

# TOWN OF HIGHLAND BEACH TOWN COMMISSION SPECIAL MEETING AGENDA

Tuesday, March 28, 2023 AT 1:30 PM

# TOWN HALL COMMISSION CHAMBERS

3614 S. OCEAN BOULEVARD HIGHLAND BEACH, FL 33487

# **Town Commission**

Natasha Moore David Stern Evalyn David Don Peters Judith Goldberg Mayor Vice Mayor Commissioner Commissioner Commissioner

Marshall Labadie Lanelda Gaskins Glen J. Torcivia Town Manager Town Clerk Town Attorney

- 1. CALL TO ORDER
- 2. ROLL CALL
- 3. PLEDGE OF ALLEGIANCE
- 4. PUBLIC COMMENTS

Public Comments will be limited to three (3) minutes per speaker.

# 5. CONSTRUCTION MANAGEMENT AT RISK AGREEMENT

A. Approve and authorize the Mayor to execute a Construction Agreement between the Town of Highland Beach and Kaufman Lynn Construction for the Construction Manager at Risk for the Fire Department.

# 6. TOWN COMMISSION COMMENTS

Commissioner Judith Goldberg

Commissioner Don Peters

Commissioner Evalyn David

Vice Mayor David Stern

Mayor Natasha Moore

# 7. ADJOURNMENT

NOTE: Any person, firm or corporation decides to appeal any decision made by the Town Commission with respect to any matter considered at this meeting, such person will need to ensure that a verbatim record including testimony and evidence upon which the appeal is to be based. (State Law requires the above Notice. Any person desiring a verbatim transcript shall have the responsibility, at his/her own cost, to arrange for the transcript.) The Town neither provides nor prepares such record.

In accordance with the Americans with Disabilities Act, persons who need accommodation in order to attend or participate in this meeting should contact Town Hall 561-278-4548 within a reasonable time prior to this meeting in order to request such assistance.

### File Attachments for Item:

A. Approve and authorize the Mayor to execute a Construction Agreement between the Town of Highland Beach and Kaufman Lynn Construction for the Construction Manager at Risk for the Fire Department.



# TOWN OF HIGHLAND BEACH AGENDA MEMORANDUM

- **MEETING TYPE:** Town Commission Meeting
- MEETING DATE March 21, 2023
- **SUBMITTED BY:** Town Manager's Office

**SUBJECT:** AUTHORIZE THE MAYOR TO EXECUTE A CONSTRUCTION AGREEMENT BETWEEN THE TOWN OF HIGHLAND BEACH AND KAUFMAN LYNN CONSTRUCTION FOR THE CONSTRUCTION MANAGER AT RISK.

### SUMMARY:

On February 25, 2022, the Town issued a request for qualifications (RFQ) for a Construction Manager at Risk (CMAR) for the construction of the Town's new fire station. On May 3, 2022, the Town Commission authorized the Town Manager to execute the pre-construction agreement with Kaufman Lynn Construction, which was the first of two phases needed to be completed to build the new Fire Station. During this phase, the CMAR consulted with project stakeholders and participated in the review of design documents, prepared phasing and logistics plans, value engineering, identified subcontractors, managed preliminary scheduling, and advised on long-lead-time work. The preconstruction preliminary phase was a required step that allowed the CMAR to provide the town with a guaranteed maximum price (GMP) for the second phase of the project, the construction phase.

Pre-construction services have been completed and the Town and Kaufman Lynn Construction are ready to move forward with the construction phase of the project. This construction agreement consists of construction services, such as obtaining permits and materials, supervising subcontractors, and ensuring the project is completed on time and within budget.

# FISCAL IMPACT:

TBD – Will be announced as an amendment to the CMAR Agreement.

# ATTACHMENTS:

CMAR Proposed Agreement

Request for Qualifications RFQ 22-001 CMAR Services

Request for Qualifications RFQ 22-001 Kaufman Lynn Proposal

# **RECOMMENDATION:**

Commission approval and the execution of the CMAR agreement.

# CONTRACT FOR CONSTRUCTION MANAGER AT RISK SERVICES

This Contract is between **TOWN OF HIGHLAND BEACH**, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as **"Town"** and **KAUFMAN LYNN CONSTRUCTION**, **INC**., a Florida corporation, hereinafter referred to as the **"Construction Manager"** or **"CM**," whose Federal Tax ID Number is <u>65-0098115</u>

### WITNESSETH:

WHEREAS, the Town has awarded the Construction Manager at Contract for the expansion of Fire Station No. 6 within the Town (RFQ No. 22-001); and

WHEREAS, on June 30, 2022, the Town and Construction Manager entered into a Pre-Construction Services Agreement, and the parties now wish to execute a Contract for completion of the Work contemplated by the RFQ.

NOW, THEREFORE, in accordance with the Contract Documents and for the promises and mutual consideration specified herein, the Construction Manager hereby covenants and agrees to undertake and execute all of the Work awarded hereunder in a good and workmanlike manner and further agrees to furnish and pay for all materials, labor, supervision, equipment, supplies, fees, expertise, and services necessary to fully complete all Work in accordance with all requirements of the Contract Documents and in accordance with all applicable codes and governing regulations, and within the time limit specified in the Contract Documents.

The parties agree that the Contract Documents consist of the following documents that are incorporated herein by reference:

- The Pre-Construction Services Agreement (to the extent services are not completed and the Agreement is still in effect)
- The Contract and any approved amendments (when executed);
- Special Conditions;
- General Conditions to the Contract;
- Work Authorizations, GMP Amendment/Work Orders and any Change Orders thereto;
- Public Construction Bond and Form of Guarantee;
- Insurance Certificates;
- Technical Specifications, Addenda, Drawings/Plans and any revisions thereto (the Construction Documents);
- Request for Proposal (RFP) and Construction Manager's Proposal;

# <u>ARTICLE 1</u> <u>GENERAL TERMS</u>

- **1.1 Definitions.** Terms used in this Contract shall have the following meanings:
  - **1.1.1** "Amendment" means a written instrument approved and executed by the parties that modifies the Contract.
  - **1.1.2** "Architect" means the Architect/Engineer of Record for the Project which will be designated in the special conditions to this Contract.
  - **1.1.3** "Basic Services" means the services described in Article 2 of this Contract.

- **1.1.4** "Change Order" means written orders to the Construction Manager for any changes in accordance with GC 65 of the General Conditions.
- **1.1.5 "Construction Contingency"** or **"Contingency"** means the amount agreed upon in the GMP Amendment for Construction Manager's use.
- **1.1.6 "Construction Documents"** means the technical specifications, design documents whether preliminary or final, architectural drawings, construction drawings, plans, addenda and Change Orders for the Project.
- 1.1.7 "Construction Manager's Fee" or "CM Fee" has the meaning set forth in Section 6.4 hereof.
- 1.1.8 "Construction Schedule" or "Master Project Schedule" has the meaning set forth in Section 1.6.
- **1.1.9** "Construction Team" means the Town, the Architect and the Construction Manager.
- **1.1.10** "Contract" means the Contract as defined on page one hereof.
- **1.1.11** "Contractor" or "Construction Manager" or "CM" the terms will be used interchangeably and means the company named in the initial paragraph of page one of this Contract
- **1.1.12** "Contract Sum" means Guaranteed Maximum Price for the Project, and the terms will be used interchangeably.
- **1.1.13 "Contract Time"** means, collectively and subject to modification by Change Order, the dates established pursuant to the Contract Documents for Construction Manager to achieve Substantial Completion, final completion and all other interim milestone dates.
- **1.1.14** "Cost of the Work" has the meaning set forth in Section 8.1.
- 1.1.15 "Days" shall mean calendar days (as opposed to business days) unless expressly stated otherwise.
- **1.1.16** "Guaranteed Maximum Price" or "GMP" the terms will be used interchangeably, means the amount calculated for the Project in accordance with Article 6 hereof and accepted by the Village.
- **1.1.17 "GMP Amendment"** means an amendment to this Contract that establishes the Guaranteed Maximum Price as described in Article 6 hereof and Article 9 of the Pre-Construction Services Agreement.
- **1.1.18** "GMP Proposal" means a proposal submitted by Construction Manager to the Town in accordance with Article 9 of the Pre-Construction Services Agreement.
- 1.1.19 "Liquidated Damages" has the meaning set forth in GC 79 of the General Conditions.
- **1.1.20** "Town" means Town of Highland Beach.
- **1.1.21** "Subcontractor" means Trade Contractor, and the terms will be used interchangeably.

- 1.1.22 "Trade Contractor" means the Subcontractors hired by the CM to perform the Work for the Project.
- **1.1.23 "Work"** means all the construction and other services required by the Contract and includes all labor, materials, equipment, supervision and services provided by the Construction Manager to fulfill its obligations under the Contract for the Project.
- **1.1.24** "Work Order" means an Amendment to the Contract that authorizes construction services for the Project.
- 1.1.25 "Town Contingency" means the amount agreed upon in the GMP Amendment for the Town's use.

**1.2** Standard of Performance. The Construction Manager agrees to furnish its best skill and judgment and to cooperate with the Town and Architect in furthering the interests of the Town. The Construction Manager agrees to furnish efficient business administration and superintendence and to use its best efforts to complete the Project in an expeditious and economical manner consistent with the interests of the Town.

**1.3** The Construction Team. The Construction Manager, the Town, and the Architect (the "Construction Team") will cooperate together through construction completion for the Project. The Construction Manager shall provide leadership to the Construction Team on all matters relating to construction. The Architect will provide leadership to the Construction Team on all matters relating to design. Nothing herein is intended to make the Town liable for the acts or deeds of the Construction Manager.

**1.4** General Warranties. By execution of this Contract, the Town and Construction Manager each represent and warrant to the other that they are authorized to enter into this Contract and that this Contract represents such party's legal, valid and binding obligation, enforceable according to the terms thereof.

**1.5 Construction Manager's Warranties.** Construction Manager covenants, represents and warrants to Town that:

It is a business organization duly organized, validly existing and in good standing under the laws of the State of Florida, having full power and authority to engage in the business it presently conducts and contemplates conducting, and is and throughout the Work will be duly licensed or qualified and in good standing under the laws of said jurisdiction;

It has the required authority, ability, skills and capacity to perform, and shall perform, the Work in a manner consistent with sound engineering and construction principles, project management and supervisory procedures, and reporting and accounting procedures;

The execution, delivery and performance of this Contract will not conflict with any applicable laws or with any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;

It has knowledge of all the applicable laws in effect on the effective date of the Contract and of all business practices in the jurisdiction within which the Work is located that must be followed in performing the Work.

### **1.6** Time is of the Essence.

Time is of the essence in this Contract, and the Construction Manager agrees to promptly perform its duties under the Contract and will give the Work as much priority as is necessary to cause the Work to be completed on a timely

basis in accordance with the Contract Documents. All Work shall be performed strictly (not substantially) within the time limitations necessary to maintain the critical path and all deadlines established in the Contract Documents.

All dates and periods of time set forth in the Contract Documents, including those for the commencement, prosecution, interim milestones, milestones, and completion of the Work, and for the delivery and installation of materials and equipment, are included because of their importance to the Town.

Construction Manager acknowledges and recognizes that the Work for the Project must be performed in accordance with the Construction Schedule developed for the Project in accordance with Article 5 hereof and General Condition 47 of the Contract.

By signing this Contract, the Construction Manager agrees to the assessment of Liquidated Damages as provided in Article 5 hereof.

In agreeing to bear the risk of delays which were or should have been within the Construction Manager's control for completion of the Work, except for extensions approved in accordance with the Contract, the Construction Manager understands that, except and only to the extent provided otherwise in the Contract, the occurrence of events of delay within the Construction Manager's control shall not excuse the Construction Manager from its obligation to achieve full completion of the Work according to the project schedule, and shall not entitle the Construction Manager to an adjustment of the GMP. All parties under the control or in contract with the Construction Manager shall include but are not limited to Subcontractors, materialmen and laborers. If the Construction Manager has reason to believe that a delay on the part of a materialman or supplier was not within the Construction Manager's control, the Construction Manager may present such justification to the Town for consideration of an extension in accordance with the General Conditions of the Contract.

1.7 Complete Functional Project. It is the intent of the parties to describe in the Contract Documents a functionally complete project to be constructed in accordance with the Contract and in accordance with all codes and regulations governing construction of the Project. Any work, materials or equipment that may reasonably be inferred from the Contract as being required to produce the intended result shall be supplied by Construction Manager whether or not specifically called for. Where words, which have a well-known technical or trade meaning, are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of performance of the Work and Construction Manager shall comply therewith. The Town shall have no duties other than those duties and obligations expressly set forth within the Contract.

**1.8** Governing Order. The Governing Order of the Contract is agreed to be as follows: The Contract includes various divisions, sections and conditions which are essential parts for the Work to be provided by the Construction Manager. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete project. In case of discrepancy, the following precedence will govern the interpretation of the Contract Documents:

- 1. This Contract and any Amendments to this Contract including Work Authorizations, GMP Amendment/Work Orders and Change Orders thereto
- 2. The Pre-Construction Services Agreement
- 3. Construction Manager's Qualifications and Assumptions
- 4. Special Conditions
- 5. General Conditions
- 6. Insurance Certificates, Public Construction Bond and Guarantee

- 7. The Construction Documents (when approved)
- 8. The RFP
- 9. The Construction Manager's Proposal

Notwithstanding the above, solely with respect to the parties' obligations related to preconstruction services, whether required herein or in the Pre-Construction Services Agreement, the Town and Construction Manager agree that the Pre-Construction Services Agreement shall take precedence and control in the event of a conflict among the Contract Documents. In the event that any conflicts cannot be resolved by reference to this Governing Order of Contract Documents provision, then the Town shall resolve the conflict in any manner which is reasonably acceptable to the Town, and which comports with the overall intent of the Contract.

**1.9** Extent of Agreement. The Contract, together with the Pre-Construction Services Agreement, represent the entire agreement between the Town and the Construction Manager and supersedes all prior negotiations, representations or agreements. This Contract may be amended only by written instrument signed by the Town and the Construction Manager.

### <u>ARTICLE 2</u> CONSTRUCTION MANAGER'S BASIC SERVICES

**2.0 Phases.** The Construction Manager's Basic Services under this Contract include preconstruction phase services and construction phase services for the Project. All Pre-Construction Services are governed by the Pre-Construction Services Agreement, which is incorporated herein by reference.

**2.0.1** CM's Project Manager. Unless agreed to the contrary in writing by the Town, the Construction Manager shall provide continuity in the assignment of the Construction Manager's Project Manager during the pre-construction and construction phases for the Project.

**2.1 Construction Phase.** Unless otherwise authorized by the Town, all Work shall be performed under trade contracts held by the Construction Manager. The Construction Manager shall not bid on any of the Trade Contractor work or perform such work with its own forces without the prior written consent of the Town. The Construction Manager shall perform the following construction services:

**2.1.1** General. CM shall administer the construction phase as provided in the Contract.

**2.1.2** Commencement of Work. CM shall commence the Work within 10 days after the latest of the following: (a) receipt of the executed Guaranteed Maximum Price Amendment, (b) receipt of all permits necessary to commence the Work and continue without interruption, and (c) "Notice to Proceed" (NTP) from the Town.

**2.1.3** Award Trade Contracts. CM shall promptly award and execute trade contracts with approved Trade Contractors. CM shall provide copies of fully executed trade contracts, insurance certificates and, if required, bonds to the Town, when requested. The subcontractor buyout is to be completed within 60 days from NTP and the Contingency reconciled with the savings/overage unless the Construction Manager requests and receives a time extension from the Town.

**2.1.4** Management of the Work. CM shall manage, schedule and coordinate the Work, including the work of the Trade Contractors, and coordinate the Work with the activities and responsibilities of the Town, Architect and Construction Manager in order to complete the Project in accordance with the Town's objectives of cost, time and quality. CM shall develop and maintain a program, acceptable to the Town and Architect, to assure quality control

of the construction. CM shall supervise the work of all Trade Contractors so that the work conforms to the requirements of the plans and specifications. CM shall provide instructions to each Trade Contractor when its work does not conform to the requirements of the plans and specifications so that the work conforms to the requirements of the plans and specification and continue to manage each subcontractor to ensure that corrections are made in a timely manner so as to not affect the progress of the Work. Should disagreement occur between the Construction Manager and the Architect over acceptability of Work and conformance with the requirements of the specifications and plans, the Town shall be the final judge of performance and acceptability.

**2.1.5 CM Staff.** CM shall maintain exclusively for the Project a competent full-time staff at the project site to coordinate and direct the Work and progress of the Trade Contractors on the Project. The Construction Manager shall maintain sufficient off-site support staff, and competent full-time staff at the project site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the Work and progress of the sub-contractors and CM shall provide no less than those personnel during the respective phases of construction that are set forth in an exhibit to the GMP Amendment. The CM shall not change any of those persons unless mutually agreed to by the Town and Construction Manager. In such case, the Town shall have the right of approval of the qualifications of replacement personnel. All of the Construction Manager's on-site management and supervisory personnel shall be consistent with the Construction Manager or replace any on-site personnel whose performance becomes unsatisfactory to the Town. In such event, the Construction Manager shall promptly replace such personnel, without consideration of additional compensation for the replacement.

**2.1.5.1 On-Site Authority.** CM shall establish on-site organization and lines of authority in order to carry out the overall plans of the Construction Team. CM shall identify an on-site staff member to represent the Construction Manager, on a daily basis, with authority to negotiate change orders and contract modifications on behalf of the Construction Manager. CM shall make available such executive personnel as necessary to execute change orders or other contract modifications on behalf of the Construction Manager so as not to delay the progress of the Work.

**2.1.6 Project Manual.** CM shall establish procedures for coordination among the Town, Architect, Trade Contractors and Construction Manager with respect to all aspects of the Work. CM shall implement such procedures, incorporate them into a project resource manual, and distribute manuals to the Construction Team.

**2.1.6.1 Coordination** Drawings. CM shall require of the various Trade Contractors such coordination drawings as may be necessary to properly coordinate the Work among the Trade Contractors.

**2.1.6.2 Processing of Shop Drawings.** In coordination with the Architect, CM shall establish and implement procedures for tracking and expediting the processing of shop drawings and samples, as required by the Contract Documents.

**2.1.7 Progress Meetings.** CM shall schedule and conduct weekly progress meetings with Trade Contractors to review such matters as job procedures, job safety, construction progress, schedule, shop drawing status and other information as necessary. CM shall attend team meetings with the Architect and Town.

**2.1.8** Schedule Updates. CM shall review the schedule with the various Trade Contractors and review, or expand the level of detail to incorporate specific Trade Contractor input consistent with the overall completion requirements. CM shall regularly monitor and update the project schedule and various sub-networks as construction progresses. CM shall identify potential variances between scheduled and probable completion dates. CM shall review

schedule for Work not started, or incomplete, and make adjustments in the schedule to meet the scheduled completion date. CM shall provide summary reports of each monitoring and document all changes in the schedule. Regular schedule updates and reporting shall be included as part of the monthly project report outlined herein.

**2.1.9** Management of Trade Contractors. CM shall determine the adequacy of the Trade Contractors' personnel and equipment, and the availability of materials and supplies to meet the schedule. In consultation with the Town and the Architect, CM shall take necessary corrective actions when requirements of a trade contract or a trade contract schedule are not being met.

**2.1.10 Town Furnished Material.** Whenever Town-Furnished Contractor-Installed (OFCI) materials or equipment are shipped to the project site, the Construction Manager shall notify the Town and shall be responsible for their acceptance, proper storage, and incorporation into the Work provided the scope of the Town-Furnished Contractor-Installed (OFCI) work is included within the Guaranteed Maximum Price.

**2.1.11 Cost Control.** CM shall develop and maintain an effective system of project cost control which is satisfactory to the Town. CM shall revise and refine the initially approved project construction budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. CM shall identify variances between actual and budgeted or estimated costs and advise Town and Architect whenever projected costs exceed budgets or estimates. Cost control reports shall be included as part of the monthly project report outlined herein.

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

**2.1.12.1Sales Tax Savings Program.** CM shall administer direct tax savings purchase program (if provided as SC 10 to the Special Conditions).

**2.1.13 Change Orders.** CM shall develop and implement a system for the preparation, review and processing of change orders. Without assuming any of the Architect/ Engineer's responsibilities for design, CM shall recommend necessary or desirable changes to the Town and the Architect, review requests for changes and submit recommendations to the Town and Architect.

**2.1.13.1Change Order Cost Estimates.** When requested by the Town or Architect, CM shall promptly prepare and submit estimates of probable cost for changes proposed in the Work including similar estimates from the Trade Contractors. If directed by the Town, CM shall promptly secure formal written Change Order proposals from such Trade Contractors.

**2.1.14** CM Safety Programs. CM shall be responsible for initiating, maintaining and supervising effective safety programs and require similar programs of the Trade Contractors and Sub-subcontractors. The OSHA guidelines shall serve as the basis for the construction safety program.

**2.1.14.1Notice of Safety Issues.** CM shall promptly notify the Town and, where applicable, the Town's Insurance Administrator, in writing, upon receiving notice of filing of any charge of non-compliance from OSHA, or upon receiving notification that a federal or state inspector shall visit or is visiting the project site.

**2.1.14.2Safety Meetings.** At progress meetings with Trade Contractors, CM shall conduct a review of job safety and accident prevention and prepare minutes of such meetings that will be available to the Town's Representative on request. The minutes of job safety and accident prevention portion of such progress meetings shall be made available to the Town's Insurance Administrator, where applicable, upon request.

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

**2.1.16 Monthly Progress Reports.** CM shall record the progress of the Project. CM shall submit written monthly progress reports to the Town and the Architect including information on the Trade Contractors' work, the percentage of completion, current estimating, computerized updated monthly "Critical Path Method" scheduling and project accounting reports, including estimated time to completion and estimated cost to complete. CM shall keep a daily log available to the Town and the Architect. CM shall report and record such additional information related to construction as may be requested by the Town.

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

**2.1.18 Funding Agreements.** Construction Manager shall comply with all requirements of funding agreements which apply to all or a part of the Work including preparing such reports and making such certifications and representations as may be required by Town or required by a funding agency for the project. Town will cooperate with Construction Manager in identifying any applicable funding agency requirements and provide Construction Manager with an opportunity to review the same to determine any impact on the Project budget prior to Town agreeing to a funding agreement.

# ARTICLE 3 ADDITIONAL SERVICES

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

### ARTICLE 4 TOWN'S RESPONSIBILITIES

**4.1 Town's Representative.** The Town will designate a representative to act on its behalf (the Town's Representative) for the Project. This representative, or his/her designee, will receive progress reports of the Work, serve as liaison with the Construction Manager and the Architect, receive and process communications and paperwork, and represent the Town in the day-to-day conduct of the Project. The Construction Manager will be notified in writing of the representative and of his/her designee or any changes thereto.

**4.2 Inspector.** The Town may retain or require the Construction Manager to retain a "threshold building" special inspector, if required by Chapter 553, Florida Statutes. All services provided by the special inspector shall be paid by the Construction Manager.

**4.3 Review of CM Deliverables.** The Town will review and approve or take other appropriate action on the Construction Manager's preconstruction deliverables within a reasonable time.

# ARTICLE 5 SCHEDULE

**5.1 Construction Phase.** The number of days for performance of the Work under the construction phase of the Project shall be established in the Guaranteed Maximum Price Amendment to this Contract.

**5.2** Critical Dates Established. At the time a Guaranteed Maximum Price (GMP) is established, as provided for in the Pre-Construction Services Agreement and Article 6 below, the project substantial completion date, the project final completion date and a Town occupancy date in accordance with the Master Project Schedule shall be as established in the GMP Amendment. The Construction Manager agrees to complete the construction in accordance with the agreed upon substantial completion date, final completion date and Town occupancy date for the Project. The Construction Manager acknowledges that failure to complete the Project within the construction time set forth in the approved Master Project Schedule will result in substantial damages to the Town. Liquidated Damages as provided for in the GMP Amendment shall be assessed at a rate to be agreed upon by the parties in the GMP Amendment, and after a specified grace period to be set forth in the GMP Amendment.

**5.3** Acceleration of Schedule. In the event the Town desires to accelerate the schedule for any portion of the Work, the Town shall notify the Construction Manager in writing. As soon as possible but not later than 21 days after the Town request, the Construction Manager shall give the Town a revised Guaranteed Maximum Price for the acceleration which shall become a Change Order upon acceptance. Subject to limitations required to perform the Work in a manner consistent with applicable safety standards and regulations, the Town may then direct the Construction Manager to increase its staff and require its Trade Contractors to increase their manpower, or to work such overtime hours as may be necessary to accomplish the required acceleration in accordance with the approved change order. In such event the Town shall reimburse the Construction Manager for the costs of such acceleration subject to the Guaranteed Maximum Price or adjust the GMP if said acceleration would cause the Cost of the Work to exceed the same. The Construction Manager shall require accurate daily records of all costs of the required acceleration and shall secure the Town's approval of such records.

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

# ARTICLE 6

# **GUARANTEED MAXIMUM PRICE**

**6.1 GMP.** The GMP Proposal shall be submitted by the Construction Manager in accordance with the Pre-Construction Services Agreement. The GMP will be established and agreed upon as part of the GMP Amendment agreed to by the parties. The GMP includes the Cost of the Work required by the Contract as defined in Article 8 of this Contract, and the Construction Manager's lump sum fee as defined in Paragraph 6.4 of this Contract. The GMP for the Project will be established based on Construction Documents prepared by the Architect. The GMP is subject to modification for Town changes in the Work as provided in Article 9, herein.

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

6.3 **Construction Contingency.** In addition to the Cost of Work, the GMP includes an agreed upon sum as the Construction Contingency which is included for use by the Construction Manager for the purpose of defraying the expenses due to unforeseen circumstances relating to construction that could not reasonably have been anticipated. The amount of the Construction Contingency will be as established in the GMP Amendment. The Construction Manager will be required to furnish documentation reasonably evidencing expenditures charged to this Contingency prior to the release of funds by the Town. Documentation for use of the Contingency shall be reasonably determined by the Town. If trade contracts are executed below the applicable line items in the GMP (e.g. buyout savings), the surplus will be added to the Contingency. If trade contracts are above the applicable line items in the GMP, the deficiency will be aggregated against buyout savings from other line items within the GMP. If a deficiency remains, it may be taken from the Contingency, however such events shall not be cause to increase the GMP. The Contingency is included to adjust the estimate for eventualities which have not been taken into precise account in the establishment of the GMP, including without limitation (1) documented scope gaps between trade contractors unless work is shown on drawings, (2) contract default by trade contractors, (3) reconciliation of allowances and sales tax savings estimate, (4) unforeseen field conditions, and (5) unforeseeable material escalation costs. The Contingency shall not be used for design errors and omissions which a prudent Construction Manager should reasonably have detected during the Construction Manager's pre-construction duties and reasonable due diligence by the Construction Manager.

If bids are not received for a portion of the Work at or below the applicable line item amount in the GMP, the Construction Manager may perform that portion of the Work if agreed to by Town or may negotiate for its performance for the specified line item lump sum amount or less.

**6.3.1** Town Contingency. In addition to the Construction Contingency, the GMP includes an agreed upon sum as a Town Contingency which is included for use solely by the Town for the purpose of defraying expenses due to unforeseen circumstances, design changes, cost overruns on allowance items (if any), escalation costs, funding of Change Orders, Construction Change Directives or other additions or modifications to the Work called for in this Contract. The amount of the Town Contingency will be set in the GMP Amendment.

**6.3.2** To the extent that any portion of the Construction Contingency or Town Contingency remains unallocated on the date of Final Completion of the Project and after the issuance of Final Payment for the Project, the remaining, unused portions shall belong to the Town.

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

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

**6.4.2** The cost of its field employees identified in Subparagraph 2.1.5 herein, or their approved replacements, including the cost of all benefits, insurance, and taxes attributable to wages and salaries for said field employees.

**6.4.3** General operating expenses of the Construction Manager's principal and branch offices, other than the field office.

6.4.4 Construction Manager's capital expenses.

6.4.5 Overhead and profit.

**6.4.6** All costs for computers, networks, wiring of networks, printers, support, software including project management software system for the Project, e.g., Pro-Log, including fees to have the Architect, the Town and Subcontractors part of the system.

**6.4.7** Travel and per diem costs of Construction Manager's employees and consultants if calculated in accordance with Section 112.061, Florida Statutes.

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

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

**6.4.10** All costs for water for office personnel, coffee and other provisions for office complex, lunches for meetings and miscellaneous jobsite expenses.

**6.4.11** All costs for Construction Manager staff, Architect staff, Town's Representative's staff and visitors for hardhats, vests, and safety glasses.

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

**6.4.13** All costs for weekly cleaning the Construction Manager site office complex as well as the site office complex of Architect and other consultants.

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

**6.5 Payment Requests.** Request for compensation for the CM Fee shall be submitted with such detail as the parties agree in the approved Schedule of Values for the Construction Phase. However, the CM Fee will be treated as a lump sum or fixed percentage amount within the GMP and administered accordingly such that Construction

CM RFP – Qualifications Based Selection

Manager will not be required to submit detailed backup documentation to for the expenses incurred by Construction Manager within the CM Fee.

**6.6** Certification. By submitting payment requests to Town, the Construction Manager certifies that all costs supporting the fees allowable under this Contract are accurate, complete and current at the time of submission; and that any other costs that may be furnished to the Town in the future to support any additional fees that may be authorized will also be accurate, complete, reasonable. The fees allowable under this Contract and any additional fees that may be authorized in the future shall be adjusted to exclude any sums by which the Town determines the fee was increased due to inaccurate, incomplete, or non-current costs.

**6.7 No Inconsistent Positions.** The Construction Manager's role in providing preconstruction services pursuant to the Pre-Construction Services Agreement has allowed/caused the Construction Manager to formulate positions with respect to specific scope of work and contract interpretation issues. In that the Construction Manager is familiar with aspects of the scope of work and the Contract for the Project during the preconstruction phase, the Construction Manager agrees not to request an increase in the GMP for any substantially similar issue based upon a theory of recovery which is inconsistent with written advice or consultation previously discussed pursuant to the aforesaid preconstruction services. Notwithstanding the foregoing, it is agreed that the Construction Manager shall not be responsible for errors or omissions in the Contract Documents, which are the responsibility of the Architect.

**6.8 GMP Adjustments.** Adjustments to the GMP will be made as described in the General Conditions to the Contract.

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

**6.10** Cost Savings. All cost savings for the not-to-exceed value of the GMP shall be returned to the Town as part of the net aggregate savings established when final accounting is submitted upon final completion of the Work, or at such earlier time as agreed to by the Town and the Construction Manager. "Cost savings" are the net difference obtained by deducting from the Adjusted GMP, the Construction Contingency balance and the actual expenditures representing the "Cost of the Work" as defined in Article 8 herein. Liquidated Damages, if any, are different from, and are not a part of, this calculation.

# ARTICLE 7 PAYMENTS TO CONSTRUCTION MANAGER

7.1 **Payments.** In consideration of the performance of the Contract, the Town agrees to pay the Construction Manager, as compensation for its services an amount as set forth below:

7.1.1 **Pre-Construction.** For preconstruction services, the Town shall pay Construction Manager in accordance with the Pre-Construction Services Agreement.

**7.1.2Construction.** Upon acceptance of the GMP for the Project, the amount established in the GMP Amendment to this Contract, which includes the "Construction Manager's Fee" as described in Paragraph 6.4 and the "Cost of the Work" as described in Article 8, is to be paid monthly as described in the Contract. With its first application for payment, Construction Manager shall be entitled to bill, and be reimbursed for, the full amount of its

liability insurance, builder's risk insurance and bond costs at the rates set forth in Article 8 or agreed upon in the GMP Amendment, with no retainage withheld on the same. The Construction Manager's Fee will be paid each month proportionally on a percent complete basis of the Work in place that month, less retainage in an amount equal to five percent (5%) of thirty percent (30%) of the Construction Manager's Fee, which the parties agree is the proportionate amount of the Construction Manager's Fee attributable to Construction Manager's overhead and profit and that does not constitute a direct Project cost (i.e., general conditions/general requirements expense).

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

**7.1.4** Pay Applications. Pay requests for construction shall be documented in accordance with the General Conditions of the Contract and submitted in detail sufficient for a proper audit thereof.

# <u>ARTICLE 8</u> COST OF THE WORK

**8.1 Definition.** The term "Cost of the Work" shall mean costs including "general conditions" costs, incurred in the Work as described and defined in Paragraph 8.2, below, and paid or incurred by the Construction Manager, which are not included in Paragraph 6.4, less any reimbursement for scrap value and cash or trade discounts, subject to Article 10, herein. The term "wages" as used herein shall include the straight time and overtime pay and the cost of associated employee benefit, all of which shall be included within the stipulated rates agreed to by Construction Manager and the Town in the GMP Amendment. Employee benefits include, but are not limited to, unemployment compensation, social security, incentive compensation, profit sharing, compensated absences, and other mandatory and customary contributions and fringe benefits insofar as such costs are based on wages, salaries, or other remuneration paid to employees of the Construction Manager.

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

**8.2.1** Subject to prior approval by the Town, wages paid for labor in the direct employ of the Construction Manager, other than those provided under Paragraph 6.4 herein as a part of the Construction Manager's Fee, in the performance of the Work.

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

**8.2.3** Payments made by the Construction Manager to Trade Contractors for their work performed pursuant to trade contracts with the Construction Manager. Construction Manager shall ensure that the value of each Trade Contractor's subcontract includes the costs associated with providing Trade Contractor payment and performance bonds.

**8.2.4** Cost of the premiums for all insurance or bonds including Trade Contractor bonds which the Construction Manager is required to procure by this Contract, or other insurance or bonds subsequently deemed necessary by the Construction Manager, and agreed upon by the Town. The stipulated rates for insurance and bond costs are as follows:

- Bond Costs: One and five hundredths of a percent (1.05%) of the GMP;
- Insurance costs (all coverage other than Builders Risk) one and three tenths of a percent of the GMP (1.30%); and
- Builders Risk Insurance: To be agreed upon in the GMP Amendment.

**8.2.5** Sales, use, gross receipt, or similar taxes related to the Work imposed by any governmental authority and for which the Construction Manager is liable.

**8.2.6** Deposits lost for causes other than the Construction Manager's own negligence.

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

**8.2.8** Cost incurred due to an emergency affecting the safety of persons and/or property.

**8.2.9** Subject to prior written approval by Town, legal costs reasonably and properly resulting from prosecution of the Work for the Town; provided, however, that they are not the result of the Construction Manager's own negligence or malfeasance. Legal costs incurred in connection with disputes solely between the Construction Manager and the Town or incurred in connection with disputes solely between the Construction Manager and Trade Contractors are the responsibility of the Construction Manager and shall not be included in the Cost of the Work.

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

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

**8.2.12** Cost of watchmen or similar security services.

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

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

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

**8.2.16** Costs directly incurred in the performance of the Work and not included in the Construction Manager's Fee as set forth in Paragraph 6.4, herein.

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

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

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

**8.2.20** Costs associated with conducting any field testing of materials and equipment which Construction Manager is obligated to perform under the Contract Documents.

**8.2.21** Costs for signage used on the Project, including without limitation, the signage required by Section 76.1 of the General Conditions.

**8.2.22** Costs of fees associated with providing all permits that Construction Manager is obligated to obtain pursuant to Section 15.1 of the General Conditions.

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

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

- 1. Home and branch office overhead and general expenses of Construction Manager, except as may be expressly included as a Cost of the Work in accordance with Section 8.2;
- 2. Expenses (including interest) of Construction Manager's capital employed for the Project;
- 3. Professional or business licenses of Construction Manager or any Subcontractor;
- 4. Except as directly applicable for performance of the Work hereunder, amounts required to be paid by Construction Manager for federal, state or local income or franchise taxes, sales, use, or gross receipts tax, payroll taxes and state, county and municipal taxes, and fees;
- 5. Except to the extent there are available funds in the Construction Contingency, cost of repairing or replacing damaged Work that is caused by Construction Manager, Subcontractor or other for whose acts Construction Manager may be liable;
- 6. Except to the extent there are available funds in the Construction Contingency, costs to repair or replace defective Work resulting from the failure of Construction Manager, Subcontractor or other

for whose acts Construction Manager may be liable to perform the Work in accordance with the Contract Documents;

- 7. Costs of warranty Work;
- 8. Any additional premiums for payment and performance bonds obtained by Trade Contractors beyond those expenses included in the value of each subcontract as provided in Section 8.2.3, above, unless otherwise approved by the Town;
- 9. Costs incurred to the extent that such costs result in the GMP being exceeded;
- 10. Costs to persuade employees to join, or not to join, any trade union or other association of organized labor or political activity;
- 11. Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal offices or other than the site office, except as part of Construction Manager's Fee:
- 12. Any other costs or expenses not specifically included as a Cost of the Work under Section 8.2 hereof; and
- 13. Any and all costs that are duplicative of those set forth in Section 6.4.

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

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

### <u>ARTICLE 9</u> <u>CHANGES IN THE WORK</u>

The Town, without invalidating this Contract, may order changes in the Work within the general scope of this Contract consisting of additions, deletions, or other revisions. All changes in the Work shall be authorized as described in the General Conditions of the Contract. Except in cases of emergency endangering life or property, the Construction Manager shall allow no changes in the Work without the prior written approval of the Town.

### ARTICLE 10 DISCOUNTS

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

# ARTICLE 11 INSURANCE

The Construction Manager shall provide insurance as required by the General Conditions of the Contract and, as required and further described in the General Conditions, name the Town as an additional insured.

## ARTICLE 12 PERIOD OF SERVICE

The period of service and contract term shall commence upon the approval and execution of this Contract by both parties and continue until completion of all phases of the Work for the Project, unless otherwise terminated as provided for in the Contract.

### ARTICLE 13 INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 – 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed Town contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the Construction Manager, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All contractors and parties doing business with the Town and receiving Town funds shall fully cooperate with the Inspector General including receiving access to records relating to any bid, proposal, or any resulting contract. Subject only to the Office of the Inspector General's right to audit pursuant to the Palm Beach County Code, the Town and Construction Manager agree that expenses set forth in the Contract as stipulated rate or an agreed upon percentage shall not be subject to audit other than to verify that the rates or percentages have been properly applied.

# ARTICLE 14 SCRUTINIZED COMPANIES

**14.1** As provided in Section 287.135, Florida Statutes, by entering into this Contract or performing any work in furtherance hereof, the Construction Manager certifies that it, its affiliates, trade contractors, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to Section 215.4725, Florida Statues. Pursuant to Section 287.135(3)(b), if Construction Manager is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Contract may be terminated at the option of the Town.

**14.2** When contract value is greater than \$1 million: As provided in Section 287.135, Florida Statutes, by entering into this Contract or performing any work in furtherance hereof, the Construction Manager certifies that it, its affiliates, trade contractors, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or is engaged in business operations in Cuba or Syria.

**14.3** If the Town determines, using credible information available to the public, that a false certification has been submitted by the Construction Manager, this Contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed, pursuant to Section 287.135, Florida Statutes. Said certification must also be submitted at the time of Contract renewal, if applicable.

### ARTICLE 15 COUNTERPARTS

This Contract may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same contract.

IN WITNESS WHEREOF, Owner and Construction Manager have signed this Agreement.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

**CONSTRUCTION MANAGER:** 

	<u>(Signature)</u>	
	(Printed Name)	
	<u>(Title)</u>	
STATE OF COUNTY OF		
The foregoing	instrument was acknowledged before me by m	and of physical presence or online
0 0	instrument was denne wreaged service me of m	leans of physical presence of onnine
notarization,	this of	, 2023
notarization,		, 2023
notarization,	this of	, 2023
notarization,	this of	, 2023
notarization, by	this of	, 2023 , a He/she is personally known to me or has
notarization, by	this of	, 2023 , a He/she is personally known to me or has
notarization, by	this of	, 2023 , a He/she is personally known to me or has
notarization, by	this of	, 2023 , a He/she is personally known to me or has

Address for giving notices:

23

3185 S. Congress Avenue

	De	lray Beach, FL 33445
	License No.:	CGC 021732
		(where applicable)
TOWN:		
	By:	
	Title:	Mayor
	Attest:	
(Seal)	Title:	Town Clerk
	Approved as to Form:	
	Title:	Town Attorney
A	ddress for giving notic	es:
3614 South Ocean Boulevard		14 South Ocean Boulevard

Highland Beach, FL 33487

# CONTRACT EXHIBIT A GENERAL CONDITIONS

# **TOWN OF HIGHLAND BEACH**

# **CONSTRUCTION MANAGER AT RISK SERVICES**

# **CONTRACT CONDITIONS**

# **GENERAL CONDITIONS**

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APPENDIX A

### **GENERAL CONDITIONS**

### GC 1 <u>EFFECTIVE DATE/ENTIRE AGREEMENT</u>

1.1 This Contract is expressly contingent upon the approval of the Town Commission of the Town of Highland Beach and shall become effective only when signed by all parties.

1.2 This Contract (which consists of the Contract Documents and the Construction Documents) embodies the entire agreement between the Town and the Construction Manager and supersedes all other writings, oral agreements, or representations, with the exception of the Pre-Construction Services Agreement, which is incorporated into and made a part of the Contract Documents. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of any of the terms or conditions of the Contract shall be valid unless reduced to writing and signed by both parties.

#### GC 2 INDEPENDENT CONTRACTOR

2.1 Construction Manager represents that it is fully experienced and properly qualified to perform the class of Work provided for herein, and that it is properly licensed, equipped, organized and financed to perform such Work.

2.2 Construction Manager shall act as an independent contractor and not as the agent of the Town in performing the Contract, maintaining complete control over its employees and all of its suppliers and subcontractors. Nothing contained in this Contract or any subcontract awarded by Construction Manager shall create any contractual relationship between any such supplier or subcontractor and Town. Construction Manager shall perform all Work in accordance with its own methods subject to compliance with the Contract. Construction Manager represents that all subcontractors' agreements entered into shall incorporate by reference the terms and conditions of this Contract, and further warrants that the Town is an intended express third-party beneficiary of any such subcontract.

2.3 Except as specifically and expressly provided for herein, no provision of this Contract is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity not a party to this Contract.

#### GC 3 AUTHORIZED REPRESENTATIVES

3.1 Before starting Work, Construction Manager shall designate a competent, authorized representative acceptable to the Town to represent and act for Construction Manager and shall inform the Town in writing, of the name and address of such representative together with a clear definition of the scope of his authority to represent and act for Construction Manager and shall specify any and all limitations of such authority ("CM's Authorized Representative"). At the Preconstruction Conference, Construction Manager shall provide resumes of key personnel for Town's approval. Construction Manager shall keep Town informed of any subsequent changes in the foregoing. Such representative shall be present or duly represented at the site of work at all times when Work is actually in progress. During periods when Work is suspended, arrangements for an authorized representative acceptable to Town shall be made for any emergency Work which may be required. All notices, determinations, instructions and other communications given to the authorized representatives of the Construction Manager shall be binding upon Construction Manager. Nothing contained herein shall be construed as modifying the Construction Manager's duty of supervision and fiscal management as provided for by Florida law. The Town will designate an authorized representative who will have limited authority to act for the Town. The Town will notify the Construction Manager in writing of the name of such representative(s) ("Town's Authorized Representative"). Facility Users (as that term is defined in SC2 of the Special Conditions) are not authorized Town representatives. Any work performed by the Construction Manager without proper authorization or at the sole direction of a User, is performed at the Construction

Manager's risk, and the Town shall have no obligation to compensate the Construction Manager for such work. The Town has the right to assign various responsibilities of the Town to the Town's Architect/Engineer of Record and can do so at any time during the duration of this Contract with written notice to the Construction Manager. The Construction Manager agrees to cooperate with Town's Architect/Engineer.

3.2 The Construction Manager's Authorized Representative, qualifying agents, project managers, superintendents and supervisors are all subject to prior and continuous approval of the Town. If, at any time during the term of the Contract, any individual nominally performing any of the positions named above is, for any reason, or no reason at all, unacceptable to the Town, Construction Manager shall replace the unacceptable personnel with personnel acceptable to the Town at no additional cost to the Town.

#### GC 4 <u>NOTICES</u>

4.1 Any notices provided for hereunder shall be in writing and may be served either personally on the authorized representative of the receiving party at the jobsite or by certified mail to that party at the addresses shown below:

OWNER:	Town of Highland Beach 3614 South Ocean Boulevard Highland Beach, FL 33487-3393 Attn: Marshall Labadie, Town Manager
CONSTRUCTION MANAGER:	Kaufman Lynn Construction, Inc. 3185 S. Congress Avenue Delray Beach, FL 33445

4.2 These addresses may be changed by either of the parties by written notice to the other.

#### GC 5 LAWS AND REGULATIONS

5.1 Construction Manager and its employees and representatives shall at all times comply with all applicable laws, codes, ordinances, statutes, rules or regulations in effect at the time Work is performed under this Contract.

5.2 If, during the term of this Contract, there are any changed or new laws, ordinances or regulations not known or foreseeable at the time of signing this Contract which become effective and which affect the cost or time of performance of the Contract, Construction Manager shall immediately notify Town in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Contract. Upon concurrence by Town as to the effect of such changes, an adjustment in the compensation and/or time of performance will be made.

5.3 If any discrepancy or inconsistency should be discovered between the Contract and any law, ordinance, regulation, order or decree, Construction Manager shall immediately report the same in writing to Town who will issue such instructions as may be necessary.

5.4 It shall not be grounds for a change order that the Construction Manager was unaware of or failed to investigate the rules, codes, regulations, statutes, and all ordinances of all applicable governmental agencies having jurisdiction over the Project or the Work.

5.5 Except to the extent Construction Manager is expressly entitled to relief elsewhere in the Contract Documents Town shall not be liable for any costs, delays or damages which Construction Manager incurs as a result of the actions or orders of any other governmental entity or agency.

### GC 6 STANDARDS AND CODES

6.1 Wherever references are made in the Contract to standards or codes in accordance with which Work is to be performed or tested, the edition or revision of the standards or codes current on the effective date of this Contract shall apply, unless otherwise expressly set forth. Unless otherwise specified, reference to such standards or codes is solely for implementation of the technical portions of such standards and codes. In case of conflict among any referenced standards and codes or between any referenced standards and codes the Town will determine which shall govern. Construction Manager acknowledges that compliance with code requirements represents minimum standards for construction and is not evidence that the Work has been completed in accordance with the Contract.

### GC 7 CODE RELATED INSPECTIONS

7.1 The Construction Manager recognizes that the Town of Highland Beach Building Department is a separate department within the Town that is charged with the inspection of improvements to real property for code compliance. If the improvements to be made by the Construction Manager pursuant to this Contract will be subject to inspection by the Building Department, the Construction Manager agrees that it will not assert, as a Town caused delay or as a defense of any delay on the part of the Construction Manager, any good faith action or series of actions on the part of the Building Department, including, but not limited to Building Department's refusal to accept any portion of the Construction Manager's Work.

### GC 8 GOVERNING LAW

8.1 The Contract shall be governed by the laws of the State of Florida and venue of any action shall be in Palm Beach County, Florida.

### GC 9 RIGHTS AND REMEDIES; NO THIRD-PARTY BENEFICIARIES

9.1 The duties and obligations imposed by the Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available at law or in equity or by statute or otherwise.

9.2 Except as specifically and expressly provided for herein, no provision of this Contract is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity not a party to this Contract.

#### GC 10 COMMERCIAL ACTIVITIES

10.1 Construction Manager shall not establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on lands owned or controlled by Town. Construction Manager shall not allow its employees to engage in any commercial activities on the site.

#### GC 11 COOPERATION WITH OTHERS

11.1 Town and other contractors and subcontractors may be working at the site during the performance of this Contract. Construction Manager shall fully cooperate with the Town, Town's Authorized Representative, and other contractors to avoid any delay or hindrance of their Work. Town may require that certain facilities be used concurrently by Construction Manager and other parties and Construction Manager shall comply with such requirements.

11.2 If any part of the Construction Manager's Work depends on proper execution or results from any work performed by the Town or any separate contractor, the Construction Manager shall, prior to proceeding with the Work, promptly report to the Town any apparent discrepancies or defects in such other work that render it unsuitable

for such proper execution and results. Failure of the Construction Manager to report such discrepancies or defects shall constitute an acceptance of the Town's separate contractor's work as fit and proper to receive its Work, except as to defects which may subsequently become apparent in such work performed by others. Any costs that could have been avoided had notice been given as required herein shall be borne by the Construction Manager unless Construction Manager gives written notice to Town, if reasonably possible, prior to proceeding with the Work and in any event within three days of commencement of Work. In no event shall the Town be liable to the Construction Manager for delay damages where required notice has not been given.

### GC 12 FORMS AND DOCUMENTS

12.1 The below listed documents are to be used by the Construction Manager and Town during the administration of this Contract. Additional administrative forms may supplement this list upon written notice by the Town (or Town's Authorized Representative). Town reserves the right to modify these forms as it deems necessary. Construction Manager shall maintain logs for Items A-K and provide to Town monthly.

- A. Request for Information
- B. Field Instruction
- C. Construction Change Proposal
- D. Change Order
- E. Construction Change Directive
- F. Submittal Transmittal
- G. Deficiency Report
- H. Non-Conformance Report
- I. Construction Manager's Daily Report
- J. Substitution Request Form
- K. Contingency Use Directive
- 12.2 The above listed forms are attached as Appendix A to these General Conditions.

### GC 13 PUBLICITY AND ADVERTISING

13.1 Construction Manager shall not make any announcement or release any information or publish any photographs concerning this Contract or the Project or any part thereof to any member of the public, press or any official body, unless prior written consent is obtained from Town.

### GC 14 TAXES

14.1 Construction Manager shall pay all taxes, levies, duties and assessments of every nature which may be applicable to any Work under this Contract. The Contract Sum and any agreed variations thereof shall include all taxes imposed by law. Construction Manager shall make any and all payroll deductions required by law. Construction Manager herein indemnifies and holds the Town harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions. The indemnity provisions of this section shall survive the termination or expiration of this Contract.

### GC 15 PERMITS AND FEES

15.1 Construction Manager will be responsible for applying for and procuring the master building permit for the Project. Town will waive all permitting fees, including master building permit fees and trade permit fees, utility connection and installation fees, and permanent water meter charges payable to the Town of Highland Beach. With respect to any permitting and utility fees payable to other entities (e.g., Palm Beach County, FPL, or the State of

Florida), Construction Manager shall advise Town ten (10) days in advance of requirement for any fee amount. The parties agree that the GMP Amendment will include an allowance for the anticipated permit fees for the Project. There are no Town impact fees associated with this Project.

### GC 16 UTILITIES

16.1 The Construction Manager, at its expense, shall arrange for, develop, and maintain all utilities in work areas to meet the requirements of the Contract. Such utilities shall be furnished by Construction Manager and shall include, but not be limited to, the following:

- A. Public telephone service for the Construction Manager's use.
- B. Construction power as required at each point of construction.
- C. Water as required throughout the construction.

16.2 Prior to final acceptance of the Work the Construction Manager shall, at its expense, satisfactorily remove and dispose of all temporary utilities developed to meet the requirements of the Contract. The Town will assume the utility costs directly related to its usage of areas in which the Work has been certified as Substantially Complete.

### GC 17 SUCCESSORS, ASSIGNS AND ASSIGNMENT

17.1 The Town and the Construction Manager each binds itself, its officers, directors, qualifying agents, partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract. It is agreed that the Construction Manager shall not assign, transfer, convey or otherwise dispose of the contract or its right, title or interest in or to the same or any part thereof, or allow legal action to be brought in its name for the benefit of others, without the prior written consent of the Town and concurred to by the sureties.

### GC 18 EXAMINATION OF CONSTRUCTION MANAGER'S RECORDS

18.1 Subject to the audit limitations set forth in the Contract the Town shall, until the expiration of five (5) years after final payment under this Contract, have access to, and the right to examine any directly pertinent books, documents, papers and records of the Construction Manager involving transactions relating to this Contract, and to make copies, excerpts and transcriptions thereof.

### GC 19 COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS

19.1 The Construction Manager represents that the Construction Manager, Subcontractors, material and equipment suppliers have compared phasing, demolition, architectural, structural, mechanical, electrical, plumbing, civil and site drawings and specifications and have compared and reviewed all general and specific details on the drawings and that all conflicts, discrepancies, errors and omissions, which are within the commonly accepted knowledge base of a licensed general contractor, subcontractor, trades persons, manufacturers or other parties required to carry out the Work involved in this Contract, have been either corrected or clarified prior to acceptance of the GMP Proposal. Construction Manager warrants that the GMP includes the cost of correcting all conflicts, discrepancies, errors, or omissions which Construction Manager identifies, or should have identified through the exercise of reasonable skill and care, during the preconstruction phase of this Contract.

19.2 The Construction Manager represents that the Contract Sum represents the total cost for complete and functional systems as depicted in or reasonably inferable from the plans and specifications and therefore, the Construction Manager's review and comparison of all drawings has taken into consideration the total and complete functioning of all systems.

### GC 20 PERMIT DRAWINGS AND SPECIFICATIONS

20.1 The Construction Manager shall provide the Town with two (2) complete sets of the permitted drawings and addendum within five (5) days of issuance by the Building Official. If the permitted set of drawings changes the scope of the Work to be performed, the Construction Manager shall notify the Town, and Architect/Engineer of Record within thirty (30) days of receipt of the permitted drawings (or within thirty (30) days of the date Construction Manager actually became aware or reasonably should have become aware of a latent condition). Such notification shall contain a written description of the change and the cost and time associated with the change, if any. Failure to provide such notice as provided herein shall be a complete waiver by the Construction Manager of all additional cost and time, and the Construction Manager shall perform the Work at its expense and complete the Work in accordance with the schedule and in no event shall the Construction Manager recover delay or consequential damages.

20.2 The Construction Manager shall, immediately upon receipt of the permitted drawings, check all drawings furnished and shall promptly notify Town of any illegibility, errors, omissions or discrepancies discovered in such drawings. The Construction Manager shall perform Work only in accordance with the permitted drawings and any subsequent revisions thereto. Construction Manager shall maintain at the site of the work a copy of the permitted drawings and specifications kept current with all changes and modifications and shall at all times give Town, as well as all trades performing at the Project, access thereto.

### GC 21 CONTRACT INTERPRETATION

21.1 All claims of Construction Manager and all questions the Construction Manager may have concerning the interpretation or clarification of this Contract or its acceptable fulfillment shall be submitted immediately or as soon as reasonably possible in writing to Town for resolution. Town, or its representatives, will render its determination concerning such resolution, which determination shall be considered final and conclusive unless Construction Manager files a written protest pursuant to GC 22 "DISPUTES". The Construction Manager's protest shall state clearly and in detail the basis thereof. Town will consider Construction Manager's protest and render its decision thereon within twenty-one (21) calendar days. If Construction Manager does not agree with the Town's decision, the Construction Manager shall immediately deliver written notice to that effect to the Town.

21.2 Construction Manager is solely responsible for requesting instructions or interpretations and is solely liable for any cost and/or expenses that could have been avoided had it done so. Construction Manager's failure to protest Town's determinations, instructions, clarifications or decisions within fourteen (14) calendar days after receipt thereof shall constitute a waiver by Construction Manager of all its rights to further protest, judicial or otherwise.

### GC 22 DISPUTES

22.1 Any dispute relating to a question of fact arising under this Contract shall be resolved through good faith efforts upon the part of Construction Manager and Town or Town's representatives. At all times, Construction Manager shall carry on the Work and maintain its progress schedule in accordance with the requirements of the Contract and the determination of the Town or Town's representatives, pending resolution of any dispute. Any dispute that is not disposed of by mutual agreement shall be decided by the Town or its representatives who shall reduce such decision to writing. The decision of the Town or its representatives shall be final and conclusive, subject to the dispute resolution procedures set forth in the Contract. Construction Manager's failure to protest Town's determinations, instructions, clarifications or decisions within fourteen (14) calendar days after receipt thereof shall constitute a waiver by Construction Manager of all its rights to further protest, judicial or otherwise.

22.2 If a dispute arises out of or relates to this contract, or the alleged breach thereof, the parties agree first to try in good faith to settle the dispute through good faith negotiation. If the matter is not resolved through negotiation, the parties agree to submit the matter to mediation before resorting to arbitration or litigation. Mediation shall be conducted by a mutually agreed-upon certified mediator, with each party to share equally in the costs.

22.3 In no event will a dispute, the filing of a protest, claim or appeal, or the resolution or litigation thereof, relieve the Construction Manager from its obligations to timely perform the Work required by the Contract and to maintain the progress schedule in accordance with the Contract.

### GC 23 SUSPENSION

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

23.1.1 Upon receipt of any such notice, Construction Manager shall, unless the notice requires otherwise:

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

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

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

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

#### GC 24 DECLARATION OF DEFAULT

24.1 The failure of the Construction Manager to supply enough properly skilled workers or material, or to make prompt payment to subcontractors or for materials or labor without sufficient justification under the subject agreements with those parties or to obey laws, ordinances, rules, regulations or orders of public agencies having jurisdiction, or to comply in any material way with the Contract, shall be sufficient grounds for the Town to find the Construction Manager in substantial default and that sufficient cause exists to terminate the Contract and to withhold payment or any part thereof until the cause or causes giving rise to the default have been eliminated by the Construction Manager and approved by the Town. If a finding of default is made, the Construction Manager and its surety shall remain responsible for performance of the requirements of the Contract unless and until the Town terminates the Contract. Upon a finding of default, the Town shall set a reasonable time within which the Construction Manager and its surety shall eliminate the cause or causes of default, but in no event shall such period of time be less than seven (7) calendar days. When the basis for finding of default no longer exists, the Town shall notify the Construction Manager and its surety in writing that the default has been corrected and that the Construction Manager is no longer in default. If the Construction Manager fails to correct the default within the time allowed, the Town may terminate the Contract and the employment of the Construction Manager, without otherwise waiving its rights against the Construction Manager or its surety.

#### GC 25 TERMINATION FOR DEFAULT

25.1 Notwithstanding any other provisions of this Contract, Construction Manager shall be considered in default of its contractual obligations under this Contract if it:

- A. Repeatedly performs work which fails to conform to the requirements of this Contract;
- B. Fails to meet the contract schedule or fails to make progress so as to endanger performance of this Contract;
- C. Abandons or refuses to proceed with any or all Work including modifications directed pursuant to the clause entitled "CHANGES"; or
- D. Fails to fulfill any of the material terms of this Contract.

25.2 Upon the occurrence of any of the foregoing, Town or its authorized representatives shall notify Construction Manager in writing of the nature of the failure and of Town's intention to either terminate the Contract for default, or to declare the Construction Manager to be in default and make demand upon its surety to perform, at its sole option.

25.3 If Construction Manager or its surety does not commence to cure such failure within ten (10) calendar days from receipt of notification, or sooner if consideration of safety to persons is involved, or if Construction Manager or its surety fails to provide satisfactory evidence that such default will be corrected, Town may, without additional notice to Construction Manager's surety, if any, terminate in whole or in part Construction Manager's right to proceed with Work by written notice and prosecute the Work to completion by contract or by any other method deemed expedient. Town may take possession of and utilize any materials, plant, tools, equipment, and property of any kind furnished by Construction Manager and necessary to complete the Work.

25.4 Construction Manager and its surety, if any, shall be liable jointly and severally for all costs in excess of the contract price for such terminated work reasonably and necessarily incurred in the completion of the Work as scheduled, including cost of administration of any contract awarded to others for completion and for liquidated damages.

25.5 Upon termination for default Construction Manager shall:

- A. immediately discontinue Work on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of Work terminated;
- B. inventory, maintain and turn over to Town all materials, plant, tools, equipment, and property furnished by Construction Manager or provided by Town for performance of Work;
- C. promptly obtain cancellation upon terms satisfactory to Town of all purchase orders, subcontracts, rentals, or any other agreements existing for performance of the terminated Work or assign those agreements to Town as directed;
- D. cooperate with Town in the transfer of information and disposition of Work in progress so as to mitigate damages;
- E. comply with other reasonable requests from Town regarding the terminated Work; and
- F. continue to perform in accordance with all of the terms and conditions of the Contract such portion of Work that is not terminated.

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

### GC 26 TERMINATION FOR CONVENIENCE

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

- A. Upon receipt of any such notice, Construction Manager and its surety shall, unless the notice requires otherwise:
  - 1. Immediately discontinue Work on the date and to the extent specified in the notice;
  - 2. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of Work under the Contract that is not terminated;
  - 3. Promptly make every reasonable effort to obtain cancellation upon terms satisfactory to Town of all orders and subcontracts to the extent they relate to the performance of Work terminated or assign to Town those orders and subcontracts and revoke agreements specified in such notice;
  - 4. The Construction Manager agrees to assign all subcontracts required for performance of this Contract to the Town;
  - 5. The Construction Manager shall include in all subcontracts, equipment leases and purchase orders, a provision requiring the subcontractor, equipment lessor or supplier, to consent to the assignment of their subcontract to the Town;
  - 6. Assist Town, as specifically requested in writing, in the maintenance, protection and disposition of property acquired by Town under the Contract; and
  - 7. Complete performance of any Work which is not terminated.
- B. Upon any such termination, Town will pay to Construction Manager an amount determined in accordance with the following (without duplication of any item):

- 1. All amounts due and not previously paid to Construction Manager for Work completed in accordance with the Contract prior to such notice, and for Work thereafter completed as specified in such notice.
- 2. The reasonable cost of demobilizing from the Project, along with the reasonable costs of settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in subparagraph A.3. above.
- 3. Any other reasonable costs which can be verified to directly result from such termination of Work.

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

26.3 Construction Manager shall submit, within thirty (30) days after receipt of notice of termination, a proposal for an adjustment to the contract price including all incurred costs described herein. Town shall review, analyze, and verify such proposal, and negotiate an equitable adjustment, and the Contract shall be amended in writing accordingly.

# GC 27 EXTENSION OF TIME/NO DAMAGES FOR DELAY

27.1 If the Construction Manager's performance of this Contract is delayed, which delay is beyond the reasonable control and without the fault or negligence of the Construction Manager or its subcontractors (which shall include but not be limited to delays resulting from unforeseeable supply chain disruption and/or unavailability of material or equipment that could not reasonable have been anticipated), or by changes ordered in the Work and in either event where such delay or change in the Work impacts the Critical Path, then the Contract time shall be extended by Change Order as determined by the Town.

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

- A. Nature of the delay or change in the Work;
- B. Dates of commencement/cessation of the delay or change in the Work, if known;
- C. Activities on the progress schedule current as of the time of the delay or change in the Work affected by the delay or change in the Work;
- D. Identification and demonstration that the delay or change in Work impacts the Critical Path (submittal of CPM schedule);
- E. Identification of the source of delay or change in the Work;
- F. Anticipated impact extent of the delay or change in the Work; and
- G. Recommended action to minimize the delay.

27.2.1 The Construction Manager acknowledges and agrees that the evaluation of time extensions will be based upon the following criteria:

- A. All schedule updates, submittals and other requirements of this General Condition have been met;
- B. The delay must be beyond the control of the Construction Manager and subcontractors and due to no direct or indirect fault of the Construction Manager;
- C. The delay which is the subject of the time extension must result in a direct delay to the Critical Path;
- D. The schedule must clearly display that the Construction Manager has used, in full, all the float time, except for Town initiated changes. Float time is not for the exclusive use of either the Construction Manager or the Town; and

E. If adverse weather conditions are the basis for a claim for additional time, such claim shall be submitted within thirty (30) days of occurrence and shall be documented to demonstrate that the requirements of GC Sections 27.7 or 27.8 below (as applicable) have been satisfied.

27.3 The Town's determination as to the total number of days of contract extension will be based upon the computer produced construction schedule current at the time of the delay event.

27.4 The Construction Manager shall not be entitled to any extension of time for delays resulting from any cause unless it shall have notified the Town in writing within seven (7) days after the commencement of such delay or knowledge of a potential delay.

27.5 Except as provided in Section 27.9 below, the Construction Manager shall not be entitled to and hereby waives, any and all damages which it may suffer by reason of Act of God, unforeseen condition, delay, acceleration, cardinal changes, loss of efficiency or any other impacts to the Work or time of performance and further. Other than the compensation provided in Section 27.9, below, Construction Manager hereby waives all damages which it may suffer by reason of these events, including, but not limited to lost profits, overhead (whether determined by the Eichleay Formula or otherwise), increased insurance costs, loss of bonding capacity or lost profits on alternate or unperformed contracts, supervision, or home office expense. Construction Manager hereby affirms that the extension of time granted herein and the amounts permitted by Section GC 27.9 below are the Construction Manager's sole and exclusive remedy. Apart from extension of time and the amounts provided in Section GC 27.9, no payment of claim for damages shall be made to the Construction Manager as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the Work whether such delay be avoidable or unavoidable.

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

27.7 Construction Manager has not included in its schedule delays arising out of adverse weather conditions, including Rain Days, inclement weather, or other weather-related delays beyond that set forth herein. A "Rain Day" is any day in which rain, adverse weather, an inclement weather event, or other weather-related delays occur at the site and is sufficient to prevent Contractor from performing critical path activities for at least four (4) consecutive hours. Accordingly, to the extent one (1) Rain Day occurs in a given week, Contractor shall not be able to claim additional time or costs. To the extent additional Rain Days beyond those thresholds occur in any given week, the additional Rain Day(s) shall constitute an adverse weather condition ("Adverse Weather") not reasonably anticipated, and Contractor shall be entitled to an equitable extension of the Contractor Time and an adjustment in the Contract Sum for a compensable delay as provided in this Section GC 27.

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

warning shall constitute a basis for a compensable delay for which the Contractor shall be entitled to an extension of the Contract Time and an adjustment in the Contract Sum as provided in this Section GC 27.

27.9 In the event Construction Manager establishes that the performance of this Contract was delayed in a manner that meets the conditions of GC Sections 27.1 and 27.2, and so long as Construction Manager also satisfies the notice and documentation requirements set forth therein, then in addition to an extension of the Contract Time, Construction Manager shall also be entitled to an adjustment of the Contract Sum. The Contract Sum shall be increased by an amount equal to the daily general conditions rates agreed to by the parties as part of the GMP Amendment multiplied by the number of days of delay (as determined above) plus any increased labor, material or equipment costs that are directly attributable to the delay, except to the extent that the Construction Manager has caused or contributed to the delay or has failed to take reasonable steps to mitigate the impacts (including costs) of the delay.

# GC 28 WARRANTY

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

28.2 Unless otherwise provided in the Contract, Construction Manager warrants all equipment, materials, and labor furnished or performed under this Contract, against defects in design, materials and workmanship for a period of twelve months (unless longer guarantees or warranties are provided for elsewhere in the Contract in which case the longer periods of time shall prevail) from and after substantial completion of the Work under the Contract, regardless of whether the same were furnished or performed by Construction Manager or by any of its subcontractors of any tier. In the event that the Town assumes partial utilization of portions of the Work prior to completion of all Work, the Warranty for that portion shall also extend for twelve months from substantial completion of that portion of the area, the warranty period shall extend for twelve months from substantial completion of the Work.

28.3 Upon receipt of written notice from the Town of any defect in any such equipment, materials, or labor during the applicable warranty period, due to defective design, materials or workmanship, the affected item or parts thereof shall be redesigned, repaired or replaced by Construction Manager at a time and in a manner acceptable to Town.

28.4 Pursuant to Section 558.005(1), Florida Statutes, Town and Construction Manager agree that the provisions Chapter 558, Florida Statutes (governing construction dispute resolution) shall not apply to this Contract. Disputes under this Contract shall be governed by GC 22, above.

28.5 Construction Manager warrants such repaired or replaced Work against defective design, materials and workmanship for a period of twelve (12) months from and after the date of acceptance thereof. Should Construction Manager fail to promptly make the necessary repair, replacement and tests, Town may perform or cause to be performed the same at Construction Manager's expense.

Construction Manager shall perform such tests as Town may require verification that such repairs and replacements comply with the requirements of this Contract. All costs incidental to such repair, replacement and testing, including the removal, replacement and reinstallation of equipment and materials necessary to gain access, shall be borne exclusively by Construction Manager.

28.6 The Construction Manager shall commence Work to remedy or replace the defective, deficient Work within five (5) calendar days after receiving written (including transmittals by email) notice from the Town. If the Construction Manager fails to remedy or remove or replace that Work or material which has been found to be defective, then the Town may remedy or replace the defective or deficient Work at the Construction Manager's expense; provided, however, all repairs to natural gas, telephone, radio, computer security, water, electric, air conditioning services and all emergency services shall be commenced within forty-eight (48) hours of notification,

and Construction Manager shall complete the repairs in an expeditious manner befitting the nature of the deficiency. The Construction Manager shall immediately pay the expenses incurred by the Town for remedying the defects. If the Town is not paid within ten (10) calendar days, the Town may pursue any and all legal or equitable remedies it may have against the Construction Manager.

28.7 The Construction Manager is required to provide a designated telephone number for elevator warranty related emergencies which occur outside the normal workday. The Construction Manager is solely responsible for ensuring that all warranty Work is completed in the manner described above. If the Village agrees, in writing, a subcontractor may be the point of contact for notices regarding warranty items, but such agreement shall not absolve the Construction Manager of its responsibility.

28.8 The terms of this section shall not modify, restrict or limit the Town's other available remedies or restrict, limit or be construed as the sole or exclusive remedy for defective performance or failure to meet Contract obligations. This section shall not relieve the Construction Manager of its responsibilities for the performance of the original work in accordance with the requirements of the Contract Documents and will not limit the Town's remedies at law, in equity or under Contract.

Additionally, the terms of a later signed manufacturer's warranty shall not modify or abridge the Construction Manager's warranties (express or implied), Construction Manager's performance, or Construction Manager's duties and liabilities under the Contract Documents and the warranties therein and shall not limit or restrict the Town's remedies or damages at law, in equity, or under contract.

28.9 Construction Manager and its surety shall be liable for the satisfaction and full performance of the Contract Documents and the warranties therein and any damage to other parts of the Work caused by the Construction Manager's failure to perform pursuant to the Contract Documents and this general condition.

28.10 The provisions of this section shall survive the termination or expiration of this Contract.

# GC 29 PATENT INDEMNITY

29.1 To the extent permitted by Section 725.06, Florida Statutes, Construction Manager hereby indemnifies and shall defend and hold Town and its representatives harmless from and against all claims, losses, costs, damages, and expenses, including attorney's fees, incurred by Town and its representatives, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent and arising out of the use of the equipment or materials furnished under the Contract by Construction Manager, or out of the processes or actions employed by, or on behalf of Construction Manager in connection with the performance of the Contract.

29.2 Construction Manager shall, at its sole expense, promptly defend against any such claim or action unless directed otherwise by Town or its representatives; provided that Town or its representatives shall have notified Construction Manager upon becoming aware of such claims or actions, and provided further that Construction Manager's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by Town or Town's representatives. Construction Manager shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials, or processes, or to modify such infringing equipment, materials and processes so they become non-infringing, or obtain the necessary licenses to use the infringing equipment, material or processes, provided that such substitute and modified equipment, materials and processes shall meet all the requirements and be subject to all the provisions of this Contract.

29.3 This section shall survive the termination or expiration of this Contract.

GC 30 INDEMNITY

30.1 Construction Manager shall indemnify and hold harmless the Town and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Construction Manager and persons employed or utilized by the Construction Manager in the performance of this Contract.

30.2 To the extent permitted by, and in accordance with Section 725.06, Florida Statutes, Construction Manager further agrees that "damages, losses and costs," includes fines, citations, court judgments, insurance claims, restoration costs or other liability, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Construction Manager and persons employed or utilized by the Construction Manager in the performance of this Contract.

30.3 To the extent permitted by, and in accordance with, Section 725.06, Florida Statutes, for purposes of indemnity, the "persons employed or utilized by the Construction Manager" shall be construed to include, but not be limited to, the Construction Manager, its staff, employees, subcontractors, all deliverers, suppliers, furnishers of materials or services or anyone acting for, on behalf of, or at the request of Construction Manager.

30.4 The indemnification provisions of this section shall survive termination or expiration of this Contract.

30.5 The Construction Manager's indemnity and hold harmless obligations hereunder shall extend to all claims against the Town by any third-party or third-party beneficiary of this Contract and all liabilities, damages, losses and costs related thereto.

30.6 If any provision(s), or portion(s) of a provision(s) of this Section or the application thereof to any person or circumstance shall, to any extent, be held to be invalid, illegal or unenforceable for any reason whatsoever: the validity, legality and enforceability of the remaining provision(s), or part of the provision(s), shall not in any way be affected or impaired thereby; and shall be interpreted to the fullest extent possible to be enforceable and to give effect to the intent manifested by the provision(s), or portion(s) thereof, held invalid, illegal or unenforceable.

# GC 31 INSURANCE

31.1 General Requirements. Unless otherwise specified in this Contract or approved by Town in writing, the Construction Manager shall, at its sole expense, maintain in full force and effect at all times during the life of this Contract or the performance of Work hereunder, insurance coverage as described herein at limits, including endorsements, set forth in the Insurance Coverage & Limit Table below. Construction Manager shall deliver to Town certificate(s) of insurance evidencing that such policies are in full force and effect, not later than fourteen (14) calendar days after receipt of Notification of Intent to Award, but in any event, prior to execution of the Contract by Town and prior to commencement of Work on the project. Such certificate(s) shall adhere in every respect to the conditions set forth herein.

The requirement contained herein as to types and limits, as well as Town's approval of insurance coverage to be maintained by Construction Manager are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Construction Manager under the Contract.

31.2 Commercial General Liability. Construction Manager shall agree to maintain a standard ISO version Commercial General Liability policy form, or its equivalent providing coverage for, but not be limited to, Bodily Injury and Property Damage, Premises/Operations, Products/Completed Operations, Independent Contractors, Contractual Liability, Broad Form Property Damage, X-C-U Coverages (if applicable), Severability of Interest including Cross Liability, and be in accordance with all of the limits, terms and conditions set forth herein. Construction Manager agrees this coverage shall be provided on a primary basis.

31.3 Business Automobile Liability. Construction Manager shall agree to maintain a standard ISO version Business Automobile Liability coverage form, or its equivalent, providing coverage for all owned, non-owned and

hired automobiles, and in accordance with all of the limits, terms and conditions set forth herein. Construction Manager agrees this coverage shall be provided on a primary basis. Notwithstanding the foregoing, should the Construction Manager not own any automobiles, the business auto liability requirement shall be amended to allow the Construction Manager to agree to maintain only Hired & Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form.

31.4 Worker's Compensation & Employer's Liability. Construction Manager shall agree to maintain Worker's Compensation Insurance & Employers Liability, including Federal Act endorsement for U.S. Longshoremen's and Harbor Workers Act when any Work is on or contiguous to navigable bodies of U.S. waterways and ways adjoining, covering all of its employees on the work site. This coverage shall be in accordance with all of the limits, terms and conditions set forth herein. Exemptions for a contractor in or doing work in the Construction Industry, or proof of worker's compensation coverage provided by an employee leasing arrangement shall not satisfy this requirement. If any Work is sublet, Construction Manager shall require all subcontractors to similarly comply with this requirement unless such subcontractors' employees are covered by Construction Manager's Worker's Compensation insurance policy. Construction Manager agrees this coverage shall be provided on a primary basis.

31.5 Additional Required Insurance. The Construction Manager shall agree to maintain the following additional required insurance coverages with respect to any Work involving property, operations, or type of equipment for which each insurance coverage described below have been designed specifically to provide coverage for:

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

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

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

The Construction Manager shall be responsible for policy deductibles, coinsurance penalty, or self- insured retention including any loss not covered because of the operation of such deductible, coinsurance penalty, self-insured retention, or coverage exclusion or limitation on all perils with the exception of projects with a value of less than \$2,000,000, the Town will be responsible for the deductible (up to \$25,000) for losses of any Act of God.

31.6 Satisfying Limits under an Umbrella Policy. If necessary, the Construction Manager may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability

coverage under an Umbrella or Excess Liability. The underlying limits may be set at the minimum amounts required by the Umbrella or Excess Liability provided the combined limits meet at least the minimum limit for each required policy. The Umbrella or Excess Liability shall have an Annual Aggregate at a limit not less than two (2) times the highest per occurrence minimum limit required above for any of the required coverages. The Town shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Umbrella or Excess Liability provides continuous coverage to the underlying policies on a complete "Follow-Form" basis without exceptions and stated as such on the Certificate of Insurance.

31.7 Additional Insured. The Construction Manager agrees to endorse the Town and the Architect/Engineer as an Additional Insured on each insurance policies required to be maintained by the Construction Manager, except for Worker's Compensation and Business Auto Liability. The CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, shall be endorsed to the Commercial General Liability. Other policies, when required, such as for pollution, builder's risk, or transit insurance, shall provide a standard Additional Insured endorsement offered by the insurer providing coverage with respect to liability arising out of the operations of the Construction Manager. The endorsement shall read "Town of Highland Beach". The Construction Manager shall agree the Additional Insured endorsements provide coverage on a primary basis. Endorsement shall be in accordance with all of the limits, terms and conditions set forth herein.

31.8 Loss Payee. The Construction Manager shall agree to endorse the Town as a Loss Payee on the Builder's Risk Insurance, when required to be maintained by the Construction Manager. The Loss Payee endorsement shall read "Town of Highland Beach". Endorsement shall be in accordance with all of the limits, terms and conditions set forth herein. The Construction Manager shall agree the Loss Payee endorsement provides coverage on a primary basis.

31.9 Waiver of Subrogation. The Construction Manager agrees by entering into this Contract to a Waiver of Subrogation for each required policy (providing coverage during the life of this Contract. When required by the insurer or should a policy condition not permit an Insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then the Construction Manager shall agree to notify the respective insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should the insured enter into such an agreement on a pre-loss basis. The Waiver of Subrogation shall be in accordance with all of the limits, terms and conditions set forth herein (or applicable).

31.10 Right to Review & Adjust. The Construction Manager shall agree, notwithstanding the foregoing, that the Town reserves the right to periodically review, reject or accept all required policies of insurance, including limits, coverages, or endorsements, hereunder from time to time throughout the life of this Contract. Furthermore, the Town reserves the right to review and reject any insurer providing coverage because of poor financial condition or because it is not operating legally. In such event, Town shall provide Construction Manager written notice of such adjusted limits, and Construction Manager shall agree to comply within thirty (30) days of receipt thereof and to be responsible for any premium revisions as a result of any such reasonable adjustment.

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

31.12 Certificate of Insurance. Certificates of Insurance must provide clear evidence that Construction Manager's Insurance Policies contain the minimum limits of coverage and terms and conditions set forth herein. A minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage shall be identified on the certificate.

In the event the Town is notified that a required insurance coverage will cancel or non-renewed during the period of this Contract, the Construction Manager shall agree to furnish at least thirty (30) days prior to the expiration of such insurance, an additional certificate of insurance as proof that equal and like coverage for the balance of the period of the Contract and any extension thereof is in effect. Construction Manager shall agree not continue to work pursuant to this Contract unless all required insurance remains in effect. The Town shall have the right, but not the obligation, of prohibiting Construction Manager or any subcontractor from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and accepted by the Town. The Town reserves the right to withhold payment, but not the obligation, to Construction Manager until coverage is reinstated. If the Construction Manager fails to maintain the insurance as set forth herein, the Town shall have the right, but not the obligation, to purchase said insurance at Construction Manager's expense.

# ADDITIONAL REQUIREMENTS FOR CERTIFICATES OF INSURANCE

- 1. Shall clearly identify the Town of Highland Beach, a municipal corporation organized and existing under the laws of the State of Florida, its officers, agents and employees as Additional Insured for all required insurance coverages, except Workers Compensation and Business Auto Liability.
- 2. Shall clearly indicate Project name and Project Task Order Number to which it applies.
- 3. Shall clearly indicate a minimum thirty (30) day endeavor to notify requirement in the event of cancellation or non-renewal of coverage, ten (10) day for non-payment.
- 4. Evidence of renewal coverage must be provided at least thirty (30) days in advance of any policy that may expire during the term of this Contract.
- 5. Shall clearly identify the Town of Highland Beach endorsed as a Loss Payee on the Builder's Risk and any Inland Marine coverages.
- 6. Construction Manager shall provide a certificate of insurance with respect to each required policy to be provided under this Section. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate. Certificates need to show the following as Certificate Holder.

Town of Highland Beach 3614 South Ocean Boulevard Highland Beach, FL 33487-3393

7. Construction Manager shall deliver original Certificate(s) of Insurance to the following:

Town of Highland Beach c/o Lanelda Gaskins, Town Clerk 3614 South Ocean Boulevard Highland Beach, FL 33487-3393

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

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

31.14 Subcontractor's Insurance. The Construction Manager shall agree to cause each subcontractor employed by Construction Manager to purchase and maintain insurance of the type specified herein, (except for Builder's Risk

and pollution liability, both of which shall be the responsibility of the Construction Manager only) unless the Construction Manager's insurance provides coverage on behalf of the subcontractor. When requested by the Town, the Construction Manager shall agree to obtain and furnish copies of certificates of insurance evidencing coverage for each subcontractor.

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

INSURANCE COVERAGE & LIMIT TABLE	
TYPE OF COVERAGE	COVERAGE AMOUNTS
COMMERCIAL GENERAL LIABILITY: Limit of Liability not less than:	\$2,000,000 per occurrence
Additional Insured endorsement required:	Yes
COMPREHENSIVE AUTO LIABILITY:         Limit of Liability not less than:         WORKERS COMPENSATION & EMPLOYER'S	\$1,000,000 per occurrence
LIABILITY: Coverage not less than:	Statutory
Employers Liability Limits:	\$100/500/100
AUTOMOBILE LIABILITY:	\$1,000,000
Limit of Liability not less than:	per occurrence
Additional Insured endorsement required:	Yes
UMBRELLA / EXCESS LIABILITY:	\$1,000,000
Limit of Liability not less than:	per occurrence
General Aggregate	\$5,000,000
Additional Insured endorsement required:	Yes
BUILDER'S RISK (if provided by CM): Limit not less than:	100% of the completed total insurable value of the Project.
Endorsement to waive coverage termination from Occupancy Clause.	Yes
Endorsement cover until final acceptance of the Project by Certificate of Occupancy by the Town.	Yes
Additional Insured & Loss Payee endorsements required:	Yes
POLLUTION LIABILITY: Limit not less than:	\$1,000,000
Limit not less than:	per occurrence

INSURANCE COVERAGE & LIMIT TABLE	
General Aggregate	\$2,000,000
Additional Insured endorsements required:	Yes

#### GC 32 SITE CONDITIONS

32.1 Construction Manager shall have the sole responsibility of satisfying itself concerning the nature and location of Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials; availability, quantity and quality of labor; familiarity with local and regional market and industry conditions including labor skill level and availability, water and electric power; availability and condition of roads; climatic conditions, location of underground utilities as depicted on Construction Documents, and through verification with local utility companies and the Town, physical conditions of existing construction, topography and ground surface conditions; to the extent identified in the Project Geotechnical Study and Report, Environmental Study and Report, or other documentation actually provided to the Construction Manager, subsurface geology, and nature and quantity of surface and subsurface materials to be encountered; the nature of the ground water conditions; equipment and facilities needed preliminary to and during performance of the Contract; and all other matters which can in any way affect performance of the Contract, or the cost associated with such performance. The failure of Construction Manager to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully and timely performing the Contract. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Construction Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Construction Documents, then notice shall be given to the Town promptly before conditions are disturbed. Should it be determined that such conditions exist and if they differ materially and cause an increase or decrease in the cost of the work, the CM will receive an equitable adjustment in the GMP or Contract time, or both in accordance with GC 65.

#### GC 33 NOT USED

#### GC 34 ACCESS TO WORK AREAS

34.1 Town, and its duly authorized representatives and employees, and all duly authorized representatives of governmental agencies having jurisdiction over work areas or any part thereof shall, at all reasonable times, for the purpose of determining compliance with Contract requirements and permits, have access to such areas and the premises used by Construction Manager. Construction Manager shall also arrange for Town, its said representatives and employees, to have access at all reasonable times to all places where equipment or materials are being manufactured, produced, or fabricated for use under the Contract.

34.2 Construction Manager's accesses to the site and storage areas shall be as shown on the plans and as designated by the Town. Access routes may also be used by Town employees, the public and other Construction Managers. No other access points shall be allowed unless approved by the Town. All Construction Manager traffic authorized to enter the site shall be experienced in the route or guided by Construction Manager personnel. The Construction Manager is responsible for immediate cleanup of any debris deposited along the access route as a result of its construction traffic.

#### GC 35 INGRESS AND EGRESS

35.1 Construction Manager's access to the work area will be permitted only through approaches which will be designated by Town, and then only in such manner that Construction Manager's traffic will not interfere with Town's operations. Construction Manager shall, at all times, maintain free unimpeded ingress and egress at the site. Construction Manager personnel are not to enter into any areas of the jobsite other than work areas and areas of designated access.

# GC 36 NOT USED

# GC 37 MEETINGS

37.1 During both the Pre-Construction and Construction Phases of the Project, the Construction Manager shall, at its expense, and at intervals mutually agreed upon by Construction Manager and Town, attend meetings called by Town to discuss the Work under the Contract. Such meetings shall be conducted and recorded by the Town with typed minutes of each meeting distributed to all attendees.

# GC 38 NOT USED

### GC 39 DELIVERY, UNLOADING AND STORAGE

39.1 Construction Manager shall, at its expense, receive, unload, store in a secure place, and deliver from storage to the construction site all materials, plant and equipment required for the performance of the Contract. The storage facilities, methods of storing and security provisions shall meet Town's approval and manufacturer's recommendations. Materials and equipment subject to degradation by outside exposure shall be stored in a weather tight enclosure provided by Construction Manager at its expense.

### GC 40 WORK AREA

40.1 All Construction Manager's work areas on the jobsite will be assigned by Town. Construction Manager shall confine its office, shops, storage, assembly and equipment and vehicle parking to the areas so assigned. Before commencing Work, the Construction Manager shall provide a temporary office on the site of the work, which shall have a telephone where a representative of the Construction Manager may be reached at all times during normal working hours. Should Construction Manager find it necessary or advantageous to use any additional land outside the Project site for any purpose whatever, Construction Manager shall, at its expense, provide and make its own arrangements for the use of such additional land.

### GC 41 PLANT, EQUIPMENT AND FACILITIES

41.1 Construction Manager shall provide and use on any Work only such construction plant and equipment as are capable of producing the quality and quantity of Work and materials required by the Contract and within the time or times specified in the Contract. Before proceeding with any Contract Work or with erection of any facilities, including but not limited to temporary structures, machinery, equipment, offices and warehouses, Construction Manager shall furnish Town such information and drawings relative to such equipment, plant facilities as Town may request.

41.2 Upon written order of Town, Construction Manager shall discontinue operation of unsatisfactory plant and equipment or facilities and shall either modify or remove the unsatisfactory items from the site. Construction Manager shall not remove construction plant or equipment from the site before the Work is finally accepted without Town's written approval. Such approval shall not be unreasonably withheld.

### GC 42 CONSTRUCTION MANAGER-FURNISHED MATERIALS, EQUIPMENT AND WORKMANSHIP

42.1 Only new, unused items of recent manufacture, of designated quality, but in no event less than the standard quality for the improvements, free from defects, will be accepted. Rejected items shall be removed immediately from

the Work and replaced with items of specified quality. Failure by Town to order removal of rejected materials and equipment shall not relieve Construction Manager from responsibility for quality of the materials supplied or from any other obligation under the Contract.

42.2 Construction Manager shall continuously check architectural and structural clearances for accessibility of equipment and mechanical and electrical systems. No allowance of any kind will be made for Construction Manager's negligence to foresee means of installing equipment into position inside structures.

42.3 No Work defective in construction or quality, or deficient in meeting any requirement of the Contract drawings and specifications will be acceptable regardless of Town's failure to discover or to point out defects or deficiencies during construction; nor will the presence of field representatives at the Work or the satisfaction of the Work meeting applicable code requirements relieve Construction Manager from responsibility for the quality and securing progress of Work as required by the Contract. The Town shall notify the Construction Manager of defective or unacceptable work if the Town discovers such. Defective work revealed within the time required by warranties (whether expressed or implied) shall be remedied in accordance with the GENERAL CONDITIONS Section entitled, "WARRANTY". No payment, whether partial or final, shall be construed as an acceptance of defective work or improper materials.

42.4 Construction Manager shall waive "common practice" and "common usage" as construction criteria wherever details and specifications or governing codes and ordinances require greater quantity or better quality than common practices and common usage would require. Construction Manager shall order and schedule delivery of materials in reasonable time to avoid delays in construction. Delays in delivery of equipment or material purchased by the Construction Manager or its subcontractors shall not be considered as a cause for an adjustment of the Contract Time or a basis for damages or compensation unless the equipment or material was timely ordered by Construction Manager or its subcontractors and the delay was beyond that which could reasonably have been anticipated. The Construction Manager shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials. If an item is found to be unavailable, Construction Manager shall notify Town immediately of recommended substitutes to permit Town's selection of a suitable substitute.

42.5 Town will exercise sole authority for determining conformance of workmanship, materials, equipment and systems with the requirements of the Contract. Review and approval of all items proposed by Construction Manager for incorporation into the Work will be by Town. This function by Town will apply both to approvals for the Contract as initially signed, and to approvals for changes to the Contract by modifications during progress of the Work. Reference to manufacturers' names, brands and models is to establish the type and quality desired. Substitutions may be permitted unless specifically noted otherwise and in accordance with GC 43 below.

42.6 When materials, equipment, or systems are specified by performance only, without reference to specific manufacturer's brands or models, Construction Manager shall submit its own choice for Town's review and approval, supported by sufficient evidence of conformity with the Contract.

# GC 43 SUBSTITUTIONS

43.1 Prior to proposing any substitute item, Construction Manager shall satisfy itself that the item proposed is, in fact, equal or better to that specified, that such item will fit into the space allocated, that such item affords comparable ease of operation, maintenance and service, that the appearance, longevity and suitability for the climate are comparable, and that by reason of cost savings, reduced construction time, or similar demonstrable benefit, the substitution of such item will be in Town's interest, and will in no way impact detrimentally upon the Project completion date and schedule.

43.2 The burden of proof of equality of a proposed substitution for a specified item shall be upon Construction Manager. Construction Manager shall support its request with sufficient test data and other means to permit Town to

make a fair and equitable decision on the merits of the proposal. Construction Manager shall submit drawings, samples, data and certificates and additional information as may be required by the Town for proposed substitute items as required by GC 46 "DRAWINGS, DATA & SAMPLES".

43.3 Any item by a manufacturer other than those specified or of brand name or model number or of generic species other than those specified will be considered a substitution. Town will be the sole judge of whether the substitution is equal in quality, utility and economy to that specified. Construction Manager shall allow an additional 15 days for Town's review of substitution. All requests for substitutions with submittal data must be made at least fifty (50) days prior to the time Construction Manager must order, purchase or release for manufacture or fabrication. Materials and methods proposed as substitutions for specified items shall be supported by certification of their approval for use by all governmental agencies having jurisdiction over use of specific material or method. Substitutions may not be permitted in those instances where the products are designed to match artistic design, specific function or economy of maintenance. Approval of a substitution shall not relieve Construction Manager from responsibility for compliance with all requirements of the Contract. Construction Manager shall coordinate the change with all trades and bear the expense for any changes in other parts of the Work caused by any substitutions.

43.4 If Town rejects Construction Manager's substitute item on the first submittal, Construction Manager may make only one additional request for substitution in the same category. On the second request, and all future requests, the Construction Manager shall be invoiced the expenses (including Town and Architect costs and overhead) involved in reviewing submittal data.

### GC 44 <u>EXPEDITING</u>

44.1 The equipment and material furnished under this Contract may be subject to expediting by Town. Town shall be allowed reasonable access to the shops, factories, and other places of business of the Construction Manager and its subcontractors and suppliers, for expediting purposes. As required by Town, Construction Manager shall supply schedules and progress reports for Town's use in expediting and Construction Manager shall cooperate with Town and require its subcontractors and suppliers to cooperate with Town in such expediting. So long as Construction Manager's work at the time of expediting request is in accordance with the timing requirements of the Project schedule, all expenses associated with expediting shall be the responsibility of the Town and the Contract Sum shall be increased to cover such expenses. Any expediting performed by Town shall not relieve Construction Manager of its sole and primary responsibility for timeliness of delivery of the equipment and material to be furnished under this Contract.

### GC 45 FIELD LAYOUT OF WORK

45.1 All Work under this Contract shall be constructed in accordance with the lines and grades shown on the Construction Drawings or as approved by the Town in writing. Elevation of existing ground, structures and appurtenances are believed to be reasonably correct but are not guaranteed to be absolute and therefore are presented only as an approximation.

45.2 All survey work for construction control purposes shall be made by a land surveyor registered in the State of Florida with demonstrated experience in the Project area who shall be employed by the Construction Manager at its expense. The Construction Manager shall establish all base lines for the location of the principal component parts of the Work together with permanent benchmarks and temporary benchmarks adjacent to the Work. Based upon the information provided by the Construction Drawings, the Construction Manager shall develop and make all detail surveys necessary for construction including establishment or construction of grid coordinates as shown on the Construction Drawings, location of property boundaries, stakes for all working points, lines and elevations. Construction Manager shall furnish survey sketch and legal necessary for utility easements.

45.3 The Construction Manager shall have the responsibility to carefully preserve all benchmarks, reference points and stakes. In case of destruction thereof by the Construction Manager resulting from its negligence, or for any other reason, CM shall be held liable for any expense and damage resulting therefrom and shall be responsible for any mistakes that may be caused by the unnecessary loss or disturbance of such benchmarks, reference points and stakes. Existing or new control points, property markers, and monuments that will be established or are destroyed during the normal course of construction shall be re-established by the Construction Manager, and all reference ties recorded therefore shall be furnished to the Town. All computations necessary to establish the exact position of the Work shall be made and preserved by the Construction Manager.

#### GC 46 DRAWINGS, DATA AND SAMPLES

46.1 Review and permission to proceed by Town as stated in this Contract does not constitute acceptance or approval of design details, calculations, analyses, test methods, certificates or materials developed or selected by the Construction Manager and does not relieve Construction Manager from full compliance with contractual obligations. Drawings, samples, catalogues, data and certificates required to be submitted to the Town for review, shall be submitted attached to forms provided by Town.

46.2 Transmittals from the Construction Manager to the Town shall be numbered sequentially and the submittal number shall be referenced. Submittal drawings (shop, erection or setting diagrams) and schedules, required for work of various trades, shall be checked before submission by technically qualified employees of Construction Manager for accuracy, completeness and compliance with contract requirements. These drawings and schedules shall be stamped and signed by Construction Manager certifying to such check. The certification stamp shall read as follows:

"I certify that I have checked this submittal for accuracy, completeness and compliance with contract requirements, and it has been coordinated with all other submittals and the Contract."

SIGN

DATE

"XYZ Construction Management Company"

### 46.3 Drawings

46.3.1 Where drawings are required for (a) fabrication of Construction Manager furnished equipment; (b) installing Construction Manager furnished material or equipment; or (c) planning and performance of the Work under Contract; such drawings shall be originally generated and submitted by the Construction Manager at its expense before fabrication, installation or performance is commenced. Each submittal shall be made not less than thirty-five (35) calendar days prior to the time that the drawings are required in accordance with the schedule. CM must allow at least twenty-one (21) calendar days for review by Town. Such drawings shall include, but not be limited to, matchmarks, erection diagrams and other details, such as field connections for proper installation, erection of the equipment, and performance of the Work. Construction Manager shall prepare and submit for approval a detailed submittal schedule outlining the required submittals for the Project, the submittal dates due and review durations by the Town/ Architect/Engineer. This schedule shall be incorporated into the Master Project Schedule and updated regularly with the Project Schedule Updates

46.3.2 For drawings greater in size than 11" x 17", one reproducible and four copies shall be submitted to the Town by and at the expense of the Construction Manager. The Town will be the sole judge of the adequacy of the quality of the reproducible and prints and may reject reproducibles and/or prints on the basis

of quality alone. Such drawings will not be folded but will be transmitted in mailer rolls manufactured expressly for that purpose. The reproducible with the Town's review comments will be returned to the Construction Manager. A reproducible copy of drawings equal to or less than 11" x 17" is not necessary, but five copies of the unfolded drawings must be transmitted to the Town.

46.3.3 If drawings show variations from the Contract requirements, the Construction Manager shall describe such variations in writing, separate from the drawings, at the time of submission. If the Town approves any such variation(s), it will issue an appropriate contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

46.3.4 Drawings of a specific piece of equipment shall identify components with the manufacturer's part number or reference drawing clearly indicated. If reference drawing numbers are used, the review date of such drawings shall be included. Drawings shall indicate design dimensions, maximum and minimum allowable operating tolerances on all major wear fits, i.e. - rotating, reciprocating or intermittent sliding fits between shafts or stems and seals, guides and pivot pins. The sequence of submission of all drawings shall be such that all information is available for reviewing each drawing when it is received.

46.3.5 All drawings submitted by the Construction Manager shall be certified and dated by the Construction Manager on the face of each drawing to be correct, accurate and shall be furnished in accordance with requirements of the specifications. Town will conduct a review of Construction Manager's drawings and a drawing marked with one of the following review comments will be returned to the Construction Manager.

- 1. No exceptions taken.
- 2. Make corrections noted. No re-submittal.
- 3. Make corrections noted. Resubmit.
- 4. Rejected.
- 5. Not required for review.

46.3.6 The Construction Manager must incorporate the changes indicated, resubmit and obtain a Code 1 or 2 notation before release for shipment can be granted.

#### 46.4 Samples

46.4.1 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. Samples of all items of related systems (i.e., adjacent surfaces requiring similar colors but manufactured of different materials) must be submitted in the same time frame before the approval process can begin.

46.4.2 Where samples are required, they shall be submitted by and at the expense of the Construction Manager. Such submittal shall be made not less than thirty-five (35) calendar days prior to the time that the materials represented by such samples need to be ordered for incorporation into any Work in accordance with the schedule. CM must allow at least twenty-one (21) calendar days for Town's review. Materials represented by such samples shall not be manufactured, delivered to the site or incorporated into any Work without such review. Each sample shall bear a label showing the Construction Manager's name, date submitted, project name, name of the item, manufacturer's name, brand name, model number, supplier's name, and reference to the appropriate drawing, technical specification section and paragraph number, all as applicable.

46.4.3 Samples which have been reviewed may, at Town's option, be returned to the Construction Manager for incorporation into the Work.

46.5 Catalogues, Data and Certificates

46.5.1 Where catalogues, data or certificates are required, electronic copies of each shall be submitted by and at the expense of the Construction Manager. Such submittal shall be made not less than thirty-five (35) calendar days prior to the time that the materials represented by such catalogues, data or certificates must be ordered for incorporation into any Work in accordance with the CPM schedule. Allow at least twenty-one (21) calendar days for Town's review. Material represented by such shall not be fabricated, delivered to the site or incorporated into any work without such review.

46.5.2 Certificates shall clearly identify the material being certified and shall include but not be limited to providing the following information: Construction Manager's name, project name, name of the item, manufacturer's name, and reference to the appropriate drawing, technical specification section and paragraph number all as applicable. All catalogues, data and certificates submitted by the Construction Manager shall be certified and dated by the Construction Manager on the face of each catalogue, data and certificate to be correct and shall be furnished in accordance with these requirements and the requirements of the technical specification, on forms provided by the Town. Town will conduct a review of Construction Manager's catalogues, data, and certificates and one copy, marked with the review comments listed above, will be returned to the Construction Manager.

### GC 47 CONSTRUCTION SCHEDULE

47.1 Within thirty (30) days after the date of the GMP Amendment approval by the Town, the Construction Manager shall prepare and submit a construction schedule which graphically depicts the activities contemplated to occur as a necessary incident to performance of the Work required to complete the Project, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity.

47.1.1 The construction schedule shall be complete in all respects, covering, in addition to activities and interfaces with other Construction Managers at the site of work, offsite activities such as design, fabrication, an allowance for weather delays (as provided below and in GC 27), submittals, procurement and jobsite delivery of Construction Manager furnished material and equipment. The schedule shall be a Critical Path Method (CPM) type network drawn to a time scale using arrow or precedence type diagramming. The construction schedule activities shall mirror the payment application breakdown.

47.1.2 The construction schedule shall include the following:

- 1. Brief description of each activity.
- 2. All submittals, samples, approvals, fabrication, and deliveries for equipment and materials. Allow no more than 60 days float between submittal approval and beginning of fabrication.
- 3. Activities showing scheduled start and finish, late start and finish, and float.
- 4. Relations between activities.
- 5. Duration of activities. No activity should be scheduled for more than 20 workdays, unless approved by Town.
- 6. Contractual and other major milestones including phasing.
- 7. Schedule activities to include assigned labor group
- 8. Adverse Weather delays, but only to the extent provided in Section GC 27.7. Contract time extensions for weather delays will be granted only when all of the conditions and criteria for evaluation of time extensions have been met pursuant to the General Conditions.
- 9. Town activities or activities by others which will affect the work schedule.

47.1.3 Upon acceptance of the original CPM Schedule, the Early Start and Early Finish dates for all activities shall be fixed as Planned Start and Planned Finish dates. Any further revisions to the schedule must be submitted in writing and approved by the Town.

47.1.4 The detailed CPM schedule submittal shall include electronic color copies of the following:

- 1. Time Scaled Network Diagram.
- 2. Bar Chart in the following formats:
  - a. Sorted by activity
  - b. Sorted by total float
  - c. Sorted by early start
- 3. Predecessor and Successor report
- 4. Narrative report, if requested by Town's Authorized Representative.
- 5. Electronic copy. (One copy)

6. Submittals shall be organized under Standard CSI format if requested in writing by the Town's Authorized Representative.

47.1.5 The detailed CPM Schedule shall be updated monthly and submitted along with the Application for Payment. Construction Manager shall meet with the Town and Architect/Engineer of Record to review and verify:

- 1. Actual start and finish dates for completed activities.
- 2. Remaining duration required to complete each activity started, scheduled to start, but not completed.
- 3. Logic and time, for change orders that are to be incorporated into the diagram and computer produced schedules.
- 4. Percentage for completed and partially completed activities.

47.2 Following development and submittal of the construction schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the subject Project, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or will affect the progress of the performance of the Work yet to be performed in contrast with the planned progress of performance of such Work, as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision.

47.3 The Construction Manager shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules:

1. Pre-Bid Schedules (Subnetwork) - The Construction Manager shall prepare a construction schedule for work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for contract completion by the successful bidder. It shall show the interrelationships between the work of the successful bidder and that of other subcontractors, and shall establish milestones eyed to the overall master schedule.

2. Subcontractor Construction (Subnetworks) - Upon the award of each subcontract, the Construction Manager shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, shop drawing schedules and material delivery schedules.

3. Occupancy Schedule - The Construction Manager shall jointly develop with the Architect-Engineer and Town a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Town occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Town occupancy.

47.4 If requested by Town's authorized representative, the Construction Manager shall submit a written narrative report as a part of its monthly review and update in a form agreed upon by the Construction Manager and the Town. When requested, the narrative report shall include a description of problem areas; current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates; and an explanation of corrective action taken or proposed.

47.5 The Construction Manager shall have in its employ for the length of this Project, at least one qualified scheduling specialist whose responsibility as to this Contract will be to prepare, plan and draft the construction schedules, monitor the construction progress, analyze scheduling problems for resolution, update the Construction Schedule as required in the Contract, and maintain updated information as required regarding the interface with other contracts.

47.6 The Construction Manager agrees that whenever it becomes apparent from the current progress review meeting or the computer produced calendar dated schedule that the contract completion date will not be met as a result of Contractor's failure to perform in accordance with the requirements of the Contract Documents, the Construction Manager shall execute some or all of the following remedial actions at Construction Manager's sole cost and expense:

- 1. Increase construction manpower in such quantities and crafts as necessary to eliminate the backlog of Work.
- 2. Increase the number of working hours per shift, shifts per working day, working days per week, the amount of construction equipment, or any combination of the foregoing to eliminate the backlog of Work.
- 3. Reschedule the Work in conformance with the specification requirements.

47.7 Prior to proceeding with any of the above actions, the Construction Manager shall notify the Town of the proposed schedule changes. Such actions shall be incorporated by the Construction Manager into the diagram before the next update, at no additional cost.

# GC 48 RESPONSIBILITY FOR WORK SECURITY

48.1 Construction Manager shall, at its expense, at all times conduct all operations under the Contract in a reasonable manner to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any property. Construction Manager shall promptly take all reasonable precautions which are necessary and adequate against any conditions which involve a risk of loss, theft or damage to its property, at a minimum. Construction Manager shall continuously inspect all its Work, materials, equipment and facilities to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such condition.

48.2 Construction Manager shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall furnish these reports to Town within three days of each incident.

# GC 49 PROTECTION OF WORK IN PROGRESS, MATERIALS AND EQUIPMENT

49.1 Construction Manager shall be responsible for and shall bear any and all risk of loss or damage to Work in progress, all materials delivered to the site, and all materials and equipment involved in the Work until completion

and final acceptance of the Work under this Contract. Excluded from Construction Manager's responsibility is a) any loss or damage which results from the sole active negligence of the Town or its representatives; and b) damage to any portions of the Project of which the parties have agreed the Town will take beneficial occupancy and put to its intended use.

49.2 Permanent openings or thoroughfares for the introduction of Work and materials to the structure and construction site shall be protected so that upon completion, the entire Work will be delivered to the Town in proper, whole and unblemished condition.

### GC 50 PROTECTION OF EXISTING PROPERTY

50.1 Construction Manager shall so conduct its operations as not to damage, close, or obstruct any utility installation, highway, road or other property until permits therefore have been obtained. If facilities are closed, obstructed, damaged or rendered unsafe by Construction Manager's operations, Construction Manager shall, at its expense, make such repairs and provide temporary guards, lights and other signals as necessary or required for safety and as will be acceptable to Town and/or its Insurance Representative.

50.2 Construction Manager shall conduct its operation so as not to damage any existing buildings or structures. The Construction Manager shall verify that means and methods of construction used inside, adjacent to, under or over existing buildings will not cause damage. The Construction Manager shall provide protection methods which are acceptable to the Town and/or its insurance representatives.

50.3 Unless otherwise specifically provided in the Contract, Construction Manager shall not do any Work that would disrupt or otherwise interfere with the operation of any pipeline, telephone, electric, radio, gas, transmission line, ditch or other structure, nor enter upon lands in their natural state until approved by Town. Thereafter, and before it begins such Work, Construction Manager shall give due notice to Town of its intention to start such Work. Should Construction Manager fail to provide said notice, Construction Manager shall not be entitled to any extension of time or any extra compensation on account of any postponement, interference or delay caused by any such line, ditch or structure on or adjacent to the site of Work.

50.4 Construction Manager shall preserve and protect all cultivated and planted areas and vegetation such as trees, plants, shrubs and grass on or adjacent to the premises, which, as determined by Town, do not reasonably interfere with the performance of this Contract.

50.5 Construction Manager shall be responsible for damage to any such areas and vegetation and for unauthorized cutting of trees and vegetation, including, without limitation, damage arising from the performance of its Work through operation of equipment or stockpiling of materials. All cost in connection with any repairs or restoration necessary or required by reason of any such damage or unauthorized cutting shall be borne by Construction Manager.

### GC 51 LABOR

51.1 Construction Manager is solely and exclusively responsible for the supervision and control of all Construction Manager's personnel on site. Construction Manager shall employ only competent and skilled personnel to perform the Work. Construction Manager shall, if requested to do so by Town, remove from the jobsite any personnel of Construction Manager working in violation of any provision of this Contract.

51.2 Disputes between the Construction Manager and its subcontractors regarding work assignments and the settlement of jurisdictional disputes shall conform with either the "Rules, Regulations and Procedures of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry", and any successor agreement thereto, or any other mutually established method of determining work assignments and settling jurisdictional disputes.

51.3 Construction Manager is solely and exclusively responsible for ensuring and providing for jobsite safety and conditions. Construction Manager shall enforce all Town jobsite condition safety rules and regulations which directly affect the performance of the Work including but not limited to starting and quitting time, smoking regulations, check-in and check-out procedures, job site safety regulations and security regulations, emergency plans and procedures, and daily clean- up.

51.4 The Construction Manager and subcontractors shall be bound by and comply with all Federal, State and local laws with regard to minimum wages, overtime work, hiring, and discrimination. All Work necessary to be performed after regular working hours, on Sundays or legal holidays, shall be performed without additional expense to the Town. The Construction Manager shall comply with the Copeland Anti-Kick Back Act (19 U.S.C. 874) as supplemented in the Department of Labor Regulations (29 CFR Part 3). This act provides that each contractor or subcontractor shall be prohibited from inducing by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

51.5 Construction Manager shall submit a "Contractor's Daily Report" (See Appendix A of these General Conditions) for each day Work is accomplished. Reports shall be submitted daily to Town.

# GC 52 EQUAL EMPLOYMENT OPPORTUNITY

52.1 During the performance of this Contract, the Construction Manager agrees as follows:

A. The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, disability, sex, age, national origin, ancestry, marital status, sexual orientation, gender identity or expression, familial status, or genetic information. The Construction Manager will take affirmative action to ensure that applicants and employees are treated during employment without regard to their race, color, religion, disability, sex, age, national origin, ancestry, marital status, sexual orientation, gender identity or expression, familial status, or genetic information. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Town setting forth provisions of this nondiscrimination clause.

B. The Construction Manager will, in all solicitations or advertisements for employees placed for, by, or on behalf of the Construction Manager, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, sexual orientation, gender identity or expression, familial status, or genetic information.

C. In the event of the Construction Manager's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Construction Manager may be declared ineligible for further contracts.

D. The Construction Manager will include the provisions of paragraphs A through C in every subcontract or purchase, so that such provisions will be binding upon each subcontractor or vendor.

E. The Construction Manager shall comply with all regulations, guidelines, and standards lawfully adopted under the governing statutes.

### GC 53 SAFETY & PROTECTION OF PERSONS & PROPERTY

53.1 Responsibility for Safety and Health

53.1.1 The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to be performed under the terms of the Contract. The Construction Manager shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the Town and Users who may be affected thereby. The Construction Manager shall set forth in writing its safety precautions and programs in connection with the Work and submit the same to the Town. The Town may, but shall not be obligated to, make suggestions and recommendations to the Construction Manager with respect thereto.

53.1.2 All Work, whether performed by the Construction Manager, its Subcontractors or Subsubcontractors, or anyone directly or indirectly employed by any of them, and all equipment, appliance, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with, and conform to:

- A. all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970, as amended and all State, Local, City and County rules and regulations now or hereafter in effect; and
- B. all codes, rules, regulations and requirements of the Town and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern. Town shall disclose to Construction Manager any such requirements, other than those readily available as published laws or regulations, prior to the time of the GMP Amendment.

53.1.3 The Construction Manager is solely and exclusively responsible for worksite safety. If the Town receives notice or is made aware that the Construction Manager has failed to provide a safe area for the performance of the Work or any portion thereof, then the Town shall have the right, but not the obligation, to suspend Work in the unsafe area until the Construction Manager remedies the unsafe conditions. All costs of any nature resulting from the suspension, by whomsoever incurred, shall be borne by the Construction Manager.

53.1.4 The Construction Manager is solely and exclusively responsible for supervising all workers at the job site including ensuring the use of proper safety equipment by the workers for the duties preformed. The Construction Manager shall provide, or cause to be provided, to each worker on the Job Site the proper safety equipment for the duties being performed by that worker and will not permit any worker on the job site who fails or refuses to use the same. If the Town receives notice or is made aware that the Construction Manager has failed in its duty to ensure that proper safety equipment is used by the workers then the Town shall have the right, but not the obligation, to suspend Work until the Construction Manager corrects the unsafe work practice. All costs of any nature resulting from the suspension, by whomsoever incurred, shall be borne by the Construction Manager.

53.1.5 To the extent permitted by, and in accordance with the provisions of Section 725.06, Florida Statutes, the Construction Manager shall defend, indemnify and hold the Town, the Town's Representative and their respective officers, directors, agents, employees and assigns, harmless from and against any and all liability, public or private, penalties, contractual or otherwise, losses, damages, costs, attorneys' fees, expenses, causes of action, claims or judgments resulting either in whole or in part from any failure of the Construction Manager, its subcontractors or sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, to comply with the provisions of this General Condition.

53.1.6 To the extent permitted by, and in accordance with the provisions of Section 725.06, Florida Statues, the Construction Manager shall not raise as a defense to its obligation to indemnify under this General Condition any contributing negligence of any of those indemnified hereunder, it being understood and agreed that no such contributing negligence shall relieve the Construction Manager from its liability to so indemnify to the extent of its own negligent acts or omissions nor entitle the Construction Manager to any contribution, either directly or indirectly, by those indemnified hereunder other than by way of reduction in Construction Manager's responsibility.

53.1.7 In any and all claims against those indemnified hereunder by any employee of the Construction Manager, any subcontractor or sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way to any limit(s) on the amount or type of damage, compensation or benefits payable by or for the Construction Manager or any subcontractor or sub-subcontractor under any workers' compensation acts, disability benefit acts or other employee benefit acts.

53.1.8 The indemnity provisions of this Section shall survive the termination or expiration of this Contract.

### 53.2 Protection of Work and Property; Responsibility for Loss

53.2.1 The Construction Manager shall, throughout the performance of the Contract, maintain adequate and continuous protection of all completed Work and temporary facilities against loss or damage from whatever cause, shall reasonably protect the property of the Town and third parties from loss or damage from whatever cause arising out of the performance of the Contract and shall comply with the requirements of the Town and its insurance carriers and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to the property. The Town, their representatives or insurance carriers may, but shall not be required to, make periodic patrols of the job site as a part of its normal safety, loss control and security programs. In such event, however, the Construction Manager shall not be relieved of its aforesaid responsibilities and the Town shall not assume, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the Construction Manager by this Contract.

53.2.2 Until final acceptance of the Work by the Town pursuant to GC 72, of this Contract, the Construction Manager shall have full and complete charge and care of and, except as otherwise provided in this subparagraph, shall bear all risk of loss of, and injury or damage to, the Work or any portion thereof (specifically including Town furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) from any cause whatsoever. Excluded from Construction Manager's responsibility under this subparagraph is a) any loss or damage which results from the sole active negligence of the Town or its representatives; and b) damage to any portions of the Project of which the parties have agreed the Town will take beneficial occupancy and put to its intended use.

53.2.3 The Construction Manager shall rebuild, repair, restore and make good all losses of, and injuries or damages to, the Work or any portion thereof (specifically including Town furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work and including improvements disturbed outside the limits of construction) before final acceptance of the Work. Such rebuilding, repair or restoration shall be at the Construction Manager's sole cost and expense unless the loss, injury or damage requiring such rebuilding, repair or restoration:

- A. is directly due to errors in the Construction Documents which were not discovered by the Construction Manager and which the Construction Manager could not have discovered through the exercise of due diligence;
- B. is caused by the agents or employees of the Town (unless (1) the Construction Manager has waived its rights of subrogation against the Town on account thereof as provided in the

Contract, but then only to the extent actually covered and paid for by insurance or (2) such loss or damage would be covered by any policy or policies of insurance which the Construction Manager is required to maintain hereunder, whether the Construction Manager actually maintains such insurance or not, or (3) is otherwise covered by a policy or policies of insurance maintained by the Construction Manager (whether or not required hereunder); or

C. is the result of a force majeure event, Act of God or other cause beyond the reasonable control of the Construction Manager, but then only to the extent not covered and actually paid for by the insurance required by the Contract.

#### 53.3 Surface and Subsurface Water

53.3.1 Surface or subsurface water or other fluid shall not be permitted to accumulate in excavations or under or in the structures. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines and ditches, dams or other methods approved by the Town in writing. The proposed location and coordination of temporary channels and conduits conducting accumulated water from the job site shall be permitted by the proper regulatory agency and submitted to the Town for its prior written approval. All such Work shall be done at the sole expense of the Construction Manager, unless the presence or volume of water constitutes an unforeseeable subsurface condition for which the Construction Manager is otherwise entitled to additional compensation pursuant to the terms of the Contract.

#### 53.4 EMERGENCIES

53.4.1 In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any federal or state safety or health law or regulation, arising out of or in any way connected with the Work or its performance, the Construction Manager shall act immediately to prevent threatened damage, injury or loss to persons or to property or to remedy said violation, whichever is applicable. Failure by Construction Manager to take necessary emergency action shall entitle the Town to take whatever action it deems necessary including, but not limited to, suspending the Work as provided in GC 23.

53.4.2 The Town may offset any and all costs or expenses of whatever nature, including attorneys' fees, paid or incurred by the Town in taking such emergency action against any sums then or thereafter due to the Construction Manager. To the extent permitted by Section 725.06, Florida Statutes, Construction Manager shall defend, indemnify and hold the Town harmless against any and all costs or expenses pursuant to this Paragraph, by whomsoever incurred. If the Construction Manager shall be entitled to any additional compensation or extension of time claimed on account of emergency Work which is not due to the fault or neglect of the Construction Manager or its subcontractors or sub-subcontractors, it shall be handled as a claim as provided in GC 65.

53.4.3 The indemnity provisions of this Section shall survive the termination or expiration of this Contract.

#### 53.5 Town's Standards

53.5.1 The Town reserves the right, but assumes no duty, to establish and enforce standards, and to change the same from time to time, for the protection of persons and property, with which the Construction Manager shall comply, and to review the efficacy of all protective measures taken by the Construction Manager. The exercise of or failure to exercise any or all of these rights by the Town shall not relieve the Construction Manager of its duties and responsibilities under this Contract, and the Town shall not thereby assume, nor be deemed to have assumed, any such duties or responsibilities of the Construction Manager.

#### GC 54 PROJECT SITE PROTECTION

54.1 Construction Manager, at its expense, shall maintain such protection as provided in General Conditions Section (GC 53) titled SAFETY & PROTECTION OF PERSONS & PROPERTY in a satisfactory condition until removal is authorized by Town. Construction Manager, at its expense, shall make all necessary repairs to property damaged by construction operations. Repairs shall be made in a manner satisfactory to Town. The Construction Manager, at its expense, will provide parking for its employees within the designated work areas. Construction Manager employees will not be allowed to park in areas which are used by any facilities which remain in operation.

#### GC 55 FIRE PREVENTION

55.1 Construction Manager shall, at its expense, conform to all Federal, State, and local laws and regulations pertaining to burning, fire prevention and control within or adjacent to the Project. Necessary precautions to avoid and eliminate fire hazards shall be the responsibility of the Construction Manager. This includes keeping the Project work area clear of all trash at all times.

55.2 All tarpaulins used for any purpose during construction of any Work shall be made of material resistant to fire, water and weather and shall bear UL labels. Lighting of any fires on premises is strictly forbidden. Controlled burning shall be with the consent of the Town.

Construction Manager shall provide portable fire extinguishers properly labeled, located and compatible with the hazard of each work area and shall instruct its personnel in their use. Wherever welding and burning are conducted, inflammable materials shall be protected and a fire watch shall be provided by Construction Manager to be present during the burning and welding operation to ensure that protective measures are taken and that no fires result from such operation. The fire watch shall have fire extinguisher equipment readily available and know-how for proper use.

### GC 56 ILLUMINATION

56.1 When any Work is performed at night or where daylight is shut off or obscured, Construction Manager shall, at its expense, provide artificial light sufficient to permit Work to be carried on efficiently, satisfactorily and safely, and to permit thorough inspection. During such time periods the access to the place of Work shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in a first-class manner, securely fastened in place at all points, and shall be kept as far as possible from telephone wires, signal wires, and wires used for firing blasts.

#### GC 57 BEST MANAGEMENT PRACTICES

57.1 Construction Manager shall be responsible for evaluating the site before construction is initiated to determine if any site conditions may pose particular problems for the handling of any Regulated Substances. For example, handling Regulated Substances in the proximity of water bodies or wetlands may be improper.

#### 57.2 Reserved

57.3 If any Regulated Substances are stored on the construction site, they shall be stored in a location and manner which will minimize any possible risk of release to the environment. Any storage container of 55 gallons, or 440 pounds, or more containing Regulated Substances shall have constructed below it an impervious containment system constructed of materials of sufficient thickness, density and composition that will prevent the discharge to the land, groundwaters, or surface waters, of any pollutant which may emanate from said storage container or containers. Each containment system shall be able to contain one hundred and fifty percent (150%) of the contents of all storage containers above the containment system.

57.4 Construction Manager shall familiarize itself with the manufacturer's safety data sheet supplied with each material containing a Regulated Substance and shall be familiar with procedures required to contain and clean up any releases of the Regulated Substance. Any tools or equipment necessary to accomplish same shall be available in case of a release.

57.5 Upon completion of construction, all unused and waste Regulated Substances and containment systems shall be removed from the construction site and shall be disposed of in a proper manner as prescribed by law.

### GC 58 DUST CONTROL

58.1 The Construction Manager shall, for the duration of the Work, maintain, at its expense, all excavations embankments, haul roads, access roads, plant sites, waste disposal areas, borrow areas, and all other Work areas free from dust. Industry-accepted methods of dust control suitable for the area involved and approved by Town will be permitted.

58.2 Construction Manager shall, for the duration of the Work, protect all fixtures, equipment, devices, and surfaces from any dust or debris within any facility which is affected by the Work and shall comply with the Town's direction to ensure dust control is being managed and maintained.

### GC 59 WATER POLLUTION

59.1 Construction Manager shall, at its expense, provide suitable facilities to prevent the introduction of any substance or materials into any stream, river, lake or other body of water which may pollute the water or constitute substances or materials deleterious to fish and wildlife.

### GC 60 AIR POLLUTION

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

### GC 61 EXPLOSIVES & HAZARDOUS MATERIALS

61.1 Construction Manager shall obtain all required Federal, State and local permits and licenses and shall be responsible for the safe and proper handling, transporting, storage and use of any explosive or hazardous materials brought onto or encountered within the site, and make good any damage caused by its handling, transporting, storage and use. The Construction Manager will notify the Town immediately if explosive or hazardous materials are encountered on the site. Transporting explosive or hazardous materials onto the site will require prior written approval from the Town. The Construction Manager shall maintain and post as necessary Material Hazard Data Sheets for all applicable hazardous materials used in the course of its Work.

61.2 In the event that hazardous material is improperly handled or stored by the Construction Manager, its subcontractors, any sub-subcontractors, or any employee or agent of any of the aforementioned which results in contamination of the site, Construction Manager shall immediately notify the Town and the appropriate governmental authority and shall take whatever action is necessary or desirable to remediate the contamination at the Construction Manager's sole cost and expense. Further, Construction Manager shall indemnify and hold harmless the Town from any and all cost, expense, action, or liability whatsoever resulting from such contamination and/or remedial activities to the extent permitted by Section 725.06, Florida Statutes.

61.3 The indemnification provisions of this Section shall survive the termination or expiration of this Contract.

#### 61.4 ASBESTOS NOTIFICATION

61.4.1 Prior to the renovation of any structure, the Town shall conduct an inspection for asbestos-containing building materials (ACBM), through a review of current surveys or the request for a new survey. All asbestos surveys are conducted under the direction of Florida licensed asbestos consultants contracted by the Town.

61.4.2 Prior to the renovation of any structure, the Town shall facilitate the removal of all ACBM that may be disturbed during the renovations, (except bituminous roofing materials), unless stated otherwise in the Contract. All asbestos removal is conducted by a Florida licensed asbestos contractor contracted by the Town.

61.4.3 An asbestos summary report may be included as part of the Contract. If not attached, it is the Construction Manager's responsibility to contact the Town and request any available reports.

61.4.4 Licensed asbestos contractors are not required for removing or repairing asbestos containing roofs, except for transite (cementitious) shingles. If the Work specified will disturb asbestos containing roofing materials, the Construction Manager must comply with all requirements of OSHA 1926.58 and ASBESTOS NESHAPS. A summary of these requirements is outlined by the National Roofing Contractors Association (NRCA). A licensed roofer who has training as an asbestos competent person is required for projects disturbing asbestos roof materials.

61.4.5 If materials are discovered that are suspected asbestos materials that were not previously sampled, CM must stop all work that will disturb these materials and immediately notify the Town.

#### GC 62 INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP

62.1 All materials and equipment furnished and Work performed shall be properly inspected by Construction Manager, at its expense, and shall at all times be subject to quality surveillance, observations or quality audit by Town. The Town has the right but not the obligation to perform such quality surveillance, observations or quality audit as the Town deems necessary. Construction Manager shall provide safe and adequate facilities and all samples, drawings, lists and documents necessary for such quality surveillance, observation or quality audit. For this purpose, Town, its agents, employees, and designees shall be afforded full and free access to the shops, factories or places of business of Construction Manager and its subcontractors and suppliers for such quality surveillance, observation or quality audit and to determine the status of the Work. Town, its agents, employees, and designees shall be entitled to conduct such surveillance, observation, or quality audits in such a manner and with such frequency and for such duration as Town, in its sole discretion, shall determine is appropriate. If Construction Manager covers all or any portion of the Work prior to any quality surveillance or test by Town, the cost of any necessary uncovering and replacing shall be borne by Construction Manager. Town has no duty or responsibility to inspect or audit Construction Manager's work and in doing so does not assume any liability or responsibility for Construction Manager's materials and workmanship. Neither the failure to make such quality surveillance, observance or quality audit, nor to discover defective workmanship, materials, or equipment, nor acceptance of or payment to Construction Manager for such Work, materials or equipment shall prejudice the rights of Town thereafter to correct or reject the same as hereinafter provided.

62.2 If any material, equipment or workmanship is reasonably determined by Town, either during performance of the Work or on final quality surveillance, or during any applicable warranty period (expressed or implied), to be defective or not complying with the requirements of this Contract, Town shall notify Construction Manager in writing that such material, equipment or work is rejected and the Town reserves the right to withhold payment on any such item. Thereupon, Construction Manager shall, at its own expense, immediately remove and replace or correct such defective material, equipment or Work by making the same comply strictly with all requirements of the Contract.

#### GC 63 TESTING

63.1 Unless otherwise provided in the Contract, drawings and specifications shop testing of materials or Work shall be performed by the Construction Manager at its expense and in accordance with the technical specifications. Unless specified in the Contract Documents or otherwise required by applicable codes, rules or regulations, any required field testing of materials or Work shall be performed by the Construction Manager. Should tests in addition to those required by the Specifications be desired by Town, Construction Manager will be advised in reasonable time to permit such testing. Such additional tests will be at Town's expense unless such additional tests are required due to Construction Manager's Work or materials having failed any initial test. In this event, such additional tests (re-tests) shall be at Construction Manager's expense. Construction Manager shall furnish samples as requested and shall provide reasonable assistance and cooperation as necessary to permit tests to be performed on materials or Work in place including reasonable stoppage of work during testing. Construction Manager shall provide reasonable and accurate notice of when construction activities which require testing services are required. Construction Manager shall be responsible for stand-by and other costs associated with the testing agency if that construction activity is delayed or canceled.

# GC 64 PROGRESS

64.1 Construction Manager shall give Town full information in advance as to its plans for performing each part of the Work. If at any time during the progress of Work, Construction Manager's actual progress is inadequate to meet the requirements of the Contract, Town may so notify Construction Manager who shall thereupon take such steps as may be necessary to improve its progress. If within a reasonable period as determined by Town, Construction Manager does not improve performance to meet the currently approved contract construction schedule, Town may require an increase in Construction Manager's labor force, the number of shifts, overtime operations, additional days of work per week and an increase in the amount of construction plant; all without additional cost to Town. Neither such notice by Town nor Town's failure to issue such notice shall relieve Construction Manager of its obligation to achieve the quality of work and rate of progress required by the Contract.

64.2 Failure of Construction Manager to comply with the instructions of Town may be grounds for determination by Town that Construction Manager is not prosecuting its Work with such diligence as will assure completion within times specified. Upon such determination, Town may terminate Construction Manager's right to proceed with the performance of the Contract, or any separable part thereof, in accordance with the applicable provisions of this Contract.

### GC 65 CHANGES

65.1 Town may, at any time, without invalidating the Contract and without notice to the surety, make changes in the Work by issuing a Change Order. In the event that additive Change Orders increase the total contract amount of a "bond waiver contract" over the Town's bond waiver limit of \$200,000, the contract will continue to be exempt from the bonding requirements if the change order is for a nominal amount. If there is a material change in project costs through a change order above the bond waiver limit of \$200,000 then a bond will be required. In the event deductive Change Orders decrease the total contract amount of a "bonded contract" below the Town's bond waiver limit of \$200,000, bonding will continue to be required. Contractor shall provide notice to its surety of all Change Orders.

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

65.3 Construction Manager shall commence such changed Work so that all dates set forth in Construction Manager's current construction schedule as accepted by Town will be met subject to an adjustment for the additional

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time necessary to complete the changed Work. In the event of an emergency which Town determines endangers life or property, Construction Manager shall immediately commence such changes as required by Town in order to mitigate or remove the emergency condition. Failure to commence any such change in timely fashion shall entitle Town to invoke the provisions of GC 25 entitled TERMINATION FOR DEFAULT.

65.4 Unless otherwise required, Construction Manager shall, within twenty-one (21) calendar days following receipt of a written contract Field Bulletin, submit in writing to Town a Contract Change Proposal for accomplishing such change, which proposal shall reflect the increase or decrease, if any, in cost to Town of performing the change under the Contract in comparison to what the cost would have been, had such change not been offered.

65.5 The proposal shall state the Construction Manager's added and/or deleted compensation in detail, including but not limited to:

- A. Material quantities and unit prices
- B. Labor man-hours and wages by craft
- C. Equipment type and size and rental rate
- D. Overhead and profit percentage
- E. Subcontract costs with back-up detail as specified in items A, B, C, and D above.
- F. Time extension, if any;
- G. A detailed description of any impacts this change will have on any activities on the Critical Path which would affect any of the Milestone Dates;
- H. Proof of payment of any tax liability resulting from a specific change (if requested by Town).

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

65.7 If Construction Manager does not propose the method of compensation for such change or any part thereof within the time required, or if any proposed method is not acceptable, or if a method of compensation for such change, or any part thereof cannot be agreed upon, Town may direct and Construction Manager shall proceed upon direction (Construction Change Directive) with such change.

65.8 A Construction Change Directive (CCD) is a written order prepared by the Architect/Engineer of Record and signed by the Town, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. A CCD may be used in the absence of total agreement on the terms of Change Order or to complete Work which, if not accomplished, could adversely affect a critical path activity. Upon receipt of the CCD, the Construction Manager shall promptly proceed with the change in the Work involved and advise the Architect/Engineer of Record of the Construction Manager's agreement or disagreement with the method, if any, provided in the CCD for determining the proposed adjustment in the Contract Sum or Contract Time. When the Town and Construction Manager agree with the determination made by the Architect/Engineer of Record concerning the adjustments in the Contract Sum and/or Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be recorded by the preparation of a Change Order. The Construction Manager shall be entitled to seek payment for Work performed pursuant to a CCD to the extent any portion of the CCD is not disputed.

65.9 If, at any time after Construction Manager commences such change, a method of compensation other than time and material is agreed upon, such compensation will be made in accordance with such agreement. In any event, Construction Manager shall keep accurate records of the actual cost to Construction Manager for such change. Costs for which Construction Manager shall be entitled to compensation on a time and material basis as described above, are as follows: <u>Direct Labor Cost</u> - Payment will be made for all manual classifications up to and including foremen, but shall not include superintendents, assistant superintendents, general foremen, office personnel, timekeepers and maintenance mechanics. The time charged to changes will be subject to the daily approval of Town and no charges shall be accepted unless evidence of such approval is submitted by Construction Manager with its billing.

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

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

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

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

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

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

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

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

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

<u>Contract and Outside Service Costs</u> - Payment for work and services subcontracted by Construction Manager in the performance or completion of the change will be made only when both the subcontractor and the terms of payment to such subcontractor have been approved in writing by Town before the subcontractor starts to work on the change.

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

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

- 1. If the CM is authorized by the Town to perform work with its own forces, the Construction Manager may add an overhead and profit fixed fee as agreed upon with Town up to ten percent (10%) of its estimated Change Order costs which amount will be converted to a lump sum before the Change Order is issued and before Work begins.
- 2. For all Work done by subcontractors, the respective subcontractors may add an overhead and profit fixed fee as agreed upon up to ten percent (10%) of their estimated costs which amount will be converted to a lump sum before the Change Order is issued and before Work begins. The construction manager may add an overhead and profit fixed fee as agreed upon up to five percent (5%) of the subcontractors' total estimate which amount will be converted to a lump sum before the Change Order is issued and before the Change Order is issued and profit fixed fee as agreed upon up to five percent (5%) of the subcontractors' total estimate which amount will be converted to a lump sum before the Change Order is issued and before Work begins.

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

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

65.11 No change order or CCD shall be valid until approved and signed by the Town. The Architect/Engineer of Record is not authorized to bind the Town to changes relative to changes in contract cost and or time. The Architect/Engineer may only recommend acceptance or rejection. If a proposed change is deemed beneficial to the Project and is within the limits set forth in the Contract, the Town may cause to be issued an appropriate change order to the Contract with or without the Construction Manager's signature.

65.12 The Architect/Engineer of Record will have the authority to order minor changes in the Work which do not involve adjustment to the Contract Sum or Contract Time and are not inconsistent with the intent of the Contract. Such changes shall be effectuated by written order and shall be binding on the Town and Construction Manager. The Construction Manager shall carry out such written orders promptly, and the Construction Manager shall receive no additional compensation therefore, nor shall there be any change in the Contract Time. The Architect/Engineer shall immediately provide notices of all minor changes in the Work to the Town.

65.13 Execution of a change order acknowledges final settlement of, and releases, all claims for costs and time associated, directly or indirectly, with the stated modification(s), including all claims for cumulative delays or

disruptions resulting from, caused by, or incident to such modification(s), and including any claim that the modification(s) constitutes, in whole or part, a cardinal change to the Contract.

#### GC 66 RECORD DRAWINGS AND SPECIFICATIONS

- A. Drawings:
  - 1. <u>Conformed Documents</u> Prior to the first application for payment, Construction Manager shall show proof of conformed documents with all Bid addenda identified on the record drawings and on its field set of drawings. Supplemental information following the bid shall be included and updated monthly for review with the application for payment.
  - 2. <u>Progress Records</u> During construction, Construction Manager shall keep a marked-up and up-to-date set of drawings showing as-built conditions on the site as an accurate record of all deviations between work as shown and work as installed. These drawings shall be available to Town for inspection at any time.
  - 3. <u>Final Records</u> Prior to request for Substantial Completions, the Construction Manager shall furnish to Town a complete set of marked-up as-builts with RECORD clearly printed on each sheet. Town, at its expense, will furnish Construction Manager with drawings for mark-up by Construction Manager. Construction Manager shall, by use of professional draftsman, accurately and neatly transfer all deviations from progress as-builts to final as-builts. Record information necessary to establish utility services shall be provide by the Construction Manager a minimum of thirty (30) days prior to the needed utility services.
- B. Specifications:
  - 1. Progress Records During construction, Construction Manager shall keep a marked-up and up-to-date set of specifications showing as-is conditions on the site annotated to clearly indicate all substitutions that are incorporated into the Work. Where selection of more than one product is specified, annotation shall show which product was installed. These specifications shall be available to Town for inspection at any time.
  - 2. Final Records Prior to request for Substantial Completion, the Construction Manager shall furnish to Town a complete set of marked-up as-built specifications with RECORD clearly printed on cover. Town, at its expense, will furnish Construction Manager a set of specifications for mark- up by Construction Manager. Construction Manager shall accurately and neatly transfer all annotations from progress as-builts to final as-builts.
- C. Manuals and Training:
  - 1. <u>Manuals</u> As a condition precedent to Substantial Completion, the Construction Manager shall furnish to Town three complete sets of manuals and applicable operating instructions as referenced in technical specifications.
  - 2. Unless otherwise specified, manuals to be bound in 3-ring binder with contents clearly indicated on outside cover.
  - 3. <u>Training</u>: Where Town training is required by the technical specifications, Construction Manager shall video and audio record the training and provide Town with one copy of recording.
- D. Endorsement:

- 1. Construction Manager shall sign each final record drawing and the cover of the record specifications and shall note thereon that deviations and annotations are complete and accurate.
- 2. The Construction Manager shall provide a signed and notarized affidavit indicating that no asbestos containing materials were used or installed during the course of construction as a condition precedent to Final Acceptance.
- E. Fixed Asset Equipment and Fixture Information:
  - 1. Prior to Final Acceptance, Construction Manager shall provide the Town with a list (in electronic format and hard copy) of each piece of equipment having an individual value greater than \$1,000. The list shall include, at a minimum; a) the name, make and model number, b) the quantity installed, and c) the value of the equipment.

#### GC 67 MEASUREMENT OF WORK FOR PAYMENT

67.1 Estimates and all support data shall be prepared by Construction Manager and submitted in writing for Town's approval on or about the end of each month covering the amount and value of Work satisfactorily performed by Construction Manager up to the date of such estimate. Such estimates shall be based on the construction schedule completed activity cost, as approved, and may be confirmed by actual measurement of the Work in place. Estimates shall be based on cumulative total quantities of Work performed. Estimates may include materials or equipment not incorporated into the Work provided the requirements set forth below are met. A format for such estimates shall be determined by the Town according to type of Contract Work and shall be agreed upon prior to, or no later than, application for the first progress payment.

The quantity of Work to be paid for under any item for which a unit price is fixed in the Contract shall be the amount or number, approved by Town, of units of work satisfactorily completed with the Contract and computed in accordance with applicable measurement for payment provisions of the Contract.

Separate payments for shop drawings and deposits for materials will not be allowed absent approval of the Town.

67.2 Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the Work, provided such materials meet the requirements of this Contract, plans, and specifications and are delivered to acceptable locations at the Project Site or to other sites in Palm Beach County that are acceptable to the Town (i.e., bonded warehouse). Such material must be stored in a secure manner, acceptable to the Town, and in accordance with any manufacturer's recommendations.

Delivered cost of such stored or stockpiled materials may be included in any subsequent payment request once the Construction Manager meets the following conditions:

- 1. An applicable purchase order or supplier's invoice is provided listing the materials in detail, cost of materials and identifying this specific contract, by name.
- 2. The material is insured against loss or damage (from whatever source) or disappearance prior to incorporation into the Work.
- 3. Once any stored material is paid for by Town, it shall not be removed from the designated storage area except for incorporation into the Work.
- 4. Evidence that Construction Manager has verified quantity and quality of materials delivered (verified packing list).

It is not the intent of this section to pay for stored materials that are intended for day-to-day inventory (i.e., small diameter piping, fittings, conduit, etc.). Payment for stored materials under this section shall be limited to finished prefabricated products, piece-marked, and customized for the Project or as otherwise agreed upon by the Construction Manager and Town.

It is further agreed between the parties that the transfer of title and the Town's payment for any stored or stockpiled materials pursuant to this General Condition shall in no way relieve the Construction Manager of the responsibility of ensuring the correctness of those materials and for furnishing and placing such materials in accordance with the requirements of this Contract, plans and specifications.

67.3 Construction Manager shall make all surveys necessary for determining all quantities of Work to be paid for under the Contract. Copies of field notes, computations, and other records made by Construction Manager for the purpose of determining quantities shall be furnished to Town upon request. Construction Manager shall notify Town prior to the time such surveys are made. Town, at its discretion, may arrange to have its representative witness and verify all surveys made by Construction Manager for determining quantities of Work to be paid for under the Contract. Measurements and computations shall be made by such methods as Town may consider appropriate for the class of Work measured.

67.4 The dividing limits, lines or planes between adjacent items or classes of excavation, concrete, or other types of Work where not definitely indicated on the drawings or in the specifications, shall be determined by Town.

67.5 No payments of invoices (or portions thereof) shall at any time constitute approval or acceptance of the Work under this Contract, nor be a waiver by Town of any of the terms contained herein.

# GC 68 PROGRESS PAYMENT PROCEDURES

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

Prior to the initial payment request, the following must be submitted and approved by the Architect/Engineer of Record and the Town of Highland Beach.

- 1. List of principal subcontractors and suppliers.
- 2. Schedule of values.
- 3. Shop drawing log.
- 4. Project schedule.
- 5. Certified copy of recorded bond. The Town's contract number will be provided after award of the Contract and the Construction Manager shall include this number on the bond prior to recording the bond. Town will not make any payment to Construction Manager until Construction Manager has complied with this requirement.

68.2 The Construction Manager will prepare and submit electronic copies of monthly invoices for Work completed during the one-month period. Pay applications shall be submitted in the format and wording of the form contained in Appendix A to these General Conditions. All information must be completed for the pay application to be accepted. Town's account number(s) for the Project will be given at the Pre-Construction meeting and will be placed at the top right-hand corner of each application. These payment applications will be reviewed by all parties in attendance at the monthly pay application meetings. Prior to formal submission of the application the Construction

Manager shall submit a rough draft plus two extra copies for the Town and Architect/Engineer of Record to review. The Construction Manager shall submit final approved electronic copies to the Architect/Engineer of Record, whose approval is required prior to submission to the Town.

68.3 If the pay estimate and support data are not approved, the Construction Manager is required to submit new, revised or missing information according to the Town's instructions. Otherwise, the Construction Manager shall prepare and submit to Town an invoice in accordance with the estimate as approved. Town will pay Construction Manager, in accordance with Local Government Prompt Payment Act (Section 218.70, Florida Statutes, et seq.). Town shall provide Construction Manager with a written notice of disputed pay request within ten (10) calendar days after receipt of such pay request which clearly states any and all deficiencies in Construction Manager's pay request that will prevent prompt processing and issuance of payment. To the extent there is an undisputed portion of the pay request that can be paid, the Town shall proceed with prompt payment of that portion of the pay request. In the event any dispute with respect to any payment or pay request cannot be resolved between the Construction Manager and Town's project staff, Construction Manager may, in accordance with the alternative dispute resolution requirements of Section 218.76, Florida Statutes, demand in writing a meeting with and review by the Town's agent. Such meeting and review shall occur within ten (10) business days of receipt by Town of Construction Manager's written demand. The Town's agent shall issue a written decision on the dispute within ten (10) business days of such meeting. This decision shall be deemed the Town's final decision for the purpose of the Local Government Prompt Payment Act.

Construction Manager must remit undisputed payment due for labor, services, or materials furnished by trade contractors, subcontractors and suppliers hired by the Construction Manager, within ten (10) calendar days after the Construction Manager's receipt of payment from the Town pursuant to the applicable Prompt Payment Act. Construction Manager shall provide trade contractors, subcontractors and suppliers hired by Construction Manager with a written notice of disputed invoice within five (5) business days after receipt of invoice which clearly states the reasons for the disputed invoice.

Retainage, in the amount of five percent (5%), will be withheld on the calculated value of any Work, with the exception of stored materials which may be paid at the supplier's invoiced cost and those items specified in the Contract as being exempt from the retainage requirements (e.g., Construction Manager's bond costs, insurance costs and a portion of the Construction Manager's Fee as specified in the Agreement).

The Construction Manager may request at any point the release of retainage from the Town attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers if the work of the subcontractor has been successfully completed or if the materials of the supplier have been inspected and accepted by the Construction Manager. The Construction Manager must submit the request in writing to the Town.

Notwithstanding the foregoing, in no instance can the amount retained be less than the value of Town's good faith claims plus the value of the Work the Town determines remains to be put in place or required to be performed as remedial activities. For the purposes of this section, fifty percent (50%) completion shall be that point in time when A/E determines that half of the Work required by the Contract has been completed. In no event shall the Work be determined to be fifty percent (50%) complete before the Town has paid fifty percent (50%) of the Contract amount and fifty (50%) of the Contract time has expired.

All retainage released by the Town to the Construction Manager which is attributable to the labor, services or materials supplied by one or more subcontractors or suppliers must be timely remitted by the Construction Manager to those subcontractors or suppliers.

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

1. A notarized "Affidavit of Disbursement of Previous Periodic Payments to subcontractors" from the Construction Manager for the portion of work up to the date of that particular pay application.

- 2. A conditional partial release of lien will be required from the Construction Manager for the portion of work being applied up to the date of that particular pay application from him as the prime contractor and all his vendors and subcontractors, and an unconditional release for all amounts paid to Construction Manager through the date of the prior application for payment.
- 3. A Town approved construction schedule update.

68.5 So long as the Town has paid Construction Manager in accordance with the Contract Documents, if one or more "Notice of Non-Payment" is received by the Town, no further payments will be approved until non-payment(s) have been satisfied and an original "Release of Claim" for each "Notice" has been submitted to the Town. Upon request, Construction Manager shall furnish acceptable evidence that all such claims or liens have been satisfied. On bonded projects only, the Town may allow, with consent of surety and indemnification of the Town against any claims, payment for Work on which there is an outstanding Notice of Non-Payment.

68.6 Any amount otherwise payable under the Contract may be withheld, in whole or in part if:

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

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

68.8 Following issuance, by the Architect/Engineer of Record, of a Certificate of Substantial Completion, Construction Manager may submit a special payment request, provided the following have been completed:

- 1. Obtain permits, certificates of inspection and other approvals and releases by governing authorities, required for the Town's occupancy and use of the Project.
- 2. Complete final cleaning of the Work.
- 3. Submit record documents (record drawings).

- 4. Submit listing of work to be completed before final acceptance.
- 5. Settle liens and other claims.
- 6. Obtain Consent of Surety for partial release of retainage.
- 7. Settle Liquidated Damages due to Town, if any.
- 8. Conditional Final Waiver and Release of Claim signed by Construction Manager.

68.9 Upon receipt by Town of Construction Manager's written Notice of Final Completion of its Work under this Contract, in accordance with GC 72, Town shall verify all Work has been completed on the Project. When all Work has been verified as complete, and the Construction Manager completes and submits the items listed below, the Construction Manager may submit a final invoice.

- 1. Complete all work listed on the punch list prepared in accordance with GC 71 and obtain Architect/Engineer certification of completed Work.
- 2. Submit proof of payment on fees, taxes or similar obligations.
- 3. Transfer operational, access, security and similar provisions to Town; remove temporary facilities, tools and similar items.
- 4. Obtain Consent of Surety for final payment and/or partial release of retainage.
- 5. All information required by GC 66.
- 6. Obtain certification of as-built (record) drawings from Architect/Engineer of Record.
- 7. Final Waiver and Release of Claim signed by Construction Manager.

#### GC 69 USE OF COMPLETED PORTIONS OF WORK

69.1 Whenever, as determined by Town, any portion of Work performed by Construction Manager is in a condition suitable for use, Town may issue a certificate of Substantial Completion (Partial Utilization) for that portion and take possession of or use such portion. Such Certificate of Substantial Completion (Partial Utilization) will be issued in accordance with the applicable requirements of GC 71 "SUBSTANTIAL COMPLETION". Such use by Town shall in no case be construed as constituting final acceptance, and shall neither relieve Construction Manager of any of its responsibilities under the Contract, nor act as a waiver by Town of any of the conditions thereof, provided, that Construction Manager shall not be liable for the cost of repairs, rework, or renewals which may be required due to ordinary wear and tear resulting from such use. However, if such use increases the cost or delays the completion of remaining portions of Work, Construction Manager shall be entitled to an equitable adjustment in its compensation and/or schedule under this Contract.

69.2 If, as a result of Construction Manager's failure to comply with the provisions of the Contract, such use proves to be unsatisfactory to Town, Town shall have the right to continue such use until such portion of work can, without injury to Town, be taken out of service for correction of defects, errors, omissions, or replacement of unsatisfactory materials or equipment, as necessary for such work to comply with the Contract; provided that the period of such operation or use pending completion of appropriate remedial action shall not exceed twelve months unless otherwise mutually agreed upon in writing between the parties.

69.3 Construction Manager shall not use any permanently installed equipment unless such use is approved by Town in writing. Where Construction Manager's written request is granted for the use of certain equipment, Construction Manager shall properly use and maintain, and upon completion of its use, and at its expense, recondition such equipment to the satisfaction of Town. If Town furnishes an operator for such equipment, such operator's

services shall be performed under the complete direction and control of Construction Manager and shall be considered Construction Manager's employee for all purposes other than the payment of such operator's wages, workmen's compensation or other benefits paid directly or indirectly by Town.

#### GC 70 NOT USED

#### GC 71 SUBSTANTIAL COMPLETION

71.1 The date of Substantial Completion is the date established by the Architect or Engineer (A/E) and approved by the Town when the Project is sufficiently complete to permit the Town to use it for its intended purpose, the Town issues a certificate of Substantial Completion and the items listed below are complete. For the issuance of a certificate of Substantial Completion (Partial Utilization) in accordance with GC 69, the Town and/or the A/E will notify the Construction Manager of which items listed below must be complete for partial utilization.

71.2 The Construction Manager shall notify the A/E in writing when the Construction Manager considers the Project Substantially Complete and attach a comprehensive list of incomplete work and items needing correction with dates indicating when the items listed will be completed.

71.3 Once the A/E has received notice and attachments from the Construction Manager, the A/E will promptly inspect the Work. The A/E may refuse to inspect the Work if the Work is obviously not substantially complete or when the Construction Manager's list is not complete.

71.4 The following items shall be completed prior to a request by the Construction Manager for inspection for Substantial Completion, subject to the punch list procedures set forth in the Contract Documents and/or required by Section 281.735, Florida Statutes:

- 1. Certificate of Occupancy or Certificate of Completion, as applicable, shall be obtained from the proper Building Official.
- 2. All general construction completed.
- 3. All mechanical and electrical work complete, equipment and fixtures in place, connected, cleaned and ready for use.
- 4. All electrical circuits shall be scheduled in panels, and all panels and disconnect switches properly labeled.
- 5. All painting shall be completed; all signs installed.
- 6. All Project components including floors, glass and metal work shall be cleaned.
- 7. All finish hardware shall be installed, and all doors shall be in good working order. All keys and blanks shall have been provided.
- 8. Project site shall be cleared of the Construction Manager's excess equipment, storage shacks, trailers, and/or building supplies. All temporary construction shall be removed.
- 9. All mechanical and electrical systems including Fire Alarm and Security, shall be complete, fully functional, and demonstrated to the Town. The Fire Alarm system must be 100% complete without exception.
- 10. All operations and maintenance manuals for all equipment shall have been submitted.
- 11. Manufacturers' certifications and warranties shall be delivered to Town.

- 12. All operations and maintenance training related literature, software and back-up disks shall have been provided.
- 13. All required spare parts as well as any special tools shall have been provided.
- 14. All HVAC testing and balancing reports shall have been submitted and approved.
- 15. The Project record drawings and specifications shall be submitted in accordance with GC 66.

71.5 If Substantial Completion is not obtained at the inspection, called by the Construction Manager, for reasons which are the fault of the Construction Manager, the cost of any subsequent inspections requested by the Construction Manager for the purpose of determining Substantial Completion shall be the responsibility of the Construction Manager and shall be assessed against the final payment application.

71.6 Once Substantial Completion is achieved and within the time allowed by Section 218.70, Florida Statutes et seq., A/E and/or Town will prepare the punch list required by the Local Government Prompt Payment Act. The punch list items shall be corrected by the Construction Manager within 30 calendar days and prior to any request for Final Inspection and Acceptance. The failure to include any corrective work or pending items not yet completed on the list does not alter the responsibility of the Construction Manager to complete the Work pursuant to the Contract.

#### GC 72 FINAL INSPECTION AND ACCEPTANCE

72.1 When the Construction Manager considers that all Work under the Contract is complete as previously referenced in GC 71, Construction Manager shall so inform Town and A/E in writing, "Notice of Final Completion". When items on the punch list as recorded at the Substantial Completion inspection have been corrected and the Town is satisfied that all Work under the Contract is completed and is in accordance with the requirements of this Contract, Town shall notify Construction Manager in writing of final acceptance of its Work under this Contract.

The Town will then make final payment to the Construction Manager in accordance with the terms of GC 68 of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contact, including the following items, for which a Change Order will be issued:

- 1. Liquidated Damages, as applicable.
- 2. At the discretion of the Town, one and one-half times the value of outstanding items, corrective Work, and incomplete punch list. All such Work shall be completed or corrected to the satisfaction of the Town within the time stated on the Certificate of Substantial Completion, or on the "final punch list", or any other "punch list", otherwise the Construction Manager does hereby waive any and all claims to all monies withheld by the Town to cover the value of all such uncompleted or uncorrected items.

72.2 Neither final acceptance of the Work, nor payment therefore, nor any provision of the Contract shall relieve the Construction Manager of responsibility for defective or deficient materials or work or responsibility for full Contract compliance. If, within one (1) year or as provided for elsewhere in the General Conditions or technical specifications after Substantial Completion, any of the Work is found to be defective, deficient or not in accordance with the Contract, the Construction Manager shall correct, remove and replace it promptly after receipt of a written notice from the Town and correct and pay for any damage to other Work resulting therefrom as set forth in GC 28 entitled "WARRANTY".

#### GC 73 DISPOSAL OF MATERIAL OUTSIDE PROJECT LIMITS

73.1 The Construction Manager shall make its own arrangements for disposal of materials outside the Project limits and the CM shall pay all costs involved. The Town reserves the right to retain any salvage material or equipment

scheduled for removal. Should the Town elect to retain salvaged materials or equipment, the Construction Manager will provide appropriate on-site storage and protection. The Town will be responsible for transporting from the site any materials or equipment it has elected to retain. Off-site disposal of any items not retained by the Town shall be the responsibility of the Construction Manager.

73.2 When any material is to be disposed of outside the Project limits, the Construction Manager shall first obtain a written permit from the property Town on whose property the disposal is to be made and he shall file in writing with the Town said permit or the certified copy thereof together with a written release from the property owner absolving the Town of any and all responsibility in connection with the disposal of material on said property.

73.3 When material is disposed of as above provided and the disposal location is visible from the Project, the Construction Manager shall dispose of the material in a neat and uniform manner to the satisfaction of the Town.

#### GC 74 IDENTITY OF INTEREST WITH SUBCONTRACTORS/SUPPLIERS

74.1 The Construction Manager represents to the Town that neither the Construction Manager, nor any officer, director, partner or shareholder who holds ten percent (10%) or more of the outstanding stock of the Construction Manager, has any financial interest in, or as an officer, director, partner or ten percent (10%) plus shareholder of any firm, person or entity which has been or may be contracted with to furnish labor, material, equipment or professional services in connection with the construction of the Project. Construction Manager agrees to give written notification and obtain the approval of the Town before entering into any contract on this Project with any subcontractor or materialman where there exists any identity of interest.

#### GC 75 <u>CLEANING UP</u>

75.1 Construction Manager shall, at all times, at its expense, keep its work areas in a neat, clean and safe condition in accordance with all Town Code requirements. Upon completion of any portion of the Work, Construction Manager shall, within forty-eight (48) hours, remove all of its equipment, construction plant, temporary structures and surplus materials not to be used at or near the same location during later stages of Work.

#### GC 76 PROJECT SIGNS

76.1 Construction Manager, at no additional cost to the Town, shall construct a project job sign as indicated and described on the "Site Sign Detail". Construction Manager shall coordinate location of sign with Town's representative and install such sign within twenty-one (21) calendar days after Town's issuance of "Notice to Proceed". Any deletion/addition of lettering during the life of the Project will be at the Construction Manager's expense. Construction Manager will remove and properly dispose of sign at Substantial Completion of the Project. With the exception of the right reserved by the Town to erect a sign in connection with the Project and unless otherwise provided in the Contract, Construction Manager shall not display or permit to be displayed on or about the Project, any sign, trademark, poster or other advertising or identifying device, without prior written approval of Town.

#### GC 77 NOT USED

#### GC 78 <u>SEVERABILITY</u>

78.1 If any provision(s), or portion(s) of a provision(s) of this Contract, or the application thereof to any person or circumstance shall, to any extent, be held to be invalid, illegal or unenforceable for any reason whatsoever: the validity, legality and enforceability of the remaining provision(s), or part of the provision(s), shall not in any way be affected or impaired thereby; and if possible the invalid, illegal, or unenforceable provision shall be interpreted to the fullest extent possible to be enforceable and to give effect to the intent manifested by the provision(s), or portion(s) thereof, held invalid, illegal or unenforceable.

#### GC 79 PUBLIC RECORDS AND CONFIDENTIAL INFORMATION

79.1 Public Records Requests. Under Chapter 119, Florida Statutes (the Florida Public Records Law), a request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency.

- 79.2 Required Procedures for Protecting Confidential and/or Exempt Information.
  - A. Records Exempt from the Public Records Laws. The Florida Public Records Law provides for certain exemptions to Florida's Public Records Law to protect the security of specific governmental facilities, employees and visitors. For the same security reasons, the Town has the statutory obligation to protect such records from public disclosure and only disclose confidential and/or exempt information to a licensed engineer, architect or contractor. The purpose of this Section is to facilitate the Construction Manager's Work by making specific documents available to individuals/firms while implementing controls on the distribution of records or information which is confidential and/or exempt from the Florida Public Records Law.
  - B. Confidential Information. For purposes of this Section, "Confidential Information" shall include all information or material that is confidential and/or exempt according to the Florida Public Records Law. The exemptions most relevant to the Construction Manager include, but are not limited to:
    - 1. Plans, blueprints, drawings and diagrams which depict the internal layout and structural elements of a building or other structure, including 911, E911 or Public Safety Radio communication system infrastructure, owned or operated by the Town;
    - 2. Security or fire safety system plans, including records, information, photographs, audio and visual representations, schematic diagrams, floor plans, surveys, as-built drawings, recommendations or consultations relating directly to the physical security or fire safety of the facility or revealing security or fire safety systems in whole or in part;
    - 3. Geographical maps indicating the actual or proposed locations of 911, E911 or Public Safety Radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911 or Public Safety Radio services, or 911, E911 or Public Safety Radio communication structures or facilities owned and operated by the Town;
    - 4. Nationwide Public Safety Broadband Network (Network) information, where such information would reveal the design and operation of Network facilities; Network coverage, including geographical maps indicating actual or proposed locations of Network infrastructure or facilities; the capabilities of Network infrastructure and facilities; the functions of Network services; and the security, including cybersecurity, of the design and operation of the Network;
    - 5. Threat assessments;
    - 6. Emergency evacuation plans;
    - 7. Sheltering arrangements; or
    - 8. Manuals for security or fire safety personnel, emergency equipment, security or fire safety training; or otherwise containing narrative and/or graphic content of a security nature.
  - C. Obligations.

- 1. Maintain the Confidentiality of the Confidential Information. The Construction Manager has an obligation to maintain the confidential status of Confidential Information. The Construction Manager shall hold and maintain the Confidential Information in the strictest confidence for the sole and exclusive benefit of the Town. The Construction Manager shall restrict access to Confidential Information to: 1) the Construction Manager's employees, and/or; 2) licensed architects, engineers, contractors, subcontractors (Third Parties) for the sole purpose of providing contractual services. Prior to releasing any Confidential Information to a Third-party, the Construction Manager shall require those Third Parties to execute nondisclosure restrictions at least as protective as those in this Section, and maintain a list of any Third-party to which the Construction Manager has distributed Confidential Information. Other than as authorized above, the Construction Manager shall not, without prior written approval of the Town, publish, copy, or otherwise disclose to others any Confidential Information.
- 2. Disclosure Warning. If Confidential Information is in written form, the Construction Manager shall label or stamp the materials as they are created with the Disclosure Warning described below on each and every sheet of plans, documents or reports that contain exempt information. If the Construction Manager is distributing Confidential Information to authorized recipients, the materials and the correspondence related thereto should contain the following disclosure warning:

DISCLOSURE WARNING. THIS DOCUMENT IS EXEMPT AND CONFIDENTIAL UNDER SEC. 119.071, FLORIDA STATUTES. ANY ENTITY OR PERSONS RECEIVING SUCH INFORMATION SHALL MAINTAIN THE EXEMPT STATUS OF THE INFORMATION UNLESS OTHERWISE AUTHORIZED BY THE TOWN. THESE DOCUMENTS SHALL NOT BE DISTRIBUTED, LOANED OR COPIED WITHOUT THE WRITTEN PERMISSION OF THE TOWN IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF FLORIDA LAW. THE TOWN MUST BE ADVISED IMMEDIATELY AS TO ANY CHANGES IN CUSTODIAN FROM THOSE PERSONS LISTED IN CORRESPONDENCE FOR ORIGINAL DISTRIBUTION, IF THE DOCUMENTS ARE LOST OR STOLEN, OR IF THERE IS IMPROPER DISCLOSURE OR UNAUTHORIZED USE OF THE INFORMATION IN THE DOCUMENT. UPON OF USE. WORK. PROJECT, OR CONTRACT. COMPLETION THE CONTRACTOR/CONSULTANT SHALL SHRED OR BURN ANY DUPLICATE RECORDS.

- 3. Identifying Correspondence that May Contain Exempt or Confidential Information. In order to assist in the identification of electronic records, i.e., email, which may be exempt from Public Records Requests and protect information that is exempt from disclosure, the Construction Manager (as either the writer or receiver of an electronic document which may contain confidential and/or exempt information) must use the letters "PREX" (in caps) as the first four letters of the subject line of the electronic document. The PREX identifier should be used if the email contains confidential and/or exempt information in the body and/or an attachment.
- 4. Notification of Improper Disclosure. Town must be notified immediately if the Confidential Information is lost or stolen or of any improper disclosure or unauthorized use of the Confidential Information. The Construction Manager shall make a report to the Town not more than seven (7) business days after the Construction Manager learns of such an improper disclosure or unauthorized use of the Confidential Information. The Construction Manager's

report shall identify, to the extent known, the nature of the improper disclosure or unauthorized use, the Confidential Information disclosed or used, who made the disclosure of or used the information, what the Construction Manager has done or shall do to mitigate any harmful effects of the improper disclosure or unauthorized use, and what corrective action the Construction Manager has taken or shall take to prevent future similar unauthorized use or improper disclosure. The Construction Manager shall provide any other such information about the unauthorized use or improper disclosure as reasonably requested by the Town. The Construction Manager shall take all steps the Town deems advisable to mitigate, resolve and/or prevent the unauthorized use or improper disclosure of the Confidential Information.

- D. Survival. The nondisclosure provisions of this Section shall survive the termination of this Contract. The Construction Manager's duty to hold Confidential Information in confidence shall remain in effect until Town sends the Construction Manager written notice releasing the Construction Manager from the provisions of this Section.
- E. Enforcement. The Construction Manager understands that non-compliance with the terms of this Section may result in debarment pursuant to the Palm Beach County Code as well as subject itself to any other remedies available to the Town in law or equity.

IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT 561-278-4548, <u>lgaskins@highlandbeach.us</u> OR BY MAIL AT TOWN OF HIGHLAND BEACH, 3614 SOUTH OCEAN BOULEVARD, HIGHLAND BEACH, FL 33487.

#### GC 80 LIQUIDATED DAMAGES

For purposes of the Contract Documents, Liquidated Damages means damages assessed for the Construction Manager's failure to substantially complete the Work within the Contract Time, including a grace period, the duration of which is to be agreed upon by the parties in the GMP Amendment, change(s) to Contract Time authorized by Change Order(s) and Written Amendment(s). Should the Construction Manager or, in the event of its default, the Surety fail to achieve certification of Substantial Completion of the Work within the Contract Time, the Construction Manager or, in the event of its default, the Surety shall pay to the Town, not as a penalty, but as Liquidated Damages in the daily amount(s) established in the GMP Amendment. Construction Manager's total liability for all Liquidated Damages assessed in accordance with this provision shall be capped at an amount to be agreed upon by the parties in the GMP Amendment.

The Construction Manager hereby agrees and affirms that the amounts specified in this section reflect a fair compensable value for damages suffered by the Town as a result of Construction Manager's delay, and that said amounts are not a penalty nor shall ever be contested as reflecting the imposition of a penalty against the Construction Manager.

The Town shall have the right to apply as payment on such Liquidated Damages any money on any Project that is due the Construction Manager by the Town, and, to deduct Liquidated Damages either incrementally from progress payment(s) or the Final Payment.

Permitting the Construction Manager to continue and to finish the Work, or any part of it, after the expiration of Contract Time, shall in no way act as a waiver on the part of the Town of the Liquidated Damages due under the Contract.

The number of days of default shall be determined by counting all calendar days. In case of default of the Contract and completion of the Work by the Town, the Construction Manager and its Surety shall be liable for the Liquidated Damages under the Contract, but no Liquidated Damages shall be chargeable for any delay in the Substantial Completion of the Work caused by the Town, in whole or in part.

#### GC 81 DISCLAIMER OF CONSEQUENTIAL DAMAGES

Neither party shall be liable to one another, whether in contract, tort, warranty or under any statute or on any other basis, for any consequential, incidental, indirect, special, punitive or exemplary damages suffered or incurred in connection with this Contract, even if that party has been advised of the possibility of such damages. Consequential damages shall include, by way of example and without limitation, opportunity costs, loss of use of facilities or other assets, consequential damage claims of subcontractors, lost profits, lost savings, lost business, lost bonding capacity, lost financing, lost reputation or lost goodwill. Notwithstanding the foregoing, this waiver shall not apply to any consequential damages that a) are covered and paid for by any insurance policy that Construction Manager is required to provide pursuant to the Agreement; or b) result from Construction Manager's intentional misconduct, fraud, gross negligence or recklessness.

#### GC 82 REQUEST FOR SECTION 179D ALLOCATION

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

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#### **APPENDIX A**

Request for Information Field Instruction Field Bulletin Construction Change Proposal Change Order Construction Change Directive Submittal Transmittal Deficiency Report Non-Conformance Report Construction Manager's Daily Report Substitution Request Form Contingency Use Directive Application for Payment

#### **CONTRACT EXHIBIT B SPECIAL CONDITIONS**

### SPECIAL CONDITIONS TABLE OF CONTENTS

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#### SC 1 SPECIAL CONDITIONS

The following supplements, modifies, changes, deletes from or adds to the General Conditions of this Contract. Where any paragraph or subparagraph is modified or deleted by these supplements, the unaltered provision of that paragraph, subparagraph or clause shall remain in effect.

#### SC 2 PROJECT TEAM

Key members of the Project Team as referenced in the specifications are defined as follows:

- 1. Town: Town of Highland Beach.
- 2. Construction Manager: Kaufman Lynn Construction, Inc.
- 3. Architect/Engineer of Record: PGAL, Inc.
- 4. User: Highland Beach Fire Department
- 5. Town's Project Representative: Marshall Labadie, Town Manager
- 6. CM's Representative: TBD
- 7. Architect's Representative:
- 8. Governmental and Regulatory agencies having jurisdiction over this project include: Town of Highland Beach Building Department
- 9. Utility companies providing service to the project include Florida Power & Light (Electrical), AT&T (Telephone), Town of Highland Beach Utilities Department (Water & Sewer)

#### SC 3 LOCATION OF WORK

3614 South Ocean Boulevard, Highland Beach, FL 33487

#### SC 4 WORK CONSTRAINTS

Normal allowable Project Work Hours are from 8:00 a.m. to 6:00 p.m. Monday through Friday. Requests by the Construction Manager to work outside this time frame including weekend and Holiday work shall be made to Town at least 3 workdays prior to the requested work time change.

#### SC 5 FIELD OFFICE

TBD

#### SC 6 CONCURRENT WORK

The following work, under separate contract to the Town, is anticipated to occur during the contractual time frames of the Project: TBD

The foregoing in no way limits the Town's rights to execute additional work on the site under separate contract.

#### SC 7 PESTICIDES AND HERBICIDES APPLICATION

Construction Manager shall provide evidence to Town of proper certification of applicators of pesticides or herbicides prior to the application of those products on Town property.

#### SC 8 NPDES PERMIT FOR STORM WATER DISCHARGE

On projects where construction activities disturb one acre of land or more, the Construction Manager will be required to comply with the County's NPDES General Permit which includes implementation of a storm water pollution prevention plan (SWPPP) during construction.

#### SC 9 CRIMINAL HISTORY RECORDS CHECK

9.1 The Construction Manager, the Construction Manager's employees, trade contractors of Construction Manager, employees of trade contractors, subcontractors and suppliers shall comply with FBI CJIS Security Policy, Section 5.12.1, Personnel Screening Requirements for Individuals Requiring Unescorted Access to Unencrypted CJI, for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolutions R2013-1470 and R2015-0572, as amended. The Construction Manager is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. Further, the Construction Manager acknowledges that its contract price includes any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the TOWN.

9.2 Prior to commencement of work within a Critical Facility or CJI Facility, the Construction Manager shall make arrangements through the Town's Fingerprint Section for its employees and those of its subcontractors to have fingerprint based criminal history record checks performed. Those employees clear of disqualifying offenses will be granted a visitor ID badge which must be worn at all times. A list of disqualifying offenses is available upon request. Any person found to have a disqualifying criminal offense will be denied unescorted access to the project. The Construction Manager will be charged a nominal fee for lost cards.

9.3 Each individual undergoing a criminal justice background check is required to comply with security awareness training.

9.4 Individuals passing the background check will be issued a badge. Construction Manager shall make every effort to collect the badges of its employees and its subcontractor's employees upon conclusion of the contract work and return them to the Town. If the Construction Manager or its subcontractor terminates an employee who has been issued a badge, the Construction Manager must notify the Town within 2 hours. At the time of termination, the Construction Manager shall retrieve the badge and return it to the Town in a timely manner. The Town reserves the right to suspend any contractor that; 1) is not in compliance with the requirements of County Code Section 2-371-2-377 as may be amended, 2) does not immediately contact the Town regarding a terminated employee or subconsultant employee, or 3) fails to make a good faith effort to comply with the badge retrieval policy.

9.5 Prior to working within the police facility, the Construction Manager and its employees must complete a 15minute CJIS Level 1 Security Training with the agency's FCIC Agency Coordinator.

#### SC 10 TAXES

Construction Manager shall pay all taxes, levies, duties and assessments of every nature which may be applicable to any work under this Contract. The Contract Sum and any agreed variations thereof shall include all taxes imposed by law. Construction Manager herein indemnifies and holds the Town harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

10.1 Town Furnished Materials

10.1.1 The Construction Manager shall include Florida State Sales Tax (Sales Tax) and other applicable taxes in its bid for material, supplies, and equipment. The Town, being exempt from sales tax, reserves the right to make direct purchases of various construction materials included in the Construction Managers bid and/or contract.

The Town reserves the right to require Construction Manager to assign some or all of its subcontracts or other agreements with material suppliers directly to Town. Any materials purchased by Town pursuant to such an assignment of a material supply subcontract or agreement of a material supply subcontract or agreement shall be

referred to as "Town Furnished Materials" and the responsibilities of both Town and Construction Manager relating to such Town Furnished Materials shall be governed by the terms and conditions of these Special Conditions, which shall take precedence over other conditions and terms of the Contract where inconsistencies or conflicts exist. In addition, the Town's standard terms and conditions associated with purchase ordered materials will be applicable to all Town Furnished Materials.

10.1.2 Material suppliers shall be selected by the Construction Manager awarded the contract by the competitive bid process. Supply contracts shall be awarded by the Construction Manager to the supplier whose bid/proposal is most advantageous to the Town, price and other factors considered.

The Construction Manager shall include the price for all construction materials in its bid. Town purchasing of construction materials, if selected, will be administered on a deductive Change Order basis.

10.1.3 To enable the Town to realize savings of Sales Tax on selected tangible personal property needed for this Project, the Construction Manager will provide to the Town a list of all intended suppliers, vendors, and materialmen for consideration as Town-Furnished Materials. The Construction Manager shall submit price quotes from the vendors, as well as a description of the materials to be supplied, quantities and prices. The Construction Manager will evaluate the list to recommend direct purchases where those direct purchases will result in Sales Tax Savings to the Town. The Town will either accept or reject the Construction Manager's recommendations and purchases will be made according to Town procedures.

10.1.4 Construction Manager shall identify materials which the Town will furnish through this Town Furnished Materials clause which will achieve a minimum agreed upon goal of tax savings. Town may agree to furnish materials worth more than the minimum agreed goal. The Construction Manager will provide the necessary clerical and administrative services support required to implement this Special Condition.

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

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

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

10.1.5 The following procedure will be used for the implementation of this program.

After receipt of the Purchasing Requisition Request Form, Town shall prepare Town Purchase Orders (hereinafter Purchase Orders) for items of material which the Town chooses to purchase directly. Once the Purchase Order has been prepared and executed, it shall be issued directly to the vendor by the Town. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the Construction Manager, less any sales tax associated with such price.

Promptly upon issuance of each Purchase Order by the Town, Construction Manager shall verify the purchase of the items in accordance with the terms of the Purchase Order and in a manner to assure timely delivery of items. Town's Procurement Specialist or his/her designated representative shall be the approving authority for the Town on Purchase Orders in conjunction with Town Furnished Materials. The Purchase Order shall require that the supplier provide the required shipping and handling insurance. The Purchase Order shall also require the delivery of the Town Furnished Materials on the delivery dates provided by the Construction Manager in the Purchasing Requisition Request Form. The Vendor shall issue its invoice, for all materials supplied pursuant to a Town Purchase Order, directly to Town of Palm Springs.

10.1.6 In conjunction with or prior to the execution of the Purchase Orders by the suppliers, the Construction Manager shall execute and deliver to the Town one or more deductive Change Orders, in accordance with General Conditions (GC 65 Changes) referencing the full direct cost of all Town Furnished Materials to be provided by each supplier from whom the Town elected to purchase material directly, plus all sales taxes associated with such materials in Construction Manager's bid to Town, . The Town Manager or his/her authorized representative shall be the approving authority for the Town on deductive Change Orders in conjunction with Town Furnished Materials.

10.1.7 All shop drawings and submittals shall be made in accordance with GC 46, Drawings, Data & Samples, of the General Conditions.

10.1.8 Construction Manager shall be fully responsible for all matters relating to the receipt of materials furnished by Town in accordance with these Special Conditions including, but not limited to, verifying correct quantities, verifying documents of orders in a timely manner, coordinating purchases providing and obtaining all warranties and guarantees required by the Contract, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials following acceptance of items by the Town due to the negligence of the Construction Manager. The Construction Manager shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Construction Manager for the particular materials furnished. The Construction Manager shall provide all services required for the unloading, handling and storage of materials through installation. To the extent permitted by Section 725.06, FS The Construction Manager agrees to indemnify and hold harmless the Town from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions of the Construction Manager.

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

10.1.10 The Construction Manager shall insure that Town Furnished Materials conform to the specifications and determine prior to incorporation into the Work if such materials are patently defective, and whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Construction Manager discovers defective or nonconformities in Town Furnished Materials upon such visual inspection, the Construction Manager shall not utilize such nonconforming or defective materials in the Work and instead shall promptly notify the Town of the defective or nonconforming condition so that repair or replacement of those materials can occur

without any undue delay or interruption to the Project. If the Construction Manager fails to perform such inspection and otherwise incorporates into the Work such defective or nonconforming Town Furnished Materials, the condition of which it either knew or should have known by performance of an inspection, Construction Manager shall be responsible for all damages to Town resulting from Construction Manager's incorporation of such materials into the Project, including liquidated damages.

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

10.1.12 The Construction Manager shall be responsible for obtaining and managing all warranties and guarantees for all materials and products as required by the Contract. All repair, maintenance or damage-repair calls shall be forwarded to the Construction Manager for resolution with the appropriate supplier, vendor, or subcontractor.

10.1.13 Notwithstanding the transfer of Town Furnished Materials by the Town to the Construction Manager's possession, the Town shall retain legal and equitable title to any and all Town Furnished Materials, although the Construction Manager shall maintain both Builders Risk and Inland Marine/Transit insurance on said Materials and the Loss Payee endorsement on said policies shall read "Town of Palm Springs."

10.1.14 The transfer of possession of Town Furnished Materials from the Town to the Construction Manager shall constitute a bailment for the mutual benefit of the Town and the Construction Manager. The Town shall be considered the bailor and the Construction Manager the bailee of the Town Furnished Materials. Town Furnished Materials shall be considered returned to the Town for purposes of their bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project.

10.1.15 The Town shall in no way be liable for any interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs or time resulting from any delay in the delivery of, or defects in, Town Furnished Materials.

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

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

10.1.18 The Town shall be entitled to the benefits of any discounts attributable to the early payment of vendor invoices for materials furnished by the Town pursuant to these specifications.

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

The premium cost for the surety bond should not be included in the bid price. Verifying that a designated material supplier can furnish a supply bond will be the responsibility of the Construction Manager.

CM RFP – Qualifications Based Selection

## **REQUEST FOR QUALIFICATIONS**

## FOR

## **CONSTRUCTION MANAGER AT RISK**

TOWN OF HIGHLAND BEACH

## FIRE STATION #6

**RFQ No.: 22-001** 

RFQ DUE DATE: MARCH 25, 2022 RESPONSES DUE NO LATER THAN 2:00 P.M.

> TOWN OF HIGHLAND BEACH TOWN HALL 3614 SOUTH OCEAN BLVD. HIGHLAND BEACH, FL 33487

### REQUEST FOR QUALIFICATIONS FOR FIRE STATION ADDITION/RENOVATION CONSTRUCTION MANAGER at RISK RFQ No.: 22-001

In accordance with Section 287.055, Florida Statutes (Consultants' Competitive Negotiation Act), the Town of Highland Beach is soliciting qualification statements from interested and qualified firms offering to provide construction manager at risk services for the renovation/addition to the existing Fire Station #6 located at 3612 South Ocean Boulevard, Highland Beach, FL 33487.

Qualification Statements must be received by 2:00 PM on March 25, 2022 in a sealed envelope clearly labeled "**RFQ # 22-001: "FIRE STATION #6 CONSTRUCTION MANAGER at RISK**" and delivered to:

#### Town of Highland Beach Clerk's Office c/o Eric Marmer, Interim Finance Director 3614 South Ocean Blvd., Highland Beach, Florida 33487

#### LOBBYING / CONE OF SILENCE

Consistent with the requirements of Chapter 2, Article VIII, Lobbyist Registration, of the Palm Beach County Code of Ordinances, Highland Beach imposes a Cone of Silence. A cone of silence shall be in effect as of the deadline to submit the proposal, bid, or other response and shall remain in effect until Town Commission awards or approves a contract, rejects all bids or responses, or otherwise takes action that ends the solicitation process. While the cone of silence is in effect, no proposer or its agent shall directly or indirectly communicate with any member of Town Commission or their staff, the Manager, any employee of Highland Beach authorized to act on behalf of Highland Beach in relation to the award of a particular contract or member of the Selection Committee in reference to the solicitation, with the exception of the Interim Finance Director or designee. (Section 2-355 of the Palm Beach County Code of Ordinances.) Failure to abide by this provision may serve as grounds for disqualification for award of contract to the proposer. Further, any contract entered in violation of the cone of silence shall render the transaction voidable.

The cone of silence shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before Selection Committees, contract negotiations during any public meeting, presentations made to the Town Commission, and protest hearings. Further, the cone of silence shall not apply to contract negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence with Highland Beach as may be permitted by the competitive solicitation. Additionally, the cone of silence shall not apply to any purchases made in an amount less than the competitive solicitation threshold set forth in the Purchasing Manual.

Any questions relative to any item(s) or portion of this bid should be directed to Eric Marmer, Financial Services Manager, E-mail <u>emarmer@highlandbeach.us.</u>

#### Purpose:

As part of the establishment of an independent Fire Rescue Service Department, the Town of Highland Beach is requesting Qualification Statements from firms to provide construction management at risk services for the renovation/addition to the existing Fire Station #6 located at 3612 South Ocean Boulevard, Highland Beach, FL 33487. Firms interested in providing Construction Management at Risk (CMAR) Services related to the construction and renovation work for the Fire Station should submit Qualification Statements. The firm ultimately selected will provide full construction management at risk services for the project as directed by the Town.

At the time of the opening of Qualification Statements, each proposer shall be presumed to have inspected the site and to have read and be fully familiar with the Contract Documents (including all addenda). Failure or omission of any proposer to examine any form, instrument or document shall in no way relieve any proposer from any obligation with respect to this RFQ.

#### PRE-SUBMITTAL CONFERENCE AND SITE VISIT:

A Pre-Submittal Conference will be held at 10:00 a.m., March 7, 2022 at the Town of Highland Beach Commission Chamber at 3614 South Ocean Blvd., Highland Beach, Florida 33442, to present the project scope, submission requirements, procurement approach, and to answer questions of interested Proposers. Attendance is not mandatory.

#### **RFQ OPENING:**

Sealed Qualification Statements will be received in The Clerk's Office, Town of Highland Beach, 3641 South Ocean Boulevard, Highland Beach, FL 33487, by: <u>March 25, 2022, No Later Than</u> 2:00PM (Local Time).

RFQ's will be opened in:	TOWN HALL
-	COMMISSION CHAMBERS
	<b>3614 South Ocean Boulevard Highland Beach, FL 33487</b> (Unless otherwise designated)

Contact: Eric Marmer, Interim Finance Director Telephone: (561) 278- 4548; Email: <u>emarmer@highlandbeach.us</u>

Office Hours: MONDAY – FRIDAY, 8:30 A.M. TO 4:30 P.M.

#### **ATTENTION ALL INTERESTED RESPONDENTS:**

Copies of this solicitation package may be obtained from Demandstar at <u>www.demandstar.com</u>. Demandstar distributes the Town's solicitations through electronic download. Paper copies of this solicitation may be requested from The Clerk's Office by calling

(561) 278-4548. Respondent(s) who obtain copies of this solicitation from sources other than Demandstar may potentially risk not receiving certain addendum(s) issued as a result of the solicitation.

#### **REQUEST FOR QUALIFICATIONS**

#### FOR

## FIRE STATION #6 CONSTRUCTION MANAGER at RISK

#### RFQ No.: 22-001

#### Section 1 – SUBMITTAL INFORMATION

- A. The Town of Highland Beach will receive RFQ responses/Qualification Statements until <u>March 25. 2022</u> at <u>2:00 P.M. (LOCAL TIME)</u> in the Town Clerk's Office located at Town Hall, 3614 South Ocean Blvd., Highland Beach, FL 33487.
- B. Any responses received after the above stated time and date will not be considered. It shall be the sole responsibility of the proposer to have its response <u>delivered to the Town</u> <u>Clerk's Office</u> for receipt on or before the above stated time and date. It is recommended that responses be sent by an overnight air courier service or some other method that creates proof of submittal. Bid responses that arrive after the above stated deadline as a result of delay by the mail service shall not be considered, shall not be opened at the public opening, and arrangements shall be made for their return at the bidder's request and expense. The Town reserves the right to consider submittals that have been determined by the Town to be received late due solely to mishandling by the Town after receipt of the bid and prior to the award being made.
- C. If any addendum(s) is issued to this RFQ, the Town will attempt to notify all prospective proposers who have secured same, however, it shall be the <u>responsibility of each proposer</u>, prior to submitting the RFQ response, to contact the Town Clerk's Office at (561) 278-4548 to determine if any addendum(s) were issued and to make any addendum acknowledgements as part of their RFQ response.
- D. One (1) original. so marked. three (3) copies. and one (1) electronic copy of the RFQ response shall be submitted in one sealed package clearly marked on the outside "<u>RFQ</u> <u>#22-001: FIRE STATION #6 CONSTRUCTION MANAGER at RISK</u>" to: Town of Highland Beach Clerk's Office, c/o Eric Marmer, Financial Services Manager, 3614 South Ocean Blvd., Highland Beach, Florida 33487.
- E. Responses shall clearly indicate the <u>legal name</u>, <u>address</u>, <u>and telephone number</u> of the proposer (firm, corporation, partnership or individual). Responses shall be <u>signed</u> above the <u>typed or printed name and title</u> of the signer. The signer shall have the authority to contractually bind the proposer to the submitted proposal. Bidder must note their Federal I.D. number on their bid submittal.
- F. All expenses for making RFQ responses to the Town are to be borne by the Proposer.
- G. A sample draft agreement from which the Town intends to negotiate with the successful firm(s) is contained within this Request for Qualifications for review. The Town reserves the right to modify the contract language prior to execution. The actual scope of services and consulting fees will be negotiated with the successful firm.
- H. Each Proposer, by submission of an RFQ response/Qualification Statement, acknowledges that in the event of any legal action challenging the award of a RFQ; damages, if any, shall be limited to the actual cost of the preparation of the RFQ.

#### **REQUEST FOR QUALIFICATIONS**

#### FOR

#### FIRE STATION #6

#### CONSTRUCTION MANAGER at RISK

#### RFQ No.: 22-001

#### Section 2 – PROPOSAL SUBMISSION REQUIREMENTS

A. **General Requirements.** The purpose of the Qualification Statement is to demonstrate the qualifications, competence, and capacity of the Firms seeking to undertake the requirements of this Request for Qualifications. As such, the substance of the response to the RFQ will carry more weight than its length, form, or manner of presentation. The Qualification Statement should demonstrate the qualification of the Firm and the staff to be assigned to his engagement. It should also specify an approach that will meet or exceed the Request for Qualifications requirements.

The selected Firms shall provide sufficient organization, personnel, and management to carry out the requirements of this RFQ in an expeditious and economical manner, consistent with the needs of the Town. Additionally, the selected Firm will be required to demonstrate recent fire station experience with the successful completion of services like those specified within this RFQ including the attached scope of work.

- B. **Certification and Licenses.** Proposers must include with their Proposals, copies of all applicable certificates and licensing or business permits related to the Work specified herein. Proposer must be licensed as a general contractor in Florida in accordance with FL Statutes Chapter 489 and the Florida Construction Industry Licensing Board.
- **C. Insurance and Bonding Capacity** Proposer shall provide a sample Certificate of Insurance demonstrating evidence that the firm can meet requirements of Attachment "A" Insurance Advisory Form included in this RFQ. Proposer shall provide letter of acknowledgement from the Proposer's Surety of Proposer's ability to provide 100% Performance and Payment Bonds for a minimum of \$10 million for a single project in the name of the Proposer as the Principal under the bonds. Letter shall also indicate Proposer's maximum single project bonding capacity and Proposer's aggregate bonding capacity. The Surety must be rated no less than "A-"as to management and no less than "VI" as to strength by the latest edition of Best's Insurance Guide published by the A.M. Best Company.
- D. **Detailed Proposal.** The detailed proposal should follow the order set forth as outlined below and come before the required forms listed in section 2.6.
  - 1. Letter of Interest

The Letter of Interest shall be a maximum of one (1) page that summarizes the Proposer's primary qualifications and a firm commitment to provide the proposed services. The Letter of Interest shall be signed by the Proposer or person authorized to bind the Proposer to the submitted RFQ.

2. <u>Firm's Qualifications</u> (Maximum Potential Points – 30)

Proposer shall provide information using the attached References Form for three

(3) fire station projects in Florida utilizing the Construction Management at Risk (CMAR) delivery method with a minimum value of \$4,000,000 with similar scope and complexity that have been completed or anticipate completion by the Proposer's firm within the last or next five (5) years which demonstrate the experience of the firm and the team that will be assigned to provide the services as required by this Project.

For each reference project, provide the following information:

- 1) Owner/Client name & Representative name, address, phone number, and email.
- 2) Name and location of the project.
- 3) Description of the scope of work.
- 4) Date project was completed or is anticipated to be completed.
- 5) GMP Amount vs. Final Cost
- 6) Size of project (gross square feet of construction).
- 3. Qualifications of Proposer's Project Team (Maximum Potential Points 30)

Proposer shall provide an overview of the qualifications of a specific project team to demonstrate the experience and capability of key project staff members to perform the requested preconstruction and construction phase services. Specify and present as a minimum, similar experience with preconstruction and construction phase services applicable to construction and/or renovation of fire station projects in Florida of similar size and complexity. Identify the preconstruction and construction staff who would be assigned to the project as follows:

- a. An organizational chart that clearly defines the lines of authority
- b. The names and roles of each professional to be assigned to this project, including familiarity with CMAR projects of a similar nature.
- c. The estimated amount of involvement expressed as a percentage of time, of each of the staff members.
- d. Brief resumes indicating relevant experience.

# <u>4.Project Approach, Demonstrated Skill Set, and Relevant Experience.</u> (Maximum Potential Points – 20)

- a. <u>Narrative of Project and Understanding of the Project Issues:</u> Provide a narrative demonstrating the Proposer's understanding of the project goals, requirements, challenges, the project delivery method, and how the Proposer intends to ensure that the established budget, quality, safety, and schedule goals will be met.
- b. <u>Cost Estimates & Budget Control:</u> Provide a description of the Proposer's approach to cost estimating and adhering to the project budget during the various phases of the design (i.e., schematic, design development, construction documents). Indicate the methodology and estimating system used in preparation of estimates.
- c. <u>Discuss how the Proposer will utilize best practice techniques</u>: such as value engineering and constructability reviews and provide evidence of previous experience with any of the methodologies presented.
- Location of Proposer's Office (Maximum Potential Points 10) Indicate the location of the Proposer's office that will be responsible for providing the services required by the RFQ/Contract.

Office location within Palm Beach County – 10 points

Office location outside Palm Beach County but within 75 miles of project location – 5 points Office location outside Palm Beach County greater than 75 miles of project location – 1 point

#### 6. Preparation of the RFQ:

This Request for Qualifications (also referred to as "RFQ") provides the complete set of terms and conditions, specifications, and proposal forms for the required goods and/or services.

SUBMITTAL FORMS – Proposers must complete and submit the required forms for submittal to be considered a valid response.

Proposer's Acknowledgement Confirmation of a Drug Free Workplace Acknowledgement of PBC Inspector General Scrutinized Companies Certification Form Public Entity Crimes Sworn Statement Acknowledgment of Addendum(s) (if applicable) Schedule of Sub-Consultants (if applicable) Statement of No RFQ (if applicable)

#### Additionally

Submit current Florida General Contractor's License Submit evidence of liability & other insurance requirements at the levels identified on the Insurance Advisory Form herein as an attachment. Submit letter from Surety indicating Bonding Capacity Submit any Supplemental information relative to this RFQ

All proposal forms must be completed in full and include all applicable signatures where indicated. The signature must be of an authorized representative who has the legal ability to bind the proposer in contractual obligations. Unsigned proposals will not be accepted.

All proposal forms must be typed or legibly printed in ink. All corrections made by a proposer to any part of a proposal form must be initialed in ink. It is a proposer's sole responsibility to assure that its proposal is complete and delivered at the proper time and place of the proposal opening.

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### REQUEST FOR QUALIFICATIONS FOR FIRE STATION #6 CONSTRUCTION MANAGER at RISK RFQ No.: 22-001

#### Section 3 – EVALUATION OF PROPOSALS

#### **EVALUATION OF PROPOSALS**

The Selection Committee will review and evaluate all Qualification Statements submitted in response to this solicitation. The Committee shall conduct a preliminary evaluation of all responses based on the information provided and other evaluation criteria as set forth in this solicitation. The selection of the best-qualified Respondent(s) will be based on whether the Respondent(s) are responsible and responsive to this solicitation, and will be evaluated as follows:

The selection committee will review and evaluate all RFQ responses. The determination shall be based upon the following criteria and respondents shall provide, as a minimum the information listed under each criterion.

Evaluation Criteria	Maximum Potential Points
Qualifications of the firm	30
Assigned Staff Qualifications and Experience	30
Project Approach	30
Office Location	<u>10</u>
Total	100

#### A. Evaluation Process

- 1. A Selection Committee will review each written submission for compliance with the requirements of the RFQ, including verifying that each Proposal includes all documents required. In addition, the Committee will ascertain whether the provider is qualified to render the required services according to State regulations and the requirements of this RFQ.
- 2. In the event less than three (3) firms submit responses to the RFQ or less than three (3) are deemed qualified by the Selection Committee, then the Town shall make a determination as to whether to proceed with the lesser number of firms. If the decision is to re-advertise, and after a subsequent advertisement resulting in less than three (3) firms that still cannot be qualified, then the Town shall proceed hereunder with the qualified firms.
- 3. The Selection Committee will score and rank all responsive firms and proposals

based on the requirements of the RFQ and determine a shortlist a minimum of three (3) firms deemed to be the most qualified to perform the required services.

- 4. The Selection Committee will recommend to the Town Commission to negotiate contract terms with the top ranked firm or conduct discussions, interviews, or require presentations from the shortlisted firms. Upon completion of the discussions, interviews or presentations, the Committee may re-evaluate, re-rate and re-rank the firms based upon the evaluation criteria listed above.
- 5. After the interviews/presentations, the Selection Committee will submit the list of the top three proposers recommended as the most qualified to the Town Commission for ratification and approval. The Town Commission may approve the ranking or require public presentations by the top three firms to determine the final ranking.
- 6. Upon approval of the final ranking by the Town Commission, the Town will negotiate an agreement with the top-ranked firm based on the draft contract attached as part of this Request for Qualifications. The Town reserves the right to include additional provisions if the inclusion is in the best interest of the Town, as determined solely by the Town. Assuming the successful negotiation of an agreement, the final contract will be submitted to the Town Commission for its consideration and approval.
- 7. Should the Town fail to negotiate a satisfactory contract as determined to be fair and competitive with the highest-ranked firm, negotiations will formally be terminated. The Town will then undertake negotiations with the second-ranked firm. Should negotiations fail also with the second-ranked firm, then the third- ranked proposer will be notified for negotiations.

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#### **REQUEST FOR QUALIFICATIONS**

#### FOR

#### **FIRE STATION #6**

#### CONSTRUCTION MANAGER at RISK

#### RFQ No.: 22-001

#### Section 4 – GENERAL CONDITIONS FOR PROPOSERS

- 1. <u>FAMILIARITY WITH LAWS:</u> The Proposer is presumed to have full knowledge of and be in compliance with all Federal, State, and Local laws, ordinances, rules, and regulations that in any manner affect the equipment and the services provided to the Town. Ignorance on the part of the Proposer will in no way relieve Proposer of responsibility to adhere to such regulations.
- 2. <u>RFQ FORMS</u>: The Proposer will submit its response to the RFQ on the forms provided. All descriptive information must be legibly entered. The Proposer is required to be licensed to do business as an individual, partnership, or corporation in the State of Florida. All RFQ forms must be executed and submitted for easy identification. The face of the envelope shall contain the company's name and address, RFQ title, number, RFQ date and time. RFQs not submitted on RFQ forms herein may be rejected. All RFQs are subject to the conditions specified within this solicitation document. RFQs which do not comply with these conditions are subject to rejection.
- 3. <u>EXECUTION OF RFQ:</u> RFQ must contain a manual signature of an authorized representative in the space provided on all affidavits and proposal sheets.
- 4. <u>RFQ DEADLINE:</u> It is the Proposer's responsibility to assure that the RFQ is delivered at the proper time and place prior to the RFQ deadline. The Town of Highland Beach is <u>not</u> responsible for the U.S. Mail or private couriers in regard to mail being delivered by a specified time so that a proposal can be considered. RFQ's which for any reason are not delivered by the deadline will not be considered. If no award has been made, the Town reserves the right to consider RFQ's that have been determined by the Town to be received late due to mishandling by the Town after receipt of the RFQ. Offers by telegram or telephone are not acceptable.
- 5. <u>RIGHTS OF THE TOWN:</u> The Town expressly reserves the right to:
  - A. Waive any defect, irregularity, or informality in any RFQ or RFQ procedure.
  - B. Reject or cancel any or all RFQ's.
  - C. Reissue the RFQ.
  - D. Extend the RFQ deadline time and date.

E. Consider and accept an alternate RFQ as provided herein when most advantageous to the Town.

6. <u>STANDARDS</u>: Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective Proposer has:

- A. Available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain such, necessary to indicate its capability to meet all contractual requirements.
- B. A satisfactory record of performance.
- C. A satisfactory record of integrity.
- D. Qualified legally to Contract within the State of Florida and the Town of Highland Beach.
- E. Supplied all necessary information in connection with the inquiry concerning responsibility.
- 7. <u>INTERPRETATIONS</u>: Any questions concerning the conditions and specifications should be directed to Eric Marmer, Interim Finance Director at <u>emarmer@highlandbeach.us</u>, in writing no later than ten (10) days prior to the RFQ deadline.
- 8. <u>CONFLICT OF INTEREST</u>: The award hereunder is subject to all conflict-of-interest provisions of the Town of Highland Beach, Palm Beach County, of the State of Florida.
- 9. <u>SUBCONTRACTING:</u> If a Proposer subcontracts any portion of a Contract for any reason, the Proposer must state the name and address of the subcontractor and the name of the person to be contacted on the attached "Schedule of Subcontractors". The Town of Highland Beach reserves the right to accept or reject any or all RFQs wherein a subcontractor is named and to make the award to the Proposer, who, in the opinion of the Town, will be in the best interest of and/or most advantageous to the Town. The Town also reserves the right to reject a RFQ of any Proposer if the RFQ names a subcontractor who has previously failed in the proper performance of an award or failed to deliver on time Contracts of a similar nature, or who is not in a position to perform properly under this award. The Town reserves all rights in order to make a determination as to the foregoing.
- 10. <u>ADDENDA</u>: From time to time, the Town may issue an addendum to change the intent or to clarify the meaning of the Contract documents. Since all addenda are available to Proposer through the Town's e-Procurement system demandstar.com, it is each Proposer's responsibility to check with the Finance Department and immediately secure all addenda before submitting RFQs. Each Proposer shall acknowledge receipt of ALL addenda by notation on the Addenda Acknowledgement form herein and shall adhere to all requirements specified in each addendum prior to submission of the RFQ.
- 11. <u>ANTITRUST CAUSE OF ACTION</u>: In submitting a RFQ to the Town of Highland Beach, the Proposer offers and agrees that if the RFQ is accepted, the Proposer will convey, sell, assign or transfer to the Town of Highland Beach all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the Town of Highland Beach. At the Town of Highland Beach's discretion, such assignment shall be made and become effective at the time of Finance Department tender's final payment to the Proposer.
- 12. <u>LEGAL REQUIREMENTS</u>: Federal, State, County, and Town laws, ordinances, rules, and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the Proposer will in no way be a cause for relief from responsibility.
- <u>ON PUBLIC ENTITY CRIMES</u> All RFQ's as defined by Section 287.012(11), Florida Statutes, requests for proposals as defined by Section 287.012(16), Florida Statutes, and any contract document described by Section 287.058, Florida Statutes, shall contain a

statement informing persons of the provisions of paragraph (2)(a) of Section 287.133, Florida Statutes, which reads as follows:

"A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a RFQ on a contract or provide any goods or services to a public entity, may not submit a RFQ on a contract with a public entity for the construction or repair of a public building or public work, may not submit a RFQ on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or design-build team under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list".

- 14. SCRUTINIZED COMPANIES 287.135 and 215.473: By submission of this RFQ, Proposer certifies that Proposer is not participating in a boycott of Israel. Proposer further certifies that Proposer is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Contractor been engaged in business operations in Syria. Subject to limited exceptions provided in state law, the Town will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of contract. The Town shall provide notice, in writing, to Contractor of the Town's determination concerning the false certification. Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If Contractor does not demonstrate that the Town's determination of false certification was made in error then the Town shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time. Solicitation responses of \$1 million or more must include the attached Scrutinized Companies form to certify that the Proposer is not on either of those lists.
- 15. <u>TRADE SECRET</u>: Any language contained in the Proposer's Proposal purporting to require confidentiality of any portion of the Proposal, except to the extent that certain information is in the Town's opinion a Trade Secret pursuant to Florida law, shall be void. If a Proposer submits any documents or other information to the Town which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 (Public Records Laws), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The Town shall be the final arbiter of whether any information contained in the Proposer's Proposal constitutes a Trade Secret. The Town's determination of whether an exemption applies shall be final, and the Proposer agrees to defend, indemnify, and hold harmless the Town its officers, employees, volunteers, and agents, against any loss or damages incurred by any person or entity as a result of the Town's treatment of records as public records. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK YOUR PROPOSAL AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR PROPOSAL OR ANY PART THEREOF AS COPYRIGHTED.

16. ASSIGNMENT: Any Purchase Order issued pursuant to this RFQ and the funds which

may become due hereunder are not assignable except with the prior written approval of the Town.

- 17. INDEMNIFICATION: The selected Proposer shall hold and save harmless the Town of Highland Beach, Florida its officers, agents, volunteers and employees from liability of any kind in the performance of this Contract. Further, the selected Proposer(s) shall indemnify, save harmless and undertake the defense of the Town, its Town Commissioners, agents, and employees from and against any and all claims, suits, actions, damages, or causes of action arising during the term of this Contract, for any personal or bodily injury, loss of life, or damage to property arising directly or indirectly from Proposer's operation pursuant to this Contract and from and against all costs, counsel fees, expenses and liabilities incurred in and about any such claims, the investigation thereof, or the defense of any action or proceedings brought thereon, and from and against any orders or judgments which may be entered therein. The Town shall notify the Proposer within ten (10) days of receipt by the Town of any claim, suit or action against the Town arising directly or indirectly from the operations of the Proposer hereunder, for which the Town may be entitled to a claim or indemnity against the Proposer, under the provisions of this Contract. Proposer shall have the right to control the defense of any such claim, suit, or actions. The Proposer shall also be liable to the Town for all costs, expenses, attorneys' fees and damages which may be incurred or sustained by the Town by reason of the Proposer's breach of any of the provisions of the contract. Proposer shall not be responsible for negligent acts of the Town or its employees.
- 18. <u>CONTRACT AGREEMENT:</u>

An Agreement outlining the Scope of Services with the intent of accomplishing a timely, cost-effective completion of a given project will be provided. The Agreement will be based on successful negotiation.

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#### **REQUEST FOR QUALIFICATIONS**

#### FOR

#### FIRE STATION #6

#### **CONSTRUCTION MANAGER at RISK**

#### RFQ No.: 22-001

#### SCOPE OF WORK:

#### **GENERAL:**

The following instructions are given for the purpose of guiding proposers in properly preparing their Qualification Statements. These directions have equal force and weight with the specifications and strict compliance is required with all the provisions herein contained.

#### SCOPE OF WORK:

As part of the establishment of an independent Fire Rescue Service Department, the Town of Highland Beach is requesting Qualification Statements from qualified firms to provide construction management at risk services for the renovation/addition to the existing Fire Station located at 3612 South Ocean Boulevard, Highland Beach, FL 33487. Firms interested in providing Construction Management at Risk (CMAR) Services related to the construction and renovation work for the Fire Station should submit responses. The firm ultimately selected will provide full construction management at risk services for the project as directed by the Town.

In general, the scope of this project includes providing construction management services to include but not necessarily limited to the following preconstruction and construction phase services: estimating, schedule development, reporting, site logistics planning, design review, constructability review, value engineering, community outreach, stimulation of subcontractor interest, procurement of subcontractors, development of a Guaranteed Maximum Price (GMP) Proposal, all construction means and methods.

Currently, the existing fire station #6 is a two (2) bay fire station, the Town wants to expand that to a three (3) bay fire station. The Town is relying on the expertise of the chosen design and construction management firms to evaluate and determine the necessary site improvements needed to design and construct a full-service fire station. In keeping in line with the Town's commitment to sustainability, it is important that considerations are given to the following when designing and constructing this project.

- Energy and water efficient construction and building systems.
- Materials and design focused on minimizing resource consumption and long-term operating costs.
- Renewable energy to the extent feasible
- Minimum projected life span of 50 years

- Maximum indoor air quality
- Apparatus emission control
- Sustainable site management

It is anticipated the overall project design and construction process will consist of two (2) phases. Fire and EMS service is currently provided by contract to the Town and the station will need to remain operational throughout the construction process.

The first phase of the project is to temporarily move the trucks in the existing two bays to a temporary covered canopy located south of the existing station. Renovate the two-bay existing area to new housing while maintaining the current housing in the south portion of the building. Work will include raising the finish floor approximately 2 feet. Once complete, move the existing station house into new quarters.

Phase two consist of demo the south end of the existing building and build a new 2-story addition with 3- truck bays and support on ground floor and fire administration and E.O.C. on the second floor. Related site work and landscaping is to be included.

The estimated construction budget is \$5,300,000.

#### THE REMAINDER OF THE PAGE IS INTENTIONALLY LEFT BLANK.

#### Attachment "A" Town of Highland Beach INSURANCE ADVISORY FORM

Under the terms and conditions of all contracts, leases, and agreements, the Town requires appropriate coverages listing the Town of Highland Beach as Additional Insured. This is done by providing a Certificate of Insurance listing the Town as "Certificate Holder" and "The Town of Highland Beach is Additional Insured as respect to coverages noted." Insurance companies providing insurance coverages must have a current rating by A.M. Best Co. of "B+" or higher. (*NOTE: An insurance contract or binder may be accepted as proof of insurance if Certificate is provided upon selection of vendor.*) The following is a list of types of insurance required of contractors, lessees, etc., and the limits required by the Town: (**NOTE: This list is not all inclusive, and the Town reserves the right to require additional types of insurance, or to raise or lower the stated limits, based upon identified risk.**)

\_\_\_\_\_

<u><b>TYPE</b></u> (Occurrence Based Only)	MINIMUM LIMITS REQUIRED	
General Liability Commercial General Liability Owners & Contractor's Protective (OCP) Liquor Liability Professional Liability Employees & Officers Pollution Liability Asbestos Abatement Lead Abatement Broad Form Vendors Premises Operations Underground Explosion & Collapse Products Completed Operations Contractual Independent Contractors Broad Form Property Damage Fire Legal Liability	General Aggregate Products-Comp/Op Agg. Personal & Adv. Injury Each Occurrence Fire Damage (any one fire) Med. Expense (any one person)	\$ 1,000,000.00 \$ 1,000,000.00 \$ 1,000,000.00 \$ 1,000,000.00 \$ 50,000.00 \$ 5,000.00
Automobile Liability Any Auto All Owned Autos Scheduled Autos Hired Autos Non-Owned Autos PIP Basic Intermodal	Combined Single Limit Bodily Injury (per person) Bodily Injury (per accident) Property Damage Trailer Interchange	\$ 500,000.00 to be determine to be determine to be determine \$ 50,000.00
Garage Liability Any Auto Garage Keepers Liability	Auto Only, Each Accident Other Than Auto Only Each Accident Aggregate	\$ 1,000,000.00 \$ 100,000.00 \$ 1,000,000.00 \$ 1,000,000.00
Excess Liability Umbrella Form	Each Occurrence Aggregate	\$ 5,000,000.00 \$ 5,000,000.00
Worker's Compensation Employer's Liability	Each Accident Disease, Policy Limit Disease Each Employee	Statutory Limit \$ 100,000.00 \$ 500,000.00 \$ 100,000.00

#### Property

1	Homeowners Revocable Permit	\$ 300,000.00
	Builder's Risk	Limits based on Project Cost

Other - As Risk Identified

to be determined

# **FORMS**

# THE DOCUMENTS BEHIND THIS PAGE MUST ACCOMPANY THE PROPOSAL IN ORDER FOR SUBMITTAL TO BE CONSIDERED RESPONSIVE AND ACCEPTABLE

#### **PROPOSER ACKNOWLEDGEMENT**

Submit RFQ's to: Clerk's Office 3614 South Ocean Blvd. Highland Beach, FL 33487 Telephone: (561) 278-4548

RFQ Title: "FIRE STATION #6 CONSTRUCTION MANAGER at RISK"

RFQ Number: **22-001** 

RFQ Due: March 25, 2022, NO LATER THAN 2:00 P.M. (LOCAL TIME)

Qualification Statements will be publicly opened and recorded for acknowledgement of receipt, unless specified otherwise, on the date and time indicated above and may not be withdrawn within ninety (90) days after such date and time.

All awards made as a result of this RFQ shall conform to applicable sections of the charter and codes of the Town.

Name of Proposer:

Federal I.D. Number: \_\_\_\_\_

A Corporation of the State of \_\_\_\_\_

Telephone No.:	

Mailing Address:

City / State / Zip: \_\_\_\_\_

E-mail Address:

Authorized Signature

#### CONFIRMATION OF DRUG-FREE WORKPLACE

Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the Town of Highland Beach or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employee that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or *nolo contendere* to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5) Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by, any employee who is so convicted.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Authorized Signature

# PALM BEACH COUNTY INSPECTOR GENERAL

# ACKNOWLEDGMENT

The Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and in furtherance thereof may demand and obtain records and testimony from the Contractor and its subcontractors and lower tier subcontractors.

The contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the Contractor or its subcontractors or lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the municipality to be a material breach of this contract justifying its termination.

CONTRACTOR NAME

Ву\_\_\_\_\_

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

# **CERTIFICATION PURSUANT TO FLORIDA**

## STATUTE § 287.135

certify

Ι.	. on behalf of	

Print Name and Title Company Name

that

does not:

**Company Name** 

- 1. Participate in a boycott of Israel; and
- 2. Is not on the Scrutinized Companies that Boycott Israel List; and
- 3. Is not on the Scrutinized Companies with Activities in Sudan List; and
- 4. Is not on the Scrutinized Companies with Activities in the Iran Petroleum

Energy Sector List; and

5. Has not engaged in business operations in Syria.

Submitting a false certification shall be deemed a material breach of contract. The Town shall provide notice, in writing, to the Contractor of the Town's determination concerning the false certification. The Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Contractor does not demonstrate that the Town's determination of false, certification was made in error then the Town shall have the right to terminate the contract and seek civil remedies pursuant to Florida Statute § 287.135.

Section 287.135, Florida Statutes, prohibits the Town from: 1) Contracting with companies for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel; and

2) Contracting with companies, for goods or services over \$1,000,000.00 that are on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector list, created pursuant to s. 215.473, or are engaged in business operations in Syria.

As the person authorized to sign on behalf of the Contractor, I hereby certify that the company identified above in the section entitled "Contractor Name" does not participate in any boycott of Israel, is not listed on the Scrutinized Companies that Boycott Israel List, is not listed on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List and is not engaged in business operations in Syria. I understand that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject the company to civil penalties, attorney's fees, and/or costs. I further understand that any contract with the Town for goods or services may be terminated at the option of the Town if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan list or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

COMPANY NAME	SIGNATURE
PRINT NAME	TITLE

# SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(A), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

# THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to the Town of Highland Beach (the "Town") by:

(Print individual's name and title)

For:

(Print name of entity submitting sworn statement)

.)

Whose business address is:

And (if applicable) its Federal Employer Identification Number (FEIN) is:

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), FLORIDA STATUTES, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), FLORIDA STATUTES, means a finding of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), FLORIDA STATUTES, means:

a. A predecessor or successor of a person convicted of a public entity crime; or

b. an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one (1) person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one (1) person controls another person.

A person who knowingly enters a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding thirty-six (36) months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), FLORIDA STATUTES, means any natural person or entity organized under the laws of any state of the United States with the legal power to enter into a binding contract and which bids or apples to bid on contracts for the provision of goods or services let by a public entity or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement (indicate which statement applies).

\_\_\_\_\_ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one (1) or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted Bidder list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICE FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMONT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

Date:

Signature

STATE OF Florida

COUNTY OF Palm Beach

The foregoing instrument was ack	nowledged before me this <u>day</u> of	,
2022, by, as	(title) of	(name of
company), on behalf of	(type of entity).	

 $\Box$  who is personally known to me,

as identification, who did take an oath, and who acknowledged before me that he executed the same freely and voluntarily for the purposes therein expressed.

(Notary Seal)

Signature

Print Name
NOTARY PUBLIC-STATE OF <u>FL</u>
My Commission Expires: \_\_\_\_\_\_
Commission No. \_\_\_\_\_\_

#### ADDENDA ACKNOWLEGEMENT

TOWN OF HIGHLAND BEACH FLORIDA

#### RFQ TITLE: "FIRE STATION #6 CONSTRUCTION MANAGER at RISK"

RFQ NO.: 22-001

DATE SUBMITTED:

We propose and agree, if this submittal is accepted, to contract with the Town of Highland Beach, in the Contract Form, to furnish all material, means of transportation, coordination, labor and services necessary to complete/provide the work specified by the Contract documents.

Having studied the documents prepared by: The Town of Highland Beach

We propose to perform the work of this Project according to the Contract Documents and the following addenda which we have received:

ADDENDUM	DATE	ADDENDUM	DATE

□ NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS

RFQ

# RFQ No.: 22-001 FIRE STATION #6 CONSTRUCTION MANAGER at RISK

#### SCHEDULE OF SUB-CONSULTANTS

The Undersigned Respondent proposes the following sub-consultants for the Project. The Respondent is further notified that all sub-consultants shall be properly licensed, bondable and shall be required to furnish the Town with a Certificate of Insurance in accordance with the contract general conditions. This page may be reproduced for listing additional sub-consultants, if necessary. <u>If not applicable or if no-sub-consultants will be used in the performance of this Work. please sign and date the from and write "Not-Applicable" or "NONE" across the form.</u>

Name of Sub-Consultant	Address of Sub-Consultant	License No.:	<u>Contract</u> <u>Amount</u>	Percentage (%) of Contract

Signature\_\_\_\_\_

Date:

Title/Company\_\_\_\_\_

Owner reserves the right to reject any sub-consultant who has previously failed in the proper performance of an award, or failed to deliver on time, contracts of a similar nature, or who has not demonstrated the necessary capability (financial capability, lack of resources, etc.) to perform under this award. Owner reserves the right to inspect all facilities of any sub-consultant in order to make a determination as to the foregoing.

REFERENC	ES FOR	
		DF FIRM)
	<b>`</b>	
<b>1.</b> Owner/Client Name:		
Name and Location of Pro	oject:	
Scope of work (use blank	sheet and attach if you need m	ore space):
Project Completion Date of	or Anticipated Completion Date	):
GMP Amount vs. Final Co	· · ·	
Size of Project (gross sq.	ft):	
Phone:	Fax:	E-Mail:
<b>2.</b> Owner/Client Name:		
Name and Location of Pro	oject:	
Scope of work (use blank	sheet and attach if you need m	ore space):
Project Completion Date of	or Anticipated Completion Date	e:
GMP Amount vs. Final Co	ost:	
Size of Project (gross sq.	ft):	
Phone:	Fax:	E-Mail:
<b>3.</b> Owner/Client Name:		
Name and Location of Pro	piect.	
	sheet and attach if you need m	ore space).
		ore space).
Project Completion Date of	or Anticipated Completion Date	2:
GMP Amount vs. Final Co	ost:	
Size of Project (gross sq.	ft):	
Phone:	Fax:	E-Mail

# TOWN OF HIGHLAND BEACH CONSTRUCTION MANAGEMENT AT-RISK SERVICES AGREEMENT

(RFQ No. 22-001 - Construction Management At-Risk Services for Fire Station #6)

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this day of \_\_\_\_\_\_, 2022 by and between the Town of Highland Beach, Florida municipal corporation, 3614 South Ocean Blvd, Highland Beach, FL ("Town") and \_\_\_\_\_\_\_, a Florida Profit Corporation organized and existing under the laws of the State of Florida, having its principal business office at \_\_\_\_\_\_\_ ("Contractor"). The Town and Contractor shall collectively be referred to as the "Parties", and each may individually be referred to as a "Party".

#### **RECITALS**

WHEREAS, the Town is desirous of constructed and/or renovating the existing Fire Station #6, which is located at 3614 South Ocean Boulevard, Highland Beach, Florida 33487, in order to provide a direct level of service to the Town's residents and visitors; and

WHEREAS, the Town advertised the Request for Qualifications 22-001; Fire Station #6 Construction Manager at Risk ("RFQ"), soliciting proposals from experienced and qualified firms to provide Construction Management at-Risk Services, in accordance with the terms, conditions and specifications contained in the RFQ ("Project"); and

**WHEREAS**, in response to the RFQ, Contractor timely submitted its Proposal and was evaluated by Town administration as the highest ranked responsive-responsible Respondent whose proposal, qualifications and references demonstrated to be the most advantageous to the Town in the procurement of the Project; and

**WHEREAS**, the Contractor has expressed the capability, willingness and expertise to perform the Project pursuant to the Contract Documents; and

WHEREAS, the Mayor and Town Commission passed Resolution Number \_\_\_\_\_\_, approving the selection of Contractor and authorized the Town Manager and Town Attorney to negotiate and execute an agreement to accomplish the Project; and

WHEREAS, the Mayor and Town Commission passed Resolution \_\_\_\_\_\_, which authorized the Town Manager to enter into an agreement with Contractor for the provision of Construction Management at-Risk services for the Fire Station #6 Construction or Renovation.

**NOW THEREFORE**, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

## ARTICLE 1 – RECITALS

1.1 The recitals are true correct and are hereby incorporated into and made a part of this Agreement.

# **ARTICLE 2 - SCOPE OF WORK**

2.1 The Contractor has overall responsibility for, and shall provide, complete Pre-Construction Phase and Construction Phase Services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with the Town's requirements and the terms of the Contract Documents.

# ARTICLE 3 – CONTRACT DOCUMENTS

3.1 The following documents are incorporated into and made a part of this Agreement (collectively referred to as the "Contract Documents"):

3.1.1 The Town's *Request for Qualifications No. 22-001, Fire Station #6 Construction Management At Risk* attached hereto by reference;

3.1.2 Contractor's response to the RFQ ("Qualifications"), attached hereto by reference;

3.1.3 Resolution No. \_\_\_\_\_\_, passed and adopted by the Mayor and Town Commission on \_\_\_\_\_\_, approving the selection of Contractor authorizing the execution of this Agreement for the provision of Services attached hereto as Exhibit "A";

3.1.4 Contractor's final negotiated and accepted proposal attached hereto as Exhibit "B";

3.1.5 Preliminary Schedule of design and construction milestones attached hereto as Exhibit "C";

3.1.6 The Town's General Conditions of the Construction Contract attached hereto by reference. Notwithstanding anything to the contrary in this Section or the Agreement, the General Conditions of the Construction Contract referenced in different sections of the Agreement are only for general reference, will be revised, and will only become a part of the Contract Documents at the time the Parties execute a GMP Amendment;

3.1.7 The drawings, specifications, details and other documents developed by the Project Architect to describe the Project and accepted by the Town;

3.1.8 The Guaranteed Maximum Price Proposal for this Project when accepted by the Town and executed by the parties in a form to be prepared by the Contractor and approved by the Town; and

3.1.9 Any additional documents, which are required to be submitted by the Town or Consultant under this Agreement.

3.2 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:

- 3.2.1 Specific written direction from the Town Manager or Town Manager's designee made in accordance with the Town Manager's authority;
- 3.2.2 This Agreement;
- 3.2.3 GMP Amendment;
- 3.2.4 Change Orders;
- 3.2.5 Specifications;
- 3.2.6 Plans;
- 3.2.7 The RFQ; and
- 3.2.8 The Proposal.

3.3 The Contractor is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or error found in the RFQ prior to the Contractor submitting its Proposal or the right to clarify same, as stipulated in the RFQ, is waived.

# **ARTICLE 4 - DEFINITIONS**

The following words, terms and phrases, when used in this Agreement, shall have the following meanings, except when it is clear from the context that another meaning is intended:

4.1 *Architect/Engineer or A/E*: The "Architect/Engineer" or "A/E" shall mean that person or firm designated as the architect/engineer for the Project, or any portion thereof. Also referred to as the Consultant, this entity has entered into a separate agreement with the Town for design services for the Project. For purposes of this Agreement, the Architect/Engineer of record for the Project is \_\_\_\_\_\_.

4.3 *Change Order*: A written document signed by the Parties authorizing an addition, deletion or revision to the Work performed on the Project pursuant to this Agreement and within the general scope of work; or an adjustment to the Time Schedule or compensation, issued on or after the effective date of the Agreement.

4.4 *The Town or Town*: The "Town" or "Town" shall mean the Town of Highland Beach, a Florida municipal corporation, having its principal offices at 3614 South Ocean Blvd, Highland Beach, Florida 33487, and may also be referred to as the "Town" in this Agreement. The Town, as a governmental entity, is subject to the availability of funds and annual appropriation of funds by its legislative body and other governmental authorities or sources of revenue, in an amount to allow continuation of its performance under this Agreement. In the event of lack of funding for this Agreement, or the Project subject to this Agreement, this Agreement may be terminated by the Town pursuant to the procedures set forth in this Agreement.

4.5 The Town Manager may approve contract amendments which shall not exceed the sum of Twenty-Five Thousand Dollars (\$25,000), or such other amount as may be specified by the Town of Highland Beach Code of Ordinances, in its Procurement Ordinance, as same may be amended from time to time.

4.6 *Contractor Principal*: The "Contractor Principal" shall be the person designated by the Construction Manager as its senior representative to the Town. The Contractor Principal shall perform those duties required in this Agreement and shall have the authority to commit and obligate the Contractor, and to fully act for the Contractor in all matters.

4.7 *Claim*: A "Claim" is a demand, assertion, dispute or other such claim by one of the parties hereto arising out of or based upon the terms and conditions of the Contract Documents.

4.8 *Contract Amendment*: A "Contract Amendment" shall mean a written order to the Construction Manager approved by the Town, as specified in this Agreement, and signed by the Town's duly authorized representative, authorizing a change in the Project or the method and manner of performance thereof, or an adjustment in the fees or completion dates, as applicable, and executed by the Town, Contractor and the A/E. Any Contract Amendments and/or Change Orders affecting changes to the Work shall be countersigned by the Contractor and the A/E.

4.9 *Construction Change Directive*: The term "Construction Change Directive" shall mean a written directive to effect changes to the Work, prepared by the A/E and executed by the Town.

4.10 *Construction Estimate*: The term "Construction Estimate" shall mean a cost estimate for the completion of the entire Scope of Work for the Project, which estimate shall include all components of the Cost of the Work, as well as the Construction Manager's Fee for the Project.

4.11 *Construction Manager (Contractor)*: \_\_\_\_\_\_, as selected by the Town pursuant to Resolution No. \_\_\_\_\_\_, to provide services of Construction Management At-Risk for this Project. Acceptance of the GMP by the Town shall result in the Contractor functioning from that point forward as a General Contractor under the terms and conditions of the Contract Documents, as same may be amended, which will go into effect at the time of GMP acceptance.

4.11.1 The Construction Manager shall be liable for its services, responsibilities and liabilities under this Agreement, as well as the services, responsibilities and liabilities of any Subcontractor, and any other person or entity acting under the direction or control of the Construction Manager. When the term "Construction Manager" or "Contractor" is used in this Agreement, it shall be deemed to include any Subcontractor and any other person or entity acting under the direction or control of Contractor. Any Subcontractor retained by Construction Manager pursuant to this Agreement and the Project, must receive the prior written approval of the Town.

4.12 *Construction Phase Services*: The term "Construction Phase Services" shall mean and anticipates, in a subsequent amendment to this Agreement, and further, in the event the Town Commission approves the GMP, the services to be performed by or through the Construction Manager during the Construction Phase of the Project, including, without limitation, the Work for the Project, and such other services as called for by this Agreement and any



amendments hereto, or reasonably inferred there from.

4.13 *Construction Schedule*: The term "Construction Schedule shall mean a critical path schedule or other construction schedule, as defined and required by the Contract Documents.

4.14 *Contingency*: The term "Contingency" (i.e. "Project Contingency") shall mean a line item budget amount agreed to by the parties and included in the GMP Proposal intended to cover costs that may result from incomplete design, Town requested changes, unforeseen and unpredictable conditions, or uncertainties encountered during execution of the Project. The actual amount of the Contingency will de pend on the status of design, complexity and uncertainties of the component parts of the Project. The Contingency funds shall be used at the discretion of the Town and must first be approved by the Town prior to the Contractor using it. Any unused portion of the Contingency that remains unallocated upon Final Completion and after issuance of final payment for the Project, shall accrue to the benefit of the Town.

4.15 *Contract*: The term "Contract" means the contract formed by all of the Contract Documents, including this Agreement and any amendments hereto.

4.16 *Contract Documents*: The "Contract Documents" include Resolution No. \_\_\_\_\_\_, this Agreement, and all attachments, exhibits, and amendments thereto; and such other documentation as may be listed as an attachment and/or an exhibit to this Agreement. Upon execution of the GMP Amendment, the Contract Documents shall be expanded to include, in addition to those items listed above, those documents identified by the GMP Amendment and the attachments and exhibits thereto.

4.17 *Contract Time*: The time period agreed to by the parties and approved by the Town for the Construction Manager to successfully complete its services for this Project.

4.18 Day: Shall mean a consecutive "calendar day," unless specifically designated otherwise

4.19 *Drawings*: The "Drawings" shall refer to the graphic and pictorial provisions of the Work identified as the Drawings in the GMP Amendment; Change Order, or Construction Change Directive issued and executed in accordance with the Agreement, including without limitation, all notes schedule and legends on such Drawings.

4.20 *General Contractor*: The term "General Contractor" shall refer to the Contractor after acceptance by the Town of the GMP Amendment. The Contractor shall be duly licensed as a General Contractor pursuant to Chapter 489, Florida Statutes.

4.21 *Guaranteed Maximum Price*: The term "Guaranteed Maximum Price" or "GMP" shall mean the sum certain set forth in the GMP Amendment as the Project price that the Construction Manager guarantees not to exceed for the Project for all services within the Agreement, as same shall be amended upon acceptance of the GMP by the Town.

4.22 *GMP Amendment*: The term "GMP Amendment" shall mean the GMP Proposal for the Project, if any, accepted by the Town, in its sole discretion, which Amendment shall automatically become a part hereof upon the Town's and Construction Manager's execution of the same and shall establish, among other things, the GMP, the names of the Construction Manager's on site-management and supervisory personnel for the Project; and the Contract Time for the Project.

4.23 *GMP Proposal*: The term "GMP Proposal" shall mean a proposal for completing the Project, which proposal shall include the proposed. Guaranteed Maximum Price for the construction of the Project, as provided by the Construction Manager and accepted by the Town based upon the Drawings and Specifications; the Contract Documents; and the Memorandum of Changes. The Town has no obligation to accept the GMP Proposal regardless of the amount or its relationship to estimates provided.

4.24 *Laws*: The term "Laws" shall include all Federal, State, County and local laws, statutes, regulations, ordinances, rules and building codes applicable to the Project, including, without limitation, orders of any public authority having jurisdiction over the Project, building, labor, safety, licensing or environmental laws and local building codes, building standards and trade practices affecting the Project, as same may be amended from time to time.

4.25 *Memorandum of Changes*: The term "Memorandum of Changes" shall mean a written summary of the Construction Manager's recommended modifications to the Drawings and Specifications relating to the Project based on an evaluation of the Project requirements; on and off-site development; constructability requirements; and Project budget requirements; and a review of the design documents; and the Drawings and Specifications; and the Contract Documents.

4.26 *Notice to Proceed:* A written notice given by the Town to the Contractor fixing the date on which the provision of Work shall commence on the Project and may set forth the date of Substantial Completion and final completion of the Project.

4.27 *Permitting Authority:* means in its singular or plural forms, the Town of Highland Beach, Palm Beach County, State of Florida and/or any other governmental body or agency having jurisdiction over the Project.

4.28 *Pre-construction Phase Services*: The term "Pre-construction Phase Services" shall mean the services which the Construction Manager shall perform during the design phase of the Project including, but not limited to, constructability analysis, value engineering recommendations, cost estimates, due diligence, pre-qualification of Subcontractor and suppliers, conducting bid openings, preparation and submittal of GMP proposal to the Town.

4.29 *Project Team*: The term "Project Team" shall mean the Town, Construction Manager, Project Architect and its sub-consultants, plus other participants as authorized by the Town and other consultants, if any, hired by the Town to assist in completion of the Project.

4.30 *Schedule of Values*: The term "Schedule of Values" shall mean the schedule of values, setting forth the detailed cost breakdown, including labor, materials and taxes, of the GMP set forth in the applicable GMP Proposal, the sum of which shall not exceed the GMP.

4.31 *Scope of the Work*: The term "Scope of the Work" shall mean all services, labor, materials equipment, operations and construction management services that are indicated in, or reasonably inferable from the Contract Documents.

4.32 *Specifications*: The "Specifications" consist of any and all written requirements for materials, equipment, construction systems, standards and workmanship for the Work which are identified as the Specifications in the GMP Amendment, Contract Amendment(s), or Construction Change Directive(s) issued and executed in accordance with the Agreement.

# 4.33 Subcontractor

4.33.1 A "Subcontractor" is a person or entity which has a direct contract with the Construction Manager to perform or supply a portion of the Work and the term includes such Subcontractor's authorized representatives. The Construction Manager shall obtain prior written approval of the Town prior to changing or modifying the Subcontractor and other professional consultants. Any such services performed by any Subcontractor shall be passed through to Town without additional charge by the Contractor. All such work shall be itemized on invoices from such Subcontractor, showing work performed and charges incurred. Notwithstanding anything in this Section or the Agreement to the contrary, for all additional costs incurred by subcontractors, and duly authorized by the Town in writing, the Contractor shall be entitled to include a fee at the same percentage negotiated in the GMP Amendment, its bond costs, and its insurance coverage to the Town.

4.33.2 The Construction Manager represents that it has made and will make reasonable investigation of all Subcontractor to be utilized in the performance of work under this Agreement to determine that they possess the skill, knowledge and experience necessary to enable them to perform the services required. Nothing in this Agreement shall relieve the Construction Manager of its prime and sole responsibility for the performance of the Work under this Agreement.

4.33.3 All rates, multipliers and any other fees charged by any Subcontractor shall be not more than those rates, multipliers and other fees in any contracts that any such Subcontractor may have either with the Town directly or as a Subcontractor under some other Town agreement or more than what is typically charged in the industry.

4.33.4 Construction Manager shall bind each and every approved Subcontractor to the terms stated in this Section and shall require the proper licensing of such Subcontractor.

4.33.5 If any of the services outlined in this Agreement are furnished by Construction Manager by obtaining the services of Subcontractor, Construction Manager shall provide Town with proposals and contracts between the Subcontractor and Construction Manager outlining the services to be performed and the charges for same, together with any other documentation required by Town.

4.34 *Substantial Completion*: The term "Substantial Completion" is as defined in the Contract Documents, as same may be amended. It is that stage in the progress of the Work when the Project is sufficiently complete in accordance with the Contract Documents, the Town can utilize the Project for its intended purpose.

4.35 *Substantial Completion Date*: The "Substantial Completion Date" shall mean the date which the A/E certifies to the Town by means of a certificate of Substantial Completion as the date when the Construction Manager has achieved substantial completion of the Project or any phase thereof in accordance with the Town's General Conditions of the Contract Documents and applicable laws and the Town of Highland Beach's Building Department issues a Temporary Certificate of Occupancy (TCO). Notwithstanding the preceding, if a situation arises beyond the control of the Contractor, and the issuance of a Certificate of Temporary Occupancy (TCO) is granted by the Building Department, then the Town may deem at its sole and reasonable discretion that the Project or any phase thereof has been Substantially Completed.

4.36 *Substitutions*: A Town-approved deviation from the brand or type of materials products or equipment is specified in the Construction Documents, as accomplished herein.

4.37 *Taxes*: The term "Taxes" shall mean all taxes related to the performance of the Work or any portion thereof, including but not limited to, all sales, consumer, use, occupational, excise, social security, unemployment compensation and similar taxes.

4.38 Work: The term "Work" means all supervision, labor materials and equipment required by the Contract Documents to be provided by or through the Construction Manager for the entire Project and all other services necessary to fulfill the Construction Manager's obligations hereunder to perform the Scope of the Work, including, as the context may require, any portion of the Work with respect to the Project. The uncapitalized term work is used in its ordinary sense.

4.39 *Worksite*: The precise Project locations as designated by the Town, where Work is to be done by Contractor or its Subcontractor under this Agreement, in accordance with the terms, conditions and specifications contained in the Contract Documents.

4.40 *Force Majeure*: "Force Majeure" shall mean any delay occasioned by superior or irresistible force(s) occasioned by violence in nature without the interference of human agency such as hurricanes, tornados, flood and loss caused by fire and other similar unavoidable casualties; changes in federal law, state or local laws, ordinances, codes or regulations, enacted after the date of this Agreement and having a substantial impact on the Project; other causes beyond the parties control; or by any other such causes which the Town and the Construction Manager decide in writing justify the delay. Provided, however, that market conditions, labor conditions, construction industry price trends, and similar matters which normally impact on the bidding process shall not be considered a Force Majeure.



4.41 *Value Engineering*: Value Engineering is a project evaluation technique used during the design process that seeks to reduce costs and/or increase value by analyzing the functional requirements of a project's materials, methods, components and subsystems consistent with specified performance, reliability, maintainability, aesthetic, safety, and security criteria to ensure that it provides the best use of available project funds.

4.42 *Final Completion:* Final Completion refers to that stage in the Project when all Work has been completed, the Town has taken beneficial occupancy, all punch lists have been completed, all as-built drawings, operations and maintenance manuals, warranties and other Project records have been delivered, all waivers and releases have been negotiated and executed, all consents of surety to final payment have been delivered, and all other requirements of this Agreement relating to Final Completion have been met, in accordance with the Contract Documents as certified by the Project Architect and the Town, so that Final Payment to the CM can be issued by the Town.

## ARTICLE 5 – RELATIONSHIP OF TOWN AND CONSTRUCTION MANAGER

5.1. The Construction Manager accepts the relationship of trust and confidence established between it and the Town by this Agreement. The Construction Manager represents that it will furnish its best skill and judgment in performing the Contractor's services and the Work and shall always act to further the interest of the Town in the expeditious completion of the Project, at the lowest responsible cost to the Town, and in strict accordance with the Contract Documents and prudent and customary construction practices.

5.2. By signing this Agreement, the Construction Manager accepts a fiduciary duty with the Town and warrants and represents to the Town that the Construction Manager:

5.2.1. Has all licenses and certifications required by applicable law to perform the Contractor's services and the Work;

5.2.2. Is experienced in all aspects of preconstruction and construction planning for projects similar to the Project;

5.2.3. Will act in the Town's highest and best interest in performing the Contractor's services and the Work; and

5.2.4. That no employee or affiliate of the Construction Manager, including all Subcontractor, suppliers, at any tier, has been convicted of a public entity crime, fraud, theft, and/or property damage crime within the preceding thirty-six (36) months from the date of execution of this Agreement, pursuant to Section 287.133, Florida Statutes.

The Construction Manager acknowledges and agrees that the Town is relying on these representations and covenants as a material inducement to enter into this Agreement

# **ARTICLE 6 – DUTIES AND RESPONSIBILITIES**

6.1 Contractor hereby agrees that it will exert every reasonable and diligent effort to ensure that all labor employed by Contractor, including that of its Subcontractor for Work on the Project,

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shall be in accordance with the Contract Documents and shall incorporate the requirements set forth by applicable rules, regulations, codes and statutes of Permitting Authority.

6.2 Contractor covenants to furnish its professional skill and judgment based on industry standards in furthering the interests of the Town. Contractor agrees to furnish efficient business administration and superintendence based upon industry standards to complete the Project in the most expeditious and economical manner consistent with the interests of the Town.

6.3 Contractor shall become thoroughly familiar with the evolving architectural, civil, mechanical, plumbing, electrical, and structural plans and specifications. Contractor shall submit to the Town and Project Team such comments as may be appropriate concerning construction feasibility and practicality.

6.4 Contractor shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of local labor and materials, community relations and any other factors pertinent to saving time and cost.

6.5 Contractor shall take such measures as appropriate to provide that construction requirements will be covered in the separate subcontracts performed without duplication or overlap, sequenced to maintain completion of all Work on schedule.

6.6 Contractor shall supervise and direct the Work, using the highest quality established by industry standards. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement, unless Contract Documents give other specific instructions concerning these matters.

6.7 Contractor shall be responsible to the Town for the acts and omissions of the Contractor's employees, Subcontractor and their agents and any employees and other persons performing portions of the Work under contract with the Contractor.

6.8 Contractor shall inspect all materials delivered to the site and shall reject any materials that do not conform to the Contract Documents.

6.9 Contractor shall employ sufficient, competent personnel who shall be in attendance at the Project site during the performance of the Work.

6.10 Contractor shall arrange for all Worksite facilities necessary to enable the Contractor, Subcontractor, and Project Manager to perform their respective duties in the management, conduct, inspection, and supervision of Work.

6.11 Contractor shall provide Project administrative functions including but not limited to the following:

6.11.1 Develop and implement a procedure for review, processing, and payment of invoices by Subcontractor for progress and final payments;



6.11.2 Determine when the Work or designated portions thereof are ready for the Substantial Completion inspection;

6.11.3 Monitor in order to provide notice to the Town that the Project is ready for final inspection, and secure and transmit to the Project Manager, all required guarantees, affidavits, releases, Bonds and waivers, manuals, record Drawings, and maintenance books as are applicable; and

6.11.4 Keep full and accurate records of all costs incurred and items billed in connection with the performance of the Work, which records shall be open to audit by the Town or its authorized representative during performance of the Work and until three (3) years after final payment.

6.12 Contractor shall be the single point of interface with all Subcontractor for the Town and all of its agents and representatives.

6.13 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

6.14 Contractor shall develop and maintain a program to ensure quality control of the Work. Contractor shall supervise the Work of all Subcontractor providing instructions to each when their Work does not conform to the requirements of the Contract Documents and shall continue to exert its influence and control over each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. The Town shall be the final judge of performance and acceptability.

6.15 Contractor shall perform the Work in accordance with the Contract Documents. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Town, it shall assume full responsibility for such Work, and shall bear the attributable costs.

6.16 All inspections shall be made for conformance with the applicable building codes, compliance with Drawings and specifications, and quality. Costs for any re-inspections of Work found defective and subsequently repaired shall be borne by the Contractor.

6.17 Contractor warrants and accepts that any and all repair work required at any phase of the Project, when caused by Contractor or Contractor's subcontractors, shall be deemed the responsibility of the Contractor at no additional cost to the Town.

6.17.1 The Contractor shall develop for the Town an approval process for Project specific procedures manual detailing the entire Project process, including at minimum the following:

- a) The RFQ and all corresponding forms and attachments;
- b) This Agreement;



c) The GMP Amendment and all corresponding forms and attachment;

d) All Contract Documents, which include, Project Specifications, Construction Managers Proposal, Qualifications, and Assumptions, Construction Managers Salary and Wake Schedule, Project Schedule; Onsite Management and Supervisory Schedule; and Schedule of Values;

e) Construction coordination, scheduling, communication and documentation procedures among the Contractor, the Architect/Engineer, Subcontractor(s), sub consultant(s), and other departments or organizations who require coordination with and/or input into the Work;

- f) Project reports (bi-weekly and final report);
- g) Requests for Information;
- h) Contract Amendment(s) process;
- i) Shop Drawing submittal/product data and samples; and
- j) Project closeout/commissioning.

Said procedures manual shall be presented no later than with first application for payment.

6.18 If the Town elects to "fast-track" or develop the Project in multiple phases, the Construction Manager shall organize and perform its services as appropriate for each phase. Each phase of the Project may have a unique schedule for completion and a specific GMP Proposal, at the Town's sole discretion.

6.19 The Contractor shall cooperate with the Project Architect and endeavor to further the interests of the Town and the Project. The Construction Manager shall furnish Pre-Construction Phase Services and Construction Phase Services and complete the Project in an expeditious and economical manner consistent with the interests of the Town and in accordance with the Project Schedule.

# ARTICLE 7 – INTENTIONALLY OMITTED

#### **ARTICLE 8 – PRE-CONSTRUCTION PHASE SERVICES**

The Construction Manager's Pre-Construction Phase services shall commence upon the date specified in a Notice to Proceed with Pre-Construction Phase Services issued by Town and shall continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Construction Manager is not entitled to reimbursement for any costs incurred for Pre-Construction Phase Services performed before issuance of the Notice to Proceed. Pre-Construction Phase Services may overlap Construction Phase Services. The Construction Manager shall perform the following Pre-Construction Phase Services.

#### 8.1 General Coordination

8.1.1 The Construction Manager's Pre-Construction Phase Services team shall attend Project Team meetings with the Town, the Town's representatives, and the Project Architect at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent Project Team meetings are anticipated prior to the Town's acceptance of the GMP and during completion of the Construction Documents.

8.1.2 Provide a preliminary evaluation of the Project's proposed Scope of Work cost components and the Town's adopted Construction Budget related thereto.

8.1.3 Review and understand the standards and requirements in Town's General Conditions of the Construction Contract and perform all services in accordance with those standards and requirements.

8.1.4 Visit the site and inspect the existing on-site and off-site conditions, as well as perform preliminary due diligence investigation with regards to existing utilities available for the Project.

8.1.5 Participate as a member of the Project Team in the development of the Project facilities program, if such program has not been developed prior to the effective date of this Agreement.

8.1.6 Provide recommendations and information to the Project Team on: site usage and site improvements; building systems, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of the Construction Manager and Town's separate Contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the Project Schedule approved by the Town and the adopted Construction Budget.

8.1.7 Assist the Town, if needed, in selecting and directing the services of surveyors, soils engineers, existing facility surveys, testing and balancing, commissioning, environmental surveys or other special consultants to develop additional information for the design or construction of the Project.

8.1.8 At Town's request, attend public meetings and hearings concerning the development and progress of the Project.

# 8.2 <u>Constructability Program</u>

8.2.1 Implement and conduct a constructability program to identify and document Project cost and schedule savings opportunities, in accordance with accepted industry practices.

8.2.2 Prepare a "Constructability Report" that identifies items that in the Construction Manager's opinion may impact either the construction cost or schedule of the Project. The Constructability Report shall address the overall coordination of Project Drawings, Specifications, and details and identify discrepancies and lack of clarity that may generate cost overruns or delays for the Project. The Constructability Report shall be updated by the Construction Manager at least monthly, or sooner if necessary, during the Pre-Construction Phase.

8.2.3 Provide and implement a system for tracking questions, resolutions, decisions, directions and other information matters that arise during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved by the Town and updated by the Construction Manager at least monthly, or sooner if necessary, during the Pre-Construction Phase.

## 8.3 <u>Scheduling</u>

8.3.1 Develop a critical path method schedule (CPM Schedule) for Project Team review and the Town's approval, that coordinates and integrates activities on the Project, including the Construction Manager's services, the Project Architect's design services, commissioning, the work of other consultants and suppliers, and the Town's activities with the anticipated construction schedules for other Contractors. The CPM Schedule must identify all major milestones through Project Final Completion.

8.3.2 The Construction Manager shall update the CPM Schedule, as needed, throughout the Pre-Construction and Construction Phases of the Project.

8.3.3 The CPM Schedule shall include other detailed schedule activities as directed by the Town including, but not limited to, Town-managed work under separate contracts such as equipment, furniture and furnishings, project security, property protection, life-safety systems, information and computer technology systems.

#### 8.4 <u>Budget and Cost Reconciliation</u>

8.4.1 The Construction Manager is responsible for preparing and updating all procurement and construction cost estimates and distributing them to the Project Team throughout the duration of the Project.

8.4.2 Provide estimated construction cost reports at the required stages of completion of the schematic design, design development, and construction documents phases of the Project. The Construction Manager's reports for the design development and construction documents phases shall be detailed estimates derived from cost quantity surveys based on unit prices for labor, materials, overhead and profit, organized in current Construction Specifications Institute Division format for each portion of the Work.

8.4.3 Provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the scope or quality of the Project and providing ongoing updates of their cost and budget impact. Advise the Project Team immediately if the Construction Manager has reason to believe that their most current estimate either exceeds the adopted Construction Budget or is not in line with the preliminary CPM Schedule requirements. If so, the Construction Manager shall prepare and submit to the Project Team reasonable strategies (solutions) for bringing the Project in line with the adopted Budget and proposed CPM Schedule.



# 8.5 <u>Coordination of Design and Construction Contract Documents</u>

8.5.1 Review all Drawings, Specifications, and other Construction Documents as they are developed by the Project Architect during the schematic design, design development, and construction documents design phases of the Project.

8.5.2 Coordinate with the Project Team regarding the selection of materials, equipment, component systems, and types of construction to be used for the Project. Provide input and recommendations to the Project Team regarding proposed site layout, construction feasibility, availability of labor and materials, procurement time requirements, and construction sequencing.

8.5.3 Advise Town of any error, inconsistency or omission discovered in the Drawings, Specifications, and other Construction Documents.

8.5.4 Advise Town regarding recommended adjustments to the Project scope, systems or other options for keeping the Project cost within the adopted Budget.

8.5.5 Review the Construction Documents for compliance with all applicable laws, rules and regulations and with Town requirements.

#### 8.6 <u>Construction Planning and Procurement Package Strategy</u>

8.6.1 Identify equipment or material requiring extended delivery times and advise Town on expedited procurement of those items. Advise Town and Project Architect on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by Town, and subject to Town's prior approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

8.6.2 Make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the soliciting of offers and awarding of construction subcontracts in a manner that promotes the interests of the Project and the Town. These recommendations may include, but are not limited to, phased or staged construction or multiple separate contracts. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, MWBE and/or DBE Contractor participation, and other factors.

8.6.3 Review the Construction Documents with the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractor or Town's separate Contractors.

8.6.4 Develop a procurement package strategy in coordination with the Project Team that addresses the entire scope of Work for each phase and stage of the Project. In developing the procurement package strategy, the Construction Manager shall clearly identify all procurement packages that the Construction Manager intends to self-perform for review and approval by the Town. The Construction Manager's procurement package strategy shall be reviewed with the Project Team on a regular basis and revised throughout the buyout of the Project in order to promote the best interests of the Project and the Town.

8.6.5 Refine, update and implement proposed MWBE and/or DBE subcontracting plans to promote diversity in the procurement of goods and services for the Project.

8.6.6 Advise Town of any tests to be performed and assist Town in selecting testing laboratories and consultants, if needed, without assuming direct responsibility for the work of such laboratories and consultants.

8.6.7 Construction Manager shall review the Construction Documents to ensure that they contain adequate provision for all temporary facilities necessary for performance of the Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.

8.6.8 Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases. Make recommendations that minimize adverse effects of labor shortages.

8.6.9 Consult with and make recommendations to the Town on the acquisition schedule for fixtures, furniture and equipment, and coordinate with the Town as may be required to meet the Schedule.

#### 8.7 Bidding Phase

8.7.1 <u>Prequalification Plan</u> - The Contractor shall prepare and submit a Subcontractor's prequalification plan for review and approval by the Project Team. The Contractor shall submit their list of pre-approved Subcontractor for each element of the Work for review and approval by the Project Team. The Town reserves the right to reject any Subcontractor proposed by the Contractor for this Project.

8.7.2 Any claims, objections or disputes arising out of the prequalification plan or list are the sole responsibility of the Contractor. The Contractor shall hold harmless, indemnify, and defend the Town, its employees, agents, and representatives in any matter arising out of the prequalification plan and/or the Subcontractor list, except where the sole cause of the matter is a Town directed decision on this specific matter. 8.7.3 Scope of Work - The Contractor shall receive subcontract proposals which, when combined with the work the Contractor intends to do with its own forces, shall represent the entirety of the Scope of Work required of this Agreement.

8.7.4 Pre-Bid Conferences - The Contractor shall schedule and conduct pre-bid conferences for Subcontractor, vendors and suppliers interested in participating in this Project. The Contractor shall coordinate the scheduling of such pre-bid conferences with the Project Team members.

8.7.5 Subcontractor Bidding - The Contractor shall properly advertise and schedule in coordination with the Project Team the opening, review and award of sealed bids to qualified responsive and responsible Subcontractor. Said bids from Subcontractor shall be in writing and shall be opened and reviewed in conjunction with the Town's representative and the Project Architect.

# **ARTICLE 9 – GUARANTTED MAXIMUM PRICE PROPOSAL**

9.1 When the Parties agree that the design of the Project is sufficiently developed and documented to allow detailed pricing of its construction, the Construction Manager shall prepare and submit a Guaranteed Maximum Price (GMP) Proposal to the Town. The GMP Proposal must remain valid for a period not-to-exceed ninety (90) days from submittal to the Town.

9.2 In developing the GMP Proposal, the Construction Manager shall coordinate efforts with the Project Architect to identify qualifications, clarifications, assumptions, exclusions, value engineering and any other factors relevant to establishment of a GMP. The Construction Manager shall review development of the GMP Proposal with the Town on an ongoing basis to address clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, exclusions, and other matters relevant to the establishment of a GMP.

9.3 The GMP Proposal must include a written description of how it was derived that specifically identifies the clarifications and assumptions made by the Construction Manager in developing the GMP and the monetary amounts attributable to them. The GMP Proposal shall include, without limitation, a breakdown of Construction Manager's proposed General Conditions and Cost of the Work organized by trade, contingency amounts, Construction Manager's Fee, as well as the proposed construction schedule (calendar days duration), including milestones for Substantial Completion and Final Completion.

9.4 In the event that the Construction Documents are not complete, the GMP Proposal shall allow for reasonably expected changes and refinements in the Drawings and Specifications through completion, except for material changes in scope.

9.5 Included with its GMP Proposal, Construction Manager shall provide two complete, bound sets of the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project as developed at the time of the GMP Proposal and that are relevant to the establishment of the GMP. The bound supporting documents shall be referenced in and incorporated into the GMP Proposal.

9.6 The GMP Proposal and all supporting documents shall identify and describe all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work and for establishment of the Guaranteed Maximum Price. The GMP Proposal and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality of material and workmanship shall prevail over all other interpretations.

9.7 In submitting the GMP Proposal, the Construction Manager represents that it will provide every item, system or element of Work that is identified, shown or specified in the GMP Proposal or the supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically excepted by the Town. Upon Town's acceptance of the GMP Proposal, the Construction Manager shall not be entitled to any increase in the Guaranteed Maximum Price due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the Construction Documents or the supporting documents used to establish the GMP.

9.8 The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement must be clearly and conspicuously identified to the Town in writing and specifically accepted by the Town. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by the Town and the terms of this Agreement and its attachments, the terms of the Agreement and its attachments shall control.

9.9 Town may accept or reject the GMP Proposal or attempt to negotiate its terms with the Construction Manager. In the event that the GMP Proposal is not accepted by the Town, then the Town may pursue other options including, but not limited to, the following:

a) Reject the GMP Proposal and request that the Construction Manager and Project Architect work together to develop solutions, including value engineering recommendations and other cost saving measures, to reconcile the proposed cost of the Project with the adopted Budget and to submit for review and approval by the Town, along with a revised GMP Proposal; or,

b) Reject the GMP Proposal, terminate this Agreement with the Contractor and take possession of the plans, specifications and other documents related to this Project. Moreover, the Town reserves the right to proceed with whichever course of action it considers to be in its best interest including, but not limited to, having the Project bid (priced) out and awarded to another firm. If so, the Contractor shall be compensated only for that percentage of their Pre-Construction Services Fee fully performed through the date of termination.

9.10 Upon acceptance by the Town of the GMP Proposal in writing, both parties shall execute the GMP Proposal and the terms of the GMP Proposal, including the Guaranteed Maximum Price

and the supporting documents, shall become part of the Contract between the Town and the Construction Manager.

9.11 Following acceptance of the GMP Proposal by the Town, the Construction Manager shall continue to monitor the development of the Construction Documents so that, when complete, the Construction Documents adequately incorporate and resolve all qualifications, assumptions, clarifications, exclusions and value engineering issues identified in the GMP Proposal. During the Construction Documents stage, the Construction Manager and the Project Architect shall jointly deliver a monthly status report to the Town describing the progress on the incorporation of all qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the establishment of the GMP into the Construction Documents. The monthly status report shall also include an updated start-to-finish project schedule that encompasses the Project Architect's activities, the Contractor's activities, and the Town's commissioning and occupancy activities, short-term schedules, and production rates for key elements of the Project as determined by the Town.

9.12 The Parties may agree to convert the GMP to a lump sum contract amount at any time after the Construction Manager has received bids or proposals from trade Contractors or Subcontractor for the performance of all major elements of the Work. In preparing a lump sum conversion proposal, the General Contractor must provide the following information:

- a) The stage of completion of the Project;
- b) The trade packages that have been completely bought out;
- c) The trade packages remaining that have not been bought out;

d) A complete line item breakdown of the calculations used to establish a lump sum amount based on the GMP Schedule of Values;

e) An accounting of all savings amounts that are to be returned to the Town as part of the lump sum calculation; and

f) Any other Project information requested by the Town.

9.13 The Construction Manager shall document the actual Cost of the Work at buyout as compared to the Guaranteed Maximum Price Proposal and shall report this information to the Town monthly throughout the Construction Phase.

# **ARTICLE 10 – CONSTRUCTION PHASE SERVICES**

The Construction Phase shall be deemed to commence upon the date specified in a signed Noticeto-Proceed issued by the Town after approval of the GMP Proposal and shall continue until Final Completion of all Work. The Pre-Construction Phase Services may overlap Construction Phase Services. The Construction Manager shall not incur any Subcontractor costs for construction of the Work prior to issuance by Town of written authorization to commence such Work. The Construction Manager shall perform the following Construction Phase Services.

10.1. Construction Obligations Generally

10.1.1. The Contractor shall designate and maintain at all times during the course of the Work a Project superintendent. Upon execution of this Agreement, Contractor shall notify the A/E in writing of the superintendent's name, address, and telephone number. Contractor's superintendent will be in charge of the operations of Contractor in the

performance of the Work, but only Contractor's Vice Presidents and/or President are authorized to bind Contractor and to accept any notice.

10.1.2. Contractor shall provide administrative, management and related services to coordinate, schedule, supervise, and inspect the activities and responsibilities of the Subcontractor with each other and with those of Contractor, Town and the A/E. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under Contractor. The Contractor shall transmit to the A/E requests for interpretations of the meaning and intent of the Contract Documents and assist in the resolution of questions that may arise consistent with the Contract Documents and utilizing information from the Subcontractor, Contractor shall coordinate the sequence of construction and assignment of space in areas where the Subcontractor are performing Work.

10.1.3. Contractor shall schedule and conduct a preconstruction meeting and weekly meetings at the Project Site to discuss such matters as procedures, progress, and scheduling. Unless otherwise directed by Town, Contractor shall prepare and promptly distribute minutes to Town, the A/E and, as necessary, Subcontractor.

10.1.4. S cheduling; Records

10.1.4.1. Utilizing the Project Schedule, Contractor shall periodically (but no less than monthly) update the Project Schedule, incorporating the activities of the Subcontractor on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products requiring long lead time and procurement. The Project Schedule shall show portions of the Project having completion priority. Contractor shall update and reissue the Project Schedule as required to show current conditions. If an update indicates that the previously approved Project Schedule or significant milestones thereon may not be met, Contractor shall recommend corrective action to Town and the A/E. If such delay is the result of the fault or neglect of Contractor or any Subcontractor or supplier, Contractor shall implement such corrective action without additional cost to Town.

10.1.4.2. Contractor shall record the progress of the Project. The Contractor shall submit written progress reports to Town and A/E including information of each Subcontractor and each Subcontractor's Work, as well as the entire Project, showing percentages of completion. Contractor shall keep a daily log containing a record of weather, each Subcontractor's work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as Town may reasonably require.

10.1.5. Contractor shall construct the Project and perform all Work in a good and workmanlike manner and in strict accordance with the Contract Documents, using only new materials and skilled workmen. All material must be of the specified quality, and equal to the approved samples, if samples have been submitted. Contractor shall supervise and



direct the Work, using Contractor's best skill; attention and judgment without limitation, the failure to comply with the requirements of this subparagraph shall be a material breach of the Contract.

10.1.6. It shall be the duty of Contractor to call the A/E's attention to ambiguities, conflicts, errors or omissions in the Contract Documents of which Contractor knew or a similarly situated Contractor reasonably should have known and request instructions before proceeding with the Work. If Contractor fails to request such clarification and proceeds with construction where such an ambiguity, conflict, error or omission is present, Contractor shall do so at its own risk and shall receive no extra compensation if such construction does not comply with the intent of the A/E and must, therefore, be removed and replaced at the sole cost of Contractor, in other words, the Contractor's cost to remove and replace the noncompliance Work shall not be a reimbursable Cost of the Work.

10.1.7. Any Work not strictly conforming to the requirements of the Contract Documents shall be considered defective. All defective Work or material shall be removed from the premises by Contractor, whether in place or not, and shall be replaced with new and satisfactory Work or material, in such manner as Town may direct at its sole discretion, and at the sole cost and expense of Contractor, in other words, the Contractor's cost to remove and replace the defective Work shall not be a reimbursable Cost of the Work. All material and workmanship of whatever description shall be subject to the inspection of, and rejection by Town, if not in strict conformance with the Contract Documents or any portion thereof.

10.1.8. The use of the words "or equal" in the Specifications following the name of any manufacturer, vendor or proprietary product will mean that, in the opinion of the Town, articles or materials which are offered as a substitute are equal in quality and performance to the articles or materials specified. Contractor must submit requests for substitution to Town, and will not proceed with the installation or use any proposed substitution without written permission from the A/E.

10.1.9. On all questions concerning the acceptability of material, machinery and classifications of material, execution of the Work, conflicts of interest of Contractor performing of related Work, and the determination of costs, the decision of the A/E shall be final and binding upon all parties, if consistent with the Contract Documents.

10.1.10. Contractor shall immediately correct any defective or imperfect Work, which may be discovered by any Person before final payment under this Agreement. Such correction and/or replacement shall be performed without extra charge or time extension of the Project Schedule, notwithstanding that it may have been overlooked in previous inspections. The Town's inspection or failure to inspect the Work or any part thereof shall not relieve Contractor from any obligation to perform the Work as specified in the Contract Documents.

10.1.11. At least forty-eight (48) hours in advance of the start of construction, Contractor shall advise all residents and businesses in the immediate vicinity of the Project and/or that are potentially affected by the contemplated activity of the type of Work that is to be undertaken and its approximate duration. Contractor shall take all necessary steps to minimize the duration of any adverse effect.

10.1.12. In the event that the Work is likely to cause interruption of service to the surrounding residents, the Contractor shall request written approval from the Town's representative and shall notify the affected residents in writing of the pending interruption at least forty-eight (48) hours prior to the scheduled interruption. Contractor shall take all necessary steps to minimize the duration of any such interruption.

10.1.13. Access to adjacent properties, cross streets or use of streets scheduled for improvement must be reasonably maintained and fully re-established at the end of each workday.

10.1.14. Contractor shall maintain dust abatement activities for the duration of the Project, as may be required or necessary, including weekends and holidays, including, without limitation, through implementation of the following measures:

10.1.14.1. Contractor shall maintain adequate moisture levels in the surface materials to eliminate blowing dust from these materials; and

10.1.14.2. All haul trucks, whether involved in delivery or removal activities, shall be covered and/or tarped in order to avoid the loss of material from trucks while being transported due to winds or the movement of the truck.

10.1.15. Protection of Work and Cleaning Up. Contractor shall be responsible for the care of all Work until its completion and final acceptance, and Contractor shall, at its own expense, replace damaged or lost material and repair damaged parts of the Work, or the same may be done by Town at Contractor's expense, and Contractor and its sureties shall be liable therefore. Contractor shall remove from the vicinity of the completed Work all plant equipment and materials belonging to Contractor or used under Contractor's direction during construction. Contractor shall clean up all waste or excess materials within the established work limits within the Project so as to make a neat and workmanlike finish to the entire Project, and in the event of Contractor's failure to remove said materials, the same may be removed by Town at the expense of Contractor, and Contractor and its sureties shall be liable therefore. All new concrete construction that becomes broken or shows evidence of cracks shall be completely replaced at Contractor's expense subject to the standards set forth in the Contract Documents. Under no circumstances will patch Work be performed to repair new concrete Work.

10.2. <u>Protection of Persons and Property Other Than the Work</u>. Contractor shall protect against injury to any public or private property encountered in the Work. All obstructions to traffic shall be guarded by barriers and illuminated at night. Contractor shall not trespass upon private property. Access to private property shall be by written permission of the property owner, as may be obtained by Contractor. Under all circumstances Contractor must comply with the laws and regulations relative to the safety of Persons and property and the interruption of traffic, as well as the convenience of the public. Contractor will be held responsible for and required to make good at its own expense, all damage to Persons and property caused by carelessness or neglect on the

part of Contractor or Subcontractor, or the agent or employees of either, during the progress of the Work and until its final acceptance. Prior to the commencement of construction, Contractor shall contact adjacent property Towns to the property on which Work will be located and which have structures such as fences, buildings, etc., adjacent to the proposed construction, and note with Town, any existing damage. Further damage caused by Contractor or a Subcontractor, or employee or agent of either, shall be repaired to the satisfaction of Town, at the sole cost of Contractor, in other words, the Contractor's cost to repair damage shall not be a reimbursable Cost of the Work. Notwithstanding anything in this Section or the Agreement to the contrary, Town shall be responsible for providing access to adjacent properties, and Contractor agrees to assist Town with coordination with adjacent property owners.

#### 10.3. Subcontractors

10.3.1. Those portions of the Work that Contractor does not customarily perform with Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with Contractor. At the request of Town, Contractor shall deliver copies of all executed subcontracts to Town. Town's review of any and all subcontracts is for the sole benefit of Town. Town's failure to object to any provision in any subcontract shall not be construed as Town's acceptance of such provision.

10.3.2. All subcontracts must be in writing and will provide that all Work to be performed hereunder will be performed in strict accordance with the terms of the Contract.

10.3.3. The Contractor shall make available to each proposed Subcontractor, prior to the execution of a subcontract, copies of the Contract Documents to which the Subcontractor will be bound to.

10.3.4. Subcontractor must submit experience, bonding capability and financial condition to Contractor. The Subcontractor experience, bonding capability and financial condition must demonstrate that adequate assets and equipment are available to properly perform the subcontract.

10.3.5. Subcontractor's exclusive remedy for delays in the performance of the Agreement caused by Force Majeure events or by delays claimed to be caused by the Town, or attributable to the Town, or on claims based on breach of contract or negligence, shall be an extension of its subcontract time.

10.3.6. Contractor shall be responsible to the Town for the acts and omissions of its employees, agents and Subcontractor, their agents and employees, and all other persons performing any of the Work or supplying materials under a contract to the Contractor.

10.3.7. The subcontracting of any or all of the Work for this Project will not relieve the Contractor of any part of its responsibility under the Contract. In case the terms of the subcontract are unsatisfactory, in the reasonable opinion of Town, or in case the Work being done under any subcontract is not conducted in strict accordance with the Contract Documents, Contractor shall, upon written notice to this effect, cause such Work to be

corrected. Any loss or damage that may be suffered on account of such action shall be borne solely by Contractor, in other words, the Contractor's loss or damage shall not be a reimbursable Cost of the Work.

# 10.4. Construction Supervision and Administration Site Logistics

10.4.1. The CM will develop a plan for site logistics, including plans for ingress and egress, street right-of-way encroachments (including lane and sidewalk closures), signage, storage of materials and equipment, site offices, temporary utilities, staging, hoists and cranes, waste disposal, security, and any other logistical issues that could affect performance of the Work to be provided by the CM.

10.4.2. Contractor shall schedule and conduct meetings at regular intervals, but no less frequently that once per week (or such other period as the Parties may agree), during which the Town, Project Architect, Contractor and appropriate Subcontractor can discuss the status of the Work. Contractor shall prepare and promptly distribute meeting minutes, which shall be subject to the review and approval of Town.

10.4.3. Contractor shall provide monthly written reports to Town and the A/E on the progress of the entire Work. Contractor shall maintain a daily log containing a record of weather, Subcontractor working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as Town may reasonably require. The log shall be available to Town and the A/E upon request.

10.4.4. Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. Contractor shall identify variances between actual and estimated costs and report the variances to Town and A/E at regular intervals, but not less than on a monthly basis, which report shall be submitted with each Application for Payment.

10.5. Safety

10.5.1. Without limitation, the Occupational Safety and Health Act (OSHA) Standard for Construction (Title 29, Code of Federal Regulations, Part 1926 as amended) and the Town's Safety Regulations contained in the General Conditions of the Construction Contract are both applicable and enforceable under this Agreement.

10.5.2. In accordance with applicable federal, state, and local law, the entry of confined spaces shall not be allowed until the air quality of these spaces has been tested and found to be of sufficient quality to support human life. Testing of these spaces will be undertaken by an employee or consultant of the Contractor, trained in the use of air quality testing equipment.

10.5.3. Prior to the commencement of construction activities on this Project, the Contractor shall submit an Accident Prevention Plan to the Project Team for review and approval. This Plan shall address all phases of construction to be undertaken for this Project, as agreed to by the parties. The Plan shall also address measures to control hazards associated with materials (MSDS), equipment, and safety inspections.

10.5.4. In the event the Contractor encounters an unforeseen hazardous material or condition, or any substance reasonably believed to be a hazardous material at the Project site, the Contractor shall immediately notify the Town and A/E in writing. The Work in the affected area will not resume except by written approval and agreement of the Town and Contractor, once the condition has been adequately assessed and properly mitigated. As a result of any delay caused by such an unforeseen condition, the Contractor shall be entitled to make a claim for a time extension in the Project schedule, provided it has otherwise fulfilled its obligations under this Agreement.

10.5.5. Contractor will provide the name of a designated safety staff member for coordination during the life of the Project.

# 10.6. <u>Roads</u>

10.6.1. Contractor may not close all or any part of a street or road without the prior written approval of the Town. Streets and roads subject to interference during the execution of the Work shall be kept open by the Contractor until the Work is completed, unless otherwise approved in writing by Town. The Contractor shall submit their proposed Maintenance of Traffic (MOT) plan for review and approval to the A/E and Town's representative.

# 10.7. Utilities

10.7.1. Contractor is solely responsible for investigating and notifying all utility companies, all pipe line operators or other utility parties affected by the Work on this Project, and shall make all reasonable efforts to have all necessary adjustments of the public or private utility fixtures, pipelines, and other appurtenances within or adjacent to the limits of construction made as soon as practicable. Contractor shall be solely responsible for the notification of and coordination of Work with the applicable utility company to avoid any delays with the Project Schedule. If any portion of the Work is to be performed adjacent to or across utility lines, Contractor must verify the locations in the field and take the necessary precautions before proceeding to work close to or across any existing underground utility line.

10.7.2. It shall be the Contractor's sole responsibility to notify the applicable utility companies at least seventy-two (72) hours prior to the start of construction and to coordinate its work with the utility company. Any damage caused by Contractor or their sub-contractors to existing utilities shall be repaired at Contractor's expense and the Town will not be responsible for any direct or indirect damage to utilities.

10.7.3. In the event that the Contractor has fulfilled its obligations under this Agreement, any delays to the Project caused by utility companies may entitle the Contractor to make a request for time extension.

#### 10.8. Relation to Other Work

10.8.1. The Town reserves the right to award separate contracts in connection with any other work or operations on the Project site. If the Contractor believes that delays or additional costs to the Project result from the Town's actions, then the Contractor may make such claim as provided in this Agreement.

10.8.2. If part of the Contractor's Work depends for proper execution or results upon construction or operations by a separate contractor hired by the Town, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Town and Project Architect as to the apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and timely completion.

10.9. <u>Environmental Mitigation Measures</u>: The project may include environmental mitigation measures. The Contractor shall be responsible for ensuring strict and complete compliance by its subcontractors, material men and employees with the applicable plan requirements and conditions established by the appropriate regulatory agencies.

10.10. <u>Professional Services</u>: The Contractor is generally not required to provide professional services which constitute the practice of architecture or engineering for design of the Project, unless such services are specifically required by the Contract Documents for a portion of the Work or unless Contractor has specifically agreed to provide such services. If so, the Contractor shall ensure that such services are performed by appropriately licensed professionals.

10.11. Changes in the Work

10.11.1. Generally.

10.11.1.1. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in this paragraph and elsewhere in the Contract Documents.

10.11.1.2. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

#### 10.11.2. Change Orders.

10.11.2.1 A Change Order is a written instrument prepared by Town and signed by Town and Contractor, stating their agreement upon all of the following:



(i) the change(s) in the Work;

(ii) the amount of the adjustment, if any, in the Guaranteed Maximum Price; and

(iii) the extent of the adjustment, if any, in the Date of Substantial Completion.

10.11.3. Construction Change Directives.

10.11.3.1 A Construction Change Directive is a written order prepared by Town directing a change in the Work prior to agreement on adjustment, if any, in the Guaranteed Maximum Price or Date of Substantial Completion, or both. Town may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Guaranteed Maximum Price and Date of Substantial Completion being adjusted accordingly.

10.11.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

10.11.3.3. If the Construction Change Directive provides for an adjustment the Guaranteed Maximum Price, the adjustment shall be based on one of the following methods:

 (i) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; or
 (ii) unit prices reflected in the Guaranteed Maximum Price package or subsequently agreed upon.

10.11.3.4. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the A/E and Town of Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Guaranteed Maximum Price or Date of Substantial Completion.

10.11.3.5. A Construction Change Directive signed by Contractor indicates the agreement of Contractor therewith, including adjustment in the Guaranteed Maximum Price and Date of Substantial Completion or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

10.11.3.6. If Contractor does not respond promptly or disagrees with the method for adjustment in the Guaranteed Maximum Price, the method and the adjustment shall be determined by the A/E on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase or decrease in the Guaranteed Maximum Price, a reasonable allowance for overhead and profit, not to exceed the percentage equal to the original

Contractor's Fee. In such case, Contractor shall keep and present, in such form as Town may reasonably prescribe, an itemized accounting together with appropriate supporting data.

10.11.3.7. The amount of credit to be allowed by Contractor to the Town for a deletion or change that results in a net decrease in the Guaranteed Maximum Price shall be actual net cost as agreed to by Town and Contractor, or in the absence of such agreement as confirmed by the A/E in the same manner as set forth herein. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

10.11.3.8. Pending final determination of the total cost of a Construction Change Directive to the Town, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by an Extra Work Order indicating the Parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the A/E will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Guaranteed Maximum Price on the same basis as an Extra Work Order, subject to the right of either party to disagree and assert a claim therefore; provided that no such disagreement or claim shall delay the progress of the Work.

10.11.3.9. When the Town and the Contractor agree with the determination made by the A/E concerning the adjustments in the Guaranteed Maximum Price and Date of Substantial Completion, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

10.11.4. *Minor Changes in the Work*: The Town has the authority to order minor changes in the Work not involving adjustment in the Guaranteed Maximum Price or extension of the Date of Substantial Completion and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on Town and the Contractor. The Contractor shall carry out such written orders promptly.

10.12. <u>As-Builts</u>: In consultation with the A/E, the Contractor shall be responsible for the preparation and furnishing of As-Built Drawings. Contractor shall obtain one set of Plans from the A/E and shall periodically, but no less than once per month, record, in red colored pencil, all cases where actual field construction differs from Work shown on Plans. Utilizing the set of Plans that have been marked-up by Contractor to represent field conditions, prepare a set of reproducible record drawings showing those changes made during the construction progress. Record drawing information will be based on marked-up prints, Plans, and other data furnished.

# 10.13. Liquidated Damages

10.13.1 If Contractor neglects, fails or refuse to complete the Work on or before the date of Substantial Completion, or any proper time extension thereof granted by the Town,



then the Contractor as part of consideration for the Town's award of this Contract, agrees to pay the Town an amount of Five Hundred Dollars **(\$500)** per day, not as a penalty but as liquidated damages for such breach of contract, for each and every calendar day beyond the stipulated date of Substantial Completion that the Project is not Substantially Complete. The aforementioned daily amount of liquidated damages is fixed and agreed upon by and between the Contractor and the Town due to the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Town would sustain due to such a delay, and therefore said amount is agreed to be the amount of damages which Town would sustain and shall be deducted by the Town from any remaining funds due to the Contractor.

10.13.3. It is further agreed that time is of the essence of each and every portion of this Contract wherein a definite and certain length of time if fixed for the performance of any act whatsoever. Further, where Contractor is allowed an additional time for the completion of any Work, the new time limit fixed by such extension shall be of the essence of this Contract.

10.13.4. Contractor shall not be charged with liquidated damages when the delay in Substantial Completion of the Work is due to the following causes ("Excusable Delays"), if such causes were unforeseen and beyond the control and without the fault or negligence of Contractor, any Subcontractor, anyone directly or indirectly employed by them, or anyone for whom they are liable: acts of God or of the public enemy, acts of another Contractor in the performance of a contract with Town (provided Contractor has fulfilled its obligations), fires, floods, epidemics, quarantine restrictions, strikes, and Without limitation as to the causes of delay excluded from freight embargos. Excusable Delays, such an unforeseeable cause shall not include shortage of labor (other than due to strikes), delays in delivery of materials, equipment, or specially fabricated items. To be entitled to the relief from Excusable Delays, Contractor shall, within ten (10) days from the beginning of such delay, notify Town, in writing, of the cause of such delay. The Project Manager shall ascertain the facts and extent of the delay and shall notify Contractor within a reasonable time as to his or her determination of the cause of the delay, whether it is excusable under this clause, and the extension in the time for performance of the Work, if any, that will be granted. Such determination made in good faith shall be binding on the Parties. Except as specifically provided in this Agreement, in the case of an Excusable Delay, Contractor shall not be entitled to additional compensation, but shall, as its sole remedy, be entitled to an extension of the time in which to perform the Work. The failure of Contractor to provide the notice specified herein shall constitute a waiver of and bar to any claim for delay, except as specified in this Agreement.

#### **ARTICLE 11 – INSPECTION**

11.1. <u>NOTIFICATION</u>: IT IS THE RESPONSIBILITY OF Contractor TO CONSTRUCT THE WORK IN STRICT ACCORDANCE WITH THE CONTRACT DOCUMENTS, APPLICABLE BUILDING CODES, ORDINANCES, REGULATIONS, STATUTES AND OTHER LAWS. IT SHALL BE THE RESPONSIBILITY OF THE Contractor TO NOTIFY THE Town AT LEAST FORTY- EIGHT (48) HOURS BEFORE COVERING WORK WHICH Town IS ENTITLED TO INSPECT PURSUANT TO THIS ARTICLE. IN NO EVENT SHALL ANY INSPECTION

## OR FAILURE TO INSPECT BY THE Town RELIEVE THE Contractor OF THIS RESPONSIBILITY TO CONSTRUCT THE WORK IN SUCH ACCORDANCE WITH THE REQUIREMENTS OF THE CONTRACT DOCUMENTS.

11.2. <u>Generally</u>: Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, Contractor shall coordinate such tests, inspections and approvals with an independent testing laboratory, or with the appropriate public authority contracted by Town, and Town shall bear all related costs of tests, inspections and approvals. The Contractor shall give the A/E timely notice of when and where tests and inspections are to be made so that the A/E may be present for such procedures.

11.3. <u>Additional Testing</u>: If the A/E, Town or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Paragraph 11.2, the A/E will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity reasonably acceptable to Town, and the Contractor shall give timely notice to the A/E of when and where tests and inspections are to be made so that the A/E may be present for such procedures. Such costs, except as provided in Paragraph 11.4, shall be at Town expense.

11.4. <u>Costs of Retesting</u>: If such procedures for testing, inspection or approval under Paragraphs 11.2 and 11.3 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the A/E's services and expenses shall be at the Contractor's expense, in other words, the Contractor's expense shall not be a reimbursable Cost of the Work.

11.5. <u>Certificates</u>: Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the A/E and the A/E.

11.6. <u>No Delay of Project</u>: Test or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

11.7. <u>Quality</u> Assurance: Contractor shall implement and observe a program of quality assurance as set forth in the Contract Documents or as otherwise reasonably directed by the A/E.

11.8. Information and Services

11.8.1 Upon Contractor's request, Town will provide information in a timely manner regarding the requirements of the Project, including a program which sets forth the Town's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

11.8.2 The Town will establish and update an overall budget for the Project, based on consultation with Contractor and A/E, which will include contingencies for changes in the



Work and other costs, which are the responsibility of the Town.

11.9 <u>Town's Representative</u>: The designated Town's Representative will be considered the administrator of this Contract on behalf of the Town, and will be the evaluator of the Contractor's performance of their services under this Agreement. All references to the A/E in these documents shall include the A/E and the Town's representative. The A/E, or properly authorized agents, will:

11.9.1 Manage the Project on behalf of Town;

11.9.2 Calculate and determine the quantity of the Work performed; and

11.9.3 Inspect all Work for acceptance or rejection. The A/E has full authority to reject or condemn any Work, which does not conform to the terms and conditions of the Contract Documents.

#### ARTICLE 12 – INTENT OF AGREEMENT

12.1 The execution of this Agreement is a representation that the Contractor has carefully examined the Contract Documents and the site, and represents that the Contractor is thoroughly familiar with the nature and location of the Project, the Worksite, the specific conditions under which the Services are to be performed, and all matters which may in any way affect the Work or its performance. The Contractor further represents that, as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of the Contractor's failure to follow the foregoing procedure and to familiarize itself with all local conditions and the Contract Documents will not be permitted.

12.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Project by the Contractor. The Contract Documents are complimentary, and what is required by any one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonable inferable from them as being necessary to produce the intended results.

12.3 In the event of conflicting provisions in the specifications or the Drawings, the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; and the more expensive item will take precedence over the less expensive. On all Drawings, figures take precedence over scaled dimensions. Scaling of dimensions, if done, is done at the Contractor's own risk.

12.4 Organization of the specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractor or in establishing the extent of Work to be performed by any trade.

12.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

#### ARTICLE 13 – TERM OF AGREEMENT

13.1 Subject to authorized adjustments, the Term of Agreement shall be for the agreed upon time by the parties following the Town's issuance of its Notice to Proceed to Contractor, which shall constitute the guaranteed time upon which Contractor is to complete the Project in accordance with the terms, conditions and specifications contained in this Agreement, unless terminated earlier by the Town.

13.2 Contractor agrees that the Work shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion within the agreed Time Schedule. Failure to achieve timely final Project completion shall be regarded as a material breach of this Agreement and shall be subject to the appropriate remedies available at law. This Agreement shall remain in full force and effect until the completion of the Project by the Contractor and the Town's acceptance of the Project.

13.3 Minor adjustments to the time for performance which are approved in writing by the Town in advance, shall not constitute non-performance by Contractor. Any impact on the time for performance shall be determined and the Time Schedule for completion of Work will be modified accordingly.

13.4 When, in the opinion of the Town, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform Work or any portion thereof, the Town may request that the Contractor, within a reasonable time frame set forth in the Town's request, provide adequate assurances to the Town in writing, of Contractor's ability to perform in accordance with terms of this Agreement. In the event that the Contractor fails to provide the Town the requested assurances within the prescribed time frame, the Town may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

13.5 Contractor shall be required to show just cause for delays or for additional time requests. Failure to comply with this subparagraph shall be sufficient grounds for the Town to find the Contractor in substantial default and certify that sufficient cause exists to terminate the Agreement or to withhold payment to the Contractor until an updated Time Schedule, acceptable to the Town, is obtained. Such failure shall not be cause for additional time.

13.6 In the event the Term of Agreement date is extended, regardless of whether delay is caused by any act or neglect of the Town or Force-Majeure Event, or is attributable to the Town, the Contractor's sole and exclusive remedy is an equal extension of time.

13.7 Notwithstanding the provisions of this Article, this Agreement may be terminated by the Town at any time, with or without cause, at its sole discretion.

#### **ARTICLE 14 – CONTRACTOR RESPONSIBILITIES**

14.1 Contractor shall confine operations at the Worksite to areas permitted by law, ordinances, permits and Contract Documents, and shall not unreasonably encumber the Worksite with personnel, materials or equipment.



14.2 Contractor shall keep the Worksite premises and surrounding areas free from accumulation of waste materials or rubbish caused by the Work. At completion, the Contractor shall remove from the Worksite all waste materials, debris, rubbish, tools, equipment, machinery and surplus materials. Failure to clean Worksite as provided herein may cause the Town to do so, and the cost thereof shall be charged to the Project Amount.

#### ARTICLE 15 - TOWN'S RESPONSIBILITY

15.1 The Town shall provide information regarding its requirements for the Project, with reasonable promptness to avoid delay in the orderly progress of the Work.

15.2 The Town shall designate a Project Manager who shall be fully acquainted with the Project and shall define the lines of Town authority to approve Change Orders and render decisions promptly and furnish information expeditiously.

15.3 The Town, unless otherwise agreed, shall furnish the site of the Project, all surveys describing the physical characteristics, soil reports, subsurface investigations, legal limitations, known utility locations, covenants, deed restrictions and a legal description if required for the Project.

15.4 If the Town becomes aware of any fault or defect in a phase of the Project or nonconformance with the Drawings and specifications, the Town shall give prompt written notice thereof to the Contractor.

15.5 The Project Manager shall communicate with Subcontractor or suppliers only through the Contractor, while such method of communication is effective in maintaining the Project's Time Schedule and quality standards.

15.6 The Town expects the Contractor to recognize, coordinate and comply with the Permitting Authorities.

15.7 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out Work in accordance with the requirements of the Contract Documents, Florida Building Code, and State of Florida, Palm Beach County and Town codes, rules and regulations, then the Town Manager, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of the Town to stop Work on the Project shall not give rise to a duty on the part of the Town, to the benefit of the Contractor, Subcontractor, or any other person or entity.

#### ARTICLE 16 - INDEPENDENT CONTRACTOR

16.1 Contractor has been procured and is being engaged by the Town as an independent Contractor, and not as an agent or employee of the Town. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the Town, nor any rights generally afforded classified or unclassified employees of the Town. Contractor further understands that Florida workers' compensation benefits available to employees of the



Town, are not available to Contractor. Therefore, Contractor agrees to provide workers' compensation insurance, as required by Florida law, for any employee or agent of Contractor rendering Work to the Town under this Agreement.

#### **ARTICLE 17 – CHANGES IN THE WORK**

17.1 The Town, without invalidating this Agreement, may order changes in the work within the general scope of this Agreement consisting of additions, deletions or other revisions. The Project Amount and the Substantial Completion date may be adjusted accordingly upon executed amendments. All other minor changes in the Project shall be authorized by Change Order, subject to any limitations in the Contract Documents.

17.2 Changes in the Project shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order. Before any Work is begun on any Change Order, a written authorization from the Town must be issued and then forward the same to the Architect-Engineer for its review

#### **ARTICLE 18 - ENVIRONMENTAL AND SAFETY REQUIREMENTS**

18.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Agreement.

18.2 Contractor shall provide a safety program for the Project to meet U.S. Department of Labor Occupational Safety and Health Administration (OSHA) requirements and monitor Subcontractor for compliance in the performance of Work in accordance with the best acceptable safety practice.

18.3 Contractor shall schedule the services of independent testing laboratories required by Permitting Authorities to provide the necessary testing of materials to ensure conformance with environmental regulations.

18.4 Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

18.4.1 Workers on the Project and all other persons who may be affected thereby;

18.4.2 Materials and equipment to be incorporated in the Project, whether in storage on or off the Worksite, under care, custody or control of the Contractor or Subcontractor;

18.4.3Other public or private property at the Worksite and adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and

18.4.4All alcoholic beverages, smoking and drugs shall be prohibited from the Project Worksite.

18.5 All workers on the Project site shall wear appropriate and uniform-like attire and shall have visible identification as being employees of the Contractor or Subcontractor.



18.6 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property, their protection from damage, injury or loss in accordance with the Safety and Health Regulations for Construction, 29 C.F.R. § 1926.

18.7 The Contractor shall erect and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying users of adjacent sites and utilities.

18.8 When the removal of asbestos, PCB's, petroleum, radioactive material or any other toxic or hazardous material, in whatever form or states, is necessary for the execution of the Work, the Contractor shall immediately notify the Town and exercise the utmost care to carry on such activities by and under the supervision of properly qualified personnel. Contractor covenants that any such removal must be performed by a Florida licensed toxic or hazardous materials abatement Contractor in accordance with all applicable federal, state, and local rules and regulations.

18.9 Contractor shall promptly remedy any damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of the Town or anyone directly or indirectly employed by either of them and whose acts are not attributable to the fault or negligence of the Contractor. Notwithstanding anything in this Section or the Agreement to the contrary, Contractor's obligations under this Section shall not apply to damage and loss to property caused by Town or Town's separate contractor.

18.10 Contractor shall designate a responsible person at the Worksite whose duty shall be prevention of accidents or injury to property or person.

18.11 Contractor shall not load or permit any part of the Worksite to be so loaded or congested, so as to endanger the site, any property, or deteriorate safety conditions.

18.12 Contractor shall promptly report to the Town and all accidents arising out of or in connection with the Work.

#### **ARTICLE 19 – TESTS AND INSPECTIONS**

19.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Town, or with the appropriate Permitting Authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Project Manager timely notice of when and where tests and inspections are to be made so as to allow him the opportunity to observe such procedures, if needed. The Contractor shall support and cooperate with all tests and inspections.

19.2 If such procedures for testing, inspection or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures.

19.3 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Town.

19.4 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

19.5 It is understood and agreed by the Contractor that the Highland Beach Building Department and its inspectors are professionals who are dedicated to providing efficient and courteous service to all residents, professionals, Contractors and the public at large through plans processing, inspections and building maintenance, which ensures the protection of the citizens and enhances the quality of life within the Town. For the purposes of this Project, the Building Department is not a surrogate of the Town. All decisions by the Building Department as to whether some aspect of the Project is or is not in compliance with the Florida Building Code, Florida Fire Prevention Code and/or any other applicable codes, regulations, laws and ordinances are independent of and not deemed to be an act or a decision by the Town. The Contractor agrees that it shall be the responsibility of the Contractor to ensure compliance with all applicable codes, regulations, law and ordinances. The Contractor warrants and accepts that any and all work necessitated by inspections which is not prescribed in the plans, specifications or Drawings, but necessitated to bring the Project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures and/or considered inside the contemplation of the Contract Documents, shall be deemed the responsibility of the Contractor at no additional cost to the Town.

#### **ARTICLE 20 – CORRECTION OF WORK**

20.1 The Contractor shall promptly correct Work rejected by the Town or Permitting Authorities or failing to conform to the requirements of the Contract Documents, whether observed before or after the completion of the Project. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections.

20.2 If, within one (1) year after the date of completion of the Project, or after the date for commencement of warranties and guarantees established under by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Town to do so unless the Town has previously given the Contractor a written acceptance of such condition.

20.3 Contractor shall remove from the Worksite and then correct any portions of the Work which are not in accordance with the requirements of the Contract Documents.

20.4 Contractor shall bear the cost of correcting destroyed or damaged portions of the Project, whether completed or partially completed, caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

20.5 If the Town prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Town may do so instead of requiring its removal and correction, in which



case the PROJECT AMOUNT will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

#### **ARTICLE 21 - CONFLICTS OF INTEREST**

21.1 Contractor represents and warrants to the Town that it has not employed or retained any person or company employed by the Town to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

21.2 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the Town in connection with this Agreement has any personal financial interest, directly or indirectly, with Contractors or vendors providing professional services on projects assigned to the Contractor, except as fully disclosed and approved by the Town. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

#### **ARTICLE 22 - TERMINATION OF AGREEMENT AND DEFAULT**

22.1 <u>Termination for Convenience</u>: In addition to other rights the Town may have at law and pursuant to the Contract Documents with respect to cancellation and termination of the Contract, the Town may, in its sole discretion, terminate for the Town's convenience the performance of Work under this Contract, in whole or in part, at any time upon written notice to the Contractor. The Town shall effectuate such Termination for Convenience by delivering to the Contractor a Notice of Termination for Convenience, specifying the applicable scope and effective date of termination, which termination shall be deemed operative as of the effective date specified therein without any further written notices from the Town required. Such Termination for Convenience shall not be deemed a breach of the Contract, and may be issued by the Town with or without cause.

Upon receipt of such Notice of Termination for Convenience from the Town, and except as otherwise directed by the Town, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:

22.1.1 Stop the Work specified as terminated in the Notice of Termination for Convenience;

22.1.2 Promptly notify all Subcontractors of such termination, cancel all contracts and purchase orders to the extent they relate to the Work terminated to the fullest extent possible and take such other actions as are necessary to minimize demobilization and termination costs for such cancellations;

22.1.3 Immediately deliver to the Town all Project records, in their original/native electronic format (i.e. CAD, Word, Excel, etc.), any and all other unfinished documents, and any and all warranties and guaranties for Work, equipment or materials already installed or purchased;

22.1.4 If specifically directed by the Town in writing, assign to the Town all right, title



and interest of Contractor under any contract, subcontract and/or purchase order, in which case the Town shall have the right and obligation to settle or to pay any outstanding claims arising from said contracts, subcontracts or purchase orders;

22.1.5 Place no further subcontracts or purchase orders for materials, services, or facilities, except as necessary to complete the portion of the Work not terminated (if any) under the Notice of Termination for Convenience;

22.1.6 As directed by the Town, transfer title and deliver to the Town (1) the fabricated and nonfabricated parts, Work in progress, completed Work, supplies and other material produced or required for the Work terminated; and (2) the completed or partially completed Project records that, if this Contract had been completed, would be required to be furnished to the Town;

22.1.7 Settle all outstanding liabilities and termination settlement proposals from the termination of any subcontracts or purchase orders, with the prior approval or ratification to the extent required by the Town (if any);

22.1.8 Take any action that may be necessary, or that the Town may direct, for the protection and preservation of the Project Site, including life safety and any property related to this Contract that is in the Contractor's possession and in which the Town has or may acquire an interest; and

22.1.9 Complete performance of the Work not terminated (if any).

Upon issuance of such Notice of Termination for Convenience, the Contractor shall only be entitled to payment for the Work satisfactorily performed up until the date of its receipt of such Notice of Termination for Convenience, but no later than the effective date specified therein. Payment for the Work satisfactorily performed shall be determined by the Town in good faith, in accordance with the percent completion of the Work, less all amounts previously paid to the Contractor in approved Applications for Payment, the reasonable costs of demobilization and reasonable costs, if any, for canceling contracts and purchase orders with Subcontractors to the extent such costs are not reasonably avoidable by the Contractor.

The Contractor shall submit, for the Town's review and consideration, a final termination payment proposal with substantiating documentation, including an updated Schedule of Values, within 30 days of the effective date of termination, unless extended in writing by the Town upon request. Such termination amount shall be mutually agreed upon by the Town and the Contractor and absent such agreement, the Town shall, no less than fifteen (15) days prior to making final payment, provide the Contractor with written notice of the amount the Town intends to pay to the Contractor. Such final payment so made to the Contractor shall be in full and final settlement for Work performed under this Contract, except to the extent the Contractor disputes such amount in a written notice delivered to and received by the Town prior to the Town's tendering such final payment.

22.2 <u>Event of Default</u>: The following shall each be considered an item of Default. If, after delivery of written notice from the Town to Contractor specifying such Default, the Contractor fails to promptly commence and thereafter complete the curing of such Default within a reasonable period of time, not to exceed twenty-one (21) days, after the delivery of such Notice of Default, it shall be deemed an Event of Default, which constitutes sufficient grounds for the Town to terminate Contractor for cause:

22.2.1 Failing to perform any portion of the Work in a manner consistent with the requirements of the Contract Documents or within the time required therein; or failing to use the Subcontractors, entities and personnel as identified and to the degree specified, in the Contract Documents, subject to substitutions approved by the Town in accordance with this Contract and the other Contract Documents;

22.2.2 Failing, for reasons other than an Excusable Delay, to begin the Work required promptly following the issuance of a Notice to Proceed;

22.2.3 Failing to perform the Work with sufficient manpower, workmen and equipment or with sufficient materials, with the effect of delaying the prosecution of the Work in accordance with the Project Schedule and/or delaying completion of any of the Project within the specified time;

22.2.4 Failing, for reasons other than an Excusable Delay, to timely complete the Project within the specified time;

22.2.5 Failing and/or refusing to remove, repair and/or replace any portion of the Work as may be rejected as defective or nonconforming with the terms and conditions of the Contract Documents;

22.2.6 Discontinuing the prosecution of the Work, except in the event of: 1) the issuance of a stop-work order by the Town; or 2) the inability of the Contractor to prosecute the Work because of an event giving rise to an Excusable Delay as set forth in this Contract for which Contractor has provided written notice of same in accordance with the Contract Documents;

22.2.7 Failing to provide sufficient evidence upon request that, in the Town's sole opinion, demonstrates the Contractor's financial ability to complete the Project;

22.2.8 An indictment is issued against the Contractor;

22.2.9 Failing to make payments to for materials or labor in accordance with the respective agreements;

22.2.10 Failing to provide the Town with a Recovery Schedule in accordance with the Contract Documents;

22.2.11 Persistently disregarding laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;

22.2.12 Fraud, misrepresentation or material misstatement by Contractor in the course of obtaining this Contract; and

22.2.13Failing to comply in any material respect with any of the terms of this Contract or the Contract Documents.

In no event shall the time period for curing a Default constitute an extension of the time for achieving Substantial Completion or a waiver of any of the Town's rights or remedies hereunder for a Default which is not cured as aforesaid.

22.3 <u>Termination of Contract for Cause</u>: The Town may terminate the Contractor for cause upon the occurrence of an Event of Default as defined herein, or for any other breach of the Contract or other Contract Documents by the Contractor that the Town, in its sole opinion, deems substantial and material, following written notice to the Contractor and the failure to timely and properly cure to the satisfaction of the Town in the time period set forth herein, or as otherwise specified in the Notice of Default.

Upon the occurrence of an Event of Default, and without any prejudice to any other rights or remedies of the Town, whether provided by this Contract, the other Contract Documents or as otherwise provided at law or in equity, the Town may issue a Notice of Termination for Cause to Contractor, copied to the Surety, rendering termination effective immediately, and may take any of the following actions, subject to any prior rights of the Surety:

22.3.1 Take possession of the Project Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by Contractor;

22.3.2 Accept assignments of subcontracts;

22.3.3 Direct Contractor to transfer title and deliver to the Town (1) the fabricated and non-fabricated parts, Work in progress, completed Work, supplies and other material produced or required for the Work terminated; and (2) the completed or partially completed Project records that, if this Contract had been completed, would be required to be furnished to the Town; and

22.3.4 Finish the Work by whatever reasonable method the Town may deem expedient.

Upon the issuance of a Notice of Termination for Cause, the Contractor shall:

22.3.5 Immediately deliver to the Town all Project records, in their original/native electronic format (i.e. CAD, Word, Excel, etc.), any and all other unfinished or partially completed documents, and any and all warranties and guaranties for Work, equipment or materials already installed or purchased;

22.3.6 If specifically directed by the Town in writing, assign to the Town all right, title and interest of Contractor under any contract, subcontract and/or purchase order, in which case the Town shall have the right and obligation to settle or to pay any outstanding claims arising from said contracts, subcontracts or purchase orders;

22.3.7 As directed by the Town, transfer title and deliver to the Town (1) the fabricated and nonfabricated parts, Work in progress, completed Work, supplies and other material produced or required for the Work terminated; and

22.3.8 Take any action that may be necessary, or that the Town may direct, for the protection and preservation of the Project Site, including life safety and property related

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to this Contract that is in the Contractor's possession and in which the Town has or may acquire an interest.

All rights and remedies of the Town's Termination rights herein shall apply to all Defaults that are non-curable in nature, or that fail to be cured within the applicable cure period or are cured but in an untimely manner, and the Town shall not be obligated to accept such late cure.

22.4 <u>Recourse to Performance and Payment Bond; Other Remedies</u>: Upon the occurrence of an Event of Default, and irrespective of whether the Town has terminated the Contractor, the Town may (i) make demand upon the Surety to perform its obligations under the Performance Bond and Payment Bond, including completion of the Work, without requiring any further agreement (including, without limitation, not requiring any takeover agreement) or mandating termination of Contractor as a condition precedent to assuming the bond obligations; or (ii) in the alternative, the Town may take over and complete the Work of the Project, or any portion thereof, by its own devices, by entering into a new contract or contracts for the completion of the Work, or using such other methods as in the Town's sole opinion shall be required for the proper completion of the Work, including succeeding to the rights of the Contractor under all subcontracts.

The Town may also charge against the Performance and Payment Bond all fees and expenses for services incidental to ascertaining and collecting losses under the Performance and Payment Bond including, without limitation, accounting, engineering, and legal fees, together with any and all costs incurred in connection with renegotiation of the Contract.

22.5 <u>Costs and Expenses</u>: All damages, costs and expenses, including reasonable attorney's fees, incurred by the Town as a result of an uncured Default or a Default cured beyond the time limits stated herein (except to the extent the Town has expressly consented, in writing, to the Contractor's late cure of such Default), together with the costs of completing the Work, shall be deducted from any monies due or to become due to the Contractor under this Contract, irrespective of whether the Town ultimately terminates Contractor.

Upon issuing a Notice of Termination for Cause, the Town shall have no obligation to pay Contractor, and the Contractor shall not be entitled to receive, any money until such time as the Project has been completed and the costs to make repairs and/or complete the Project have been ascertained by the Town. In case such cost and expense is greater than the sum which would have been due and payable to the Contractor under this Contract for any portion of the Work satisfactorily performed, the Contractor and the Surety shall be jointly and severally liable and shall pay the difference to the Town upon demand.

22.6 <u>Termination If No Default or Erroneous Default</u>: If, after a Notice of Termination for Cause is issued by the Town, it is thereafter determined that the Contractor was not in default under the provisions of this Contract, or that any delay hereunder was an Excusable Delay, the termination shall be converted to a Termination for Convenience and the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause contained herein. The Contractor shall have no further recourse of any nature for wrongful termination.

22.7 <u>Remedies Not Exclusive</u>: Except as otherwise provided in the Contract Documents, no remedy under the terms of this Contract is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

22.8 <u>Materiality and Non-Waiver of Breach</u>: Each requirement, duty, and obligation in the Contract Documents is material. The Town's failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or Amendment of this Contract. A waiver shall not be effective unless it is in writing and approved by the Town. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and the failure of the Town to exercise its rights and remedies under this Article at any time shall not constitute a waiver of such rights and remedies.

22.9 Contractor Right to Terminate Contract or Stop Work: If the Project should be stopped under an order of any court or other public authority for a period of more than ninety (90) days due to no act or fault of Contractor or persons or entities within its control, or if the Town should fail to pay the Contractor any material amount owing pursuant to an Approved Application for Payment in accordance with the Contract Documents and after receipt of all supporting documentation required by the Contract Documents, and if the Town fails to make such payment within ninety (90) days after receipt of written notice from the Contractor identifying the Approved Application for Payment for which payment is outstanding, then, unless the Town is withholding such payment pursuant to any provision of this Contract which entitles the Town to so withhold such payment, the Contractor shall have the right upon the expiration of the aforesaid ninety (90) day period to stop its performance of the Work, provided that Contractor has sent a Notice to Cure to the Town via certified mail, allowing for a 7 day cure period. In such event, Contractor may terminate this Contract and recover from Town payment for all Work executed and reasonable expense sustained (but excluding compensation for any item prohibited by any provisions of the Contract Documents). In the alternative to termination, Contractor shall not be obligated to recommence the Work until such time as the Town shall have made payment to the Contractor in respect of such Approved Application for Payment, plus any actual and reasonable related demobilization and start-up costs evidenced by documentation reasonably satisfactory to the Town. No act, event, circumstance or omission shall excuse or relieve the Contractor from the full and faithful performance of its obligations hereunder and the completion of the Work as herein provided for.

#### ARTICLE 23 - NOTICES

23.1 All notices, demands, correspondence and other communications between the Parties shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows or as the same may be changed from time to time:

То

Town of Highland Beach Attn: Town Manager 3614 South Ocean Blvd. Highland Beach, Florida 33487

With a copy to: Town Attorney

23.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

23.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

#### **ARTICLE 24 – INDEMNIFICATION**

24.1 Contractor shall defend, indemnify and hold harmless the Town, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of the Contractor, its officers, directors, agents, partners, Subcontractor, employees and managers in the performance of Work under this Agreement.

24.2 Contractor shall be fully responsible to Town for all acts and omissions of the Contractor, its employees, Subcontractor, suppliers, or other persons directly or indirectly employed by its Subcontractor or suppliers, and any other persons or organizations performing or furnishing supplies under a direct or indirect agreement with Contractor. Nothing in the Contract Documents shall create any contractual relationship between Town and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of Town to pay or to cause the payment of any money due any Subcontractor, supplier, employee or agent except as may otherwise be required by law.

24.3 The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillments or discharge of such obligations.

24.4 If any Subcontractor, supplier, laborer, or materialmen of Contractor or any other person directly or indirectly acting for or through Contractor files or attempts to file a mechanic's or construction lien against the real property on which the Work is performed or any part or against any personal property or improvements or make a claim against any monies due or to become due from the Town to Contractor or from Contractor to a Subcontractor, for or on account of any Work, labor, construction services, material, equipment, or other items furnished in connection with the Work, Contractor agrees to satisfy, remove, or discharge such lien or claim at its own expense by bond, payment, or otherwise within ten (10) Days of the filing or from receipt of written notice from the Town.

24.5 Contractor has visited the Worksite and is familiar with the local conditions under which the Work are to be performed and relieves the Town from any liability in regard to any matter not immediately brought to the attention of the Town.

24.6 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the Town's liability as set forth in Chapter 768, Florida Statutes. Additionally, the Town does not waive sovereign immunity, and no claim or award against the Town shall include attorney's fees, investigative costs or pre-judgment interest.

#### **ARTICLE 25 – WARRANTY**

25.1 The Contractor warrants to the Town that all materials and equipment included in the Project will be new except where indicated otherwise in the Contract Documents, and that such materials and equipment will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and specifications. The Contractor further agrees to correct all Work found by the Town to be defective in material and workmanship or not in conformance with the Contract Documents for a period of one year from the date of completion or for such longer periods of time as may be set forth in specific warranties contained in the specifications. The Contractor shall collect and deliver to the Town any specific written warranties given by others as required by the Contract Documents.

25.2 If, within one (1) year after the date of substantial completion or such longer period of time as may be prescribed by laws or regulations, or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, whether observed before or after acceptance by Town, Contractor shall promptly, without cost to Town, either correct such defective Work, or, if it has been rejected by Town, remove it from the site and replace it with non- defective Work that is satisfactorily correct to the Town. If Contractor does not promptly comply with the terms of such instructions, the Town may have the defective Work corrected and all direct, indirect and consequential costs of such removal and replacement, including but not limited to fees and charges of engineers, attorneys and other professionals, shall be paid by Contractor.

25.3 If any lien or claim remains unsatisfied after all payments are made, the Contractor shall refund to the Town all monies that the latter may be compelled to pay in discharging such liens or claims, including all costs and reasonable Attorney's fees. Any Subcontractor may seek relief from the surety and Contractor under Section 255.05, Florida Statutes.

25.4 In addition, the Contractor represents and warrants the following to the Town, as an inducement to the Town to enter into this Agreement, which representations and warranties shall survive the execution of the Agreement, final completion of the Project and final payment hereof:

25.4.1 Contractor shall furnish the tools, materials, supplies, equipment and labor required to complete the Work and perform their obligations under the Contract Documents, and shall have sufficient experience and competence to do so;

25.4.2 Contractor is authorized to do business in the State of Florida and is properly licensed by all necessary governmental, public and other authorities having jurisdiction over the Contractor and the Project; and

25.4.3 The persons executing this Agreement, on behalf of the Contractor, are properly authorized to do so.

25.5 Contractor warrants that any and all Work, materials, services or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result, will be supplied by the Contractor at its own cost, whether or not specifically called for.

25.6 Contractor warrants and accepts that any and all Work, materials, services or equipment necessitated by the inspections of Town and/or Palm Beach County agencies, or other regulatory agencies as are applicable, to bring the Project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures, or considered inside the contemplation of the Contract Documents, shall be deemed the responsibility of the Contractor at no additional cost to the Town.

#### **ARTICLE 26 – INSURANCE**

26.1 Prior to the execution of this Agreement, the Contractor shall submit certificate(s) of insurance evidencing all required insurance coverage, as more particularly described in the RFQ, with the following minimum coverage:

26.1.1 Commercial General Liability - Minimum limit of \$1 Million per occurrence for bodily injury and property damage; this coverage shall also include personal, advertising injury and medical expense;

26.1.2 Professional Liability (Errors and Omissions) – With minimum limit of One Million Dollars (\$1,000,000.00) covering any errors or omissions of the Contractor in the performance of professional Services; the Self Insured Retention shall not exceed \$25,000. If the self-insured retention (SIR) or deductible exceeds \$25,000, the Town reserves the right, but not the obligation, to review and request a copy of Contractor's most recent annual report or audited financial statement. Policies written on a "Claims-Made" basis shall include a Retroactive Date equal to or preceding the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Contract, the Contractor shall purchase a SERP with a minimum reporting period of not less than three (3) years. The requirement to purchase a SERP shall not relieve the Contractor of the obligation to provide replacement coverage. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims - made" form. If coverage is provided on a "claims - made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage;

26.1.3 Commercial Automobile Liability - Minimum limit of \$1 Million, covering any auto including owned, non-owned, hired or leased. In the event that the Contractor owns no automobiles, the Commercial Auto Liability requirement shall be amended allowing Contractor to maintain only Hired & Non-Owned Auto Liability. If vehicles are acquired throughout the term of the contract, the Contractor agrees to purchase "Owned Auto" coverage as of the date of acquisition. T his amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or a separate Commercial Auto coverage form; and

26.1.4 Worker's Compensation - As required by the State of Florida and in accordance to F.S.440, with statutory limits, and Employer's Liability with a minimum limit of \$1,000,000 per accident for bodily injury or disease.

26.2 Contractor shall not commence Work under this Agreement until after Contractor has obtained all of the minimum insurance coverage prescribed in the IFB and the policies of such insurance detailing the provisions of coverage have been received and approved by the Town.

26.3 The Town shall be named as an additional insured for claims caused in whole or in part by the Contractor, Subcontractor's, employees or assignee's negligent acts or omissions during the term of this Agreement. This provision shall not limit the Town's recovery for coverage under the Contractor's insurance policy.

26.4 Contractor shall not permit any Subcontractor to begin Services until after similar minimum insurance to cover Subcontractor has been obtained and approved.

26.5 In the event the insurance certificate provided by Contractor or Subcontractor indicates that the insurance shall terminate and lapse during the term of this Agreement, Contractor shall furnish, at least thirty (30) Days prior to expiration of the date of the insurance, a renewed certificates of insurance as proof that equal and like coverage and extension is in effect. Contractor shall not continue to perform the Services required by this Agreement unless all required insurance coverage remains in full force and effect.

26.6 All insurance policies required of the Contractor shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed managers upon whom service of process may be made in Palm Beach County, Florida.

#### **ARTICLE 27 - PERFORMANCE AND PAYMENT BONDS**

27.1 The Contractor is required to furnish to the Town a Performance Bond and Payment Bond, each in the amount of One Hundred percent (100%) of the total Project value ("Bonds"). Such Bonds may be in the following form: 1) a Cashier's Check, made payable to the Town of North Miami; 2) Bonds written by a surety company authorized to do business in the State of Florida, in accordance with Section 255.05, Florida Statutes; or 3) an Irrevocable Letter of Credit. If the latter is chosen, it must be written on a bank located in Palm Beach County, be in the amount of the Agreement and should clearly and expressly state that it cannot be revoked until express written approval has been given by the Town. The Town, to draw on same, would merely have to give written notice to the bank with a copy to the Contractor.

27.2 The Performance Bond shall secure and guarantee Contractor's faithful performance of this Agreement, including but not limited to Contractor's obligation to correct defects after final payment has been made as required by the Contract Documents. The Payment Bond shall secure and guarantee payment of all Subcontractor performing labor on the Project under this Agreement and furnishing supplies, materials or services in connection herewith. These Bonds shall be in effect through the duration of the Agreement plus the warranty period as required by the Contract Documents.

27.3 Each Bond shall be written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The Bonds required hereunder shall be executed by a responsible surety licensed in the State of Florida, and have at least the following minimum qualification in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc.,

Page 47 of 52

Ambest Road, Oldwick, New Jersey 08858: B+ to A+. The Contractor shall require the attorney in fact

who executes the required Bonds on behalf of the surety to affix thereto a certified and current copy of this power of attorney indicating the monetary limit of such power.

27.4 If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other applicable laws or regulations, Contractor shall within three (3) Days substitute another Bond and surety, both of which must be acceptable to Town. If Contractor fails to make such substitution, Town may procure such required Bonds on behalf of Contractor at Contractor's expense.

27.5 The Town may, in the Town's sole discretion, inform surety of the progress of the Work, any defects in the Work, or any defaults of Contractor under the Contract Documents and obtain consents as necessary to protect the Town's rights, interest, privileges and benefits under and pursuant to any Bond issued in connection with the Project.

27.6 Contractor shall indemnify and hold harmless the Town and any agents, employees, representative from and against any claims, expenses, losses, costs, including reasonable attorneys' fees, as a result of any failure of Contractor to procure the Bonds required herein.

#### **ARTICLE 28 - FORCE MAJEURE**

28.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

28.2 If conditions are encountered at the Worksite which are: 1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or 2) unknown physical conditions of an unusual nature, which differ materially from

those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing Party shall be given to the other Party promptly before conditions are disturbed, and in no event later than ten (10) Days after first observance of such conditions. The Project Manager will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for performance of any part of the Work, will recommend an equitable adjustment in the PROJECT AMOUNT or to the Term of Agreement or both. If the Project

Manager determines that the conditions at the Worksite are not materially different from those indicated in the Contract Documents and that no change in the PROJECT AMOUNT or to the Term of Agreement is justified, the Town shall so notify the Contractor in writing, stating the

reasons. Claims by the Contractor in opposition to such determination must be made within ten (10) Days after the Town has given notice of the decision.

#### **ARTICLE 29 – NON-EXCLUSIVE AGREEMENT**

29.1 The Work to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the Town from engaging other firms to perform Work.

29.2 The Town reserves the right to perform Work or operations related to the Project with the Town's own forces, or through the award of one or more separate contracts to one or more separate Contractors if the scope of the work changes during the term of this Agreement and the Town and Contractor are unable to agree as to the Contractor's timely performance of such changed scope of work. Additionally, the Town reserves the right to award separate contracts in connection with other portions of the Project or other construction or operations on the Worksite under conditions identical or substantially similar to these.

#### ARTICLE 30 - EMERGENCIES

30.1 In any emergency affecting the safety of persons or property, the Contractor shall act at the Contractor's discretion, to prevent threatened damage, injury or loss.

#### **ARTICLE 31 - TOWNSHIP OF DOCUMENTS**

31.1 All documents developed by Contractor under this Agreement shall be delivered to the Town by the Contractor upon completion of the Work and shall become property of the Town, without restriction or limitation of its use. The Contractor agrees that all documents generated hereto shall, unless exempt, be subject to the applicable provisions of the Public Records Law, under Chapter 119, Florida Statutes.

31.2 The Contractor shall additionally comply with Section 119.0701, Florida Statutes, including without limitation, the following conditions: (1) keep and maintain public records that ordinarily and necessarily would be required by the Town to perform this service; (2) provide the public with access to public records on the same terms and conditions as the Town would at the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from disclosure are not disclosed, except as authorized by law; (4) meet all requirements for retaining public records and transfer, at no cost to the Town, all public records in its possession upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from disclosure requirements; and (5) all electronically stored public records must be provided to the Town in a format compatible with the Town's information technology systems.

31.3 It is further understood by and between the Parties that any information, writings, tapes, Contract Documents, reports or any other matter whatsoever which is given by the Town to the Contractor pursuant to this Agreement shall at all times remain the property of the Town and shall not be used by the Contractor for any other purposes whatsoever without the written consent of the Town.

31.4 In the event the Agreement is terminated, Contractor agrees to provide the Town all such documents within ten (10) Days from the date the Agreement is terminated.

#### ARTICLE 32 - INTENTIONALLY OMITTED

#### **ARTICLE 33 - MISCELLANEOUS PROVISIONS**

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

33.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

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

33.4 This Agreement and Contract Documents constitute the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

33.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Palm Beach County, Florida.

33.6 The Town reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Work and for a period of three (3) years after final payment is made under this Agreement.

33.7 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

33.8 Work shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the Town.

33.9 The Town of Highland Beach is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

33.10 The professional Work to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the Town from engaging other firms to perform Work.

33.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

33.12 The Contractor agrees that it shall not discriminate as to race, sex, color, creed, national



origin, or disability, in connection with its performance under this Agreement.

33.13 All other terms, conditions and requirements contained in the IFB, which have not been modified by this Agreement, shall remain in full force and effect.

33.14 In the event of any dispute arising under or related to this Agreement, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

33.15 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

33.16 Notwithstanding anything in this Agreement to the contrary, Contractor and Town waive all claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes (1) damages incurred by the Town for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and (2) damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination. Nothing contained in this Section shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

33.17 Nothing in this agreement shall be construed to mean that the CM is responsible for the design of the project or that the CM assumes any professional responsibility or liability, in whole or in part, for the design of the Project nor does the CM assume any of the contractual or customary duties of the Architect, its sub-consultants or any other parties not specified by this Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST: Corporate Secretary or Witness:

"Contractor":

Witnessed By: \_\_\_\_\_

Signed By: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Print Name: \_\_\_\_\_



ATTEST:

Town of Highland Beach, a Florida municipal Corporation: "Town"

By: \_\_\_\_\_ By: \_\_\_\_\_

Town Clerk

Town Manager

APPROVED AS TO FORM AND Legal sufficiency:

By: \_\_\_\_\_ Town Attorney

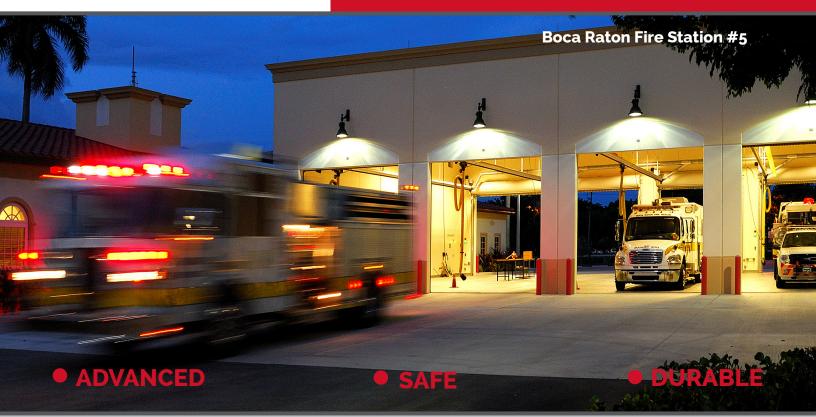




Town of Highland Beach

### Construction Manager at Risk TOWN OF HIGHLAND BEACH FIRE STATION #6

March 25, 2022



### PROVEN CMAR EXPERTS CREATING THE NEXT GENERATION OF FIRE STATIONS

**14** FIRE STATIONS IN SOUTH FLORIDA



**RFP No. 22-001** 

## **TABLE OF CONTENTS**

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## Tab 1 LETTER OF INTEREST





3185 South Congress Avenue Delray Beach, FL 33445 o 561.361.6700 | f 561.361.6979

www.kaufmanlynn.com

March 25, 2022

Town of Highland Beach 3614 S Ocean Blvd Highland Beach, FL 33487

Dear Selection Committee Members:

Kaufman Lynn Construction (KL) is eager to work in partnership with the Town of Highland Beach to construct a new Fire Station #6 that meets your immediate needs and those ahead through an advanced facility built to last for decades. The ability of the KL team to address your needs is demonstrated in this qualification package.

#### **Partnership Focused**



KL will be a **PROACTIVE PARTNER** with the Town of Highland Beach. The success of your facility will be a direct result of our collaborative attitude and dedication to achieving your goals. We will conduct extensive discussions with your team to make key schedule, cost, and performance decisions. As an advisor, we will provide options for utilizing the right components to help *expedite construction, reduce costs (initial and long-term) and provide a better functioning facility*.

#### **We Know Fire Stations**



KL has built **14 Fire Stations and 23 public safety facilities** in South Florida! *We understand the nuances of these types of facilities*. We are currently building public safety, fire stations and administration facilities for the City of Pompano Beach, City of Miami Beach, City of Riviera Beach, and City of Lighthouse Point. This proven experience is embodied in the staff that we have proposed in this submittal.

#### **Team of Experts**



KL has tailored the team members for your project based on their knowledge and experience with these specific facilities. The team we propose for this facility has a solid portfolio of similar municipal projects. The team has individually and together worked on projects such as Coral Springs Fire Station #43 & #95, Riviera Beach Fire Station #88, Lighthouse Point Fire Station and EOC, and Boca Fire Rescue Station #5, as well as other related projects. Our team has first-hand knowledge and experience working with municipal staff and building quality municipal projects.

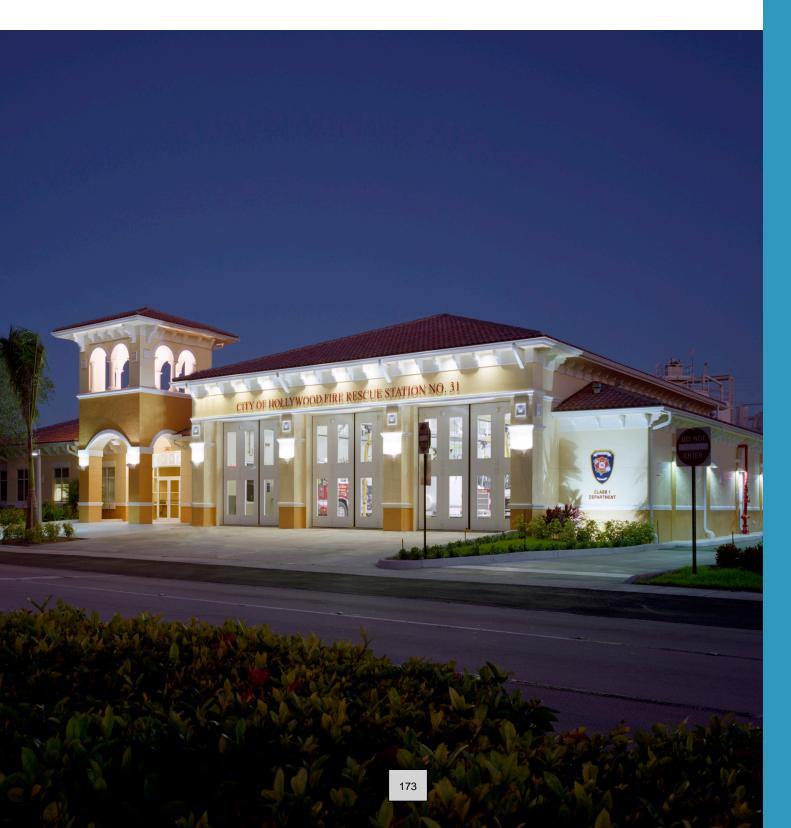
I am confident that our credentials, which feature our ability to **safely and successfully complete fire stations and public safety projects on time and within budget**, will provide Highland Beach with the expertise needed to successfully build Fire Station #6 on time and within budget. As a company just down the road from you in Delray Beach, our team is personally committed to the success of your project. I appreciate your time and thoughtful consideration of our capabilities and experience.

Sincerely,

un

Michael I. Kaufman President / Chief Executive Officer

# Tab 2 FIRM'S QUALIFICATIONS

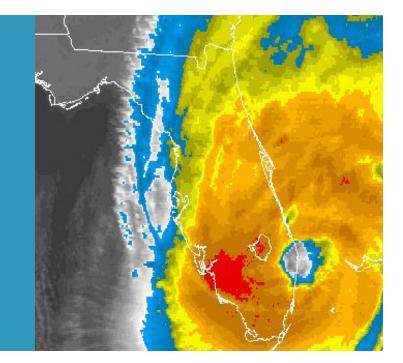


REFERENCES FC	<b>DR</b> Kaufman Lynn Constr	uction, Inc.
	(NAME OF	
-		
1.Owner/Client Name: City of Lighthouse Point / Assist	ant Fire Chief Tony Long	
Name and Location of Project: Lighthouse Point Fire Station - EOC,	, Lighthouse Point, FL	
Scope of work (use blank sheet ar KL is currently building this new 3 bay, 2-sto house 24 firefighter/paramedics, two chief of vehicle exhaust systems, individual sleeping area, kitchen and day room, office, generated	officers and will include 3 drive th 9 quarters, bunker storage, medic or and a meeting space on the sec	rough emergency vehicle parking stalls, al storage training room, decontamination
Project Completion Date or Antici	pated Completion Date:	May 17, 2022 (Anticipated)
GMP Amount vs. Final Cost: GM	P: \$7,620,377 Anticipated	Final: \$7,620,377
Size of Project (gross sq. ft): 16,1	00 SF	
Phone: (954) 520-2714	Fax: <sub>None</sub>	E-Mail: tlong@lighthousepoint.com
2.Owner/Client Name: City of Riviera Beach / City of Riv	viera Beach Fire Chief John I	M. Curd
Name and Location of Project: Riviera Beach Fire Station 88, Rivier	a Beach, FL	
Scope of work (use blank sheet an Design and construction of a two-story fire st bays, sleeping and private restroom facilities dining room, lounge/dayroom, offices, a train Project Completion Date or Antici	for male and female firefighters, ning element, decontamination a	locker rooms, exercise room, kitchen,
GMP Amount vs. Final Cost: GMF	P: \$16,700,000 Anticipated	
Size of Project (gross sq. ft): 28,0	000 SF	
Phone: (561) 843-0976	Fax: None	E-Mail: jcurd@rivierabeach.org
	ager Frank Babinec	
	<u> </u>	
City of Coral Springs / City Mana Name and Location of Project:	95, Coral Springs, FL nd attach if you need more nent fire stations, each featuring 3 of two identical 8,000 s.f. fire stati	bays. Included total demolition of both ons. Included a commercial grade kitchen,
City of Coral Springs / City Mana Name and Location of Project: Coral Springs Fire Stations #43 & #9 Scope of work (use blank sheet ar Simultaneous construction of two replacem existing fire stations and new construction of	95, Coral Springs, FL nd attach if you need more pent fire stations, each featuring 3 of two identical 8,000 s.f. fire station ockers, and includes extensive site pated Completion Date:	bays. Included total demolition of both ons. Included a commercial grade kitchen, ework.
City of Coral Springs / City Mana Name and Location of Project: Coral Springs Fire Stations #43 & #9 Scope of work (use blank sheet ar Simultaneous construction of two replacem existing fire stations and new construction of and living quarters/dorm rooms, showers, lo Project Completion Date or Antici GMP Amount vs. Final Cost:	95, Coral Springs, FL nd attach if you need more pent fire stations, each featuring 3 of two identical 8,000 s.f. fire station ockers, and includes extensive site pated Completion Date:	bays. Included total demolition of both ons. Included a commercial grade kitchen, ework. Fire Station #43: February 2017 Fire Station #95: April 2017
City of Coral Springs / City Mana Name and Location of Project: Coral Springs Fire Stations #43 & #9 Scope of work (use blank sheet ar Simultaneous construction of two replacem existing fire stations and new construction of and living quarters/dorm rooms, showers, lo Project Completion Date or Antici GMP Amount vs. Final Cost: GMP Size of Dreiget (grage og ft):	95, Coral Springs, FL nd attach if you need more pent fire stations, each featuring 3 of two identical 8,000 s.f. fire stati ockers, and includes extensive site pated Completion Date:	bays. Included total demolition of both ons. Included a commercial grade kitchen, ework. Fire Station #43: February 2017 Fire Station #95: April 2017

## SOUTH FLORIDA Is unique

Our team has actively designed and built fire stations and public safety facilities throughout the tri-county area for over 30 years and understands the local conditions. That includes the environmental factors as well as regulatory, labor and economic forces impacting this project.

Currently, Kaufman Lynn is working in Lighthouse Point on a 2-story, Hurricane 5+ rated Fire Station/EOC facility. Every public safety facility we have built is to the standard to withstand hurricane force winds.



## WE ARE YOUR LOCAL EXPERTS!

### WITH 14 FIRE STATIONS BUILT IN SOUTH FL

## **A PROVEN PARTNERSHIP**

175





As a **100% Employee-Owned Company**, each of our Kaufman Lynn associates has a vested interest in the success of every project we are involved with. We understand **PGAL** has been selected as the architect for Fire Station #6 and we have a proud history of teaming with quality partners like PGAL. Also based in South Florida, our teams have worked together for over 20 years, successfully completing many public safety projects, including the Boca Raton Police and Fire Training Facility. Renowned for outstanding client service and attention to detail, PGAL's client-centered philosophy blends seamlessly with our custom project approach for Fire Station #6. As your local team, we will work with PGAL to create a safe, durable, and modern facility customized to serve the unique needs of the Highland Beach community.



August 31, 2020

Mr. Michael Kaufman Kaufman Lynn Construction 3185 South Congress Avenue Delray Beach, FL 33445

Dear Mike,

With Phase I of the \$150 million JM Family Campus project recently completed and opened to great accolades, I wanted to take a moment to express my thoughts about working with the Kaufman Lynn team on this projects, as well as during the past 20 years on several different project types. While this is our largest project together to date, we have found the Kaufman Lynn team great to work with, whether it is a project under \$5 million or over \$100 million.

Teamwork was instrumental in the success of the JM project, since we evaluated many different campus solutions and design options from the planning stage through construction. Throughout the design process, the Kaufman Lynn team was actively engaged in providing real-time cost and schedule feedback. As designers we were able to count on your team to provide timely cost data and construction insight that helped advance the project to an on-time completion and within budget. Your team worked with our team to understand the goals of the client and their operations. Cost saving ideas did not impact the use, aesthetics or the design intent and truly was focused on providing the best product for the best price.

I am not sure that JM would have felt comfortable in undertaking such a major replacement of their active campus had it not been for the level of detail and clarity with which the Kaufman Lynn team helped communicate the sequencing of construction activities. The use of BIM and the 3D models we created jointly to show the phasing, construction sequencing and the overall campus aesthetics was a powerful tool that we used effectively to communicate to the client and end users.

Once construction started, Kaufman Lynn followed through. Every team member I have encountered has shown the same dedication toward client satisfaction. It is not easy building within inches of occupied office buildings while keeping everyone happy, but I have only received positive feedback from the client about Kaufman Lynn and their communications and responsiveness. The onsite team exhibited the right experience and attitude. Professional, effective and focused on the client's needs, they worked efficiently through any challenges, moving the project forward toward successful completion.

While this is certainly the largest project we have ever worked on together, it follows that no matter the size of the project or the delivery method, the Kaufman Lynn team continues to be a collaborative partner.

Sincerely

Ian A. Nestler, AIA, LEED AP Executive Vice President

ALEXANDRIA ATLANTA AUSTIN BOCA RATON CHICAGO DALLAS/FORT WORTH DENVER HOBOKEN HOUSTON LAS VEGAS LOS ANGELES SALT LAKE CITY SAN DIEGO





KL is currently building this new 3 bay, 2-story replacement fire station. The 16,100 SF Category 5+ hurricane rated facility will house 24 firefighter/paramedics, two chief officers and will include 3 drive through emergency vehicle parking stalls, vehicle exhaust systems, individual sleeping quarters, bunker storage, medical storage training room, decontamination area, kitchen and day room, office, generator and a meeting space on the second floor.



Design and construction of a two-story, 28,000 SF fire station using a HOT Zone facility layout. The project consists of four apparatus bays, sleeping and private restroom facilities for male and female firefighters, locker rooms, exercise room, kitchen, dining room, lounge/dayroom, offices, a training fire tower, circadian lighting, decontamination area and a fire operations center.



Simultaneous construction of two replacement fire stations, each featuring 3 bays. Included total demolition of both existing fire stations and new construction of two identical 8,000 SF fire stations. Included a commercial grade kitchen, and living quarters/dorm rooms, showers, lockers, and includes extensive sitework.



The project included the demolition of an existing fire station and new construction of a 13,000 SF facility. The fire station includes four emergency vehicle bays, kitchen, offices, living quarters, gymnasium and common area. The project design called for Tilt Wall construction of the shell.

First LEED Certified Fire Station in Palm Beach County.



Kaufman Lynn Construction built this new 2-story public safety building with a 3-bay fire station, Beach Safety and Community Redevelopment Agency offices and parking. The project also included the renovation of an existing 1-story historic structure. This shell design, along with impact rated windows, has the ability to withstand 155 mph wind and storm conditions equal to or greater than a Category 5 storm.

#### **LEED Silver Certified.**



New construction of a 26,515 SF public safety maintenance and training facilities for the City of Hollywood Fire Department. The site has 1.06 acres dedicated to an exterior SWAT Obstacle Course and K-9 Training Area. The SWAT Obstacle course features agility training structures such as rope nets, A-frame log walls, platform jumps, balance beams, hurdles, and parallel pipe bars which help train officers for tactical maneuvers. The canine agility course contains plastic tunnels, car doors, plywood walls, buried isolation boxes, and cool down pavilion with pet fountains.



Demolition of existing Fire Station #5 and construction of a new 9,700 SF Fire Rescue Station and parking facilities by Kaufman Lynn Construction. Project included new kitchen and dormitories housing 3 shifts of Fire Rescue personnel; 3-bay equipment bay; emergency generator; high-speed, high impact folding equipment bay doors; and special plymovent vehicle exhaust system.



Demolition of existing Fire Station #31 and construction of a new 9,700 SF Fire Station and parking facilities by Kaufman Lynn Construction. Project includes new kitchen and dormitories housing 3 shifts of Fire Rescue personnel. 3-bay equipment bay, Emergency generator, high -speed, high impact folding equipment bay doors. Special plymovent vehicle exhaust system.



New construction of a 3-story 20,000 SF fire station with a 911 Emergency Call Dispatch Center, equipment bays, living spaces, offices, a kitchen, a gym, support facilities and associated parking spaces. Kaufman Lynn Construction is currently in preconstruction.

#### LEED Gold.



A 100,000 SF complete renovation, including the removal and replacement of the roof and complete interior renovation. The shell of the building was hardened into a Category 5 Hurricane Shelter. The facility features classroom/training rooms, an auditorium, gymnasium as well as Police, Fire and Life Safety administrative offices.



New construction of a two-story, 13,000 SF fire station using a HOT Zone facility layout. The project consists of three apparatus bays, sleeping and private restroom facilities for male and female firefighters, and circadian lighting.



New construction of a two-story fire station featuring three apparatus bays, living quarters for rescue personnel.



# QUALIFICATIONS OF Proposer's project team



# **TEAM EXPERIENCE**

Kaufman Lynn Construction (KL) has successfully completed hundreds of CM at Risk projects, including municipal and public safety projects. We have carefully selected a team of CM at Risk fire station construction experts to make Fire Station #6 the ideal facility for rescue personnel and the Highland Beach community.

We thrive on the participative team approach of CM at Risk and this customized team knows how to guide the process to assure the project achieves the desired functionality, durability and aesthetics within the given budget.

KL has the estimating and scheduling resources available to provide the team with real time pricing and constructability analysis. Leading pre-construction efforts, Project Executive Mishel Mako, VP of Preconstruction Bryan Ardner, and Senior Estimator John Huddleston will establish the foundations of success before shovels hit the ground. All three pre-construction experts are currently working on the Riviera Beach Fire Station 88 project, designed as a Next Generation fire station with our advanced technology, equipment, and safety standards.

While established processes create the framework for our interactions, KL **Project Manager Matt Carney and Senior Superintendent Walter Wharton** will have the authority to make decisions in the field to address the many variables that make up Fire Station #6. **Along with**  Design Coordinator Jeff Zalkin, both have built the simultaneously constructed Coral Springs Fire Stations #43 & #95.

The senior management team is actively involved in every project and maintains direct, and frequent, communication that expedites critical decisions, making us more responsive to your needs. KL's Senior **Vice President Derek Wolfhope is** currently working on Riviera Beach **Fire Station 88 and Lighthouse** Point Fire Station & EOC. Together, this team creates the perfect dynamic of professional fire station construction professionals to create an advanced and enduring facility for the rescue team of Highland Beach Fire Station #6.

PERSONNEL	CM AT RISK Experience	FIRE STATIONS	GOVERNMENT EXPERIENCE	SIMILAR SIZE Projects
<b>Derek Wolfhope</b> Senior Vice President	$\checkmark$	$\checkmark$	$\checkmark$	$\checkmark$
<b>Mishel Mako</b> Project Executive	$\checkmark$	$\checkmark$	$\checkmark$	$\checkmark$
<b>Matt Carney</b> Project Manager	$\checkmark$	$\checkmark$	$\checkmark$	$\checkmark$
<b>Walter Wharton</b> Senior Superintendent	$\checkmark$	$\checkmark$	$\checkmark$	$\checkmark$
<b>Bryan Ardner</b> VP Preconstruction	$\checkmark$	$\checkmark$	$\checkmark$	$\checkmark$
<b>John Huddleston</b> Senior Estimator	$\checkmark$	$\checkmark$	$\checkmark$	$\checkmark$
<b>Jeff Zalkin</b> Design Coordinator	$\checkmark$	$\checkmark$	$\checkmark$	$\checkmark$
<b>Ryan Reiter</b> Grant Support	$\checkmark$	$\checkmark$	$\checkmark$	$\checkmark$

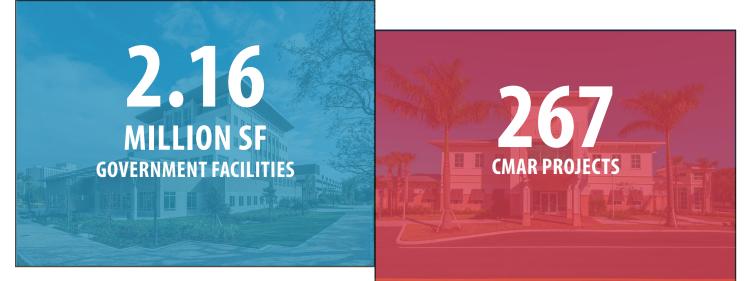
184

# **TEAM EXPERIENCE** & COLLABORATION

Kaufman Lynn Construction (KL) is a proven government CMAR and fire station builder, with over 30 years of experience and many projects similar in size and scope to Highland Beach Fire Station #6. We have assembled an expert team with a unique blend of experience across the spectrum of public projects, from public safety to government office and beyond, which will benefit the Town of Highland Beach from day one.

KL is a **LOCAL** company with deep roots in the subcontractor market. We will bring a wealth of experience by only soliciting subcontractor and material bids from pre-qualified vendors, which further benefits goals for Fire Station #6.







We recently completed the 3-bay Coral Springs Fire Stations #43 & #95 which were built from the ground up simultaneously and we are currently constructing the Riviera Beach Fire Station #88 which embodies all the components befitting a next generation fire station where advanced technology meets durability. Our team is made up of professionals who bring the project specific experience that has proven to be a valuable asset to Highland Beach.

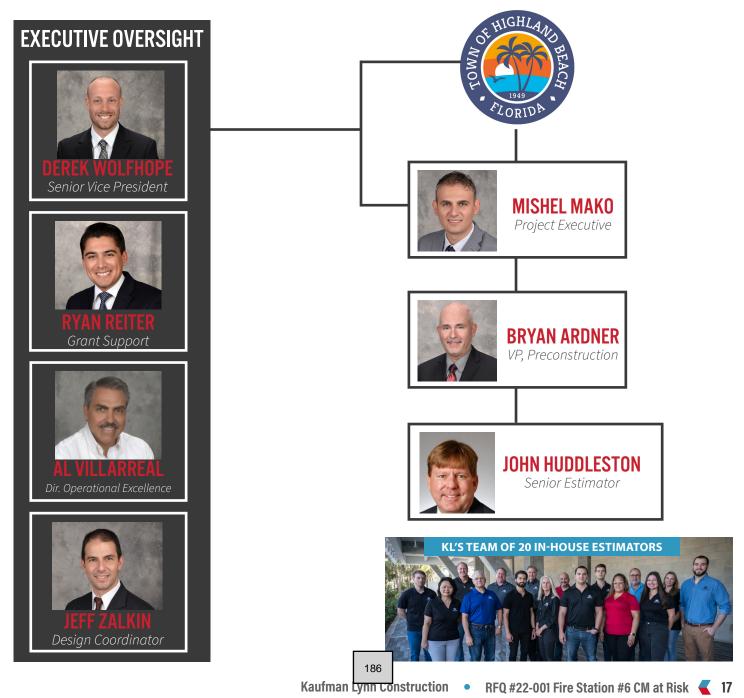
We specialize in building using the CM at Risk delivery method and building for municipalities. Our processes are completely transparent and we seek to engage the local community whenever possible.

#### After all, we are community builders.

Kaufman Lynn Construction (KL) has assembled an expert team with experience building mission critical government facilities. They bring years of experience that will benefit Highland Beach and lead to a successful completion of your Fire Station #6 project.

#### TEAM ORGANIZATION PRE-CONSTRUCTION PHASE

KL's dedicated in-house team of over 20 pre-construction professionals will begin tackling your project immediately after award. Our proven process for CM@Risk projects involves meeting with the client and all the stakeholders involved, beginning a transparent and comprehensive bidding process, and developing a GMP with your specific needs in mind. This process involves our pre-construction team, as well as our Senior Vice President and executive team in advisory roles. Please see below for our team's organization during this important phase of your project.





# **MISHEL MAKO**

### **PROJECT EXECUTIVE**



#### **RELEVANT EXPERIENCE**



#### **RIVIERA BEACH FIRE STATION 88 RIVIERA BEACH, FL**

28,000 S.F. | \$16.6 MILLION

Design and construction of a two-story, 28,000 SF fire station using a HOT Zone facility layout. The project consists of four apparatus bays, sleeping and private restroom facilities for male and female firefighters, locker rooms, exercise room, kitchen, dining room, lounge/dayroom, offices, a training fire tower, decontamination area and a fire operations center.

**Riviera Beach Fire Station 87,** Riviera Beach, FL – New construction of fire station using a HOT Zone facility layout complete with truck bays, sleeping quarters for rescue personnel, offices, and kitchen/dining area. \$15.0 million.

**Fountains East,** Boynton Beach, FL – New 118,000 SF, 2-story senior living community with 130 assisted living and memory care units on a 5.3 acres site. \$24 million.

East River Esplanade/Pier 35, New York, NY —Part of the East River waterfront, Pier 35 is a new eco-park combining public space with habitat restoration such as the "Mussel Beach" which mimics the conditions of the original East River shoreline. Landscaped lawns and dunes along a pedestrian pathway are punctuated by a variety of metal and mesh structures which create visually pleasing screens. \$32 million.

Seminole Trails Elementary School, West Palm Beach, FL – A 53,190 GSF renovation and 452-student station addition at Seminole Trails Elementary School. KL worked closely with school administration and facilities staff to meet every project objective including respecting the character of the existing school's design to develop a site plan and phasing plan that maintains operations and keep students safe during construct €4 ¶ million.

Mishel's career includes land development and construction management experience which makes him particularly astute to the needs of his clients. He has successfully led multiple teams, overseeing a variety of construction projects ranging from \$1 million to over \$130 million. Whether building for private or public entities, Mishel's focus is on earning repeat business by focusing on client satisfaction.

#### **CERTIFICATIONS**

LEED AP BD+C 30 Hours OSHA

#### **EDUCATION**

B.S. Civil Engineering, New Jersey Institute of Technology

#### YEARS OF EXPERIENCE

21

#### **PROJECT INVOLVEMENT**

33%

187

Kaufman Lynn construction 🔹 RFQ #22-001 Fire Station #6 CM at Risk 🧲 18



Bryan has over 40 years of experience in government, retail, commercial, healthcare, and higher education construction from renovation to new construction throughout the states of Florida, North Carolina and Ohio.

As Preconstruction Lead he will manage the estimating department and will coordinate closely with the business development and operations team to assure continuity and accuracy.

#### **CERTIFICATIONS**

30 Hours OSHA

#### **EDUCATION**

St. Petersburg College

#### YEARS OF EXPERIENCE

43

#### **PROJECT INVOLVEMENT**

100%

# **BRYAN ARDNER**

### **VP, PRECONSTRUCTION**



#### **RELEVANT EXPERIENCE**



# LIGHTHOUSE POINT FIRE STATION & EOC LIGHTHOUSE POINT, FL

16,100 S.F. | \$7.6 MILLION

New 3 bay, 2-story replacement fire station. The Category 5+ hurricane rated facility will house 24 firefighter/paramedics, two chief officers and will include 3 drive through emergency vehicle parking stalls, vehicle exhaust systems, individual sleeping quarters, storage, medical storage training room, decontamination area, kitchen and day room, office, generator and a meeting space on the second floor.

**Oakland Park Fire Station 9,** Oakland Park, FL — New construction of a twostory fire station featuring three apparatus bays, living quarters for rescue personnel. \$9.0 million.

**Miami Beach Fire Station 1,** Miami Beach, FL — New construction of a 3-story 20,000 SF fire station with a 911 Emergency Call Dispatch Center, equipment bays, living spaces, offices, a kitchen, a gym, support facilities and associated parking spaces. Kaufman Lynn Construction is currently in preconstruction. LEED Gold. CM at Risk. \$6.5 million.

**Riviera Beach Fire Station 88,** Riviera Beach, FL — Design and construction of a two-story, 28,000 SF fire station using a HOT Zone facility layout. The project consists of four apparatus bays, sleeping and private restroom facilities for male and female firefighters, locker rooms, exercise room, kitchen, dining room, lounge/dayroom, offices, a training fire tower, decontamination area and a fire operations center. \$16.6 million.

**Riviera Beach Fire Station 86,** Riviera Beach, FL — New construction of a two-story, 13,000 SF fire station using a HOT Zone facility layout. The project consists of three apparatus bays, sleeping and private restroom facilities for male and female firefighters and circadian lighting. \$12.0 million.

188



JOHN HUDDLESTON

#### SENIOR ESTIMATOR



#### **RELEVANT EXPERIENCE**



#### RIVIERA BEACH FIRE STATION 88 RIVIERA BEACH, FL

189

28,000 S.F. | \$16.6 MILLION

Design and construction of a two-story, 28,000 SF fire station using a HOT Zone facility layout. The project consists of four apparatus bays, sleeping and private restroom facilities for male and female firefighters, locker rooms, exercise room, kitchen, dining room, lounge/dayroom, offices, a training fire tower, decontamination area and a fire operations center.

**Miami Beach Fire Station #1,** Miami Beach, FL — New construction of a 3-story 20,000 SF fire station with a 911 Emergency Call Dispatch Center, equipment bays, living spaces, offices, a kitchen, a gym, support facilities and associated parking spaces. Kaufman Lynn Construction is currently in preconstruction. *LEED Gold.* \$6.5 million.

**PBSO Headquarters Annex,** Hallandale Beach, FL — New construction of a 25,000 SF building to house the new PBSO District 1 substation, new Marine Unit facility with vehicle repair shop, a specialty vehicle storage shelter, and all associated site improvements. \$9.4 million.

**Palm Beach Fire Station #32,** Lake Worth, FL — Construction of a 2-story station with 2 bays. \$2.2 million.

**Pompano Beach Fire Station 11,** Pompano Beach, FL — Took over construction for bonding company. This was a ground-up two-story replacement station with 3 bays. \$7.5 million.

**Riviera Beach Fire Station 87,** Riviera Beach, FL —New construction of fire station using a HOT Zone facility layout complete with truck bays, sleeping quarters for rescue \_\_\_\_\_\_\_nel, offices, and kitchen/dining area. \$15.0 million.

John's 45 years of experience in government and public safety construction from renovation to new construction throughout South Florida pinpoint him as an ideal preconstruction team member for Fire Station #6.

For this project, John's responsibilities include bid strategy planning, value engineering capabilities, subcontractor networking / relationships, spreadsheet design and implementation, owner/ architect correspondence and estimating department employee training and budget controls.

#### EDUCATION

B.A., Rollins College

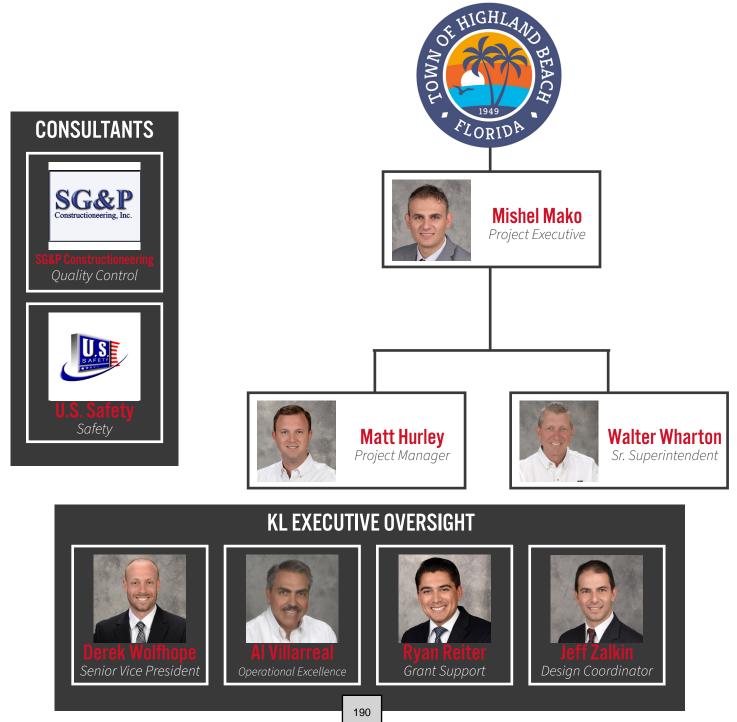
#### **YEARS OF EXPERIENCE**

45

#### **PROJECT INVOLVEMENT**

#### TEAM ORGANIZATION CONSTRUCTION PHASE

The full breadth of experience and expertise of KL's senior leadership team will be brought to bear on your project -- but when it comes time to negotiate the General Conditions, we'll only look to the Town to pay for those individuals who are on-site -- the Project Manager and Superintendent -- and approximately 20% of KL's proposed Project Executive (the equivalent of 1 day per week). We expect your project will require, and are prepared to commit, without reservation or additional remuneration, the undivided attention of our other seasoned team members (also noted in the proposed organizational chart). EVERYTHING is 100% open book with KL.





# **DEREK WOLFHOPE, LEED AP**

**SENIOR VICE PRESIDENT** 



#### **RELEVANT EXPERIENCE**



#### RIVIERA BEACH FIRE STATION 88 RIVIERA BEACH, FL

28,000 S.F. | \$16.6 MILLION

Design and construction of a two-story, 28,000 SF fire station using a HOT Zone facility layout. The project consists of four apparatus bays, sleeping and private restroom facilities for male and female firefighters, locker rooms, exercise room, kitchen, dining room, lounge/dayroom, offices, a training fire tower, decontamination area and a fire operations center.

**Boca Police Fire Station #5,** Boca Raton, FL —The project included the demolition of an existing fire station and new construction of a 13,000 sf facility. The fire station includes four emergency vehicle bays, kitchen, offices, living quarters, gymnasium and common area. The project design called for Tilt Wall construction of the shell. \$2.9 million.

**Lighthouse Point Fire Station & EOC,** Lighthouse Point, FL — KL is currently building this new 3 bay, 2-story replacement fire station. The Category 5+ hurricane rated facility will house 24 firefighter/paramedics, two chief officers and will include 3 drive through emergency vehicle parking stalls, vehicle exhaust systems, individual sleeping quarters, bunker storage, medical storage training room, decontamination area, kitchen and day room, office, generator and a meeting space on the second floor. \$7.6 million.

**Claude Pepper Community Center,** North Miami, FL — New construction of a 20,000 square foot community center. The project includes basketball courts, and an activity and wellness center. The site contained arsenic contaminated soil and required extensive decontamination and working closely with DERM and following a Contamination Assessment Plan. \$5.2 million.

As Senior Vice President for the Fire Station #6 project, Derek will be your principal point of contact. Derek is unique in that he's design savvy, routinely engages in high-level discussions with owners and design partners to make critical decisions, but he also "rolls-up his sleeves" and "gets into the details" with subcontractors, working together to resolve the smallest of issues. His keen awareness of time-critical CPM scheduling, job cost analysis, safety and risk mitigation, quality control, emphasizes team integrity and customer satisfaction.

#### **CERTIFICATIONS**

LEED AP

#### EDUCATION

B.S. Civil Engineering, Pennsylvania State University

#### **YEARS OF EXPERIENCE**

19

#### PROJECT INVOLVEMENT



# **MISHEL MAKO**

### **PROJECT EXECUTIVE**



#### **RELEVANT EXPERIENCE**



#### RIVIERA BEACH FIRE STATION 88 RIVIERA BEACH, FL

28,000 S.F. | \$16.6 MILLION

Design and construction of a two-story, 28,000 SF fire station using a HOT Zone facility layout. The project consists of four apparatus bays, sleeping and private restroom facilities for male and female firefighters, locker rooms, exercise room, kitchen, dining room, lounge/dayroom, offices, a training fire tower, decontamination area and a fire operations center.

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Mishel's career includes land development and construction management experience which makes him particularly astute to the needs of his clients. He has successfully led multiple teams, overseeing a variety of construction projects ranging from \$1 million to over \$130 million. Whether building for private or public entities, Mishel's focus is on earning repeat business by focusing on client satisfaction.

#### **CERTIFICATIONS**

LEED AP BD+C 30 Hours OSHA

#### EDUCATION

B.S. Civil Engineering, New Jersey Institute of Technology

#### YEARS OF EXPERIENCE

21

#### **PROJECT INVOLVEMENT**



# MATT HURLEY, LEED AP BD+C

### **PROJECT MANAGER**



#### **RELEVANT EXPERIENCE**



#### CORAL SPRINGS FIRE STATIONS #43 & #95 Coral Springs, FL

16,000 S.F. | \$6.5 MILLION

Simultaneous construction of two replacement fire stations, each featuring 3 bays. Included total demolition of both existing fire stations and new construction of two identical 8,000 s.f. fire stations. Included a commercial grade kitchen, and living quarters/dorm rooms, showers, lockers, and includes extensive sitework.

**Palm Beach State College Fire Tower,** Lake Worth, FL — Construction of a five-story fire training tower consisting of off-site precast panels. \$1.9 million.

**Palm Beach State College Security Building,** Lake Worth, FL – New construction of a single story structure and parking lot for campus security staff and students. \$1.8 million.

**Palm Beach State College Classroom Building and Gym,** Lake Worth, FL — Project consisting of four multi-story buildings, structured with tilt-wall, cast-inplace, and CMU walls. The buildings include an auditorium, a mock courtroom, holding cell, and a wellness center. \$17.2 million.

**Palm Beach State College Central Energy Plant,** Lake Worth, FL — Demolition of a parking lot and construction of a 5,200 s.f. chiller plant including multiple underground chilled water connections. \$3.2 million.

**Lakeside at Doral,** Doral, FL — New construction of a 352-unit, 464,246 s.f. apartment community. Project included the construction of a 12,000 s.f. clubhouse around a man-made lake. Amenities included a resort-style pool, outdoor living room with grilligeners, and state-of-the-art fitness center. \$27 million.

Matt is a results-oriented, hands-on construction professional with 10 years experience. He is well versed in the areas of construction safety, sustainable construction, electronic documentation and problem solving. His duties include developing and maintaining the project schedule, coordinating with the owner's representatives and architect, managing cost control and financial reporting, supervising field staff, design participation, bidding, contract negotiation, facilities inspection and coordination of preventive maintenance.

#### CERTIFICATIONS

LEED AP BD+C 30+ Hours OSHA

CPR & First Aid

USGBC Green Advantage Florida CGC1522705

#### EDUCATION

Sustainable Construction Management, Palm Beach State College

Business Administration, Lynn University

#### **YEARS OF EXPERIENCE**

11

#### PROJECT INVOLVEMENT



Walter Wharton has over 45 years of experience, much of it being for municipal and institutional clients with advanced technology needs.

As superintendent, his duties include quality control oversight for all subcontractors, coordination of weekly safety meetings and monthly safety inspections, on-site coordination of subcontractor performance, communication and teamwork, preparation of Requests for Information (RFIs), tracking review of submittals, preparation of two-week look ahead schedule and filing and journaling meeting minutes, job logs and daily reports.

#### **EDUCATION**

**Construction Management**, Palm **Beach State College** 

#### **YEARS OF EXPERIENCE**

49

#### **PROJECT INVOLVEMENT**

100%

# WALTER WHARTON

### SENIOR SUPERINTENDENT



#### **RELEVANT EXPERIENCE**



#### **CORAL SPRINGS FIRE STATIONS #43 & #95** CORAL SPRINGS, FL

16,000 S.F. | \$6.5 MILLION

Simultaneous construction of two replacement fire stations, each featuring 3 bays. Included total demolition of both existing fire stations and new construction of two identical 8,000 s.f. fire stations. Included a commercial grade kitchen, and living quarters/dorm rooms, showers, lockers, and includes extensive sitework.

**Boca Police and Fire Training, Boca Raton**, FL – A 100,000 SF complete renovation, including the removal and replacement of the roof and complete interior renovation. The shell of the building was hardened into a Category 5 Hurricane Shelter. The facility features classroom/training rooms, an auditorium, gymnasium as well as Police, Fire and Life Safety administrative offices. \$9.0 million.

Boca Raton Downtown Library, Boca Raton, FL – New library with an occupancy of 739. Library has various seating, study and reference areas. Private and open plan office space along with retail area, coffee bar, multi-purpose rooms, restrooms and circulation area. \$9.9 million.

Maltz Jupiter Theatre, Jupiter, FL — This project includes an upgraded Broadway-scale stage, an expanded orchestra pit, a state-of-the-art production center, a second 199-seat theatre, a new dining experience, and an enlarged version of the Goldner Conservatory of Performing Arts. \$29.3 million.

Miramar Cultural Arts Park, Miramar, FL — New construction of 49,000 square foot facility featuring an 800 seat state-of-the-art auditorium with three tiers and extensive acoustical ceilings and theatrical sound / lighting. Also includes a fine art classrooms and state of the art banquet and kitchen facilities. \$18.5 gallery/m million. 194



Jeff Zalkin has been involved in public sector projects for the past 23 years primarily focused on government facilities.

He understands the nuances of government and public safety facilities, more specifically each component of your project, and will be a point person working with the architect during preconstruction to ensure the final product meets all Highland Beach's project goals.

#### **EDUCATION**

M.B.A., Florida International University

B.S., University of Florida

#### **YEARS OF EXPERIENCE**

23

#### PROJECT INVOLVEMENT

20%

# JEFF ZALKIN

### **DESIGN COORDINATOR**



#### **RELEVANT EXPERIENCE**



#### LIGHTHOUSE POINT FIRE STATION & EOC LIGHTHOUSE POINT, FL

16,100 S.F. | \$7.6 MILLION

New 3 bay, 2-story replacement fire station. The Category 5+ hurricane rated facility will house 24 firefighter/paramedics, two chief officers and will include 3 drive through emergency vehicle parking stalls, vehicle exhaust systems, individual sleeping quarters, storage, medical storage training room, decontamination area, kitchen and day room, office, generator and a meeting space on the second floor.

**Coral Springs Fire Stations \$43 & #95,** Coral Springs, FL — Simultaneous construction of two replacement fire stations, each featuring 3 bays. Included total demolition of both existing fire stations and new construction of two identical 8,000 s.f. fire stations. Included a commercial grade kitchen, and living quarters/dorm rooms, showers, lockers, and includes extensive sitework. \$6.5 million.

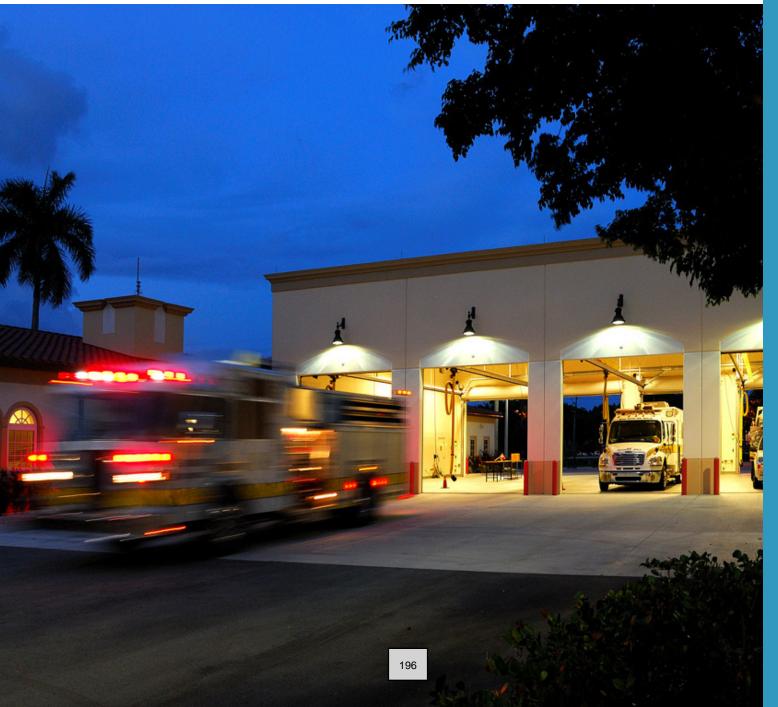
**Riviera Beach Fire Station 87,** Riviera Beach, FL —New construction of fire station using a HOT Zone facility layout complete with truck bays, sleeping quarters for rescue personnel, offices, and kitchen/dining area. \$15.0 million.

**Riviera Beach Fire Station 88,** Riviera Beach, FL — Design and construction of a two-story, 28,000 SF fire station using a HOT Zone facility layout. The project consists of four apparatus bays, sleeping and private restroom facilities for male and female firefighters, locker rooms, exercise room, kitchen, dining room, lounge/dayroom, offices, a training fire tower, decontamination area and a fire operations center. \$16.6 million.

Miami Beach Fire Station #1, Miami Beach, FL — New construction of a 3-story 20,000 SF fire station with a 911 Emergency Call Dispatch Center, equipment bays, living spaces. offices, a kitchen, a gym, support facilities and associated parking spaces. K 195 ently in preconstruction. *LEED Gold*. \$6.5 million.



# PROJECT APPROACH, DEMONSTRATED SKILL SET & RELEVANT EXPERIENCE



# **SECTION A: PROJECT APPOACH**

For over 30 years, Kaufman Lynn Construction has been providing quality construction here in Palm Beach County. We specialize in public facilities, having successfully completed **hundreds of municipal and other public facilities** – **specifically Fire Stations**. We will be a **PROACTIVE PARTNER** bringing lessons learned and **INNOVATIVE SOLUTIONS** from the hundreds of similar projects, ten of which are featured on the following pages.

# **PROVEN TEAMWORK WITH PGAL**



We have built numerous facilities with your selected architect PGAL. As a matter of fact, we are just finishing an \$150 Million design-build project which demonstrates the great relationship the two firms have.

# **FIRE STATION EXPERIENCE**

**14** FIRE STATIONS IN SOUTH FLORIDA Currently, we have 4 fire stations either in preconstruction or the early stages of construction which means we not only know how stations have been built, but we understand how they are changing to be safer. This experience and knowledge will make a difference.

# **NEXT GENERATION SAFETY & PERFORMANCE**



With a long history of building fire stations, we have implemented and helped develop the latest construction and safety standards. KL will work with you to evaluate the various solutions and define the station that works best for Highland Beach.

# **TIGHT SITE SOLUTIONS**



We are located within minutes of the site and understand the constraints of building the new fire station without disturbing the nearby Town operations. We will be a partner with you to make the construction process as smooth as possible. The following demonstrate the KL expertise and how we will make a difference in your new fire station.

## **SITE SOLUTIONS**

This is a tight site along a busy main road, and we understand that the Highland Beach Club and the Town Municipal Complex must not be disturbed during construction. The following are key solutions to some challenges to ensure we build your fire station effectively and minimize any impacts from construction.

#### **NO TRAILER**

Given the tight site, we will work with the Town to identify space within the Municipal Complex so we do not occupy any space on-site for a trailer.

#### **CONSTRUCTION PARKING**

Another challenge during construction is where the construction workers will park. Not the KL staff, but the many tradespeople that will be involved. There is not adequate parking on-site and KL does not want to take up precious parking needed for the Municipal Complex.

KL proposes to contact and rent parking from the nearby St. Lucy Catholic Church. We would use parking during the hours that are least used for the Church so it is a win-win for all parties and close enough to the new station to be an effective spot.

## **IMPLEMENTING HOT ZONES**

It is an unfortunate fact that Firefighters face increased risks due to the profession they chose. It is incumbent on us to build facilities that lower the interaction with contaminates.

At KL, we understand the risks and have worked hand-in-hand with architects to mitigate those risks. We are firm believers that the station should be designed beyond minimum NFPA 1500 standards and implement best practices from the numerous stations we have built.

To address the arrival of carcinogens in the building and prevent the inadvertent migration of contaminated materials within the structure, we must use a smarter way of setting up the stations. Elements of this approach include:

#### **CONTAIN THE CONTAMINANTS**

All spaces that house apparatus, tools, equipment or personal protective equipment (PPE) used in emergency responses belong in the HOT Zone. Cleaning and equipment washdown will occur in the HOT Zone in spaces that are convenient and purpose built.

The apparatus bays, apparatus equipment storage, EMS storage, workroom, self-contained breathing





apparatus (SCBA) storage rooms, PPE storage room, decontamination area with commercial laundry and extractor are all considered part of the HOT Zone.

#### SEPARATE OCCUPANTS FROM CONTAMINANTS

By consolidating all occupied spaces in the COLD Zone, we create a healthy living and working environment. These spaces are arranged to serve individual functions without concern for contamination. The COLD Zone spaces include administrative spaces, offices, workrooms, meeting rooms and associated spaces. All public spaces like lobbies, community rooms and public toilets are also part of the COLD Zone. Finally, all living and sleeping spaces like the day room, dining room, kitchen, exercise room, bunkrooms, lockers, toilets, laundry and dedicated janitor closet are also included.

#### ADDITIONAL CONSIDERATIONS

Common practices of storing the gear in open racks in the apparatus bays should be eliminated. This practice increases the exposure of the gear to further degradation by UV exposure and increased contamination by apparatus exhaust. It also allows the off-gassing of carcinogens into an open work environment, possibly including migration of the vapors into the living quarters.

#### **CONTROL CROSSOVER BETWEEN ZONES**

To limit the exposure to contaminants within the HOT Zone, opportunities for personnel movement between the HOT and COLD Zones should be controlled. Vestibules are a common method to provide a transition from one zone to another and can be closed off completely separating the zones. This also allow the air systems to transition from one zone to another

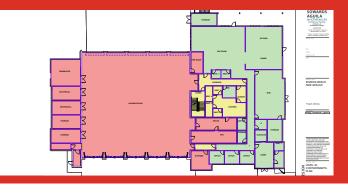
#### FIRE STATION ZONE CONTROL

#### **Case Study: Lighthouse Point Fire Station**

Kaufman Lynn is currently finishing construction of the Lighthouse Point Fire Station 22 and has worked with the City and design team to refine the design to implement the latest safety techniques.

As you can see from the drawing below the station is set up to contain carcinogens in the HOT Zone (red) and include spaces for Laundry, Bunker Gear, etc., that is separate from the Apparatus Bay space itself. There are transition spaces (yellow) connecting the HOT Zone (red) to the COLD Zone (green) spaces ensuring proper transition eliminating cross containment. A best practice is having storage spaces are included to the Apparatus Bay but may also be accessed externally and are considered medium level risk; thus, are also coded yellow).

One key factor in the design which is a must in new Fire Station construction is the complete separation of the gear, laundry, and associated spaces from the living quarters. This is achieved by placing these spaces on the opposite side of the Apparatus Bay than the Living Quarters and is a key strategy in keeping potential contaminants away from Firefighters.



reducing the chance of cross contamination from the HOT Zone to the COLD Zone.

### **KEY COMPONENTS OF YOUR FIRE STATION**

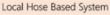
#### **APPARATUS BAY CONSTRUCTION**

A major factor in the function of a fire station is the quality and durability of the apparatus bay. Successful construction of this area of the facility is not just about achieving a good-looking finished floor, but how it is built below that finished floor. The strength of the substrate is the key factor for a successful apparatus bay.

KL inspects and verifies every step of the construction, specifically the stabilized sub-base, rock base material, thickness and flexural mix of concrete with reinforcing steel of the apparatus bay construction.

#### **TRANSITION APRON**

The weight of fire trucks can chip the edge of the concrete drive where the building meets the drive apron. This is often due to the change thickness which is often engineered by different engineers under the architect. KL will work with the design team and their engineers to provide a thickened apron slab at the building foundation in order to prevent chipping and cracking in the future.





### + Time tested technology

First cost to purchase (3x cost)
 Replacement cost
 Apparatus location becomes fixed
 Potential injury risk

#### Building Dilution System

Lower first cost System automatically starts/stops Apparatus can move freely Replacement cost of filters
 Particulates not 100% removed

#### **EXHAUST SYSTEMS**

KL has built all kinds of truck exhaust systems and can utilize whichever system is preferred by the Highland Beach fire department. If there is not a preference or the team wants to evaluate other systems, KL will provide you with the initial cost, longterm cost, and functionality of all systems for your review and decision making.

KL provides extra attention to the apparatus bay substrate

construction to ensure a long-lasting floor is built to

withstand the weight of current and future trucks.

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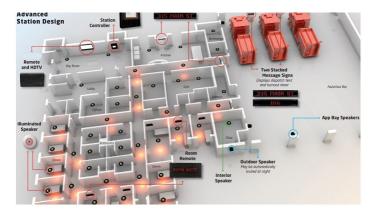
#### **TECHNOLOGY COORDINATION**

A fire station is full of technology. Many of these systems will be provided by different vendors and possibly installed by different subcontractors. KL will take ownership of the process and coordinate all systems even if it is a direct purchase by the Town to ensure that when we turn over the facility it is fully functional and has been tested and commissioned.

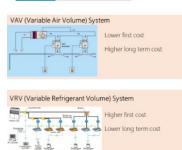
#### **DORM ROOMS**

A key satisfaction factor for firefighters has proven to be the ability to control the temperature in their own space. The traditional system (VAV) is one that just enables the control of air flow volume. The newer and preferred system by firefighters is the VRV system that allow temperature control at the room level.

In addition to the temperature control, items such as lighting, sound insulation, security/access control, and personal storage are all key factors in creating effective spaces for the fire fighters. One item to discuss is the use of motion sensors for lighting control in the dorm rooms – KL has found that many fire fighters do not like that solution as lights can turn on if the person moves around in thei



#### DORM ROOMS





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#### **EQUIPMENT SELECTION**

Commercial grade equipment will be utilized in the facility and the weight of the some of the kitchen and laundry equipment may require reinforcing the foundation at that area.

Also, some of the equipment will be larger than standard opening so early product selection will ensure that the building is designed to be able to move in and out the equipment and handle the weight of it as well. These are just a few of the early preconstruction coordination efforts that KL will ensure that proper decisions are being made eliminating conflicts, change orders, and future issues post construction for the Town.



KL will take a proactive approach to making sure the building can handle the equipment that Highland Beach selects to ensure it works as expected.

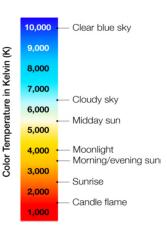
### **CIRCADIAN LIGHTING**

Circadian lighting is a lighting system designed to tap into the proven cycles our bodies follow each day (our circadian rhythm), based on the position, duration, and color of natural sunlight at any given time. Disruption of the circadian rhythm can lead to sleep deprivation in addition to many other severe health problems.

Firefighting work schedules require 24-hour coverage, 7 days per week, 365 days each year with most firefighters

working 24-hour shifts. Due to this type of work schedule, daytime sleep following night work is more difficult due to light streaming through windows. Circadian lighting is a proven solution that can be implemented to mitigate the effects of sleep deprivation and improve the quality of sleep you receive on or off shift, regardless of how little it is.

Installing circadian lighting in fire stations helps firefighters follow the natural sleep/wake cycles of the human body which strategically has the power to positively affect their health, alertness, productivity, and more. **The image to the right shows the type of light needed to keep the body's natural circadian rhythm:** exposure to bright, blue-rich white light during the day, and softer, amber hues at night.



**The image below is an example of circadian lighting inside a building**. The lighting direction, timing, intensity, color, wavelength and the aesthetic of light are all taken into consideration to create a solution that is suitable for the various tasks carried out within a building.



## **QUALITY CONTROL FOR FIRE STATION #6**

#### **QUALITY CONTROL**

We believe a client is entitled to a building that is designed and built with care to last decades. Our proactive approach to quality and coordination assures that we consistently meet these goals and will meet these goals for Fire Station #6.

#### A SPECIAL FOCUS ON PREVENTING WATER INTRUSION

Water intrusion is the #1 issue affecting the longevity of a building. We give our owners added assurance of a water-tight building by using an exterior envelope consultant to review projects for the integration of windows, roofing, exterior doors, paint, exterior stucco, etc. During construction, our consultant reviews the contract documents as well as performs visual inspections on "in-progress" installation procedures and again at final inspection to complement our existing quality control methods and processes. The findings are documented in written reports with photographs that are reviewed by the on-site project team in addition to the project executive. These reports include corrective actions taken or employed from the consultant's observations and discussions with subcontractors and the superintendent. At the conclusion of the project we turn over a complete book to the owner with a full description of what issues were addressed to ensure them of a superior building for years to come.



#### **DESIGN COORDINATION**

Leveraging models early on during design phases increases engagement and allows people to ask the right questions. This in turn promotes better decision making for the project. We will take the lead in setting up the BIM models ensuring timely submissions from parties and creating specific merged models for the project team so that they can be leveraged for MEP, structural and architecture and interiors coordination. We archive consolidated models at every major design iteration and attend meetings with the BIM model on hand to assist with design reviews, target costing, schedule and constructability analysis.



KL's "Building Better Building"

program includes detailed

inspections of the exterior

of the building.

building envelope leading to

better indoor air quality, lower

maintenance and a longer life

MEP coordination integrated with the structural model eliminates possible obstructions during construction.

## **SITE SAFETY FOR FIRE STATION #6**

### SAFETY IS PARAMOUNT AT KAUFMAN LYNN CONSTRUCTION

No matter the size or the scope of a project, the degree that we focus on safety never waivers. KL focuses on the safety of the workers as well as the surrounding community and we will ensure that these practices are implemented for Highland Beach's Fire Station #6.

#### SAFETY EXTENDS OUTSIDE OUR CONSTRUCTION FENCE TO THE SURROUNDING COMMUNITY.

We are not only concerned with the safety of our workers, but we also want to make sure that pedestrians and motorists around the jobsite are kept away from hazards and have nothing to worry about. KL develops detailed maintenance of traffic (MOT) plans, establishing safe, clearly defined passage for individuals and vehicles around the site. KL is used to working in and around active campus environments and our keen approach to safety does not diminish when working on remote sites.



boots are required and enforced.



### **EXCEEDING STANDARDS FOR** SUPERINTENDENT SAFETY TRAINING AND OSHA CERTIFICATION

KL requires our superintendents to receive ongoing and advanced training certification to OSHA 30 requirements, well beyond OSHA 10 which is what most contractors require of their superintendents. This training includes fall protection, confined space, ladder safety, trench and excavation and a host of related safety matters to keep our team at the ready and certified in the latest and most innovative

practices. In KL's 33 years of business, we have never been fined by OSHA.

#### SAFETY AS A CONDITION OF PREQUALIFICATION

Kaufman Lynn uses a third-party pregualification platform to determine the financial health and safety of its subcontractors. Lockton's Score System collects safety information from subcontractors and reviews the prior three years of EMR ratings and OSHA 300 logs, calculate TRIR and DART numbers, and issue a safety rating on a 0-5 scale. Any Subcontractors scoring less than 2.5 are flagged and further discussions are held to determine why the rating is low and what the Subcontractor is doing to improve their safety record.

### DEDICATED TO SUBCONTRACTOR SAFETY TRAINING

Training at KL extends to our subcontractor teams as well. We teach the safety techniques to our subcontractors at the Weekly Tool Box meetings. We gather the teams on the job site each week, review their current and upcoming project issues and discuss the safety measures that must be employed on the jobsite.

We also hold monthly project safety stand downs to the project 203



team, raise awareness, and reward good practices. We like to catch workers in the act of using proper safety protocols and reward them in front of the entire team.

#### **SAFETY INFRACTION PROGRAM**

While we try to catch workers in the act of being safe, and reward them, we still, occasionally, catch unsafe behavior. Those instances are corrected immediately, documented, and the worker's office is notified. Disciplinary action ranges from training and permanent removal from the jobsite for more severe violations, to training, corrective action and a fine to the subcontractor for less severe violations. Any fines collected are donated to a charity KL, the owner and design team have chosen at the beginning of the project.

#### **INDEPENDENT SAFETY CHECKS AT ALL JOBSITES**

KL has hired an independent OSHA certified Safety Inspector to visit our jobsites, unannounced, at least once a month. He files a report which is reviewed by the project executive, and the project team with points and suggestions to be acted upon immediately. This Safety Action Plan is carefully reviewed for completion and correctness at the 24-hour point by the project executive who also shares the plan with the company president.

Any deficiencies are noted and corrected immediately followed by a report within 24 hours to show all items corrected and any required retraining performed.

#### **ONGOING CRISIS MANAGEMENT TRAINING**

KL regularly reviews the crisis management plans with jobsite personnel to ensure that the right protocols and procedures are followed at all times. This plan is part of the standard training folder for all projects. Accompanying this plan each jobsite prominently displays emergency contact information and locations of nearest medical facility.

### **ROOT CAUSE ANALYSIS**

Though we go to great lengths to train our own staff and those of our subcontractors to work safely, incidents may occur. We use any incident, whether it involves injury or not, as a learning opportunity. Below are the procedures we follow in any incident to ensure the safety of the workers, the public, and property.

- 1. Determine if injury occurred and seek immediate medical attention.
- 2. Identify the hazard and secure the area to ensure no future injury or damage occurs.
- 3. Interview witnesses, determine the cause, and document, notify necessary parties, take corrective action.
- 4. Initiate incident reporting procedure.
- 5. Hold a job-wide safety stand down to retrain all workers on the incident that happened and how to avoid it.

The Incident Investigation Report KL creates outlines the details of the incident described above including corrective action taken, an accident analysis, photographs, the subcontractor's accident investigation report, and finally an attendance sheet of workers present at the safety stand down following the incident. 204



Our superintendents walk the jobsite with a trained eye on workers' adherence to safety practices. We like to "catch them do right" - and reward the safe behavior - but have a detailed safety infraction program in place for those instances when we witness unsafe behavior.

Kaufman Lynn construction 🔹 RFQ #22-001 Fire Station #6 CM at Risk 🧧 35

#### **COVID-19 AND HEALTHY BUILDINGS**

On a daily basis we utilize our log tool in Procore to track every location each construction related personnel is working. This log can be distributed to The Town of Highland Beach automatically on a daily basis, providing the ability to quickly observe the work taking place and where exactly the work is taking place.

In the event that implementing our tracking protocol is required, we can break down the path each person took from arriving to work, taking breaks, and leaving work, down to each corridor of any building. This allows us to pinpoint our efforts of disinfecting if this need were to arise. In addition to our immediate Project Team's daily awareness of Covid Safety, KL brings in a 3rd party safety consultant for a weekly Covid Safety inspection. This allows



for additional trained safety inspectors to put more eyes on the methods of safety we have implemented and provide constructive feedback.

Kaufman Lynn Construction has implemented numerous additional safeguards at our construction sites to ensure crew safety and minimize exposure to COVID-19. We have new signage throughout the project, additional PPE requirements and enhanced cleaning protocol. We have deployed an independent inspector to visit the site weekly to ensure compliance with CDC guidelines. These inspections include assessing cleaning supplies, COVID-19 educational signage, restroom sanitizing, safe distancing of workers, the proper use of face coverings and other PPE. KL has also deployed thermometers and oxygen sensors to help personnel assess crew member wellness.

While safety has always been the top priority on the Kaufman Lynn jobsite, these additional measures have demonstrated our commitment to worker safety and have become a standard that other firms now follow.

## SAFETY IN ACTION: RESPONDING TO COVID-19

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- Bi-lingual signs at entry to all jobsites
- Additional CDC posters in trailers and other public areas on hand-washing techniques and other safety reminders
- COVID-19 awareness hard hat stickers
- Face coverings and gloves required on site
- Online training for all job site personnel and staff
- Regular safety stand downs to review procedures and answer questions
- Extra hand washing stations and hand sanitizer locations
- <u>Toolbox talks about coronavirus for all job teams</u>
- One-way stairways to maintain social distance
- Extra fans inside buildings to keep air moving
- Dedicated clean up areas to sanitize shared tools
- Common areas, like picnic tables & portable toilets, sprayed regularly with bleach/water mist
- Adherence to CDC guidelines should personnel feel sick or have been near a suspected COVID-19 positive individual
- Limited food truck meals to pre-packaged items
- All company personal vehicles provided hand sanitizer
- Limited access to GC trailer, conduct meetings in open areas
- Additional resource library on safety measures, CDC information and social distancing guidelines

### **SCHEDULING FOR FIRE STATION #6**

All four components of the project - financing, design, community outreach and construction - need to work in tandem so that Fire Station No. 6 can open as desired. To keep everyone accountable and working towards the same objective we create and use a variety of schedules, each with its own emphasis and purpose:

- » **Master schedule:** The master schedule includes all activities from finance, design, community outreach, and construction.
- » **In-depth design and permitting schedule**: Incorporating a detailed breakdown of design activities and durations to allow for all required permits supports the design team in meeting critical milestones.
- » **In-depth construction schedule:** Throughout the construction process, we continue to evaluate and optimize the schedule through pull planning a collaborative process that promotes partnership with our trade contractors through an active, solutions oriented approach to scheduling and coordination
- » 2-week look-ahead schedule: The short term schedules are reviewed with subcontractors at weekly meetings to assure proper staffing onsite
- » **Catch-up schedule (if needed):** In the case of any delays we work with the subcontractors to create a specific plan how to overcome the delay.

#### THE SCHEDULE AS A LIVING DOCUMENT

In order to be effective, schedules need to reflect what is occurring and incorporate new information as it becomes available. Therefore schedules are updated in real time as things occur. The master schedule is updated on a weekly basis and is reviewed with all parties including the Town, finance, design and construction teams to ensure the project is tracking for an on-time completion.

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#### Schedules Built Around Client Needs

Case Study: Simultaneous Built of Coral Springs Fire Stations #43 and #95

KL built two stations recently for the City of Coral Springs and they both were active Fire Stations prior to replacement. We provided on-site temporary facilities for the Fire Station 95 and fast-tracked the construction of that station. Fire Station 43 operations was moved off site due to the site constraints.

KL provided the City the options early in order for them to make the best plan for servicing the community while the new fire stations were being constructed and the final solution was keeping the site operational during construction as opposed to shutting them both down and forcing service relocations for both stations during construction. This proactive planning by KL helped the City's operations and saved them money finding two new sites to operate from.

At the request of the City of Coral Springs, all scheduled efforts to complete Fire Station #95 first were reversed to complete the second station, #43, ahead of #95. Our coordination and scheduling not only accomplished this but turned over both projects early.

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# **SECTION B: COST ESTIMATES & BUDGET CONTROL**

### **CONTROLLING COSTS**

We always provide a first budget/estimate based on schematic plans and early specifications, it allows the Design Build team and the owner to know where we are and provides a baseline to course correct. Some critical subcontractor input and a complete quantitative analysis with graphical take-off is included at this point. We also perform a gap analysis to assure as best possible that no "holes" or "overlaps" are evident in the estimated amount. Based on overall cost at this point, we introduce Value Management options to assure the target budget is not exceeded.

#### **OPTIONS ANALYSIS: SAVING TIME & COSTS WHILE MAINTAINING HIGH FUNCTIONALITY & QUALITY**

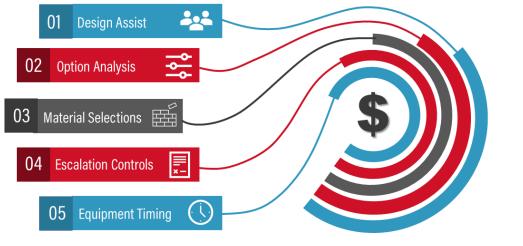
We do not just provide accurate and reliable cost data for specified items, but we proactively provide alternative approaches or "menu's" for different aspects of construction installations and means and methods. These options analyses can bring significant cost and time savings to the project while maintaining the high level of function and quality envisioned. We identify alternatives for systems, materials, equipment and their associated cost and time for evaluation and decision by the team. This on-going design menu log remains in place for discussion until the team agrees to discard or implement an item.

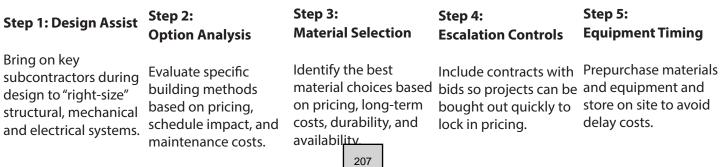
Utilizing our in-house multidisciplinary estimating capabilities, Kaufman Lynn Construction will guide the project team in making informed decisions in the evaluation of all options brought to the table.

# KL's proven, proactive approach to preconstruction, including the detailed scopes released to subcontractors and thorough analysis of bids, is the primary reason why we have an exceptionally low amount of contractor initiated change orders.

In the case of owner initiated change orders we conduct a full constructability review and then offer viable options and alternatives to reduce or even eliminate cost and schedule impacts of the requested changes.







The Kaufman Lynn Construction (KL) team has decades of experience building quality fire stations and we bring that knowledge and experience to the Town of Highland Beach. Our custom approach for the Highland Beach Fire Station #6 reflects our research and site exploration efforts that demonstrate the quality and attention to detail that KL will deliver.

As a project partner, Kaufman Lynn Construction will provide leadership through the preconstruction & design, construction and post construction phases of the project. We accomplish this by establishing clear goals of the team and the responsibilities of each team member towards achieving these goals. Kaufman Lynn Construction creates and frequently updates schedules that track the progress of team and establishes venues to promote a collaborative teamwork approach to defining best practices and quality, evaluating cost benefits or potential savings opportunities and general issue resolution. A detailed description of this process follows on the following pages.

#### DESIGN REVIEW & ADDITIONAL ANALYSIS OF PLANS AND SPECIFICATIONS

As Construction Manager, our effort throughout the development of a project is as a design assist partner to the project team. We lend support to the design team through our "hands on" knowledge of constructability, pricing accuracy, market conditions, life cycle cost analysis, technical material and systems validation, energy efficiency vs. first cost analysis, schedule expertise, subcontractors and vendor selection, long lead and critical equipment procurement, LEED recommendations, and code experience, to name a few.

In addition, we act as the conduit of communication to all team partners during the life of the design process, because clear, concise and continual discussion and documentation are components to the success of the design stage.

#### **REVIEW FOR CODE COMPLIANCE AND QUALITY**

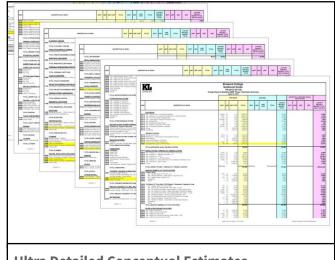
Because the review process is critical in establishing the quality of the project, we involve our

independent quality assurance/building envelope consultant in this process. Together we review the drawings and specifications from all design disciplines and all consultants. This review focuses on final code and zoning solutions, appropriate systems distribution, materials selected and the building envelope. (Please see Quality Control section below for more detail)

We also compare original design schemes and working drawings to inform the owner of changes that may exceed previously established budgets or life cycle expectations, we compare the owner's program vs. the design documents. We review plans and specifications with respect to completeness of the documents.

#### **BUDGET ESTIMATING**

Based on the project program and planned budget the first budget/estimate will be based on schematic plans and early specifications. Some critical subcontractor design assist input and a complete quantitative analysis with graphical take-off will be included. Assumptions will continue to be made where appropriate and allowances established for items undetermined. Based on overall cost at this point, the introduction of Value Management options would come into play to assure the target budget is not exceeded.



**Ultra Detailed Conceptual Estimates** The conceptual estimated set the standard for the remainder of the estimates and are designed to provide the team actionable information.

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Subsequently, the design development phase will allow for a larger complement of subcontractor design assist input as we work towards a tighter cost parameter and begin identifying contingencies necessary within the project cost. And as more information is now available, the need for assumptions and allowances reduces. A gap analysis is done at this point to assure as best possible that no "holes" or "overlaps" are evident in the estimated amount and a complete review of Value Management options is conducted to adjust cost to within the target amount. Wish list items are also discussed for possible inclusion in the budget.

#### **BIDDING/NEGOTIATIONS**

# EXPERIENCE & UNDERSTANDING WITH LOCAL SUBCONTRACTORS & BIDDING

Kaufman Lynn Construction is a true South Florida contractor, headquartered in Delray Beach. We have

been serving the South Florida market for 33 years and South Florida remains our primary focus with over 75% of our work located in the tri-county area.

Our longevity and volume of work in the market means that we truly understand the area and have built a significant network of quality subcontractors. The fact that we are actively bidding work across multiple market sectors means that we are in constant contact with the subcontractor market and have current market pricing available. Our estimating team monitors commodities market trends through publications and subscriptions services so we can anticipate possible near future price escalations. We also get information directly from manufacturers for the primary building commodities such as concrete, drywall, asphalt, metal studs and steel so we can provide the most accurate cost estimates.

#### IN-HOUSE COST ESTIMATING AND BIDDING STAFF RESOURCES AND CAPABILITIES

We have a 20-person in-house cost estimating team of senior estimators, line estimators and estimating coordinators. Our senior estimators have on average well over 20 years of experience. They are knowledgeable in all trades and have extensive subcontractor relationships in South Florida. The most important step in preparing a low bid that will result in a successful project is having the right subcontractors bid the project. Based on our experience and knowledge we know who to reach out to and invite to bid. Our goal is to have a minimum of five bids for every scope division. To accomplish this, we go through extensive outreach to generate market interest in the project. We then work with the individual trades one-on-one to assure that they understand the entire scope and don't miss anything on their bids. Working with the trades, we look for opportunities for possible substitutions or for potential gaps as we are working on the bid. We then submit RFI's during the bidding process to clarify any questionable items. This puts everybody on a level playing field and reduces the need for change orders after the award of the bid.



A dedicated team of 20 estimating professionals is ready to support the project the team to develop thorough estimates and thoughtful value options for the team to consider.

# **SECTION C: UTILIZING BEST PRACTICE TECHNIQUES**

#### **VALUE ENGINEERING REDUCING THE COST NOT THE DESIGN**

In the Kaufman Lynn Construction world, Value Engineering optimizes the allocation of projected funds (the budget) without reducing the guality of a project. Unlike many other construction managers, we do not simply try to find a cheaper product that "cheapens the design", we seek to find more economical but equal or better option that remains consistent with the project team's vision and life cycle limits.

#### LIFE CYCLE COST ANALYSIS: MAKING SURE THAT "LESS EXPENSIVE NOW" DOESN'T TRANSLATE TO "HIGH LONG-TERM OPERATIONS COSTS"

Life Cycle Cost Analysis is an integral part of the value management process, providing an assessment of costs associated with each of the various options under consideration. Life cycle costs can be applied to any component of a facility, but generally focuses on the systems noted in the plumbing, mechanical and electrical plans and specifications.

A complete life cycle cost analysis will not only take into account the initial costs of equipment, materials and installation, but also the cost of the future re-installations in present dollars. This is an important point of clarification; if equipment for example has to be replaced every ten years, the costs of inflation that will take place between now and the last replacement needs be considered in the true life cycle cost of the product or system.

Utilizing our in-house multidisciplinary estimating capabilities, Kaufman Lynn Construction will guide the project team in making informed decisions in the evaluation of all options brought to the table.



### Saving Funds: Peter Bluesten Park

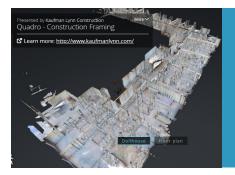
During the preconstruction phase, KL was heavily engaged throughout the value engineering process to help guide the design team with real time cost data. Our services and collaboration throughout the design process ensured that when construction began, our team was ready to build with an efficiency that resulted in a \$2.2 million cost savings. This value engineering helped the city move forward with construction without impacting the appearance or quality of the project.

### **CONSTRUCTABILITY ANALYSIS**

#### **THINKING THROUGH THE "HOW"**

Ideally, we provide a constructibility analysis during the design-development stage, working with the design professionals to identify design to construction inconsistencies, dissimilar materials issues, installation sequencing voids, and options for systems and materials going into the final design. Through this operations led process, we analyze critical building components including roofing materials, mechanical systems, building envelope integrity, finishes, etc. After review, we provide the client a comprehensive listing of discoveries, with alternative solutions that incorporate the most cost effective approach for every area where there are alternatives to be considered. Further, we analyze specific project exterior conditions (i.e., location of activities, scheduled events, etc.) and include thoughtful recommendations to site logistics, traffic flow, staging and parking. 210

#### **PROJECT CONTROL PROCESS, PROJECT MANAGEMENT SOFTWARE, AND CLOSEOUT METHODS**



COMMUNICATION is key. KL uses technology to document and share information in real-time with the whole team. The PGA Parcel 5A Building will benefit from our many ways of capturing and sharing information. From daily logs within our web-based Project Management System, Procore, by our Lead and MEP Superintendents to the utilization of cutting edge technology such as Matterport (3D Interactive Imaging), KL will share and preserve the information needed to build effectively. These 3D Interactive models also allow Fire Station #6 to manage the completed facility more efficiently and effectively.

#### **COMMUNICATION: KEEPING EVERYONE INFORMED AND INVOLVED**

Construction is a collaborative activity, pooling the knowledge and experience of many people. After an initial kick-off meeting, we suggest weekly meetings with the entire team for complete and accurate exchanges of information and maximum accountability. Kaufman Lynn Construction (KL) uses Procore, an on-demand construction software platform designed to facilitate document management and team communication. By hosting documents online, they are available to all team members. Owners have 24/7 access to contract documents, change orders, RFI's, meeting minutes, schedules and progress photos. All team members can access the information in real time (24/7) on their tablets, phones or computers



Our project management software allows owner's 24/7 access to all project information on multiple platforms.

to keep everyone up to date on progress. RFI's are tracked and users can easily see the status. Even more importantly the process of responding to an RFI is as simple as sending an email, which assures use of the software by team members.

However, we understand that not all interested parties in a construction project are part of the project team. Which is why we provide a weekly project "snapshot" to the client and design team. On a single page, we summarize accomplishments of the current week and provide a look-ahead for the next week. This provides an easy way for our client's to keep their associates informed and engaged.



#### INFORMATION MANAGEMENT STARTS WITH TRUSTED LEADERSHIP, MUTUAL GOALS AND PARTNERING

KL begins providing feedback to all members of the project team early in the design process before concepts evolve to avoid any potential problems. We take full responsibility in performing the role of "leader" so that we may guide our owners through the entire construction management process. We start each project with a meeting to gather the team together to collaborate, discuss the scope of the project and clearly understand the owner's expectations. We then establish clear lines of communication and team goals with milestones marked at all critical stages. By using this method, each team member understands specific expectations being made of them and this results in the establishment of a partnering approach.

#### **OPEN, FREQUENT COMMUNICATION AND ACCOUNTABILITY**

After the kickoff meeting, we will schedule weekly meetings with the owner and architect to provide complete and accurate exchanges of information and maximum accountability. During each weekly meeting, all vital project log information (shop drawings, procurement, RFI's, etc.) will be reviewed with all parties. If action is necessary, a task is assigned and placed on a master action plan including the party responsible for completing the task item as well as the expected date of completion. At the conclusion of each weekly meeting, the master action plan is reviewed to ensure that all parties know what they are responsible for and when the information is due. Each weekly meeting begins with a review of the previous week's master action plan to follow up and verify that the team has completed their tasks and to determine the next logical steps in the best interest of the project.

#### DISTRIBUTION OF INFORMATION/RECORD KEEPING

KL provides detailed and accurate record keeping in accordance with our Owners' objectives. We use the latest construction software in the industry for accounting (Timberline), project management (Procore) and scheduling (P6). We train our staff in every program and continue training to ensure proficiency for all future updates. Our information management processes have allowed us to complete our jobs early or on time and within or below budget and provide the owner with accurate current information when they want it. We assign a project accountant to every project facilitating the direct communication between financial staffs which frees our job site project manager to devote more time to building the building. Matching subcontractor forms to the standard forms used by the owner creates a smooth monthly facilitation of paperwork.

#### TRANSPARENCY AND ACCOUNTABILITY FOR CLEAN AUDITS

While KL has always been noted for our transparent accounting processes, we have increased the detail of our monthly reporting to make it easy for accounting departments and auditors to review our project documentation and verify contract compliance specifically with regards to payroll, buyout savings and use of General Conditions.

Every pay application is accompanied by a Contractor Status Report and a Labor Report. The Contractor Status Report is a snapshot of where the project is at the moment in terms of schedule, outstanding items, RFIs and amounts billed to date and for the time period at hand. The labor reports are a summary of the supervision hours worked on the project by superintendent, project manager, senior project manager, coordinator and others if applicable. The summary is backed with the actual time cards of each individual.

#### IN-HOUSE TECHNOLOGY EXPERTISE

Kaufman Lynn has an in-house BIM department with specialists who are actively researching, testing, and implementing solutions for our clients. As both construction and applied software specialists, the KL BIM department has a suite of tools to address the everyday unique solutions that present themselves during the design validation and construction phases. We have the technical skills to develop our own BIM models and apply BIM specific workflows as opportunities emerge.

Our capabilities include:

- BIM execution planning for your design team, construction and operations
- 3D MEP coordination and issue resolution (BIM 360 Glue to Navisworks)
- 3D modeling (Revit, AutoCAD, Rhino 3D, Sketchup and Infraworks)
- Laser scanning (Matterport, Leica, Faro, Recap 360)
- 4D sequencing (Synchro or Navisworks)
- Virtual reality mockups and virtual tours (Fuzor, HTC Vive, Oculus Rift)
- 3D estimation (Assemble Systems, D Profiler)

#### **USING TECHNOLOGY TO COORDINATE TRADES**

A reliable BIM execution plan that is aligned with project delivery needs helps facilitate quick and confident decision making by project stakeholders. We have a deep understanding of how BIM applications during the design phases translate to the construction phases. Our BIM department becomes an extension of your design team day one to ensure we implement the specific technological use cases identified for this project. We supply the BIM group with processes and procedures on our weekly BIM meetings to ensure accountability and a proper follow through on all proposed BIM workflows for this project.

#### **COMMUNICATION MANAGEMENT SYSTEMS**

KL utilizes a variety of other construction specific information software platforms to increase efficiency and information management. They are:

#### NAVISWORKS MANAGE - BUILDING INFORMATION MODELING (BIM)

KL has been using BIM via Navisworks Manage. During pre-construction, we are able to utilize the 3D model and extrapolate data, view the design intent in context, and obtain quantities, which allows us to provide critical feedback to the client and design team with regards to cost and constructability. Using this data allows us to critically evaluate subcontractor estimates and hone in on quantity issues or indentify scope gaps. For example, at MDC Academic Support Center, during preconstruction we noted that continuous linear diffusers were implied, but not fully detailed. Knowing the intent early prior to entering a subcontractors scope of work. Navisworks allows us to import information from several platforms, including CAD files, digital photos (jpegs), and PDFs allowing us to overlay documents together to analyze information related to the project.

#### P6 – SCHEDULING

While all project managers and superintendents receive P6 training, a full time internal scheduler works with each team to develop schedules. Not only assures this high level use of the software, but also helps the project teams to think through the sequencing and learn from other projects.

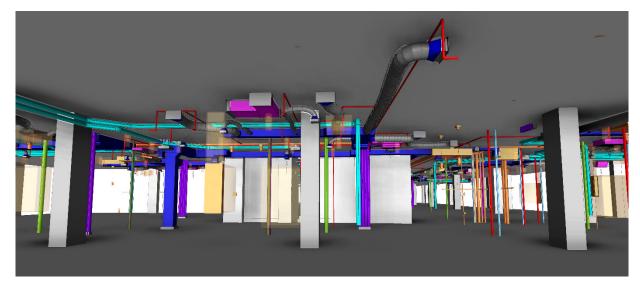
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#### **TIMBERLINE – ACCOUNTING**

Accounts Payable, Accounts Receivable, General Ledger, and Job Cost comprise the backbone of this integrated financial and operations construction management solution. Built-in and customizable reports provide big-picture views and drill-down details, giving you the insight to make timely and well-informed decisions.

#### SUBCONTRACTOR MEP COORDINATION

The BIM execution plan will continue to grow to cover the specifics in the construction phases such as information sharing, subcontractor model development, MEP coordination standards, BIM signoff schedule, as-builts and close out deliverables. We maximize opportunities to increase prefabrication by working closely with our trade partners to create shop drawings derived from BIM models. We utilize Navisworks to perform clash detection, constructability, and visual checks. This BIM coordination is aligned with the concrete pour schedule to ensure all MEP penetrations in the slab are accounted for prior to concrete placement. We integrate BIM coordination dates into the schedule and tie them to MEP rough-in activities allowing us to fine-tune our coordination efforts as the schedule develops.



#### **Coordination Zones:**

1. Underground MEP

- From day one we focus heavily on civil and major utility connections to the building. Coordinating foundations with large conduit runs and plumbing systems helps us hit our marks with slab on grade penetrations.
- 2. Elevated Slab Penetrations
  - Prior to coordinating horizontally, we lay out all sleeves and identify them in the model and then send that information to the field prior to concrete placement. From there we coordinate MEP horizontally to quickly resolve any potential duct and plumbing issues.

3. Overhead and Ceiling Interspatial

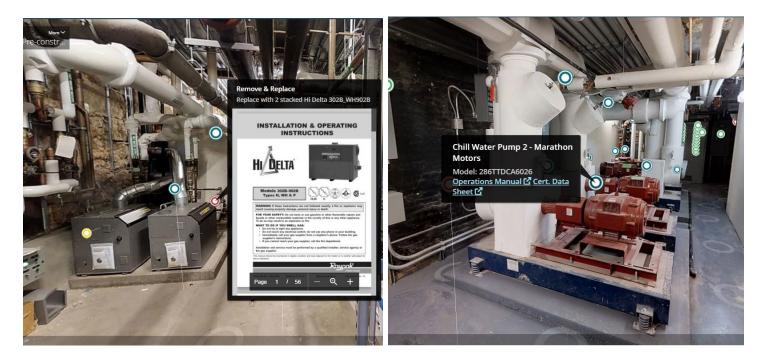
- Mixed-use facilities present unique challenges when it comes to placement of MEP systems, since the floorplans are vastly different from level to level. We leverage BIM to cleanly route MEP systems ensuring higher ceiling heights and systems that are easily accessible for future maintenance.
- In some instances, early integration of the process has been able to reduce overall building heights, lightened the structure, and saved costs that would be lost in above ceiling space.

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#### FACILITIES MANAGEMENT AND INTERACTIVE DOCUMENTATION

The key challenge for owners developing a facilities maintenance program is keeping track of the numerous OEM manuals, as-built documents and asset information required for preventive maintenance. We've found that BIM technologies have substantially benefited design and construction teams to deliver a project, but the information that is created is cumbersome for owners to access and use as part of their efforts to manage and maintain their facilities. To solve this, we've developed an innovative solution that we call "Interactive Documentation" which enables you to visually interact in 3D with your facilities, allowing you to quickly locate information that is important to your facilities team. You can easily tag the 3D model of laser scans to store punch lists, contact information, asset data, operation manuals, list Information, various PDFs, pictures, videos and external websites and much more. More importantly, this solution does not require any high end computers and expensive software. All information can be accessed from your mobile phone, ipad or standard laptop.





#### PUNCH LIST MANAGEMENT AND CLOSE-OUT

Prior to building commissioning and final equipment start-up, we review all systems with the respective vendors technical team to review the proper sequencing, interface and controls. As we instruct and train the owner's personnel on the building systems and controls, we videotape all meetings and demonstrations for archiving and future use their staff and new maintenance personnel.

The management of the punch list is really an extension of our quality control program which includes a pre-installation meeting with subcontractors to review submittals, specifications and materials as well as three stages of inspection:

**INITIAL INSPECTION:** Before a subcontractor proceeds with their scope, we have them prepare a mockup area. Once inspected and approved by our team this mock-up area becomes the control sample for all later work.

**IN-PROGRESS INSPECTIONS:** Our superintendent and quality control consultant conduct ongoing inspections of work put in place.

**FINAL INSPECTION:** Before a subcontractor is "dismissed" from the site, our superintendent and/or quality control consultant perform a final inspection and note any deficiencies.

Any open items that are identified during any of these inspections are tracked on an "open deficiency log" and are reviewed at weekly subcontractor meetings. Using this approach means that most items are corrected before they get to the punch list.

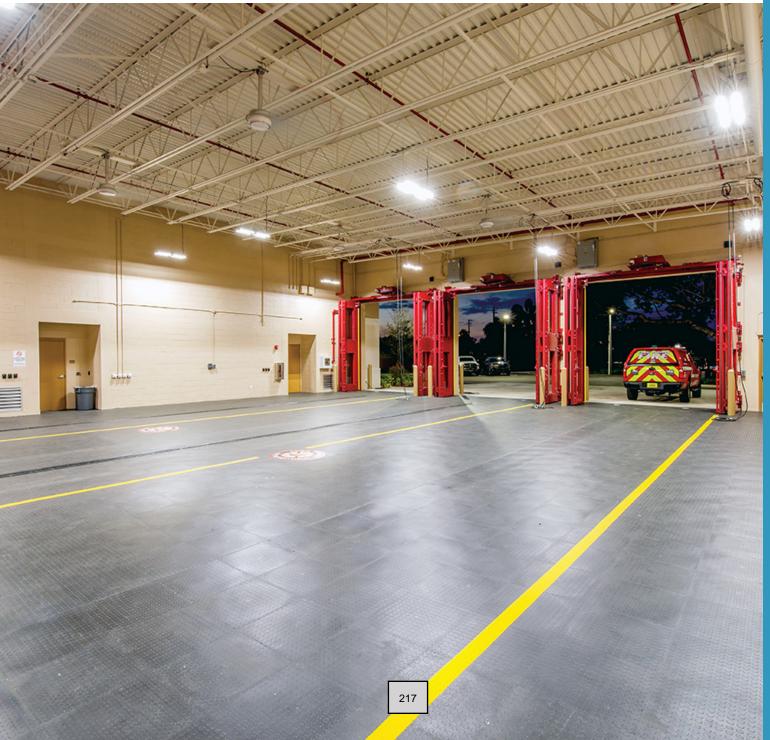
As we approach substantial completion, we prepare a completion list that spells out everything that still needs to be completed or corrected on a room by room basis. The list is posted in each room for easy reference by the subcontractors. The complete list is also available to the entire project team on Procore. Once all items on the list have been completed, the project manager and superintendent walk the entire project and prepare an internal punch list, which again is tracked in Procore. Once this internal list is marked complete, the Project Executive performs a final review. Only then do we ask the owner and architect to prepare a punch list. All items identified in the official punch list are transmitted to the subcontractors who have a contractually specified number of days to complete the items.

#### **CLOSE OUT/WARRANTY**

Kaufman Lynn Construction's project closeout does not end with the Certificate of Occupancy. We stand behind our work. Prior to the warranty expiration periods, our project manager sets up a walk through with the owner's staff to identify items in need of warranty repairs. In addition, due to our corporate philosophy of being an extension of our owners' staff and our desire for long term relationships, Kaufman Lynn Construction has a history of taking care of its clients and projects after the warranty period expires.



# Tab 5 LOCATION OF PROPOSER'S OFFICE



#### TAB 5: LOCATION OF PROPOSER'S OFFICE







Kaufman Lynn Construction's Headquarters Florida office is located in Delray Beach. As a local contractor, we pride ourselves on our relationships with the area's top subcontractors in every trade. Over our 33 years of building high-quality local buildings, we understand how the effectiveness and speed at which all parties are able to operate ensures the right decision makers are kept involved throughout the project. Our entire management approach is focused on fulfilling the objectives of our clients and our relationships with the local subcontractor base will benefit the Town of Highland Beach from day one.

**KL Headquarters Address:** 3185 South Congress Avenue Delray Beach, FL 33445







# **CM at Risk Team**

All Construction Team Members are based in Palm Beach County

#### PALM BEACH COUNTY LOCAL BUSINESS TAX RECEIPT



ANNE M. GANNON CONSTITUTIONAL TAX COLLECTOR Serving Palm Beach County Serving you.

P.O. Box 3353, West Palm Beach, FL 33402-3353 www.pbctax.com Tel: (561) 355-2264

\*\*LOCATED AT\*\*

3185 South CONGRESS AVE DELRAY BEACH, FL 33445

TYPE OF BUSINESS	OWNER	CERTIFICATION #	RECEIPT #/DATE PAID	AMT PAID	BILL #
23-0051 GENERAL CONTRACTOR	KAUFMAN MICHAEL I	CGC021732	B21.561418 - 07/19/21	\$27.50	B40105457

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This document is valid only when receipted by the Tax Collector's Office.

STATE OF FLORIDA PALM BEACH COUNTY 2021/2022 LOCAL BUSINESS TAX RECEIPT

#### LBTR Number: 200515138 **EXPIRES: SEPTEMBER 30, 2022**

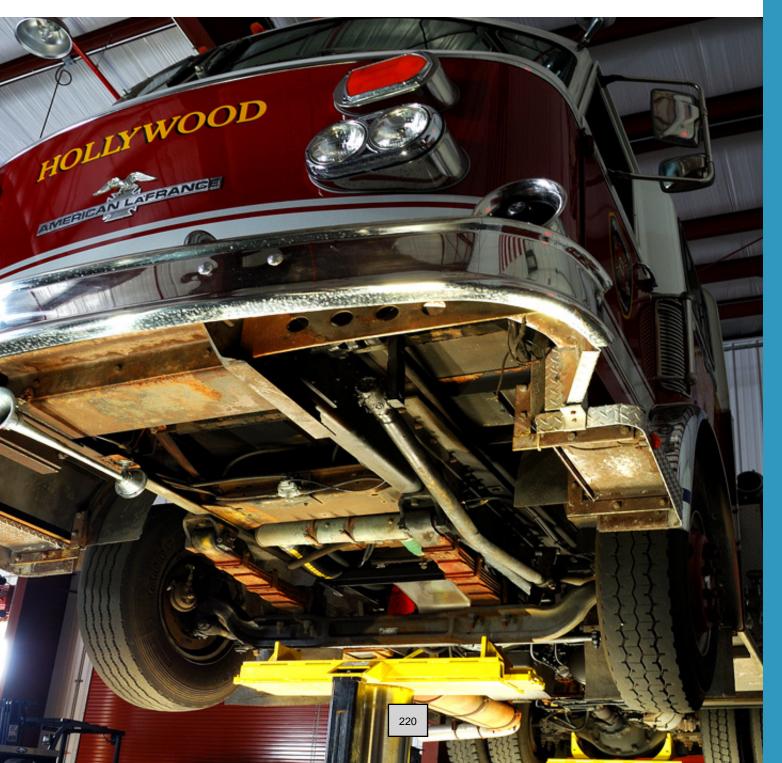
This receipt grants the privilege of engaging in or managing any business profession or occupation within its jurisdiction and MUST be conspicuously displayed at the place of business and in such a manner as to be open to the view of the public.



2584

KAUFMAN LYNN CONSTRUCTION INC KAUFMAN LYNN CONSTRUCTION INC 12 3185 S CONGRESS AVE DELRAY BEACH FL 33445-7324 վիրությեն հենդերին են կանգրություններին հենդերին հենդերին հենդերին հենդերին հենդերին հենդերին հենդերին հենդերին

# Tab 6 PREPARATION OF THE RFQ



#### PROPOSER ACKNOWLEDGEMENT

Submit RFQ's to: Clerk's Office 3614 South Ocean Blvd. Highland Beach, FL 33487 Telephone: (561) 278-4548

RFQ Title: "FIRE STATION #6 CONSTRUCTION MANAGER at RISK"

RFQ Number: 22-001

RFQ Due: March 25, 2022, NO LATER THAN 2:00 P.M. (LOCAL TIME)

Qualification Statements will be publicly opened and recorded for acknowledgement of receipt, unless specified otherwise, on the date and time indicated above and may not be withdrawn within ninety (90) days after such date and time.

All awards made as a result of this RFQ shall conform to applicable sections of the charter and codes of the Town.

Name of Proposer: Kaufman Lynn Construction, Inc.

Federal I.D. Number: \_\_\_\_\_65-0098115

A Corporation of the State of Florida

Telephone No.: (561) 361-6700

Mailing Address: 3185 South Congress Avenue

City / State / Zip: \_\_\_\_\_ Delray Beach, FL 33445

E-mail Address: \_jzalkin@kaufmanlynn.com

Authorized Signature

#### CONFIRMATION OF DRUG-FREE WORKPLACE

Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the Town of Highland Beach or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employee that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or *nolo contendere* to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5) Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by, any employee who is so convicted.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Authorized Signature

#### PALM BEACH COUNTY INSPECTOR GENERAL

#### ACKNOWLEDGMENT

The Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and in furtherance thereof may demand and obtain records and testimony from the Contractor and its subcontractors and lower tier subcontractors.

The contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the Contractor or its subcontractors or lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the municipality to be a material breach of this contract justifying its termination.

Kaufman Lynn Construction, Inc. CONTRACTOR NAME

By Michael I. Kaufman

Title: \_\_\_\_\_President / CEO

Date: <u>3/23/2022</u>

#### **CERTIFICATION PURSUANT TO FLORIDA**

#### **STATUTE § 287.135**

I, Michael I. Kaufman, President/CEQ on behalf of Kaufman Lynn Construction, Inc. certify

Print Name and Title

Company Name

that Kaufman Lynn Construction, Inc. does not:

**Company Name** 

- 1. Participate in a boycott of Israel; and
- 2. Is not on the Scrutinized Companies that Boycott Israel List; and
- 3. Is not on the Scrutinized Companies with Activities in Sudan List; and
- 4. Is not on the Scrutinized Companies with Activities in the Iran Petroleum

Energy Sector List; and

5. Has not engaged in business operations in Syria.

Submitting a false certification shall be deemed a material breach of contract. The Town shall provide notice, in writing, to the Contractor of the Town's determination concerning the false certification. The Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Contractor does not demonstrate that the Town's determination of false, certification was made in error then the Town shall have the right to terminate the contract and seek civil remedies pursuant to Florida Statute § 287.135.

Section 287.135, Florida Statutes, prohibits the Town from: 1) Contracting with companies for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel; and

2) Contracting with companies, for goods or services over \$1,000,000.00 that are on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector list, created pursuant to s. 215.473, or are engaged in business operations in Syria.

As the person authorized to sign on behalf of the Contractor, I hereby certify that the company identified above in the section entitled "Contractor Name" does not participate in any boycott of Israel, is not listed on the Scrutinized Companies that Boycott Israel List, is not listed on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List and is not engaged in business operations in Syria. I understand that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject the company to civil penalties, attorney's fees, and/or costs. I further understand that any contract with the Town for goods or services may be terminated at the option of the Town if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan list or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

Kaufman Lynn Construction, Inc.

COMPANY NAME

Mallen

Michael I. Kaufman

SIGNATURE President / CEO

PRINT NAME

TITLE

#### SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(A), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

# THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to the Town of Highland Beach (the "Town") by: Michael I. Kaufman, President / CEO

(Print individual's name and title)

For: Kaufman Lynn Construction, Inc.

(Print name of entity submitting sworn statement)

Whose business address is: 3185 South Congress Avenue, Delray Beach, FL 33445

And (if applicable) its Federal Employer Identification Number (FEIN) is: <u>65-0098115</u>

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement

\_\_\_\_\_.)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), FLORIDA STATUTES, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), FLORIDA STATUTES, means a finding of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), FLORIDA STATUTES, means:

a. A predecessor or successor of a person convicted of a public entity crime; or

b. an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one (1) person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one (1) person controls another person.

A person who knowingly enters a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding thirty-six (36) months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), FLORIDA STATUTES, means any natural person or entity organized under the laws of any state of the United States with the legal power to enter into a binding contract and which bids or apples to bid on contracts for the provision of goods or services let by a public entity or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement (indicate which statement applies).

\_\_\_\_ Neither the entity submitting this sworn statement, nor any of its officers, directors, Х executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one (1) or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted Bidder list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICE FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMONT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

Date: 3/23/2022

STATE OF Florida

COUNTY OF Palm Beach

Signature

The foregoing instrument was acknowledged before me this <u>23rd</u> day of <u>March</u> 2022, by, as Michael KAUMAN, CED (title) of Kaufman Lynn Construction, Inc(name of company), on behalf of FIORINA (OLDVATION) (type of entity).

 $\checkmark$  who is personally known to me,

 $\Box$  who produced\_

\_as identification, who did take an oath, and who acknowledged before me that he executed the same freely and voluntarily for the purposes therein expressed expressed.

(Notary Seal)



Maria Calminer
400 Amerine
Print Name
NOTARY PUBLIC-STATE OF <u>FL</u>
My Commission Expires:
Commission No.

#### ADDENDA ACKNOWLEGEMENT

TOWN OF HIGHLAND BEACH FLORIDA

#### RFQ TITLE: "FIRE STATION #6 CONSTRUCTION MANAGER at RISK"

RFQ NO.: 22-001

DATE SUBMITTED: March 25th, 2022

We propose and agree, if this submittal is accepted, to contract with the Town of Highland Beach, in the Contract Form, to furnish all material, means of transportation, coordination, labor and services necessary to complete/provide the work specified by the Contract documents.

Having studied the documents prepared by: The Town of Highland Beach

We propose to perform the work of this Project according to the Contract Documents and the following addenda which we have received:

ADDENDUM	DATE	ADDENDUM	DATE

NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS

RFQ

RFQ No.: 22-001 FIRE STATION #6 CONSTRUCTION MANAGER at RISK

# SCHEDULE OF SUB-CONSULTANTS

The Undersigned Respondent proposes the following sub-consultants for the Project. The Respondent is further notified that all sub-consultants shall be properly licensed, bondable and shall be required to furnish the Town with a Certificate of Insurance in accordance with the contract general conditions. This page may be reproduced for listing additional sub-consultants, if necessary. If not applicable or if no-sub-consultants will be used in the performance of this Work. please sign and date the from and write "Not-Applicable" or "NONE" across the form.

Name of Sub-Consultant	Address of Sub-Consultant	<u>License No.:</u>	<u>Contract</u> <u>Amount</u>	Percentage (%) of Contract
	NOT ADDI ICARI E AT THIS TIME		INTE	

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Signature\_

Title/Company\_\_\_\_

contracts of a similar nature, or who has not demonstrated the necessary capability (financial capability, lack of resources, etc.) to perform under this award. Owner reserves the right to reject any sub-consultant who has previously failed in the proper performance of an award, or failed to deliver on time, Owner reserves the right to inspect all facilities of any sub-consultant in order to make a determination as to the foregoing.

Date:

#### **GENERAL CONTRACTOR'S LICENSE**



ACO		ER	TIF	ICATE OF LIA	BILI		URANC	E 2/28/2023		(mm/dd/yyyy) /2022
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.										
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).										
PRODUCER Lockton Companies Contract Lockton Companies Contract Note:										
1185 Avenue of the Americas, Suite 2010 New York NY 10036				PHONE FAX (A/C, No, Ext): (A/C, No): E-MAIL ADDRESS:						
646-572-7300				ADDRE		URER(S) AFFOR			NAIC #	
					RA: LM Ins				33600	
INSURED         Kaufman Lynn Construction, Inc.           1456123         2185 S. Congress Avenue							surance Corporation		33588	
3185 S. Congress Avenue Delray Beach FL 33445				INSURER C : Allied World National Assurance Company 106 INSURER D : *** SEE ATTACHMENT ***				10690		
Defray Beach FL 55445				INSURER D : *** SEE ATTACHMENT *** INSURER E :						
					INSURE					
COVERAG				<b>NUMBER:</b> 1832418	-			<b>REVISION NUMBER:</b>		XXXXX
INDICATED CERTIFICA	THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.									
INSR LTR	TYPE OF INSURANCE		SUBR WVD	POLICY NUMBER		POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIN	NITS	
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X \$0	0 Deductible							MED EXP (Any one person)	\$ 100	)
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GEN'L AG								GENERAL AGGREGATE	. ).	00,000
								PRODUCTS - COMP/OP AGO	3 <u>\$ 4,0</u> \$	00,000
	BILE LIABILITY	Y	N	AS5-Z51-291934-032		2/28/2022	2/28/2023	COMBINED SINGLE LIMIT (Ea accident)		00,000
Λ	YAUTO NED SCHEDULED							BODILY INJURY (Per person)		XXXXX
AUT	OS ONLY AUTOS ED V NON-OWNED							BODILY INJURY (Per accider PROPERTY DAMAGE		XXXXX XXXXX
AUT	OS ONLY AUTOS ONLY							(Per accident)		XXXXX
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DED									\$ XX	XXXXX
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	PRIETOR/PARTNER/EXECUTIVE	N / A						E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYI		00,000
If yes, des	cribe under TION OF OPERATIONS below							E.L. DISEASE - POLICY LIMI		00,000 00,000
D See Atta		N	N	See Attached		2/28/2022	2/28/2023		+ 1,0	
	OF OPERATIONS / LOCATIONS / VEHICI	FS (4		101. Additional Remarks Schedu	le, may h	e attached if mor	e space is requir	ed)		
RE: RFQ # 22	2-001 Fire Station #6 located at 361	2 Soi	ith Oc	ean Boulevard, Highland Bea	ach, FL	33487. Town o			ional insu	red on the
general liabili	ty, automobile liability and umbrel	a/exc	ess Iia	ibility policies as required by	written	contract.				
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	<u>TE HOLDER</u> 24186				CAN	ELLATION	See Atta	cinnents		
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	SOUTH OCEAN BLVD. HLAND BEACH FL 33487						-25	~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~	-	
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LOB	Eff Date	Limits	Carriers	Policy#	Ded
Excess Layer 1	2/28/2022- 2/28/2023	Ea: \$15,000,000 Agg: \$15,000,000 Ea: \$10,000,000 Agg: \$10,000,000	The Ohio Casualty Insurance Company	ECO (23) 57718548	
Excess Layer 2	2/28/2022- 2/28/2023		Gemini Insurance Co.	CEX09604359-01	
Excess Layer 3	2/28/2022- 2/28/2023	Ea: \$15,000,000 Agg: \$15,000,000	Endurance American Specialty Insurance Co.	ELD30003990601	
CPPI (Professional & Pollution)	2/28/2022- 2/28/2023	Ea: \$10,000,000 Agg: \$10,000,000 Ret: \$250,000	Steadfast Insurance Co.	EOC 7560174-00	
Property & Equipment	2/28/2022- 2/28/2023	Listed: \$325,000 Unlisted: \$25,000 Leased or Rented Items: \$250,000	Zurich American Ins Co.	CPP0111634-07	\$5,000



March 25, 2022

Town of Highland Beach Town Hall 3614 South Ocean Blvd. Highland Beach, FL 33487

RE: Kaufman Lynn Construction RFQ No. 22-001 Fire Station #6 Construction Manager at Risk

To Whom It May Concern:

We are pleased to share with you our favorable experience and high regard for Kaufman Lynn Construction, Inc. Kaufman Lynn has a 30-year track record for outstanding performance on a wideranging scope of projects for public and private owners. We routinely receive positive feedback from bond holders regarding the company's ability to deliver high-quality projects on time and on budget.

Hartford Fire Insurance Company provides surety bonds on behalf of Kaufman Lynn Construction, Inc. for single projects over \$175 Million and an overall program in excess of \$600 Million. Kaufman Lynn has available bonding capacity in excess of \$350 Million.

Hartford Fire Insurance Company is A.M. Best rated A+ XV and listed on the Department of Treasury's Listing of Approved Sureties with an underwriting limitation of \$991,602,000 on a per bond basis. Hartford Fire Insurance Company is licensed to do business in the State of Florida.

Hartford Fire Insurance Company is prepared to consider providing on their behalf payment and performance bonds for the above referenced project in an amount equal to or greater than one hundred percent (100%) of the estimated construction cost. Our support is conditioned upon completion of the underwriting process, including satisfactory review of contract documents, confirmation of financing and our ongoing review of the operational and financial capacity of Kaufman Lynn Construction, Inc.

This letter is not an assumption of liability and is issued only as a prequalification reference request from our client. It should be understood that any arrangement for bonds is strictly a matter between Kaufman Lynn Construction, Inc., and Hartford Fire Insurance Company.

Sincerely. Kathleen M. Coen Attorney-in-Fact

# POWER OF ATTORNEY

Direct Inquiries/Claims to: THE HARTFORD BOND, T-11 One Hartford Plaza Hartford, Connecticut 06155 Bond Claims@thehartford.com call: 888-266-3488 or fax: 860-757-5835

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Agency Name: LOCKTON COMPANIES LLC Agency Code: 39-427620

Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
 Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
 Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
 Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
 Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
 Hartford Insurance Company, a corporation duly organized under the laws of the State of Indiana
 Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Indiana
 Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
 Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Indiana
 Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, up to the amount of Unlimited :

Kathleen M. Coen, Louis J. Bensinger, Gary J. Giulietti, Renee Hugar, Tammy L. Orehek, Holly Tallone, Julia Zalesky of BLUE BELL, Pennsylvania

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by  $\boxtimes$ , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on May 23, 2016 the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



Shelby Wiggins, Assistant Secretary



ss. Lake Mary



On this 20th day of May, 2021, before me personally came Joelle LaPierre, to me known, who being by me duly sworn, did depose and say: that (s)he resides in Seminole County, State of Florida; that (s)he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that (s)he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that (s)he signed his/her name thereto by like authority.



cione

Joelle L. LaPierre, Assistant Vice President

Jessica Ciccone My Commission HH 122280 Expires June 20, 2025

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of March 25, 2022

Signed and sealed in Lake Mary, Florida.



# Tab 7 EXHIBITS & ATTACHMENTS



#### LEED

We understand that Highland Beach Fire Station #6 will be built as a sustainably conscious project, built in an area of frequent public foot traffic and coastal environment considerations. Our team is prepared to achieve the goal of a sustainably conscious build. KL knows that "Green" solutions can greatly reduce the operating costs of a new facility and may be desirable even if they require higher initial costs. To find the best overall solutions for our clients, we start the process to sustainable design and construction with a 'question and answer' workshop with LEED accredited

in-house professionals and your staff. This conversation allows us to set meaningful and affordable goals and objectives. Whether the goal is to achieve LEED certification or not, we provide our clients a host of energy saving suggestions as well as alternative systems as part of Kaufman Lynn's Standard Operating Procedures.



Our team of 18 LEED Accredited Professionals and LEED Green Associates has experience evaluating strategies, implementing practices, finding resources and weighing cost/benefits for each option to blend budget decisions with energy efficient, environmentally-friendly construction.

**Kaufman Lynn has completed 27 LEED certified projects**, including LEED Silver and LEED Gold Projects. Some of our projects that have achieved LEED Certification are as follows:





MIRAMAR WEST CENTER



COCONUT CREEK PUBLIC WORKS BUILDING



HOLLYWOOD BEACH SAFETY COMPLEX



**BOCA RATON FIRE STATION #5** 





27 LEED Projects

# FIRE STATION EXPERTS

CITY OF HOLLYWOOD FIRE RESCUE STATION NO. 31

#### BUILDING SAFE COMMUNITIES





# **ABOUT US**

Since 1989, Kaufman Lynn Construction (KL) has built high-quality buildings and long-lasting client relationships. Headquartered in South Florida, KL has over 200 employees.

Guided by our values of Integrity, Ingenuity and Initiative, KL is committed to the success of our clients and our local community. KL's "client first" philosophy has resulted in a company culture that requires everyone to do whatever it takes to get the job done right.

We consistently deliver superior construction projects by relentlessly advancing each client's vision, beyond their expectations. You have our commitment and dedication to ensure the public trust is kept.

# **SUSTAINABILITY**

The Kaufman Lynn Construction team knows how to build sustainably and we are all about advancing green building initiatives. Even if the project doesn't call for any additional certifications, we build to an environmentally sustainable standard. Our team of construction professionals have delivered projects that have received various levels of LEED certifications.









# WE KNOW FIRE STATIONS



# **OUR EXPERIENCE**

Fire stations present unique challenges that not every commercial contractor has the expertise to address. As the leading fire station builder in South Fliorida, we have the experience to help construct the perfect building for firefighters, trucks, equipment and more.

From vehicle sizes, to living quarters, to lighting and flooring within the station, KL brings the knowledge gained from our successful fire station builds to every project. We create smart solutions for the firefighters, such as hot zones, circadian lighting and armor turf, to ensure their health and safety.

# **14** FIRE STATIONS IN SOUTH FLORIDA

KL works closely with each municipality, involving them from start to finish, in order to understand their goals so that we can exceed them and make sure every detail of the project is perfect. *The following page highlights our project experience.* 

# **LOCAL EXPERTS**

KL is a LOCAL South Florida based construction company that has a proven track record delivering fire station projects utilizing different methods such as CM at Risk, Design Build and Design Build Finance. We are a proactive partner and bring lessons learned allowing us to offer cutting edge solutions for every fire station project.

Having built 14 fire stations in South Florida, KL understands the nuances of these type of facilities and incorporate best practices to ensure every fire station functions from day one and works well for many decades. We inform and discuss important topics with our clients such as new, evolving technology that benefit the health of the firefighters. Hot zones, circadian lighting and armor turf are three main concepts that KL advises their clients about and which can be included in any fire station project.

# **TRUSTED BY LOCAL FIRE DEPARTMENTS**

Kaufman Lynn is a trusted contractor by many different fire departments in South Florida, some of which we have had the opportunity of building multiple fire station facilities for. Below are a few examples.













# IMPLEMENT HOT ZONES



# **ISSUE OF CARCINOGEN EXPOSURE**

The exposure to carcinogens is not restricted to the scene of the fire. Materials settle on the uniforms and equipment and are carried back to the station. To address the arrival of carcinogens in the building and prevent the inadvertent migration of contaminated materials within the structure, stations must be set up smarter.

## **CONTAIN THE CONTAMINANTS**

All spaces that house apparatus, tools, equipment and personal protective equipment (PPE) used in emergency responses belong in the HOT (*Red*) Zone. Cleaning and equipment washdown will occur in the HOT Zone in spaces that are convenient and purpose built. The apparatus bays, apparatus equipment storage, EMS storage, workroom, self-contained breathing apparatus (SCBA) storage rooms, PPE storage room, decontamination area with commercial laundry and extractor are all part of the HOT Zone.

# SEPARATE OCCUPANTS FROM CONTAMINANTS

We can create a healthy living and working environment by consolidating all living spaces in the COLD (*Green*) Zone. These spaces are arranged to serve individual functions without concern for contamination. The COLD Zone spaces include administrative spaces, offices, workrooms, meeting rooms and associated spaces. All public spaces like lobbies, community rooms and public toilets are also part of the COLD Zone. Finally, all living and sleeping spaces like the day room, dining room, kitchen, exercise room, bunkrooms, lockers, toilets, laundry and dedicated janitor closet are also included.

## **ADDITIONAL CONSIDERATIONS**

Common practices of storing the gear in open racks in the apparatus bays should be eliminated. This practice increases the exposure of the gear to further degradation by UV exposure and increased contamination by apparatus exhaust. It also allows the off-gassing of carcinogens into an open work environment, possibly including migration of the vapors into the living quarters.

# **CONTROL CROSSOVER BETWEEN ZONES**

To limit the exposure to contaminants within the HOT Zone, personnel movement between the HOT and COLD Zones should be controlled. Vestibules (*Yellow*) are a common method to provide a transition from one zone to another and can be closed off completely to separate the zones. This also allow the air systems to transition from one zone to another, reducing the chance of cross contamination from the HOT Zone to the COLD Zone.



# SLEEPING SOLUTIONS -



## **ISSUE OF SLEEP DEPRIVATION**

The lack of restful sleep can make firefighters more vulnerable to illness and stress related diseases. Lighting, sounds such as emergency alerts and temperatures within the facility can affect quality of sleep. Offering solutions that have been proven to help firefighters to relax and combat sleep interruption is of the upmost importance.

## **CREATING A COOL ATMOSPHERE**

The ability to control the temperature significantly affects satisfaction ratings from firefighters. That is why VRV (Variable Refrigerant Volume) systems are highly recommened for fire stations. This system cools and dehumidifies the common spaces and sleeping quarters and also allows temperature control at the individual room level. Additionally, VRV systems are energy efficient which can cut overall costs for the fire station.

## **PROTECTING SLEEPING FIREFIGHTERS**

Many fire stations use motion sensor detecctors inside shared dorm rooms. These sensors cause sleep disturbance for firefighters as many have reported that the lights turn on while they are tossing and turning in their sleep. To prevent and protect firefighters, removing these motion sensors is recommended to prevent these disruptions.

# HELPING FIREFIGHTERS WITH CIRCADIAN LIGHTING

Circadian lighting is a lighting system designed to tap into the proven cycles our bodies follow each day (our circadian rhythm), based on the position, duration, and color of natural sunlight at any given time. Disruption of the circadian rhythm can lead to sleep deprivation in addition to many other severe health problems.

Firefighting work schedules require 24-hour coverage, 7 days per 365 days each year with most firefighters working 24-hour shifts this type of work schedule, daytime sleep following night work difficult due to light streaming through windows. Circadian ligh a proven solution that can be implemented to mitigate the effect sleep deprivation and improve the quality of sleep you receive of shift, regardless of how little it is.

Installing circadian lighting in fire stations helps firefighters follo natural sleep/wake cycles of the human body which strategicall the power to positively affect their health, alertness, productivi more. *The image to the right shows the type of light needed the body's natual circadian rhythm:* exposure to bright, bluewhite light during the day, and softer, amber hues at night.

*The image below is an example of circadian lighting inside a building.* The lighting direction, timing, intensity, colour, wavelength and the aesthetic of light are all taken into consideration to create a solution that is suitable for the various tasks carried out within a building.





EXIL

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		8,000				
nting is ects of	in Ke	9 또 <b>7,000</b>				
on or off	Color Temperature		6,000	— Cloudy sky		
low the lly has ity, and <b>to keep</b>			Color Tempera	5,000	— Midday sun	
					4,000	— Moonlight — Morning/evening sun
					3,000	- Sunrise
-rich						2,000
		1,000				



## **APPARATUS BAY FLOORING**

The material for fire station flooring needs to be durable safe and easy to maintain. Fire station apparatus bay floors can be customized with line striping and different colors to show where the apparatus should be parked. Due to extensive use by personnel and vehicles, the material should provide a slip-resistant surface to ensure the safety of the firefighters, along with the fire trucks.

#### **FLOORING MATERIAL**

Abrasion and impact resistance are essential in apparatus bays where floors are subjected to everyday wear and tear including a high level of foot traffic, parking/repairing of trucks and the dropping of tools or heavy equipment. Epoxy coating creates seamless stretches of flooring that withstands grease, scuffing, moisture, and chemicals. It is easy to maintain and cleanse, with no frequent waxing, buffing, or polishing required.



The best solutions are eco-friendly as It does not erode and because it is not porous, harsh cleaning chemicals aren't needed. In addition, they are also extremely cost effective due to longevity and overall low maintenance.

# **DORM ROOM HVAC**

A key satisfaction factor for firefighters has proven to be the ability to control the temperature in their own space. The traditional system (VAV) is one that just enables the control of air flow volume. The newer and preferred system by firefighters is the VRV system that allow temperature control at the room level.

#### **VRV SYSTEM**

VRV systems are a very sophisticated technological air conditioning system that utilizes refrigerant only (the only material in the system), inverter compressors (which allows lowerpower consumption), multiple air handlers and the ability of modular expansions.

#### **VAV SYSTEM**

VAV (Variable air volume) systems supply air at a variable temperature and airflow rate from an air handling unit (AHU) and meet varying heating and cooling needs of different building zones. Unlike most other air distribution systems, VAV systems use flow control to efficiently condition each building zone while maintaining required minimum flow rates.

## **VEHICLE EXHAUST SYSTEMS**

Vehicle exhaust removal systems are a critical component in maintaining a fire station atmosphere that is free of the particulates and gases present in diesel engine emissions. These systems remove harmful exhaust fumes and effectively removes any threat to firefighters.

#### **DILUTION SYSTEMS**

Dilution ventilation supplies and exhausts large amounts of air to and from an area or building. It usually involves large exhaust fans placed in the walls or roof of a building. Dilution ventilation controls pollutants generated at a worksite by ventilating the entire workplace.

#### **HOSE BASED SYSTEMS**

The hose based system uses the increasingly familiar orange or yellow flexible hose, attaching directly to the apparatus exhaust pipe to capture the engine emissions before they can leave the vehicle's exhaust system. Typically, a pneumatic boot or a magnetic coupling attachment is used to connect the hose to the exhaust pipe. The contained emissions are routed out of the building using exhaust fans and ductwork.





# PROJECTS



**BOCA RATON FIRE RESCUE #5 CORAL SPRINGS FIRE RESCUE #43 CORAL SPRINGS FIRE RESCUE #95 HOLLYWOOD FIRE RESCUE #31** (W/ EOC)

**HOLLYWOOD FIRE RESCUE #5 HOLLYWOOD BEACH SAFETY #40** HOLLYWOOD FIRE TRAINING FACILITY LIGHTHOUSE POINT FIRE RESCUE #22 (W/EOC)

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MIAMI BEACH FIRE RESCUE #1
POMPANO BEACH FIRE ADMIN/EOC
OAKLAND PARK FIRE RESCUE #9
RIVIERA BEACH FIRE RESCUE #88
    (TEMPORARY FIRE ADMIN/ EOC)
```



# **RIVIERA BEACH FIRE RESCUE #87** (FIRE ADMIN/ EOC) **RIVIERA BEACH FIRE RESCUE #86**



"I have experience with five other GCs and none can match the highly competent professionalism of Kaufman Lynn. I give your firm high marks in every aspect of the construction process."

> **Thomas Wood Fire Chief City of Boca Raton**

"Kaufman Lynn demonstrated a focus on partnership and communication that not only occurred during construction but continued well after the consutruction was completed."

> **Alexander Hernandez Chief Building Official City of Coral Springs**

"Kaufman Lynn consistently delivers on their promises. Their scheduling and cost management during the construction process has been exceptional and taken the uncertainty out of the process."

> **Vernon Hargray City Manager City of Miramar**

"Kaufman Lynn has been an exemplary Contractor finishing projects on time and within budget. We have found everyone in the KL organization to be quality, cost conscious and focused on the City's goals."

> **Bob Wertz Senior Project Manager City of Hollywood**







Kaufman Lynn Construction, Inc. 3185 South Congress Avenue Delray Beach, FL 33445 561.361.6700

KaufmanLynn.com



#### TOWN OF HIGHLAND BEACH CONSTRUCTION MANAGEMENT AT-RISK PRE-CONSTRUCTION SERVICES AGREEMENT RFQ No. 22-001)

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement" or "Contract") is made and entered into this day of June 30, 2022 (the "<u>Effective Date</u>") by and between the **Town** of Highland Beach, Florida municipal corporation, 3614 South Ocean Blvd, Highland Beach, FL ("Town") and Kaufman Lynn Construction, Inc., a Florida Corporation organized and existing under the laws of the State of Florida, having its principal business office at 3185 S. Congress Avenue, Delray Beach, Florida ("Contractor" or "Construction Manager"). The Town and Contractor shall collectively be referred to as the "Parties", and each may individually be referred to as a "Party."

#### **RECITALS**

WHEREAS, the Town is desirous of constructed and/or renovating the existing Fire Station #6, which is located at 3614 South Ocean Boulevard, Highland Beach, Florida 33487, in order to provide a direct level of service to the Town's residents and visitors; and

WHEREAS, the Town advertised the Request for Qualifications 22-001; Fire Station #6 Construction Manager at Risk ("RFQ"), soliciting proposals from experienced and qualified firms to provide Construction Management At-Risk Services, in accordance with the terms, conditions and specifications contained in the RFQ ("Project"); and

WHEREAS, in response to the RFQ, Contractor timely submitted its Proposal and was evaluated by Town administration as the highest ranked responsive-responsible Respondent whose proposal, qualifications and references demonstrated to be the most advantageous to the Town in the procurement of the Project; and

WHEREAS, the Contractor has expressed the capability, willingness and expertise to perform the Project pursuant to this Contract; and

**WHEREAS**, the Mayor and Town Commission have authorized the Town Manager to enter into an agreement with Contractor for the provision of Construction Management At-Risk services for the Fire Station #6 Construction or Renovation; and

WHEREAS, the Town is seeking to engage the Contractor to perform certain preconstruction services related to the development of the Project, and the Contractor has recognized that the identified pre-construction services are essential for determining various aspects of the construction of the Fire Station.

**NOW THEREFORE**, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:



#### ARTICLE 1 – RECITALS

1.1 The recitals are true correct and are hereby incorporated into and made a part of this Agreement.

#### **ARTICLE 2 - SCOPE OF SERVICES**

2.1 The Contractor will be responsible for providing Pre-Construction c o n s u l t a t i o n s e r v i c e s d u r i n g t h e p r e c o n s t r u c t i o n phase. The Contractor's consultation services will be as set forth herein, or that has been delineated throughout the other Articles of the Agreement for this Pre-construction portion of the Project.

2.2 Starting on the Effective Date of this Agreement and continuing through the term of this Agreement, the Contractor shall consult with, advise, assist and make recommendations as part of the services (the "Services") provided to the Town, and all other consultants and design professionals for the Project, including, without limitation, the architect ("<u>Architect</u>"), interior designer and the mechanical, electrical, plumbing, civil and structural engineers (collectively, the "<u>Design Professionals</u>").

2.2.1 Participation in the review of Design Documents: The Contractor will review and make recommendations with respect to such factors as site conditions, foundations, selection of systems and materials, construction feasibility, costs, availability of labor and materials, time requirements for procurement, installation and construction. The reviews, recommendations, proposals and advice to be furnished by the Contractor as part of the Services hereunder shall not constitute the performance of professional services beyond those commonly provided by persons or entities similar to Contractor performing similar services in Florida. In no event shall the Contractor's Services be deemed to constitute the performance of professional services which are commonly provided by the Design Professionals or other engineers or consultants. All advice, proposals and recommendations furnished by the Contractor as part of the Services are subject to review and approval of the Town, Architect and other Design Professionals, as determined by the Town;

2.2.2 <u>Phasing /Logistics: The</u> Contractor shall prepare phasing and logistics plans for the Project and assist in the identification of the crane location, buckhoist location, delivery and drop off locations, as well as assist in identifying areas for parking and material lay-down;

2.2.3 <u>Value Engineering</u>: The Contractor shall evaluate the Project's various systems and materials and advise the Town as to their initial costs. The Contractor shall evaluate, and propose to the Town, alternative materials, systems construction methods and construction sequencing to achieve the most cost-effective means of implementing the Project's design requirements;

2.2.4 <u>Subcontractors</u>: The Contractor shall identify subcontractors and with the Town's consent, discuss the Project with such subcontractors in connection with major scopes of work for the Project;

2.2.5 <u>Initial Budget and Cost Consultation</u>: Based upon the information provided by the Town, the Contractor shall prepare and provide to Owner, for its review and approval, an initial total hard cost budget for the Project that includes, without limitation, the estimated cost of all materials, labor, services and equipment necessary for the entire construction of the Project, all insurance costs, bond premiums, construction contingency, and the contractor's general conditions, general requirements, overhead and profit;

2.2.6 <u>Scheduling</u>: The Contractor shall develop a preliminary construction schedule in P6 format (the "<u>Preliminary Schedule</u>"); and

2.2.7 <u>Long Lead-Time Items</u>: The Contractor shall advise the Town as to advance procurement requirements necessary to meet the Preliminary Schedule and/or realize cost savings. The Contractor will be obligated to provide the Town the advanced procurement requirements based upon the most current available information and will continue to up-date this information based on the existing and projected market conditions. The Contractor shall notify the Town should the market conditions cause unanticipated changes in delivery lead times.

2.3 The Services that the Contractor shall be providing to the Town pursuant to this Agreement will be set forth as part of the deliverables, which is scheduled below:

• 30% Design Development Budget – 4 weeks after the date Contractor receives the 30% Design Development Documents from the Architect;

• 50% Design Development Budget - 4 weeks after the date Contractor receives the 50% Design Development Documents from the Architect;

• GMP Proposal – 6 weeks after the date the Contractor receives the 100% Construction Documents from the Architect.

#### ARTICLE 3 – CONTRACT DOCUMENTS

3.1 The following documents are incorporated into and made a part of this Agreement (collectively referred to as the "Contract Documents"):

3.1.1 The Town's *Request for Qualifications No. 22-001, Fire Station #6 Construction Management At Risk* attached hereto by reference; and

3.1.2 The Contractor's response to the RFQ ("Qualifications"), attached hereto by reference.

3.2 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:

3.2.1 Specific written direction from the Town Manager or Town Manager's designee made in accordance with the Town Manager's authority pursuant to this Agreement;

- 3.2.2 This Agreement;
- 3.2.3 The RFQ; and

3.2.4 The Proposal.

#### **ARTICLE 4 - DEFINITIONS**

The following words, terms, and phrases, when used in this Agreement, shall have the following meanings, except when it is clear from the context that another meaning is intended:

4.1 *Architect/Engineer or A/E*: The "Architect/Engineer" or "A/E" shall mean that person or firm designated as the architect/engineer for the Project, or any portion thereof. Also referred to as the Consultant, this entity has entered into a separate agreement with the Town for design services for the Project. For purposes of this Agreement, the Architect/Engineer of record for the Project is PGAL, Inc..

4.2 *Budget*: The amount established by the Town to build this Project (i.e., "Construction Budget"). The Contractor herein acknowledges the Construction Budget established by the Town for this Project.

4.3 *Change Order*: A written document signed by the Parties authorizing an addition, deletion or revision to the pre-construction services performed pursuant to this Agreement; or an adjustment to the deliverable Schedule or compensation, issued on or after the effective date of the Agreement.

4.4 *The Town or Town*: The "Town" or "Town" shall mean the Town of Highland Beach, a Florida municipal corporation, having its principal offices at 3614 South Ocean Blvd, Highland Beach, Florida 33487, and may also be referred to as the "Town" in this Agreement. The Town, as a governmental entity, is subject to the availability of funds and annual appropriation of funds by its legislative body and other governmental authorities or sources of revenue, in an amount to allow continuation of its performance under this Agreement. In the event of lack of funding for this Agreement, or the Project subject to this Agreement, this Agreement may be terminated by the Town pursuant to the procedures set forth in this Agreement.

4.5 The Town Manager may approve contract amendments which shall not exceed the sum of Twenty-Five Thousand Dollars (\$25,000), or such other amount as may be specified by the Town of Highland Beach Code of Ordinances, in its Procurement Ordinance, as same may be amended from time to time.

4.6 *Claim*: A "Claim" is a demand, assertion, dispute or other such claim by one of the parties hereto arising out of or based upon the terms and conditions of this Contract.

4.7 *Contract Amendment*: A "Contract Amendment" shall mean a written order to the Construction Manager approved by the Town, as specified in this Agreement, and signed by the Town's duly authorized representative, authorizing a change in the pre-construction Services or the method and manner of performance thereof, or an adjustment in the fees or completion dates, as applicable, and executed by the Town, and the Contractor. Any Contract Amendments and/or Change Orders affecting changes to the Services shall be executed by the Town and by the Contractor.

4.8 Construction Manager's Pre-Construction Services Fee: The Construction Manager's Fee for pre-construction services, including the cost of time and materials expended in completion of its pre-construction services for this Project, is Sixty Thousand Dollars (\$60,000.00) as contemplated herein. Notwithstanding anything to the contrary, if the GMP Proposal is not accepted by the Town and this Agreement is terminated, the Construction Manager shall be entitled to receive only that portion of the Fee referenced herein, representing all Services performed to the date of termination relating to the Project, which will be a pro-rated monthly amount. The Construction Manager's Pre-Construction Fee shall be at the rate of ten thousand (\$10,000.00) per month, which shall not exceed six (6) months.

4.9 *General Contractor*: The term "General Contractor" shall refer to the Contractor, Kaufman Lynn Construction, Inc. The Contractor shall be duly licensed as a General Contractor pursuant to Chapter 489, Florida Statutes. The term "Construction Manager" shall be given the same meaning and may be used interchangeably with the term Contractor throughout this Contract.

4.10 *Laws*: The term "Laws" shall include all Federal, State, County and local laws, statutes, regulations, ordinances, rules and building codes applicable to the Project, including, without limitation, orders of any public authority having jurisdiction over the Project, building, labor, safety, licensing or environmental laws and local building codes, building standards and trade practices affecting the Project, as same may be amended from time to time.

4.11 *Memorandum of Changes*: The term "Memorandum of Changes" shall mean a written summary of the Construction Manager's recommended modifications to the Drawings and Specifications relating to the Project based on an evaluation of the Project requirements; on-site and off-site development; constructability requirements; and Project budget requirements; and a review of the design documents.

4.12 *Permitting Authority:* means in its singular or plural forms, the Town of Highland Beach, Palm Beach County, State of Florida and/or any other governmental body or agency having jurisdiction over the Project.

4.13 *Pre-construction Phase Services*: The term "Pre-construction Phase Services" shall mean the services which the Construction Manager shall perform during the design phase of the Project including, but not limited to, constructability analysis, value engineering recommendations, cost estimates, due diligence, pre-qualification of Subcontractor and suppliers, preparation and submittal of GMP proposal to the Town.

4.14 *Force Majeure*: "Force Majeure" shall mean any delay occasioned by superior or irresistible force(s) occasioned by violence in nature without the interference of human agency such as hurricanes, tornados, flood and loss caused by fire and other similar unavoidable casualties; changes in federal law, state or local laws, ordinances, codes or regulations, enacted after the date of this Agreement and having a substantial impact on the Project; other causes beyond the parties control; or by any other such causes which the Town and the Construction Manager decide in writing justify the delay.

## ARTICLE 5 – RELATIONSHIP OF TOWN AND CONSTRUCTION MANAGER

5.1. The Construction Manager accepts the relationship of trust and confidence established between it and the Town by this Agreement. The Construction Manager represents that it will furnish its best skill and judgment in performing the Contractor's Services and shall always act to further the interest of the Town in the expeditious completion of the Project, at the lowest responsible cost to the Town, and in strict accordance with this Contract and prudent and customary construction practices.

5.2. By signing this Agreement, the Construction Manager accepts a fiduciary duty with the Town and warrants and represents to the Town that the Construction Manager:

5.2.1. Has all licenses and certifications required by applicable law to perform the Contractor's pre-construction Services;

5.2.2. Is experienced in all aspects of preconstruction and construction planning for projects similar to the Project;

5.2.3. Will act in the Town's highest and best interest in performing the Contractor's services and the Services; and

5.2.4. That no employee or affiliate of the Construction Manager has been convicted of a public entity crime, fraud, theft, and/or property damage crime within the preceding thirty-six (36) months from the date of execution of this Agreement, pursuant to Section 287.133, Florida Statutes.

The Construction Manager acknowledges and agrees that the Town is relying on these representations and covenants as a material inducement to enter into this Agreement

## **ARTICLE 6 – DUTIES AND RESPONSIBILITIES**

6.1 The Contractor covenants to furnish its professional skill and judgment based on industry standards in furthering the interests of the Town. The Contractor agrees to furnish the Services set forth herein pursuant to industry standards in order to allow the Town to timely complete the Project in the most expeditious and economical manner consistent with the interests of the Town.

6.2 The Contractor shall become thoroughly familiar with the evolving architectural, civil, mechanical, plumbing, electrical, and structural plans, and specifications. The Contractor shall submit to the Town and Project Team such comments as may be appropriate concerning construction feasibility and practicality.

6.3 The Contractor shall advise on such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of local labor and materials, community relations and any other factors pertinent to saving time and cost.

6.4 The Contractor shall advise on such measures as appropriate to provide that construction requirements will be covered in the separate subcontracts performed without duplication or overlap, sequenced to maintain completion of all Services on schedule.

6.5 The Contractor shall inspect all materials delivered to the site during the Term of this Agreement and shall reject any materials that do not conform to the design documents, to the extent they exist at the time.

6.6 The Contractor shall cooperate with the Project Architect and endeavor to further the interests of the Town and the Project. The Construction Manager shall furnish Pre-Construction Phase Services in an expeditious and economical manner consistent with the interests of the Town and in accordance with the proposed Project Schedule.

### **ARTICLE 7 – PRE-CONSTRUCTION SERVICES PHASE FEE**

7.1 The Pre-Construction Phase Fee is the total compensation payable to the Construction Manager for the performance of Pre-Construction Phase Services for this Project. The Pre-Construction Phase Fee shall be Sixty Thousand Dollars (\$60,000.00).

7.2 The Construction Manager shall submit invoices based on the percentage of completion of the services, payable proportionally on a monthly basis based on the agreed to schedule approved by the Town. The Town shall make payment of undisputed amounts within thirty (30) days after receipt of an acceptable invoice, which shall be accompanied by sufficient supporting documentation and contain sufficient detail, to allow a proper audit of expenditures, should Town require one to be performed.

7.3 Except as otherwise authorized pursuant to Paragraph 7.5 below, the Construction Manager shall not be entitled to an increase in the Pre-Construction Phase Fee for any costs, expenses, liabilities, or other obligations arising from their performance of Pre-Construction Phase Services.

7.4 Any work performed for the Contractor by a Subcontractor will be pursuant to an appropriate agreement between the Contractor and Subcontractor which specifically binds the Subcontractor to all applicable terms and conditions of this Contract.

7.5 In the event that additional Pre-Construction Phase Services are required and approved by the Town in writing, the Construction Manager shall be entitled to additional compensation determined by one of the following:

7.5.1 A pre-determined lump sum amount; or

7.5.2 The stipulated hourly cost of the Construction Manager's employees or consultants who actually performs the Additional Services shall be as set forth in the schedule below, inclusive of all overhead and profit; or as otherwise agreed to by the Construction Manager and the Town prior to the performance of the requested Additional Services.

•	Executive	\$190.95
•	Senior Project Manager	\$144.28
•	Senior Estimator	\$117.55
•	Superintendent	\$140.37
•	Scheduling Manager	\$109.71

## ARTICLE 8 – PRE-CONSTRUCTION PHASE SERVICES

The Construction Manager's Pre-Construction Phase services shall commence upon the Effective Date and shall continue consistent with the time period set forth within Article 13 of the Agreement. The Construction Manager is not entitled to reimbursement for any costs incurred for Pre-Construction Phase Services performed before the Effective Date. The Pre-Construction Phase Services may overlap Construction Phase Services. The Construction Manager shall perform the following Pre-Construction Phase Services, in addition to those obligations set forth in Article 2.

### 8.1 <u>General Coordination</u>

8.1.1 The Construction Manager's Pre-Construction Phase Services team shall attend Project Team meetings with the Town, the Town's representatives, and the Project Architect at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent Project Team meetings are anticipated prior to the Town's acceptance of the GMP and during completion of the Construction Documents.

8.1.2 Provide a preliminary evaluation of the Project's proposed Scope of Work cost components and the Town's adopted Construction Budget related thereto.

8.1.3 Visit the site and inspect the existing on-site and off-site conditions, as well as perform preliminary due diligence investigation with regards to existing utilities available for the Project.

8.1.4 Participate as a member of the Project Team in the development of the Project facilities program, if such program has not been developed prior to the effective date of this Agreement.

8.1.5 Provide recommendations and information to the Project Team on: site usage and site improvements; building systems, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of the Construction Manager and Town's separate Contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the Project Schedule approved by the Town and the adopted Construction Budget.

8.1.6 Assist the Town, if needed, in selecting and directing the services of surveyors, soils engineers, existing facility surveys, testing and balancing, commissioning, environmental surveys or other special consultants to develop additional information for the design or construction of the Project.

8.1.7 At Town's request, attend public meetings and hearings concerning the development and progress of the Project.

### 8.2 <u>Constructability Program</u>

8.2.1 Implement and conduct a constructability program to identify and document Project cost and schedule savings opportunities, in accordance with accepted industry practices.

8.2.2 Prepare a "Constructability Report" that identifies items that in the Construction Manager's opinion may impact either the construction cost or schedule of the Project. The Constructability Report shall address the overall coordination of Project Drawings, Specifications, and details and identify discrepancies and lack of clarity that may generate cost overruns or delays for the Project. The Constructability Report shall be updated by the Construction Manager at least monthly, or sooner if necessary, during the Pre- Construction Phase.

8.2.3 Provide and implement a system for tracking questions, resolutions, decisions, directions, and other information matters that arise during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved by the Town and updated by the Construction Manager at least monthly, or more frequently as agreed upon by the Town and Contractor, commencing after Contractor submits the 50% Design Development Budget in accordance with Section 2.3, above.

## 8.3 Scheduling

8.3.1 Develop a critical path method schedule (CPM Schedule) for Project Team review and the Town's approval, that coordinates and integrates activities on the Project, including the Construction Manager's services, the Project Architect's design services, commissioning, the work of other consultants and suppliers, and the Town's activities with the anticipated construction schedules for other Contractors. The CPM Schedule must identify all major milestones through Project Final Completion. The Town agrees and acknowledges that the CPM will be a preconstruction schedule, and that it will not be sufficiently detailed for actual construction. The Contractor shall provide detailed CPM 30 days after the CMAR Agreement is executed.

8.3.2 The Construction Manager shall update the CPM Schedule, as needed, throughout the term of this Contract .

8.3.3 The CPM Schedule shall include other detailed schedule activities as directed by the Town including, but not limited to, Town-managed work under separate contracts such as equipment, furniture and furnishings, project security, property protection, life- safety systems, information, and computer technology systems.

### 8.4 Budget and Cost Reconciliation

8.4.1 The Construction Manager is responsible for preparing and updating all procurement and construction cost estimates and distributing them to the Project Team throughout the duration of this Agreement.

8.4.2 Provide estimated construction cost reports at the required stages of

completion of the schematic design, design development, and construction documents phases of the Project. The Construction Manager's reports for the design development and construction documents phases shall be detailed estimates derived from cost quantity surveys based on unit prices for labor, materials, overhead and profit, organized in current Construction Specifications Institute Division format for each portion of the work on the Project.

8.4.3 Provide continuous cost consultation services throughout the duration of this Agreement, including identification and tracking of decisions that affect the scope or quality of the Project and providing ongoing updates of their cost and budget impact. Advise the Project Team immediately if the Construction Manager has reason to believe that their most current estimate either exceeds the adopted Construction Budget or is not in line with the preliminary CPM Schedule requirements. If so, the Construction Manager shall prepare and submit to the Project Team reasonable strategies (solutions) for bringing the Project in line with the adopted Budget and proposed CPM Schedule.

### 8.5 Coordination of Design and Construction Documents

8.5.1 Review all Drawings, Specifications, and other Construction Documents as they are developed by the Project Architect during the schematic design, design development, and construction documents design phases of the Project.

8.5.2 Coordinate with the Project Team regarding the selection of materials, equipment, component systems, and types of construction to be used for the Project. Provide input and recommendations to the Project Team regarding proposed site layout, construction feasibility, availability of labor and materials, procurement time requirements, and construction sequencing.

8.5.3 Advise the Town of any error, inconsistency or omission discovered in the Drawings, Specifications, and other Construction Documents.

8.5.4 Advise Town regarding recommended adjustments to the Project scope, systems, or other options for keeping the Project cost within the adopted Budget.

8.5.5 Review the Construction Documents for compliance with all applicable laws, rules, and regulations and with Town requirements.

It is agreed and acknowledged by the Town that the performance of any portion of the Services required by this Section 8.5 shall be done by Contractor in its capacity as a licensed contractor, not as an architect, engineer, or other design professional. The quality of the Drawings, Specifications and Construction Documents is the responsibility of the Design Professionals. It shall also remain the responsibility of the Design Professionals to ensure that the Drawings, Specifications and Construction Documents are free of errors and omissions and that they are properly coordinated in accordance with the applicable standard of care.

### 8.6 <u>Construction Planning and Procurement Package Strategy</u>

8.6.1 Identify equipment or material requiring extended delivery times and advise Town on expedited procurement of those items. Advise Town and Project Architect on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by Town, and subject to Town's prior approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

8.6.2 Make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the soliciting of offers and awarding of construction subcontracts in a manner that promotes the interests of the Project and the Town. These recommendations may include, but are not limited to, phased or staged construction or multiple separate contracts. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, MWBE and/or DBE Contractor participation, and other factors.

8.6.3 Review the Construction Documents with the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractor or Town's separate Contractors.

8.6.4 Develop a procurement package strategy in coordination with the Project Team that addresses the entire scope of work for each phase and stage of the Project. In developing the procurement package strategy, the Construction Manager shall clearly identify all procurement packages that the Construction Manager intends to self-perform for review and approval by the Town. The Construction Manager's procurement package strategy shall be reviewed with the Project Team on a regular basis in order to promote the best interests of the Project and the Town.

8.6.5 Refine, update, and implement proposed MWBE and/or DBE subcontracting plans to promote diversity in the procurement of goods and services for the Project.

8.6.6 Advise Town of any tests to be performed and assist Town in selecting testing laboratories and consultants, if needed, without assuming direct responsibility for the work of such laboratories and consultants.

8.6.7 Construction Manager shall review the Construction Documents to ensure that they contain adequate provision for all temporary facilities necessary for performance of the work on the Project, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Project.

8.6.8 Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases. Make recommendations that minimize adverse effects of labor shortages.

8.6.9 Consult with and make recommendations to the Town on the acquisition schedule for fixtures, furniture and equipment, and coordinate with the Town as may be required to meet the Schedule.

## ARTICLE 9 – GUARANTTED MAXIMUM PRICE PROPOSAL

9.1 When the Parties agree that the design of the Project is sufficiently developed and documented to allow detailed pricing of its construction, the Construction Manager shall prepare and submit a Guaranteed Maximum Price (GMP) Proposal to the Town. The GMP Proposal must remain valid for a period not-to-exceed forty-five (45) days from submittal to the Town.

9.2 In developing the GMP Proposal, the Construction Manager shall coordinate efforts with the Project Architect to identify qualifications, clarifications, assumptions, exclusions, value engineering and any other factors relevant to establishment of a GMP. The Construction Manager shall review development of the GMP Proposal with the Town on an ongoing basis to address clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, and other matters relevant to the establishment of a GMP.

9.3 The GMP Proposal must include a written description of how it was derived that specifically identifies the clarifications and assumptions made by the Construction Manager in developing the GMP and the monetary amounts attributable to them. The GMP Proposal shall include, without limitation, a breakdown of Construction Manager's proposed General Conditions and Cost of the Work organized by trade, contingency amounts, Construction Manager's Fee, as well as the proposed construction schedule (calendar days duration), including milestones for Substantial Completion and Final Completion.

9.4 In the event that the Construction Documents are not complete, the GMP Proposal shall allow for reasonably expected changes and refinements in the Drawings and Specifications through completion, except for material changes in scope.

9.5 Included with its GMP Proposal, Construction Manager shall reference and incorporate the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project as developed at the time of the GMP Proposal and that are relevant to the establishment of the GMP.

9.6 The GMP Proposal and all supporting documents shall identify and describe all items, assumptions, costs, contingencies, schedules, and other matters necessary and relevant for proper execution and completion of the work on the Project and for establishment of the Guaranteed Maximum Price. The GMP Proposal and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality of material and workmanship shall prevail over all other interpretations.

9.7 In submitting the GMP Proposal, the Construction Manager represents that it will provide every item, system or element of work that is identified, shown, or specified in the GMP Proposal or the supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically excepted by the Town, or expressly qualified by the Construction Manager. Upon Town's

acceptance of the GMP Proposal, the Construction Manager shall not be entitled to any increase in the Guaranteed Maximum Price due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the Construction Documents or the supporting documents used to establish the GMP.

9.8 Town may accept or reject the GMP Proposal or attempt to negotiate its terms with the Construction Manager. In the event that the GMP Proposal is not accepted by the Town, then the Town may pursue other options including, but not limited to, the following:

a) Reject the GMP Proposal and request that the Construction Manager and Project Architect work together to develop solutions, including value engineering recommendations and other cost saving measures, to reconcile the proposed cost of the Project with the adopted Budget and to submit for review and approval by the Town, along with a revised GMP Proposal; or,

b) Reject the GMP Proposal, terminate this Agreement with the Contractor and take possession of the plans, specifications and other documents related to this Project. Moreover, the Town reserves the right to proceed with whichever course of action it considers to be in its best interest including, but not limited to, having the Project bid (priced) out and awarded to another firm. If so, the Contractor shall be compensated only for that percentage of their Pre-Construction Services Fee fully performed through the date of termination, which will be based upon the pro-rated monthly amount.

9.8.1 Should the Town elect option (a), above, Construction Manager shall be entitled to additional compensation beyond the original amount of this Agreement for additional preconstruction services which amount will be based upon (1) a lump sum value agreed to by the Town and Construction Manager; or (2) the hourly rates provided 7.5.2. In the event the additional pre-construction services proceed based upon hourly rates, the additional amounts shall be capped at, and shall not exceed, Ten Thousand Dollars (\$10,000.00) per month.

## ARTICLE 10 – TERM OF AGREEMENT

10.1 This Agreement shall commence on the Effective Date set forth above and shall remain in full force and effect until the earlier of the following occurs:

- The Parties' execution of a GMP contract for the construction of entire Project (the "Construction Management At-Risk Services Agreement") upon which time this Agreement shall be deemed terminated and cancelled, unless otherwise agreed by the Parties in writing;
- (ii) Either Party's termination of this Agreement in accordance with Article 22 below; or
- (iii) They shall not exceed threshold amount of \$60,000 has been attained for the Agreement.

10.2 In the event the Term of Agreement date is extended, regardless of whether delay is caused by any act or neglect of the Town or Force-Majeure Event, or is attributable to the Town, the Contractor's sole and exclusive remedy is an equal extension of time; *provided however*, that should the extension result in Contractor being required to provide

additional or extended Services beyond those initially contemplated by the parties under this Contract, Contractor shall be entitled to additional compensation in accordance with Section 7.5.2, above.

### **ARTICLE 11 – INDEPENDENT CONTRACTOR**

11.1 The Contractor has been procured and is being engaged by the Town as an independent the Contractor, and not as an agent or employee of the Town. Accordingly, the Contractor shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the Town, nor any rights generally afforded classified or unclassified employees of the Town, the Contractor further understands that Florida workers' compensation benefits available to employees of the Town are not available to the Contractor. Therefore, the Contractor agrees to provide workers' compensation insurance, as required by Florida law, for any employee or agent of the Contractor rendering Work to the Town under this Agreement.

### **ARTICLE 12 - CONFLICTS OF INTEREST**

12.1 The Contractor represents and warrants to the Town that it has not employed or retained any person or company employed by the Town to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

12.2 The Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the Town in connection with this Agreement has any personal financial interest, directly or indirectly, with Contractors or vendors providing professional services on projects assigned to the Contractor, except as fully disclosed and approved by the Town. The Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

## ARTICLE 13 - TERMINATION OF AGREEMENT AND DEFAULT

13.1 <u>Termination for Convenience</u>: In addition to other rights the Town may have at law and pursuant to this Contract with respect to cancellation and termination of the Contract, the Town may, in its sole discretion, terminate for the Town's convenience the performance of Services under this Contract, in whole or in part, at any time upon written notice to the Contractor. The Town shall effectuate such Termination for Convenience by delivering to the Contractor a Notice of Termination for Convenience, specifying the applicable scope and effective date of termination, which termination shall be deemed operative as of the effective date specified therein without any further written notices from the Town required. Such Termination for Convenience shall not be deemed a breach of the Contract and may be issued by the Town with or without cause.

Upon receipt of such Notice of Termination for Convenience from the Town, and except as otherwise directed by the Town, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:

13.1.1 Stop the Services specified as terminated in the Notice of Termination for

Convenience;

13.1.2 Promptly notify all Subcontractors (if any) of such termination, cancel all contracts and purchase orders to the extent they relate to the Services terminated to the fullest extent possible and take such other actions as are necessary to minimize demobilization and termination costs for such cancellations;

13.1.3 Immediately deliver to the Town all Project records, in their original/native electronic format (i.e., CAD, Word, Excel, etc.), any and all other unfinished documents, and any and all warranties and guaranties for Services, equipment or materials already installed or purchased;

13.1.4 If specifically directed by the Town in writing, assign to the Town all right, title and interest of Contractor under any contract, subcontract and/or purchase order, in which case the Town shall have the right and obligation to settle or to pay any outstanding claims arising from said contracts, subcontracts or purchase orders;

13.1.5 Place no further subcontracts or purchase orders for materials, services, or facilities, except as necessary to complete the portion of the Services not terminated (if any) under the Notice of Termination for Convenience;

13.1.6 As directed by the Town, transfer title and deliver to the Town (1) the work product created by the Services in progress, completed Services work product and other material produced or required for the Services terminated; and (2) the completed or partially completed Project records that, if this Contract had been completed, would be required to be furnished to the Town;

13.1.7 Settle any outstanding liabilities and termination settlement proposals from the termination of any subcontracts or purchase orders, with the prior approval or ratification to the extent required by the Town (if any); and

13.1.8 Complete performance of the Services not terminated (if any).

Upon issuance of such Notice of Termination for Convenience, the Contractor shall only be entitled to payment for the Services satisfactorily performed up until the date of its receipt of such Notice of Termination for Convenience, but no later than the effective date specified therein. Payment for the Services satisfactorily performed shall be determined by the Town in good faith, in accordance with the percent completion of the Services, less all amounts previously paid to the Contractor in approved Applications for Payment, and reasonable costs, if any, for canceling contracts and purchase orders with Subcontractors to the extent such costs are not reasonably avoidable by the Contractor.

13.2 <u>Termination of Contract for Cause</u>: The Town may terminate the Contractor for cause upon the occurrence of any breach of the Contract by the Contractor that the Town, in its sole opinion, deems substantial and material, following written notice to the Contractor and the failure to timely and properly cure to the satisfaction of the Town in the time period set forth herein. Upon the occurrence of the Town issuing a Notice of Termination for Cause to Contractor rendering termination effective immediately and may take any actions permitted pursuant to Florida law. All rights and remedies of the Town's Termination rights herein shall apply to all Defaults that are non-curable in nature, or that fail to be cured within the applicable cure period or are cured but in an untimely manner, and the Town shall not be obligated to accept such late cure.

## 13.3 Costs and Expenses:

Upon issuing a Notice of Termination for Cause, the Town shall have no obligation to pay Contractor, and the Contractor shall not be entitled to receive, any money until such time as the Services have been completed and the costs to complete the Services have been ascertained by the Town. In case such cost and expense are greater than the sum which would have been due and payable to the Contractor under this Contract for any portion of the Services satisfactorily performed, the Contractor shall be liable and shall pay the difference to the Town upon demand.

13.4 <u>Termination If No Default or Erroneous Default</u>: If, after a Notice of Termination for Cause is issued by the Town, it is thereafter determined that the Contractor was not in default under the provisions of this Contract, or that any delay hereunder was an Excusable Delay, the termination shall be converted to a Termination for Convenience and the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause contained herein. The Contractor shall have no further recourse of any nature for wrongful termination.

13.5 <u>Remedies Not Exclusive</u>: No remedy under the terms of this Contract is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute.

13.6 <u>Materiality and Non-Waiver of Breach</u>: Each requirement, duty, and obligation in this Contract is material. The Town's failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or Amendment of this Contract. A waiver shall not be effective unless it is in writing and approved by the Town. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and the failure of the Town to exercise its rights and remedies under this Article at any time shall not constitute a waiver of such rights and remedies.

Contractor Right to Terminate Contract or Stop Services: If the Project should be 13.7 stopped under an order of any court or other public authority for a period of more than sixty (60) days due to no act or fault of Contractor or persons or entities within its control, or if the Town should fail to pay the Contractor any material amount owing pursuant to an Approved Application for Payment in accordance with this Contract and after receipt of all supporting documentation required by this Contract, and if the Town fails to make such payment within sixty (60) days after receipt of written notice from the Contractor identifying the Approved Application for Payment for which payment is outstanding, then, unless the Town is withholding such payment pursuant to any provision of this Contract which entitles the Town to so withhold such payment, the Contractor shall have the right upon the expiration of the aforesaid sixty (60) day period to stop its performance of the Services, provided that Contractor has sent a Notice to Cure to the Town via certified mail, allowing for a 7 day cure period. In such event, Contractor may terminate this Contract and recover from Town payment for all Services executed and reasonable expense sustained (but excluding compensation for any item prohibited by any provisions of this Contract). In the alternative to termination, Contractor shall not be obligated to recommence the Services until such time as the Town shall have made payment to the Contractor in respect of such Approved Application for Payment, plus any actual and reasonable related demobilization and start-up costs evidenced by documentation reasonably satisfactory to the Town. No act, event, circumstance or omission shall excuse or relieve the Contractor from the full and

faithful performance of its obligations hereunder and the completion of the Services as herein provided for.

# **ARTICLE 14 - NOTICES**

14.1 All notices, demands, correspondence and other communications between the Parties shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows or as the same may be changed from time to time:

For Contractor:	Kaufman Lynn Construction, Inc. Attn: Ben Baffer, Senior Vice President 3185 S. Congress Ave. Delray Beach, FL 33445
With a copy to:	Joshua M. Atlas, Esq., Chief Legal Officer Kaufman Lynn Construction, Inc. 3185 S. Congress Ave. Delray Beach, FL 33445
То	Town of Highland Beach Attn: Town Manager 3614 South Ocean Blvd. Highland Beach, Florida 33487
With a copy to:	Town Attorney

14.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

14.3 In the event there is a change of address, and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

## **ARTICLE 15 – INDEMNIFICATION**

Contractor shall defend, indemnify and hold harmless the Town, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, to the extent caused by the negligent acts or omissions of the Contractor, its officers, directors, agents, partners, Subcontractor, employees and managers in the performance of Services under this Agreement.

15.1 Contractor shall be fully responsible to Town for all acts and omissions of the Contractor, its employees, Subcontractor (if any), suppliers (if any), or other persons directly or indirectly employed by its Subcontractor or suppliers, and any other persons or organizations performing or furnishing supplies under a direct or indirect agreement

with Contractor. Nothing in this Contract shall create any contractual relationship between Town and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of Town to pay or to cause the payment of any money due any Subcontractor, supplier, employee or agent except as may otherwise be required by law.

15.2 The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillments or discharge of such obligations.

15.3 If any Subcontractor, supplier, laborer, or materialmen of Contractor or any other person directly or indirectly acting for or through Contractor files or attempts to file a mechanic's or construction lien against the real property on which the Services is performed or any part or against any personal property or improvements or make a claim against any monies due or to become due from the Town to Contractor or from Contractor to a Subcontractor, for or on account of any Services, labor, construction services, material, equipment, or other items furnished in connection with the Work, Contractor agrees to satisfy, remove, or discharge such lien or claim at its own expense by bond, payment, or otherwise within ten (10) Days of the filing or from receipt of written notice from the Town.

15.4 Contractor has visited the Project site and is familiar with the local conditions under which the Services are to be performed and relieves the Town from any liability in regard to any matter not immediately brought to the attention of the Town.

15.5 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the Town's liability as set forth in Chapter 768, Florida Statutes. Additionally, the Town does not waive sovereign immunity, and no claim or award against the Town shall include attorney's fees, investigative costs or pre-judgment interest.

#### ARTICLE 16 – INSURANCE

16.1 Prior to the execution of this Agreement, the Contractor shall submit certificate(s) of insurance evidencing all required insurance coverage, as more particularly described in the RFQ, with the following minimum coverage:

16.1.1 Commercial General Liability - Minimum limit of \$1 Million per occurrence for bodily injury and property damage; this coverage shall also include personal, advertising injury and medical expense;

16.1.2 Professional Liability (Errors and Omissions) – With minimum limit of One Million Dollars (\$1,000,000.00) covering any errors or omissions of the Contractor in the performance of professional Services; the Self-Insured Retention shall not exceed \$250,000. If the self-insured retention (SIR) or deductible exceeds \$250,000, the Town reserves the right, but not the obligation, to review and request a copy of Contractor's most recent annual report or audited financial statement. Policies written on a "Claims- Made" basis shall include a Retroactive Date equal to or preceding the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life

of this Contract, the Contractor shall purchase a SERP with a minimum reporting period of not less than three (3) years. The requirement to purchase a SERP shall not relieve the Contractor of the obligation to provide replacement coverage. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims - made" form. If coverage is provided on a "claims - made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage;

16.1.3 Commercial Automobile Liability - Minimum limit of \$1 Million, covering any auto including owned, non-owned, hired or leased. In the event that the Contractor owns no automobiles, the Commercial Auto Liability requirement shall be amended allowing Contractor to maintain only Hired & Non-Owned Auto Liability. If vehicles are acquired throughout the term of the contract, the Contractor agrees to purchase "Owned Auto" coverage as of the date of acquisition. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or a separate Commercial Auto coverage form;

16.1.4 Worker's Compensation - As required by the State of Florida and in accordance with F.S.440, with statutory limits, and Employer's Liability with a minimum limit of \$1,000,000 per accident for bodily injury or disease;

16.1.5 Contractor shall not commence Services under this Agreement until after Contractor has obtained all of the minimum insurance coverage prescribed in the IFB and the policies of such insurance detailing the provisions of coverage have been received and approved by the Town;

16.1.6 The Town shall be named as an additional insured for claims caused in whole or in part by the Contractor, Subcontractor's (if any), employees or assignee's negligent acts or omissions during the term of this Agreement, except for workers compensation and professional liability. This provision shall not limit the Town's recovery for coverage under the Contractor's insurance policy;

16.1.7 Contractor shall not permit any Subcontractor to begin Services until after similar minimum insurance to cover Subcontractor has been obtained and approved;

16.1.8 In the event the insurance certificate provided by Contractor or Subcontractor (if any) indicates that the insurance shall terminate and lapse during the term of this Agreement, Contractor shall furnish, at least thirty (30) Days prior to expiration of the date of the insurance, a renewed certificates of insurance as proof that equal and like coverage and extension is in effect. Contractor shall not continue to perform the Services required by this Agreement unless all required insurance coverage remains in full force and effect; and

16.1.9 All insurance policies required of the Contractor shall be written

by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed managers upon whom service of process may be made in Palm Beach County, Florida.

### **ARTICLE 17 - FORCE MAJEURE**

A "Force Majeure Event" shall mean an act of God, act of governmental body 17.1 or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

17.2 If conditions are encountered at the Project site which are: 1)subsurface or otherwise concealed physical conditions which differ materially from those indicated in this Contract, or 2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in this Contract, then notice by the observing Party shall be given to the other Party promptly before conditions are disturbed, and in no event later than ten (10) Days after first observance of such conditions. The Project Manager will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for performance of any part of the Services, will recommend an equitable adjustment in the amounts due Contractor under this Contractor to the Term of Agreement or both. If the Project Manager determines that the conditions at the Project site are not materially different from those indicated in this Contract and that no change in the value of this Contract or to the Term of Agreement is justified, the Town shall so notify the Contractor in writing, stating the reasons. Claims by the Contractor in opposition to such determination must be made within ten (10) Days after the Town has given notice of the decision.

#### ARTICLE 18 – NON-EXCLUSIVE AGREEMENT

18.1 The Services to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the Town from engaging other firms to perform Services.

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the Project with the Town's own forces, or through the award of one or more separate contracts to one or more separate Contractors if the scope of the work changes during the term of this Agreement and the Town and Contractor are unable to agree as to the Contractor's timely performance of such changed scope of work. Additionally, the Town reserves the right to award separate contracts in connection with other portions of the Project or other construction or operations on the Project site under conditions identical or substantially similar to these.

#### **ARTICLE 19 – EMERGENCIES**

19.1 In any emergency affecting the safety of persons or property, the Contractor shall act at the Contractor's discretion, to prevent threatened damage, injury or loss.

### **ARTICLE 20 - TOWNSHIP OF DOCUMENTS**

20.1 All documents developed by Contractor under this Agreement shall be delivered to the Town by the Contractor upon completion of the Services and shall become property of the Town, without restriction or limitation of its use. The Contractor agrees that all documents generated hereto shall, unless exempt, be subject to the applicable provisions of the Public Records Law, under Chapter 119, Florida Statutes.

20.2 The Contractor shall additionally comply with Section 119.0701, Florida Statutes, including without limitation, the following conditions: (1) keep and maintain public records that ordinarily and necessarily would be required by the Town to perform this service; (2) provide the public with access to public records on the same terms and conditions as the Town would at the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from disclosure are not disclosed, except as authorized by law; (4) meet all requirements for retaining public records and transfer, at no cost to the Town, all public records in its possession upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from disclosure requirements; and (5) all electronically stored public records must be provided to the Town in a format compatible with the Town's information technology systems.

20.3 It is further understood by and between the Parties that any information, writings, tapes, reports or any other matter whatsoever which is given by the Town to the Contractor pursuant to this Agreement shall at all times remain the property of the Town and shall not be used by the Contractor for any other purposes whatsoever without the written consent of the Town.

20.4 In the event the Agreement is terminated, Contractor agrees to provide the Town all such documents within ten (10) Days from the date the Agreement is terminated.

#### **ARITICLE 21 - DISPUTES**

EXCEPT AS OTHERWISE PROVIDED IN THE CONTRACT, ANY DISPUTE ARISING UNDER THIS CONTRACT WHICH IS NOT DISPOSED OF BY AGREEMENT SHALL BE DECIDED BY THE TOWN MANAGER OF THE TOWN OF HIGHLAND BEACH, FLORIDA, WHO SHALL REDUCE HIS/HER DECISION IN WRITING AND FURNISH A COPY THEREOF TO THE CONTRACTOR. THE DECISION OF THE TOWN MANAGER OF THE TOWN OF HIGHLAND BEACH, FLORIDA, SHALL BE FINAL AND CONCLUSIVE UNLESS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE FRAUDULENT MADE IN BAD FAITH, OR NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

### **ARTICLE 22 - MISCELLANEOUS PROVISIONS**

22.1 The duties and obligations imposed by this Contract and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the obligations imposed upon Contractor and all of the rights and remedies available to Town thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available to any or all of them which are otherwise imposed or available to any or all of them which are otherwise imposed or available to any or all of them which are otherwise imposed or available to any or all of them which are otherwise imposed or available to any or all of them which are otherwise imposed or available by laws or regulations, by other provisions of this pre-construction Agreement, and the provisions of this Paragraph will be as effective as if repeated specifically in this Contract, and the provisions of this Paragraph will survive final payment and termination or completion of the Contract.

22.2 Contractor shall not assign or transfer the Contract or its rights, title or interests therein without Town's prior written approval. The obligations undertaken by Contractor pursuant to the Contract shall not be delegated or assigned to any other person or firm unless Town shall first consent in writing to the assignment. Violation of the terms of this Paragraph shall constitute a breach of Contract by Contractor and the Town may, at its discretion, cancel the Contract and all rights, title and interest of Contractor shall thereupon cease and terminate.

22.3 Contractor and its employees, volunteers and agents shall be and remain an independent contractor and not agents or employees of Town with respect to all of the acts and services performed by and under the terms of this Contract. This Contract shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties hereto.

22.4 Town reserves the right to audit the records of Contractor relating in any way to the work to be performed pursuant to this Contract at any time during the performance and term of the Contract and for a period of three (3) years after completion and acceptance by Town. If required by Town, Contractor agrees to submit to an audit by an independent certified public accountant selected by Town. Contractor shall allow Town to inspect, examine and review the records of Contractor at any and all times during normal business hours during the term of the Contract.

22.5 The remedies expressly provided in this Contract to Town shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of Town now or hereafter existing at law or in equity.

22.6 The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida.

22.7 Should any part, term or provision of this Contract be by the courts decided to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portion or provision shall not be affected thereby.

22.8 TOWN AND CONTRACTOR HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY ACTION, PROCEEDING, LAWSUIT OR COUNTERCLAIM BASED UPON THE CONTRACT, ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE CONSTRUCTION OF THE WORK, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR THE ACTIONS OR INACTIONS OF ANY PARTY.

22.9 **<u>Public Records</u>**: The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the Town as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the Town to perform the service.
- (b) Upon request from the Town's custodian of public records or designee, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the Town.

(d) Upon completion of this Contract, transfer, at no cost, to the Town all public records in possession of the Contractor or keep and maintain public records required by the Town to perform the service. If the Contractor transfers all public records to the Town upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records or designee, in a format that is compatible with the information technology systems of the Town.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION LANELDA GASKINS, TOWN CLERK, (561) 278-4548, 3614 S. OCEAN BLVD., HIGHLAND BEACH, FL 33487 OR AT LGASKINS@HIGHLANDBEACH.US. 22.10 **PALM BEACH COUNTY IG:** In accordance with Palm Beach County ordinance number 2011-009, the Contractor acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

## 22.11 Scrutinized Companies:

- A. Contractor certifies that it and its subcontractors (if any) are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the Town may immediately terminate this Contract at its sole option if the Contractor or any of its subcontractors are found to have submitted a false certification; or if the Contractor or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Contract.
- B. If this Contract is for one million dollars or more, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the Town may immediately terminate this Contract at its sole option if the Contractor, or any of its subcontractors are found to have submitted a false certification; or if the Contractor or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Contract.
- C. The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract.
- D. The Contractor agrees that the certifications in this section shall be effective and relied upon by the Town for the term of this Contract, including any and all renewals.
- E. The Contractor agrees that if it or any of its subcontractors' status changes in regard to any certification herein, the Contractor shall immediately notify the Town of the same.
- F. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

22.12 **<u>E-VERIFY</u>**. Pursuant to Section 448.095(2), Florida Statutes, the Contractor shall:

a. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

- b. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien;
- c. Maintain copies of all subcontractor affidavits for the duration of this Agreement;
- d. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- e. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and

f. Be aware that if the Town terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the Contractor may not be awarded a public contract for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the Town as a result of the termination of the Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Corporate Secretary or Witness:

"Contractor":

Witnessed By: 1

\_\_\_\_ Signed By:

Witness Name: Ben Baffer

Print Name:

Cheis Long

Witness Date: 8/30/22

Signature Date: 3/30/22

ATTEST:

Town of Highland Beach, a Florida municipal Corporation:

"Town"

022 Marshall Labadie arelda Gaskins, MMC

Town Clerk

Town Manager

APPROVED AS TO FORM AND

Legal sufficiency:

He. m By: \_\_\_\_

Glen J. Torcivia, Town Attorney

