

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 65-0098115

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;

ARTICLE 1 **GENERAL TERMS**

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.

ARTICLE 2 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's Proposal and its interview presentation and shall not be removed or replaced without the Town's consent. Upon written notice and with reasonable justification, the Town shall have the right to direct the Construction Manager to remove 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.

2.1.12.1 Sales 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.

2.1.13.1 Change 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.

2.1.14.1 Notice 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.

2.1.14.2 Safety 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 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

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.

7.1.2 Construction. 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's work. The Construction Manager shall, by appropriate agreement with each Trade Contractor, require each Trade Contractor to make payments to its subcontractors in a similar manner consistent with Florida Statutes.

7.1.4 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.

ARTICLE 8 **COST OF THE WORK**

8.1 Definition. The term "Cost of the Work" shall mean costs including "general conditions" costs, incurred in the Work as described and defined in Paragraph 8.2, below, and paid or incurred by 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.

ARTICLE 9 **CHANGES IN THE WORK**

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 Statutes. 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:

(Signature) _____

(Printed Name) _____

(Title) _____

STATE OF _____
COUNTY _____
OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ of _____, 2023 by _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ as identification.

(Notary Signature) _____

(Printed Name) _____

(Title) _____

(Serial #, if applicable) _____

(Seal)

Address for giving notices:

3185 S. Congress Avenue

Delray 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

Address for giving notices:

3614 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

**GENERAL CONDITIONS
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APPENDIX A

GENERAL CONDITIONS

GC 1 EFFECTIVE DATE/ENTIRE AGREEMENT

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 NOTICES

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 Work, if and only if the Town has exclusive use of the area. If the Town does not have exclusive use of the area, the warranty period shall extend for twelve months from substantial completion of the last portion 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 substituted 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 |
| <p><u>COMMERCIAL GENERAL LIABILITY:</u> Limit of Liability not less than:</p> <p>Additional Insured endorsement required:</p> | <p>\$2,000,000 per occurrence</p> <p>Yes</p> |
| <p><u>COMPREHENSIVE AUTO LIABILITY:</u> Limit of Liability not less than:</p> | <p>\$1,000,000 per occurrence</p> |
| <p><u>WORKERS COMPENSATION & EMPLOYER’S LIABILITY:</u> Coverage not less than:</p> <p>Employers Liability Limits:</p> | <p>Statutory</p> <p>\$100/500/100</p> |
| <p><u>AUTOMOBILE LIABILITY:</u> Limit of Liability not less than:</p> <p>Additional Insured endorsement required:</p> | <p>\$1,000,000 per occurrence</p> <p>Yes</p> |
| <p><u>UMBRELLA / EXCESS LIABILITY:</u> Limit of Liability not less than:</p> <p>General Aggregate</p> <p>Additional Insured endorsement required:</p> | <p>\$1,000,000 per occurrence</p> <p>\$5,000,000</p> <p>Yes</p> |
| <p><u>BUILDER’S RISK (if provided by CM):</u> Limit not less than: Endorsement to waive coverage termination from Occupancy Clause. Endorsement cover until final acceptance of the Project by Certificate of Occupancy by the Town. Additional Insured & Loss Payee endorsements required:</p> | <p>100% of the completed total insurable value of the Project.</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> |
| <p><u>POLLUTION LIABILITY:</u> Limit not less than:</p> | <p>\$1,000,000 per occurrence</p> |

| 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 EXPEDITING

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 Sub-subcontractors, 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 performed. 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 Statutes, 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

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:

Direct Labor Cost - Payment will be made for all manual classifications up to and including foremen, but shall not include superintendents, assistant superintendents, general foremen, office personnel, timekeepers and maintenance mechanics. The time charged to changes will be subject to the daily approval of 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.

Material Costs - 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.

Contract and Outside Service Costs - 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.

Tools and Equipment - Payment will be made for tools and equipment with a new cost of One Thousand Dollars, or less, each, only upon approval by the 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 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. Conformed Documents - 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. Progress Records - 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. Final Records – 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. Manuals - 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. Training: 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.

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 Contract, 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 CLEANING UP

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 SEVERABILITY

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 COMPLETION OF USE, WORK, PROJECT, OR CONTRACT, 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, lgaskins@highlandbeach.us 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

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Non-Conformance Report

Construction Manager's Daily Report

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**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 15-minute 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 or 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.