONTRACTOR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Task Order.

7.3.2. CONTRACTOR shall preserve and make available, at reasonable times for examination and audit by CRA, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CRA to be applicable to CONTRACTOR's records, CONTRACTOR shall comply with all requirements thereof; however, CONTRACTOR shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CRA's disallowance and recovery of any payment upon such entry.

7.4. NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AMERICANS WITH DISABILITIES ACT, AND EQUAL BENEFITS FOR DOMESTIC PARTNERS

7.4.1. CONTRACTOR shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by CRA, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

7.4.2. CONTRACTOR's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, gender identity or expression, national origin, marital status, physical or mental disability, political affiliation, or any other factor that cannot be lawfully or appropriately used as a basis for service delivery. CONTRACTOR shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, gender identity or expression, marital status, political affiliation, or physical or mental disability. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment

advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

7.4.3. CONTRACTOR shall comply with City Ordinance Sec. 2-799 Requirements for City Contractors to Provide Equal Benefits for Domestic Partners.

7.5. PUBLIC ENTITY CRIMES ACT

7.5.1. CONTRACTOR represents that the execution of this Agreement shall not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to CRA, may not submit a bid on a contract with CRA for the construction or repair of a public building or public work, may not submit bids on leases of real property to CRA , may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CRA , and may not transact any business with CRA in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in being barred from CRA's competitive procurement activities.

7.5.2. In addition to the foregoing, CONTRACTOR further represents that there has been no determination, based on an audit, that it or any subcontractor, has committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONTRACTOR has been placed on the convicted vendor list.

7.5.3. CONTRACTOR shall promptly notify CRA if it or any subcontractor is formally charged with an act defined as a "public entity crime" or has been placed on the convicted vendor list.

7.6. SUBCONTRACTORS

CONTRACTOR may use subcontractors to provide the services under this Agreement. The CRA reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make determination as to the capability of the subcontractor to perform properly under this Contract. The CRA's acceptance of a subcontractor shall not be unreasonably withheld. CONTRACTOR shall obtain written approval of Contract Administrator prior to the use of subcontractors.

7.7. ASSIGNMENT AND PERFORMANCE

7.7.1. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party and CONTRACTOR shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 7.6.

7.7.2. CONTRACTOR represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CRA's satisfaction for the agreed compensation.

7.7.3. CONTRACTOR shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONTRACTOR's performance and all interim and final product(s) provided to or on behalf of CRA shall be in accordance with the standard of care set forth in Paragraph 3.5.

7.8. INDEMNIFICATION OF CITY

7.8.1. To the fullest extent permitted by law, the CONTRACTOR expressly agrees to indemnify and hold harmless the City of Key West, their officers, directors, agents, and employees (herein called the "indemnities") from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR, its Subcontractors or persons employed or utilized by them in the performance of the Contract. Claims by indemnities for indemnification shall be limited to the amount of CONTRACTOR's insurance or $1 million per occurrence, whichever is greater. The parties acknowledge that the amount of the indemnity required hereunder bears a reasonable commercial relationship to the Contract and it is part of the project specifications or the bid documents, if any.

7.8.2. The indemnification obligations under the Contract shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR under workers' compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the CONTRACTOR or of any third party to whom CONTRACTOR may subcontract a part or all of the Work. This indemnification shall continue beyond the date of completion of the Work.

7.9.1 GENERAL INSURANCE REQUIREMENTS

7.9.1.1 During the Term of the Agreement, the Contractor shall provide, pay for, and maintain with insurance companies satisfactory to the City of Key West, Florida ("City"), the types

of insurance described herein.

7.9.1.2 All insurance shall be from responsible insurance companies eligible to do business in the State of Florida. The required policies of insurance shall be performable in Monroe County, Florida, and shall be construed in accordance with the laws of the State of Florida.

7.9.1.3 The City shall be specifically included as an additional insured on the Contractor's Liability policies with the exception of the Contractor's Professional Liability policies (if required) and shall also provide the "Severability of Interest" provision (a/k/a "Separation of Insured's" provision). The City's additional insured status should be extended to all Completed Operations coverages.

7.9.1.4 The Contractor shall deliver to the City, prior to commencing work/activities under the Agreement, properly executed "Certificate(s) of Insurance" setting forth the insurance coverage and limits required herein. The Certificates must be signed by the authorized representative of the insurance company(s) shown on the Certificate of Insurance. In addition, certified, true, and exact copies of the insurance policies required herein shall be provided to the City, on a timely basis, if requested by the City.

7.9.1.5 If the Contractor fails to provide or maintain the insurance coverages required in this Agreement at any time during the Term of the Agreement and if the Contractor refuses or otherwise neglects to deliver the required Certificate(s) of Insurance signed by the authorized representative of the insurance company(s) to the City, the City may, at the City's sole discretion, terminate or suspend this Agreement and seize the amount of Contractor's performance bond, letter of credit, or other security acceptable to the City).

7.9.1.6 The Contractor shall take immediate steps to make up any impairment to any Aggregate Policy Limit upon notification of the impairment. If at any time the City requests a written statement from the insurance company(s) as to any impairment to the Aggregate Limit, the Contractor shall promptly authorize and have delivered such statement to the City.

7.9.1.7 The Contractor authorizes the City and/or its insurance consultant to confirm all information furnished to the City, as to its compliance with its Bonds and Insurance Requirements, with the Contractor's insurance agents, brokers, surety, and insurance carriers.

7.9.1.8 All insurance coverage of the Contractor shall be primary to any insurance or self-insurance program carried by the City. The City's insurance or self-insurance programs or coverage shall not be contributory with any insurance required of the Contractor in this Agreement.

7.9.1.9 The acceptance of delivery to the City of any Certificate of Insurance evidencing the insurance coverage and limits required in the Agreement does not constitute approval or agreement by the City that the insurance requirements in the Agreement have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the Agreement requirements.

7.9.1.10 No work/activity under this Agreement shall commence or continue unless and until the required Certificate(s) of Insurance are in effect and the written Notice to Proceed is issued by the City.

7.9.1.11 The insurance coverage and limits required of the Contractor under this Agreement are designed to meet the minimum requirements of the City. They are not designed as a recommended insurance program for the Contractor. The Contractor alone shall be responsible for the sufficiency of its own insurance program. Should the Contractor have any question concerning its exposures to loss under this Agreement or the possible insurance coverage needed therefore, it should seek professional assistance.

7.9.1.12 During the Term of this Agreement, the City and its agents and contractors may continue to engage in necessary business activities during the operations of the Contractor. No personal property owned by City used in connection with these business activities shall be considered by the Contractor's insurance company as being in the care, custody, or control of the Contractor.

7.9.1.13 Should any of the required insurances specified in this Agreement provide for a deductible, self-insured retention, self-insured amount, or any scheme other than a fully insured program, the Contractor shall be responsible for all deductibles and self-insured retentions.

7.9.1.14 All of the required insurance coverages shall be issued as required by law and shall be endorsed, where necessary, to comply with the minimum requirements contained herein.

7.9.1.15 All policies of insurance required herein shall require that the insurer give the City thirty (30) days advance written notice of any cancellation, intent not to renew any policy and/or any change that will reduce the insurance coverage required in this Agreement, except for the application of the Aggregate Limits Provisions.

7.9.1.16 Renewal Certificate(s) of Insurance shall be provided to the City at least twenty (20) days prior to expiration of current coverage so that there shall be no termination of the Agreement due to lack of proof of the insurance coverage required of the Contractor.

7.9.1.17 If the Contractor utilizes contractors or sub-contractors to perform any operations or activities governed by this Agreement, the Contractor will ensure all contractors and sub-contractors to maintain the same types and amounts of insurance required of the Contractor. In addition, the Contractor will ensure that the contractor and sub-contractor insurances comply with all of the Insurance Requirements specified for the Contractor contained within this Agreement. The Contractor shall obtain Certificates of Insurance comparable to those required of the Contractor from all contractors and sub-contractors. Such Certificates of Insurances shall be presented to the City upon request. Contractor's obligation to ensure that all contractor's and sub-contractor's insurance as provided herein shall not exculpate Contractor from the direct primary responsibility Contractor has to the City hereunder. The City will look directly to Contractor for any such liability hereunder and shall not be obligated to seek recovery from any contractor or subcontract or under such contractor's or sub-contractor's insurance coverages.

7.9.2 SPECIFIC INSURANCE COVERAGES AND LIMITS

7.9.2.1 All requirements in this Insurance Section shall be complied with in full by the Contractor unless excused from compliance in writing by the City.

7.9.2.2 The amounts and types of insurance must conform to the following minimum requirements. Current Insurance Service Office (ISO) or National Council on Compensation Insurance (NCCI) policies, forms, and endorsements or broader shall be used where applicable. Notwithstanding the foregoing, the wording of all policies, forms, and endorsements must be acceptable to the City.

Workers' Compensation and Employers' Liability Insurance shall be maintained in force during the Term of this Agreement for all employees engaged in this work under this Agreement, in accordance with the laws of the State of Florida. The minimum acceptable limits shall be:

Workers' Compensation	Florida Statutory Requirements
Employer's Liability	$100,000.00 Limit Each Accident

$500,000.00 Limit Disease Aggregate
$100,000.00Limit Disease Each Employee

If the Contractor has less than four (4) employees and has elected not to purchase Workers' Compensation/Employers Liability coverage as permitted by *Florida Statutes*, the Contractor will be required to issue a formal letter (on the Contractor's letterhead) stating that it has less than four (4) employees and has elected not to purchase Workers' Compensation/Employers Liability coverage as permitted by *Florida Statutes*. This exception does **not** apply to firms engaged in construction activities.

~~USL&H Coverage shall be maintained by the Contractor that will respond to claims filed under the United States Longshoremen and Harbor Workers Act (*33 USC sections 901-950*). The limits of such coverage shall be not be less than $1,000,000.~~

Commercial General Liability Insurance shall be maintained by the Contractor on a Full Occurrence Form. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual for this Agreement, Independent Contractors, and Products & Completed Operations Coverage. The limits of such coverage shall not be less than:

Bodily Injury & Property Damage Liability	$1,000,000.00 Combined Single Limit each Occurrence and Aggregate

Completed Operations Liability Coverage shall be maintained by the Contractor for a period of not less than four (4) years following expiration or termination of this Agreement.

The use of an Excess, Umbrella and/or Bumbershoot policy shall be acceptable if the level of protection provided by the Excess, Umbrella and/or Bumbershoot policy is equal to or more comprehensive than the Primary Commercial General Liability policy.

Business Automobile Liability Insurance shall be maintained by the Contractor as to ownership, maintenance, use, loading and unloading of all owned, non-owned, leased, or hired vehicles with limits of such coverage of not less than:

Bodily Injury	$ 500,000.00 Per person $1,000,000.00 Limit Each Occurrence
Property Damage Liability	$1,000,000.00 Limit Each Occurrence
	or
Bodily Injury & Property Damage Liability	$1,000,000.00 Combined Single Limit Each Accident

If the Contractor does not own any vehicles, this requirement can be satisfied by having the Contractor's Commercial General Liability policy endorsed with "Non-Owned and Hired Automobile" Liability coverage.

SURETY AND INSURER QUALIFICATIONS

All bonds, insurance contracts, and certificates of insurance shall be either executed by or countersigned by a licensed resident agent of the Surety or insurance company, having his place of business in the State of Florida, and in all ways complying with the insurance laws of the

State of Florida. Further, the said Surety or insurance company shall be duly licensed and qualified to do business in the State of Florida.

7.10. REPRESENTATIVE OF CRA AND CONTRACTOR

7.10.1. The parties recognize that questions in the day-to-day conduct of the Task Order will arise. The Contract Administrator, upon CONTRACTOR's request, shall advise CONTRACTOR in writing of one (1) or more CRA employees to whom all communications pertaining to the day-to-day conduct of the Task Order shall be addressed.

7.10.2. CONTRACTOR shall inform the Contract Administrator in writing of CONTRACTOR's representative to whom matters involving the conduct of the Task Order shall be addressed.

7.11. ALL PRIOR AGREEMENTS SUPERSEDED

7.11.1. This document 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 and the exhibits attached. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

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

7.12. NOTICES

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

FOR CRA OF KEY WEST:

City of Key West
Port & Marine Services
201 William Street
Key West, FL 33041

FOR CONTRACTOR:

Robin Szmansky, President (305-872-0888 / robins@seatech.cc)
131 Palomino Horse Trail
Big Pine Key, Florida 33043

7.13. TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by CONTRACTOR shall act as the execution of a truth-in negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price for any task order and any additions thereto shall be adjusted to exclude any significant sums, by which CITY determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

7.14. INTERPRETATION

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence or paragraph where they appear, unless the context otherwise requires. Whenever reference is made to a Paragraph or Article of this Agreement, such reference is to the Paragraph or Article as a whole, including all of the subsections of such Paragraph, unless the reference is made to a particular subsection or subparagraph of such Paragraph or Article.

7.15. INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor under this Agreement. Services provided by CONTRACTOR shall be subject to the supervision of CONTRACTOR. In providing the services, CONTRACTOR or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the CRA, nor shall they accrue any of the rights or benefits of a CRA employee. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

7.16. THIRD PARTY BENEFICIARIES

Neither CONTRACTOR nor CRA intend directly or substantially to benefit a third party by this Agreement. Therefore, the parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a

claim against either of them based upon this Agreement. No subcontractor, whether named or unnamed, shall be a third-party beneficiary of this Agreement.

7.17. CONFLICTS

7.17.1. Neither CONTRACTOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONTRACTOR's loyal and conscientious exercise of judgment related to its performance under this Agreement.

7.17.2. CONTRACTOR agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against CRA in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CRA or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

7.17.3. In the event CONTRACTOR is permitted to use subcontractors to perform any services required by this Agreement, CONTRACTOR agrees to prohibit such subcontractors from having any conflicts as within the meaning of this section, and shall so notify them in writing.

7.18. CONTINGENCY FEE

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this 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 CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, CRA shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

7.19. WAIVER OF BREACH AND MATERIALITY

7.19.1. Failure by CRA to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

7.19.2. CRA and CONTRACTOR agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

7.20. COMPLIANCE WITH LAWS

CONTRACTOR shall comply with federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement applicable at the time the scope of services was drafted for this agreement. In addition, at the time each Task Order is executed, any revisions to applicable federal state, and local laws, codes, ordinances, rules and regulations shall apply.

7.21. SEVERABILITY

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CRA or CONTRACTOR elects to terminate this Agreement.

7.22. JOINT PREPARATION

Preparation of this Agreement has been a joint effort of CRA and CONTRACTOR and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

7.23. PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 7 of this Agreement shall prevail and be given effect.

7.24. APPLICABLE LAW AND VENUE

The laws of the State of Florida govern the validity of this Agreement, its interpretation and performance, and any claims related to it. The venue for mediation, arbitration or any other legal proceeding shall be Monroe County, Florida.

7.25. INCORPORATION BY REFERENCE

The attached exhibits are incorporated into and made a part of this Agreement:

Exhibit A – **Bid Schedule** ITB #23-011 CONSTRUCTION SERVICES

7.26. COUNTERPARTS

This Agreement may be executed in three (3) counterparts, each of which shall be deemed to be an original.

REST OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

CITY OF KEY WEST, FLORIDA

ATTEST:

Keri O'Brien, City Clerk

27 Day of September, 2023

Albert Childress, City Manager

27th Day of Sept., 2023

SEA TECH of the FLORIDA KEYS, INC.

Robin Szmansky, President

31st Day of Sept, 2023

APPROVED AS TO FORM

Attorney for Owner

* * * *

Exhibit A – **Bid Schedule** ITB #23-013 CONSTRUCTION SERVICES

EXHIBIT A

BID SCHEDULE

Project Title: **CONSTRUCTON SERVICES CONTRACT**

Project No: **ITB#23-013**

Provide unit prices (fully wrapped hourly rates) for the below contracted and subcontracted labor.

MOB/DEMOB	(10% maximum)	percent of work	10%
SUPERINTENDENT		per hour	$ 75.00
FOREMAN		per hour	$ 65.00
LABORER		per hour	$ 35.00
CLERICAL		per hour	$ 35.00
ELECTRICIAN		per hour	$ 115.00
PLUMBER		per hour	$ 154.00
HVAC/MECHANICAL		per hour	$ 182.00
ROOFER		per hour	$ 100.00
CARPENTER		per hour	$ 50.00
MASON		per hour	$ 50.00
MATERIALS AT INVOICE	(15% maximum)	plus	15%
ADD'L APPROVED SUBCONTRACTOR AT INVOICE	(10% maximum)	plus	10%

PERMITS AT COST

I represent that this bid is submitted in compliance with all terms, conditions and specifications of the Invitation to Bid and that I am authorized by the owners/principals to execute and submit this bid on behalf of the business identified below:

Company Name: Sea Tech of the Florida Keys Inc

Contact Name & Telephone #: Robin Szmansky, 305-872-0888

Email Address: robins@seatech.cc Signature: