



THE SUNRISE CITY

**FORT PIERCE**

CITY ATTORNEY'S OFFICE

LATONYA HUBBARD, PURCHASING AGENT

*Florida*

SARA HEDGES, CITY ATTORNEY *SH*

TO:

FROM:

RE:

CAO RLS FILE:

DATE:

UNIT PRICE CONSTRUCTION CONTRACT - BID No. 2024-023

RLS 24-305

AUGUST 26, 2024

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I have reviewed the above Request for Legal Services (RLS) related to a Fort Pierce Redevelopment Agency (FPRA) contract with Close Construction for parking improvements at Avenue D and Means Court. Pursuant to your clarification and confirmation from the Engineering department, this is an FPRA contract, not a City of Fort Pierce contract and the property is entirely owned by the FPRA, this contract has to be changed to be an FPRA contract instead of a City contract. Unfortunately, there is an issue with the formatting of the Word document uploaded to Agenda Quick. I attempted to make the necessary changes to the Contract, but I have been unable to do so without the formatting of the document becoming unworkable. Please make the following changes to the Contract (keep in mind, where indicated, underlines are language you must add and ~~strike throughs~~ are language you must delete):

1. The first paragraph should read as follows:

**THIS AGREEMENT** (hereinafter the "Agreement" or "Contract") entered into this \_\_\_\_ day of \_\_\_\_\_, 2024 by and between the **FORT PIERCE REDEVELOPMENT AGENCY (FPRA)**, a dependent special district of the CITY OF FORT PIERCE, FLORIDA, a municipal corporation (hereinafter the "CITY"), and **CLOSE CONSTRUCTION a LIMITED LIABILITY** corporation, with its principal address at **305 NW 4th Avenue, Okeechobee FL 34972** (hereinafter "CONTRACTOR").

2. Change the following to read as follows:

4(A) The CONTRACTOR will complete the entire Work described in the Contract Documents, except as specifically identified therein as the Work of other parties, in accordance with the terms herein and in all Exhibits, all as may be amended from time to time.

3. In paragraph 5(A), the Article referenced in the last sentence should be changed from Article 10(G) to Article 9(G).
4. In paragraph 6(I), thirty (30) calendar days should be changed to twenty (20) calendar days.
5. Add the following paragraph:

6(J) Notwithstanding any terms in this Article or elsewhere in this Contract, all payments shall be made in compliance with the Local Government Prompt Payment Act.

6. The key supervisory personnel needs completed in paragraph (9)(F) of the Agreement.
7. In paragraph 11(B), Article 6 should be changed to Article 5.
8. In paragraph 13(A), Article 6 should be changed to Article 5.
9. Please see the attached page for required revisions to Article 17 Insurance (changes highlighted for your convenience).
10. In Article 18, change all references to Circular 570 where the Revised 2022 is listed to be Revised 2024.
11. In paragraph 22(A) change the following sentence to read as follows: "The CONTRACTOR shall be responsible for compliance with any such law, ordinance, rule or regulation, and shall hold CITY and the FPRA harmless and indemnify same in the event of non-compliance."
12. In paragraph 22(C) change the following sentence to read as follows: "CONTRACTOR shall indemnify and hold harmless the CITY and the FPRA for any loss, cost, or expense incurred by, levied upon or billed to the CITY or the FPRA as a result of CONTRACTOR's failure to pay any tax of any type due in connection with this Agreement"
13. Replace Article 26 E-Verify language with the following language:

All requirements of Section 448.095, Florida Statutes, shall be complied with by CONTRACTOR. In accordance with, Section 448.095, Florida Statutes, CONTRACTOR shall register with and utilize the E-Verify System operated by the United States Department of Homeland Security to verify the employment eligibility of all new employees hired during the term of the Agreement and shall expressly require any subcontractors performing work or providing services pursuant to this Agreement to likewise utilize the E-Verify System to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Contract. If CONTRACTOR enters into a contract with a subcontractor performing work or providing services on its behalf, CONTRACTOR shall also require the subcontractor to provide an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Information on registration for and use of the E-Verify System can be obtained via the internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

CONTRACTOR shall, upon request, provide evidence of compliance with this provision to the CITY. An agreement terminated pursuant to Section 448.095 is not a breach of contract and may not be considered as such. If the CITY terminates this Agreement with a CONTRACTOR, the CONTRACTOR may not be awarded a public contract for at least one (1) year after the date on which the contract was terminated. CONTRACTOR is liable for

any additional costs incurred by the CITY as a result of the termination of this Agreement under Section 448.095, Florida Statutes.

14. The signature blocks should be changed so that the City of Fort Pierce is changed to the Fort Pierce Redevelopment Agency, Linda Cox is listed as the Agency Secretary, and Linda Hudson is listed as the Chairwoman.
15. The actual documents submitted by the Contractor should be attached for Exhibit D.
16. All references in Exhibit D to the Owner need to be changed to the Fort Pierce Redevelopment Agency, a dependent special district of the City of Fort Pierce. There are extensive places throughout the Exhibit D documents where this needs to occur.
17. In Exhibit E, paragraph 1.1.1 THE CONTRACT DOCUMENTS references subparagraph 2.2.8. This subparagraph does not exist in Exhibit E. This should be changed to reference subparagraph 2.3.
18. In Exhibit E, paragraph 1.1.14 CITY should be changed to read as follows:

The Fort Pierce Redevelopment Agency, a Dependent Special District of the City of Fort Pierce: The Owner.

19. In Exhibit E, paragraph 1.1.25 OWNER should be changed to read as follows:

The Fort Pierce Redevelopment Agency, a Dependent Special District of the City of Fort Pierce: The Owner.

20. In Exhibit E, paragraph 4.12.6 references Subparagraph 4.12.3.1. That Subparagraph does not exist. I believe Subparagraph 4.12.3.1 should be changed to Subparagraph 4.12.3. Please review and confirm with Engineering.
21. In Exhibit E, paragraph 4.18.1 INDEMINIFICATION, change the following sentence to read as follows: "The Contractor shall agree to indemnify and hold the City and the FPRA harmless against any and all expenses and liabilities as per the Contract, to include Articles 10 and 22, and all Contract Documents."
22. In Exhibit E, paragraph 9.5.1 should be changed to read in part as follows: "... with Article 6 of ~~identified in~~ the Agreement."
23. In Exhibit E, paragraph 9.8.4 the following sentence should be changed to read as follows: "By acceptance thereof, Contractor agrees to cooperate with City in disposing of any and all remaining claims of subcontractors, sub-subcontractors, material men, and laborers, and shall indemnify and hold harmless City and the FPRA from all such claims, including attorneys' fees, trial and appellate, and costs and expenses."

Once you make the all of the above corrections, the Contract is approved as to form and correctness and may be placed on an FPRA Agenda for approval.

As a reminder, the Contractor will need to sign the Human Trafficking Affidavit.

If you have any questions, please do not hesitate to contact this Office via phone or e-mail.

Thank you.

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## **ARTICLE 17 INSURANCE**

17(A) CONTRACTOR shall be responsible for all damage to person and or property resulting from its negligent acts, reckless or intentional misconduct, errors, or omissions, or those of their subcontractors, agents, or employees in connection with such services and shall be responsible for all parts of its Work, both temporary and permanent.

17(A)(1) Evidence of Insurance

CONTRACTOR shall, at its own expense, procure and maintain throughout the term of this Contract, with insurers acceptable to the CITY, the types and amounts of insurance conforming to the minimum requirements set forth herein. CONTRACTOR shall not commence Work until the required insurance is in force and evidence of insurance acceptable to the CITY has been provided to, and approved by, the CITY. The CITY at all times reserves the right to request such additional documentation and evidence of insurance as in its sole discretion it may require, and the CONTRACTOR hereby agrees to provide same.

With respect to the Workers' Compensation/Employer's Liability Insurance, and Business Auto Liability Insurance, an appropriate Certificate of Insurance (which identifies the Project), and a copy of the actual notice of cancellation endorsement(s) as issued on the policy(ies), signed by an authorized representative of the insurer(s) shall be satisfactory evidence of insurance. With respect to the Commercial General Liability, Watercraft Liability and Pollution Liability Insurance an appropriate Certificate of Insurance (which identifies the Project) signed by an authorized representative of the insurer, and copies of the actual additional insured and notice of cancellation endorsements as issued on the policy(ies), shall be satisfactory evidence of such insurance. With respect to Property Insurance, a fully completed Evidence of Commercial Property Insurance (ACORD Form 28) signed by an authorized representative of the insurance, a copy of the notice of cancellation endorsement and a copy of the waiver of subrogation endorsement shall be satisfactory evidence of such insurance. All endorsements shall be properly completed and signed by an authorized representative of the insurer providing the coverage and shall indicate the policy number.

To the extent CONTRACTOR is permitted to and elects to sub-contract any of the Work performed under this Agreement, CONTRACTOR shall require Subcontractors to maintain any and all insurance required by law. Except to the extent required by law, or as otherwise specifically provided by this Agreement, this Agreement does not establish minimum insurance requirements for Subcontractors.

If the insurance policies expire or terminate during the term of this Agreement CONTRACTOR shall provide CITY with renewal or replacement evidence of the insurance, including endorsements, no less than fifteen (15) days before the expiration or termination of the insurance for which previous evidence of insurance has been provided.

Notwithstanding the prior submission of a Certificate of Insurance, copies of endorsements, or other evidence initially acceptable to CITY, if requested by CITY, CONTRACTOR shall, within thirty (30) days after receipt of a written request from CITY, provide CITY with a certified copy or certified copies of the policy or policies providing

the coverage required by this Article 17. CONTRACTOR may redact or omit, or cause to be redacted or omitted, those provisions of the policy or policies which are not relevant to the insurance required by Article 17.

17(A)(2) Workers' Compensation /Employer's Liability Insurance.

Worker's Compensation/Employer's Liability Insurance shall be no more restrictive than that provided by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than any endorsements required by NCCI or the State of Florida. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law.

The policy must be endorsed to waive the insurer's right to subrogate against CITY **and the FPRA**, and **their its** members, officials, officers and employees in the manner which would result from the attachment of the NCCI Waiver of Our Right to Recover from Others Endorsement (Advisory Form WC 00 03 13) with CITY, and its officials, officers, and employees scheduled thereon.

The policy must be endorsed to provide CITY with thirty (30) days prior written notice of cancellation. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One:	"Statutory"	
Part Two:	\$2,000,000	Each Accident
	\$2,000,000	Disease - Policy Limit

17(A)(3) Commercial General Liability Insurance.

Commercial General Liability Insurance shall be no more restrictive than that provided by the latest edition of the standard Commercial General Liability Form (Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office (ISO), without any restrictive endorsements other than any endorsements specifically required by ISO or the State of Florida.

The coverage may include restrictive endorsements which exclude coverage for liability arising out of:

- Mold, fungus, or bacteria
- Terrorism
- Silica, asbestos, or lead
- Sexual molestation"

CITY **and the FPRA** and **their its** members, officials, officers, and employees shall be included as an "Additional Insured" on a form no more restrictive than ISO form CG 20 10 (Additional Insured – Owners, Lessees, or Contractor).

The policy must be endorsed to provide CITY with 30 days prior written notice

of cancellation.

The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$2,000,000
Each Occurrence	\$2,000,000

CONTRACTOR shall continue to maintain products/completed operations coverage in the amounts stated above for a period of three (3) years after the Final Completion of the Work. The insurance shall be on a form no more restrictive than, and shall cover those sources of liability which would be covered by Coverage A of, the latest occurrence form edition of the Commercial General Liability Coverage Form (ISO Form CG 00 01), or of the occurrence Products/Completed Operations Liability Coverage Form (ISO Form CG 00 37), as filed for use in the State of Florida by ISO, without any restrictive endorsements other than those than those which, under an ISO filing, must be attached to the policy (i.e., mandatory endorsements).

17(A)(4) Automobile Liability Insurance.

Automobile Liability Insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of the standard Business Auto Policy (ISO Form CA 00 01) without any restrictive endorsements, including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of the Work.

The policy must be endorsed to provide CITY with 30 days prior written notice of cancellation.

Such insurance shall not be subject to any aggregate limit and the minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

Each Occurrence Bodily Injury and Property Damage Liability Combined	\$2,000,000
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17(A)(5) Watercraft Liability

To the extent watercraft are utilized, the CONTRACTOR shall purchase and maintain, or cause its subcontractors to purchase and maintain, insurance which shall, at a minimum, cover the CONTRACTOR and subcontractor for injuries or damage arising out of the use of all owned, non-owned and hired watercraft.

The insurance shall include the CITY **and the FPRA and their** its members, officials, officers and employees as additional insureds.

The policy must be endorsed to provide CITY with 30 days prior written notice of

cancellation.

The limits applicable to watercraft liability (inclusive of any amounts provided by an umbrella or excess policy) shall be:

Each Occurrence/Annual Aggregate                      \$2,000,000

17(A)(6)      Pollution Legal Liability

Pollution Legal Insurance shall cover CONTRACTOR for liability resulting from pollution or other environmental impairment arising out of, or in connection with, Work performed under this Agreement, or which arises out of, or in connection with this Agreement, including coverage for clean- up of pollution conditions and third party bodily injury and property damage claims arising from pollution conditions. Such insurance shall also include transportation coverage and non-owned disposal site coverage.

The policy must be endorsed to provide CITY with thirty (30) days prior written notice of cancellation

Coverage must either be on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within, three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

The minimum limits (inclusive of any amounts provided by an umbrella or excess

policy) shall be: Each Claim                      \$2,000,000  
Annual Aggregate

\$2,000,000

The CITY and the **FPRA and their -CITY's** members, officials, officers, and employees shall be included as an "Additional Insureds" on the policy.

The Maximum permissible deductible or self-insured retention on the policy shall be \$50,000 per claim. The payment of any amount owed under any deductible or self-insured shall be the sole responsibility of CONTRACTOR and CONTRACTOR shall pay on behalf of the CITY **and the FPRA or CITY's their** members, officials, officers, agents and employees any deductible or self-insured retention applicable to a claim against the CITY or the CITY's officials, officers, agents and employees.

17(A)(7)      Property/Builder's Risk Insurance

CONTRACTOR shall provide, in a policy acceptable to the CITY, "all risk" (i.e., Special Form) property or builder's risk insurance on all such construction, additions, modifications, machinery, and equipment. The policy shall be issued on a non-reporting form of policy. The amount of the insurance shall be no less than the Contract Amount.

The maximum deductible for other than windstorm or hail shall be \$10,000 per occurrence. The maximum deductible per occurrence for windstorm and hail shall be

the greater of \$20,000 or 5% of the Contract Amount. CONTRACTOR shall be responsible for the payment of such deductible.

The policy must be endorsed to provide the CITY with thirty (30) days prior written notice of cancellation. The policy must be endorsed to waive the insurer's right to subrogate against CITY and the FPRA, and its their members, officials, officers, and employees.

17(A)(8)      General Conditions

The insurance provided by the CONTRACTOR shall apply on a primary basis to and shall not require contribution from, any other insurance or self-insurance maintained by CITY or the FPRA or CITY's their members, officials, officers, or employees. Any insurance, or self-insurance, maintained by the CITY or the FPRA shall be in excess of, and shall not contribute with, the insurance provided by CONTRACTOR.

Except as otherwise specifically authorized in this Agreement, no deductible or self-insured retention for any required insurance provided by CONTRACTOR pursuant to this Agreement will be allowed. To the extent any required insurance is subject to any deductible or self-insured retention (whether with or without approval of CITY or the FPRA), CONTRACTOR shall be responsible for paying on behalf of CITY and the FPRA (and any other person or organization CONTRACTOR has, in this Agreement, agreed to include as an insured for the required insurance) any such deductible or self-insured retention.

Compliance with these insurance requirements shall not limit the liability of CONTRACTOR, its subcontractors, sub-subcontractors, employees, or agents. Any remedy provided to the CITY or the FPRA or their CITY's members, officials, officers, or employees by the insurance provided by CONTRACTOR or the CITY or FPRA shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of CONTRACTOR) available to the CITY or the FPRA under this Contract or otherwise.

Neither approval nor failure to disapprove insurance furnished by CONTRACTOR shall relieve CONTRACTOR from the responsibility to provide insurance as required by this Contract.

17(A)(9)      CONTRACTOR shall deliver to CITY the required certificate(s) of insurance and endorsement(s) before beginning any Work under this Agreement. Failure to do so shall constitute a material breach upon which the City may immediately terminate or suspend this contract.

17(A)(10)      At its sole discretion, CITY may obtain or renew CONTRACTOR insurance, and CITY may pay all or part of the premiums. Upon demand, CONTRACTOR shall repay CITY all monies paid to obtain or renew the insurance. CITY may offset the cost of the premium against any monies due CONTRACTOR from CITY. CONTRACTOR's failure to obtain, pay for, maintain any required insurance shall constitute a material breach upon which the CITY may immediately terminate or suspend this agreement.