REQUEST FOR QUALIFICATIONS

FOR

CONSTRUCTION MANAGER AT RISK

TOWN OF HIGHLAND BEACH

FIRE STATION #6

RFQ No.: 22-001

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

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

REQUEST FOR QUALIFICATIONS FOR

FIRE STATION ADDITION/RENOVATION

CONSTRUCTION MANAGER at RISK

RFQ No.: 22-001

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

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

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

LOBBYING / CONE OF SILENCE

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

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

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

Purpose:

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

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

PRE-SUBMITTAL CONFERENCE AND SITE VISIT:

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

RFQ OPENING:

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

RFQ's will be opened in: TOWN HALL

COMMISSION CHAMBERS 3614 South Ocean Boulevard Highland Beach, FL 33487 (Unless otherwise designated)

Contact: Eric Marmer, Interim Finance Director

Telephone: (561) 278- 4548; Email: emarmer@highlandbeach.us

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

ATTENTION ALL INTERESTED RESPONDENTS:

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

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

REQUEST FOR QUALIFICATIONS

FOR

FIRE STATION #6

CONSTRUCTION MANAGER at RISK

RFQ No.: 22-001

Section 1 – SUBMITTAL INFORMATION

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

REQUEST FOR QUALIFICATIONS

FOR

FIRE STATION #6

CONSTRUCTION MANAGER at RISK

RFQ No.: 22-001

Section 2 – PROPOSAL SUBMISSION REQUIREMENTS

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

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

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

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

2. Firm's Qualifications (Maximum Potential Points – 30)

Proposer shall provide information using the attached References Form for three

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

For each reference project, provide the following information:

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

3. Qualifications of Proposer's Project Team (Maximum Potential Points – 30)

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

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

4. Project Approach, Demonstrated Skill Set, and Relevant Experience. (Maximum Potential Points – 20)

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

Indicate the location of the Proposer's office that will be responsible for providing the services required by the RFQ/Contract.

Office location within Palm Beach County – 10 points

Office location outside Palm Beach County but within 75 miles of project location – 5 points

Office location outside Palm Beach County greater than 75 miles of project location – 1 point

6. Preparation of the RFQ:

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

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

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

<u>Additionally</u>

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

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

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

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REQUEST FOR QUALIFICATIONS

FOR

FIRE STATION #6

CONSTRUCTION MANAGER at RISK

RFQ No.: 22-001

Section 3 – EVALUATION OF PROPOSALS

EVALUATION OF PROPOSALS

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

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

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

A. Evaluation Process

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

- based on the requirements of the RFQ and determine a shortlist a minimum of three (3) firms deemed to be the most qualified to perform the required services.
- 4. The Selection Committee will recommend to the Town Commission to negotiate contract terms with the top ranked firm or conduct discussions, interviews, or require presentations from the shortlisted firms. Upon completion of the discussions, interviews or presentations, the Committee may re-evaluate, re-rate and re-rank the firms based upon the evaluation criteria listed above.
- 5. After the interviews/presentations, the Selection Committee will submit the list of the top three proposers recommended as the most qualified to the Town Commission for ratification and approval. The Town Commission may approve the ranking or require public presentations by the top three firms to determine the final ranking.
- 6. Upon approval of the final ranking by the Town Commission, the Town will negotiate an agreement with the top-ranked firm based on the draft contract attached as part of this Request for Qualifications. The Town reserves the right to include additional provisions if the inclusion is in the best interest of the Town, as determined solely by the Town. Assuming the successful negotiation of an agreement, the final contract will be submitted to the Town Commission for its consideration and approval.
- 7. Should the Town fail to negotiate a satisfactory contract as determined to be fair and competitive with the highest-ranked firm, negotiations will formally be terminated. The Town will then undertake negotiations with the second-ranked firm. Should negotiations fail also with the second-ranked firm, then the third- ranked proposer will be notified for negotiations.

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REQUEST FOR QUALIFICATIONS FOR

FIRE STATION #6

CONSTRUCTION MANAGER at RISK

RFQ No.: 22-001

Section 4 – GENERAL CONDITIONS FOR PROPOSERS

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

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

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

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

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

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

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

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

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

18. CONTRACT AGREEMENT:

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

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REQUEST FOR QUALIFICATIONS

FOR

FIRE STATION #6

CONSTRUCTION MANAGER at RISK

RFQ No.: 22-001

SCOPE OF WORK:

GENERAL:

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

SCOPE OF WORK:

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

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

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

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

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

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

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

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

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

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Attachment "A" Town of Highland Beach INSURANCE ADVISORY FORM

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

TYPE (Occurrence Based Only)		MINIMUM LIMITS REQUIRED		
General Liability Commercial General Liability Owners & Contractor's Protective (OCP) Liquor Liability Professional Liability Employees & Officers Pollution Liability Asbestos Abatement Lead Abatement Broad Form Vendors Premises Operations Underground Explosion & Collapse Products Completed Operations Contractual Independent Contractors Broad Form Property Damage Fire Legal Liability	General Aggregate Products-Comp/Op Agg. Personal & Adv. Injury Each Occurrence Fire Damage (any one fire) Med. Expense (any one person)	\$ 1,000,000.00 \$ 1,000,000.00 \$ 1,000,000.00 \$ 1,000,000.00 \$ 50,000.00 \$ 5,000.00		
Automobile Liability Any Auto All Owned Autos Scheduled Autos Hired Autos Non-Owned Autos PIP Basic Intermodal	Combined Single Limit Bodily Injury (per person) Bodily Injury (per accident) Property Damage Trailer Interchange	\$ 500,000.00 to be determined to be determined to be determined \$ 50,000.00		
Garage Liability Any Auto Garage Keepers Liability	Auto Only, Each Accident Other Than Auto Only Each Accident Aggregate	\$ 1,000,000.00 \$ 100,000.00 \$ 1,000,000.00 \$ 1,000,000.00		
Excess Liability Umbrella Form	Each Occurrence Aggregate	\$ 5,000,000.00 \$ 5,000,000.00		
Worker's Compensation Employer's Liability	Each Accident Disease, Policy Limit Disease Each Employee	Statutory Limits \$ 100,000.00 \$ 500,000.00 \$ 100,000.00		
Property Homeowners Revocable Permit Builder's Risk		\$ 300,000.00 sed on Project Cost		

Other - As Risk Identified

to be determined

FORMS

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

PROPOSER ACKNOWLEDGEMENT

Submit RFQ's to:	Clerk's Office 3614 South Ocean Blvd. Highland Beach, FL 33487 Telephone: (561) 278-4548
RFQ Title:	"FIRE STATION #6 CONSTRUCTION MANAGER at RISK"
RFQ Number:	22-001
RFQ Due:	March 25, 2022, NO LATER THAN 2:00 P.M. (LOCAL TIME)
	ents will be publicly opened and recorded for acknowledgement of receipt, rwise, on the date and time indicated above and may not be withdrawn within such date and time.
All awards made as a codes of the Town.	result of this RFQ shall conform to applicable sections of the charter and
Name of Proposer: _	
Federal I.D. Number:	
A Corporation of the	State of
Telephone No.:	
Mailing Address:	
City / State / Zip:	
E-mail Address:	
	Authorized Signature

CONFIRMATION OF DRUG-FREE WORKPLACE

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

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

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

Authorized Signature

PALM BEACH COUNTY INSPECTOR GENERAL

ACKNOWLEDGMENT

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

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

CONTRACTOR NAME
Зу
Γitle:
Date:

CERTIFICATION PURSUANT TO FLORIDA STATUTE § 287.135

I,, on behalf of	certify
Print Name and Title	Company Name
thatdoes	not:
Company Name	
1. Participate in a boycott of Israel; and	
2. Is not on the Scrutinized Companies	that Boycott Israel List; and
3. Is not on the Scrutinized Companies	with Activities in Sudan List; and
4. Is not on the Scrutinized Companies	with Activities in the Iran Petroleum
Energy Sector List; and	
5. Has not engaged in business operation	ons in Syria.
notice, in writing, to the Contractor of the Tow Contractor shall have ninety (90) days following that the determination of false certification was	ed a material breach of contract. The Town shall provide vn's determination concerning the false certification. The receipt of the notice to respond in writing and demonstrate made in error. If the Contractor does not demonstrate that was made in error then the Town shall have the right to bursuant to Florida Statute § 287.135.
services in any amount if at the time of bidding of	e Town from: 1) Contracting with companies for goods or on, submitting a proposal for, or entering into or renewing a npanies that Boycott Israel List, created pursuant to Section ael; and
,	vices over \$1,000,000.00 that are on either the Scrutinized Energy Sector list, created pursuant to s. 215.473, or are
above in the section entitled "Contractor Name" the Scrutinized Companies that Boycott Israel Lactivities in the Iran Petroleum Energy Sector Lunderstand that pursuant to section 287.135, Fl subject the company to civil penalties, attorney's with the Town for goods or services may be ter to have submitted a false certification or has be	the Contractor, I hereby certify that the company identified does not participate in any boycott of Israel, is not listed on List, is not listed on either the Scrutinized Companies with List and is not engaged in business operations in Syria. I lorida Statutes, the submission of a false certification may sefees, and/or costs. I further understand that any contract minated at the option of the Town if the company is found the placed on the Scrutinized Companies with Activities in citivities in the Iran Petroleum Energy Sector List.
COMPANY NAME	SIGNATURE

TITLE

PRINT NAME

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

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

1. This sworn statement is submitted to the Town of Highland Beach (the "Town") by:
(Print individual's name and title)
For:
(Print name of entity submitting sworn statement)
Whose business address is:
And (if applicable) its Federal Employer Identification Number (FEIN) is:
(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement

- 2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), FLORIDA STATUTES, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
- 3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), FLORIDA STATUTES, means a finding of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
- 4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), FLORIDA STATUTES, means:
 - a. A predecessor or successor of a person convicted of a public entity crime; or
 - b. an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one (1) person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one (1) person controls another person.

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

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), FLORIDA STATUTES, means any natural person or entity organized under the laws of any state of the United States with the legal power to enter into a binding contract and which bids or apples to bid on contracts for the provision of goods or services let by a public entity or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity. 6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement (indicate which statement applies). Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. _The entity submitting this sworn statement, or one (1) or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted Bidder list. (Attach a copy of the final order) I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICE FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMONT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM. Date: Signature STATE OF Florida

COUNTY OF Palm Beach

The foregoing instrument was acknowled	dged before me this day of	
2022, by, as	(title) of	(name o
company), on behalf of	(type of entity).	
 □ who is personally known to me, □ who produced acknowledged before me that he execute 		
expressed.	d the same neery and voluntarity for the	purposes therein
(Notary Seal)		
	Signature	
	Print Name	
	NOTARY PUBLIC-STATE OF <u>F</u>	<u>L</u>
	My Commission Expires:	
	Commission No.	

ADDENDA ACKNOWLEGEMENT

TOWN OF HIGHLAND BEACH FLORIDA

RFQ TITLE: "FIRE	STATION #6 CONS	TRUCTION MANAGER at R	ISK"
RFQ NO.: 22-001			
DATE SUBMITTE	D:		
the Contract Form	, to furnish all materia		the Town of Highland Beach, in oordination, labor and services cuments.
Having studied the	documents prepared	by: The Town of Highland Bo	each
	form the work of this F nda which we have re	Project according to the Control ceived:	ract Documents and the
ADDENDUM	DATE	ADDENDUM	DATE
			
	NO ADDENDUM W	AS RECEIVED IN CONNEC	CTION WITH THIS
	RFQ		

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

SCHEDULE OF SUB-CONSULTANTS

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

Name of Sub-Consultant	Address of Sub-Consultant	License No.:	Contract Amount	Percentage (%) of Contract
Signature		Date:		
Title/Company				

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

REFEREN	CES FOR	
	(NAME O	F FIRM)
1. Owner/Client Name:		
Name and Location of P	roject:	
Scope of work (use blan	k sheet and attach if you need mo	ore space):
Project Completion Date	e or Anticipated Completion Date	<u> </u>
GMP Amount vs. Final 0		
Size of Project (gross so	դ. ft)։	
Phone:	Fax:	E-Mail:
2.Owner/Client Name:		
Name and Location of P	Project:	
Scope of work (use blan	k sheet and attach if you need mo	ore space):
Project Completion Date	e or Anticipated Completion Date	:
GMP Amount vs. Final 0	Cost:	
Size of Project (gross so	դ. ft)։	
Phone:	Fax:	E-Mail:
3. Owner/Client Name:		
Name and Location of P	roject:	
Scope of work (use blan	k sheet and attach if you need mo	ore space):
Project Completion Date	e or Anticipated Completion Date	:
GMP Amount vs. Final 0	Cost:	
Size of Project (gross so	ą. ft):	
Phone:	Fax:	E-Mail

TOWN OF HIGHLAND BEACH CONSTRUCTION MANAGEMENT AT-RISK SERVICES AGREEMENT

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

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and
entered into this day of, 2022 by and between the Town of Highland Beach , Florida municipal corporation, 3614 South Ocean Blvd, Highland Beach, FL ("Town") and, a Florida Profit Corporation organized and existing
under the laws of the State of Florida, having its principal business office at ("Contractor"). The Town and Contractor shall
collectively be referred to as the "Parties", and each may individually be referred to as a "Party".
RECITALS
WHEREAS , the Town is desirous of constructed and/or renovating the existing Fire Station #6, which is located at 3614 South Ocean Boulevard, Highland Beach, Florida 33487, in order to provide a direct level of service to the Town's residents and visitors; and
WHEREAS, the Town advertised the Request for Qualifications 22-001; Fire Station #6 Construction Manager at Risk ("RFQ"), soliciting proposals from experienced and qualified firms to provide Construction Management at-Risk Services, in accordance with the terms, conditions and specifications contained in the RFQ ("Project"); and
WHEREAS, in response to the RFQ, Contractor timely submitted its Proposal and was evaluated by Town administration as the highest ranked responsive-responsible Respondent whose proposal, qualifications and references demonstrated to be the most advantageous to the Town in the procurement of the Project; and
WHEREAS , the Contractor has expressed the capability, willingness and expertise to perform the Project pursuant to the Contract Documents; and
WHEREAS, the Mayor and Town Commission passed Resolution Number, approving the selection of Contractor and authorized the Town Manager and Town Attorney to negotiate and execute an agreement to accomplish the Project; and
WHEREAS, the Mayor and Town Commission passed Resolution, which authorized the Town Manager to enter into an agreement with Contractor for the provision of Construction Management at-Risk services for the Fire Station #6 Construction or Renovation.
NOW THEREFORE , in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE 1 – RECITALS

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

ARTICLE 2 - SCOPE OF WORK

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

ARTICLE 3 – CONTRACT DOCUMENTS

- 3.1 The following documents are incorporated into and made a part of this Agreement (collectively referred to as the "Contract Documents"):
 - 3.1.1 The Town's *Request for Qualifications No. 22-001, Fire Station #6 Construction Management At Risk* attached hereto by reference;
 - 3.1.2 Contractor's response to the RFQ ("Qualifications"), attached hereto by reference;

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

 3.1.4 Contractor's final negotiated and accepted proposal attached hereto as Exhibit "B";
 - 3.1.5 Preliminary Schedule of design and construction milestones attached hereto as Exhibit "C";
 - 3.1.6 The Town's General Conditions of the Construction Contract attached hereto by reference. Notwithstanding anything to the contrary in this Section or the Agreement, the General Conditions of the Construction Contract referenced in different sections of the Agreement are only for general reference, will be revised, and will only become a part of the Contract Documents at the time the Parties execute a GMP Amendment;
 - 3.1.7 The drawings, specifications, details and other documents developed by the Project Architect to describe the Project and accepted by the Town;
 - 3.1.8 The Guaranteed Maximum Price Proposal for this Project when accepted by the Town and executed by the parties in a form to be prepared by the Contractor and approved by the Town; and
 - 3.1.9 Any additional documents, which are required to be submitted by the Town or Consultant under this Agreement.

- 3.2 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:
 - 3.2.1 Specific written direction from the Town Manager or Town Manager's designee made in accordance with the Town Manager's authority;
 - 3.2.2 This Agreement;
 - 3.2.3 GMP Amendment;
 - 3.2.4 Change Orders;
 - 3.2.5 Specifications;
 - 3.2.6 Plans;
 - 3.2.7 The RFQ; and
 - 3.2.8 The Proposal.
- 3.3 The Contractor is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or error found in the RFQ prior to the Contractor submitting its Proposal or the right to clarify same, as stipulated in the RFQ, is waived.

ARTICLE 4 - DEFINITIONS

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

- 4.1 Architect/Engineer or A/E: The "Architect/Engineer" or "A/E" shall mean that person or firm designated as the architect/engineer for the Project, or any portion thereof. Also referred to as the Consultant, this entity has entered into a separate agreement with the Town for design services for the Project. For purposes of this Agreement, the Architect/Engineer of record for the Project is ______.
- 4.2 *Budget*: The amount established by the Town to build this Project (i.e. "Construction Budget"). The Contractor herein acknowledges that it has reviewed and accepted the Construction Budget established by the Town for this Project as being _____ prior to execution of this Agreement.
- 4.3 *Change Order*: A written document signed by the Parties authorizing an addition, deletion or revision to the Work performed on the Project pursuant to this Agreement and within the general scope of work; or an adjustment to the Time Schedule or compensation, issued on or after the effective date of the Agreement.
- 4.4 The Town or Town: The "Town" or "Town" shall mean the Town of Highland Beach, a Florida municipal corporation, having its principal offices at 3614 South Ocean Blvd, Highland Beach, Florida 33487, and may also be referred to as the "Town" in this Agreement. The Town, as a governmental entity, is subject to the availability of funds and annual appropriation of funds by its legislative body and other governmental authorities or sources of revenue, in an amount to allow continuation of its performance under this Agreement. In the event of lack of funding for this Agreement, or the Project subject to this Agreement, this Agreement may be terminated by the Town pursuant to the procedures set forth in this Agreement.

- 4.5 The Town Manager may approve contract amendments which shall not exceed the sum of Twenty-Five Thousand Dollars (\$25,000), or such other amount as may be specified by the Town of Highland Beach Code of Ordinances, in its Procurement Ordinance, as same may be amended from time to time.
- 4.6 Contractor Principal: The "Contractor Principal" shall be the person designated by the Construction Manager as its senior representative to the Town. The Contractor Principal shall perform those duties required in this Agreement and shall have the authority to commit and obligate the Contractor, and to fully act for the Contractor in all matters.
- 4.7 *Claim*: A "Claim" is a demand, assertion, dispute or other such claim by one of the parties hereto arising out of or based upon the terms and conditions of the Contract Documents.
- 4.8 Contract Amendment: A "Contract Amendment" shall mean a written order to the Construction Manager approved by the Town, as specified in this Agreement, and signed by the Town's duly authorized representative, authorizing a change in the Project or the method and manner of performance thereof, or an adjustment in the fees or completion dates, as applicable, and executed by the Town, Contractor and the A/E. Any Contract Amendments and/or Change Orders affecting changes to the Work shall be countersigned by the Contractor and the A/E.
- 4.9 *Construction Change Directive*: The term "Construction Change Directive" shall mean a written directive to effect changes to the Work, prepared by the A/E and executed by the Town.
- 4.10 *Construction Estimate*: The term "Construction Estimate" shall mean a cost estimate for the completion of the entire Scope of Work for the Project, which estimate shall include all components of the Cost of the Work, as well as the Construction Manager's Fee for the Project.
- - 4.11.1 The Construction Manager shall be liable for its services, responsibilities and liabilities under this Agreement, as well as the services, responsibilities and liabilities of any Subcontractor, and any other person or entity acting under the direction or control of the Construction Manager. When the term "Construction Manager" or "Contractor" is used in this Agreement, it shall be deemed to include any Subcontractor and any other person or entity acting under the direction or control of Contractor. Any Subcontractor retained by Construction Manager pursuant to this Agreement and the Project, must receive the prior written approval of the Town.
- 4.12 Construction Phase Services: The term "Construction Phase Services" shall mean and anticipates, in a subsequent amendment to this Agreement, and further, in the event the Town Commission approves the GMP, the services to be performed by or through the Construction Manager during the Construction Phase of the Project, including, without limitation, the Work for the Project, and such other services as called for by this Agreement and any

amendments hereto, or reasonably inferred there from.

- 4.13 *Construction Schedule*: The term "Construction Schedule shall mean a critical path schedule or other construction schedule, as defined and required by the Contract Documents.
- 4.14 Contingency: The term "Contingency" (i.e. "Project Contingency") shall mean a line item budget amount agreed to by the parties and included in the GMP Proposal intended to cover costs that may result from incomplete design, Town requested changes, unforeseen and unpredictable conditions, or uncertainties encountered during execution of the Project. The actual amount of the Contingency will de pend on the status of design, complexity and uncertainties of the component parts of the Project. The Contingency funds shall be used at the discretion of the Town and must first be approved by the Town prior to the Contractor using it. Any unused portion of the Contingency that remains unallocated upon Final Completion and after issuance of final payment for the Project, shall accrue to the benefit of the Town.
- 4.15 *Contract*: The term "Contract" means the contract formed by all of the Contract Documents, including this Agreement and any amendments hereto.
- 4.16 *Contract Documents*: The "Contract Documents" include Resolution No. _______, this Agreement, and all attachments, exhibits, and amendments thereto; and such other documentation as may be listed as an attachment and/or an exhibit to this Agreement. Upon execution of the GMP Amendment, the Contract Documents shall be expanded to include, in addition to those items listed above, those documents identified by the GMP Amendment and the attachments and exhibits thereto.
- 4.17 *Contract Time*: The time period agreed to by the parties and approved by the Town for the Construction Manager to successfully complete its services for this Project.
- 4.18 Day: Shall mean a consecutive "calendar day," unless specifically designated otherwise
- 4.19 *Drawings*: The "Drawings" shall refer to the graphic and pictorial provisions of the Work identified as the Drawings in the GMP Amendment; Change Order, or Construction Change Directive issued and executed in accordance with the Agreement, including without limitation, all notes schedule and legends on such Drawings.
- 4.20 *General Contractor*: The term "General Contractor" shall refer to the Contractor after acceptance by the Town of the GMP Amendment. The Contractor shall be duly licensed as a General Contractor pursuant to Chapter 489, Florida Statutes.

- 4.21 *Guaranteed Maximum Price*: The term "Guaranteed Maximum Price" or "GMP" shall mean the sum certain set forth in the GMP Amendment as the Project price that the Construction Manager guarantees not to exceed for the Project for all services within the Agreement, as same shall be amended upon acceptance of the GMP by the Town.
- 4.22 *GMP Amendment*: The term "GMP Amendment" shall mean the GMP Proposal for the Project, if any, accepted by the Town, in its sole discretion, which Amendment shall automatically become a part hereof upon the Town's and Construction Manager's execution of the same and shall establish, among other things, the GMP, the names of the Construction Manager's on sitemanagement and supervisory personnel for the Project; and the Contract Time for the Project.
- 4.23 *GMP Proposal*: The term "GMP Proposal" shall mean a proposal for completing the Project, which proposal shall include the proposed. Guaranteed Maximum Price for the construction of the Project, as provided by the Construction Manager and accepted by the Town based upon the Drawings and Specifications; the Contract Documents; and the Memorandum of Changes. The Town has no obligation to accept the GMP Proposal regardless of the amount or its relationship to estimates provided.
- 4.24 *Laws*: The term "Laws" shall include all Federal, State, County and local laws, statutes, regulations, ordinances, rules and building codes applicable to the Project, including, without limitation, orders of any public authority having jurisdiction over the Project, building, labor, safety, licensing or environmental laws and local building codes, building standards and trade practices affecting the Project, as same may be amended from time to time.
- 4.25 Memorandum of Changes: The term "Memorandum of Changes" shall mean a written summary of the Construction Manager's recommended modifications to the Drawings and Specifications relating to the Project based on an evaluation of the Project requirements; on and off-site development; constructability requirements; and Project budget requirements; and a review of the design documents; and the Drawings and Specifications; and the Contract Documents.
- 4.26 *Notice to Proceed:* A written notice given by the Town to the Contractor fixing the date on which the provision of Work shall commence on the Project and may set forth the date of Substantial Completion and final completion of the Project.
- 4.27 *Permitting Authority:* means in its singular or plural forms, the Town of Highland Beach, Palm Beach County, State of Florida and/or any other governmental body or agency having jurisdiction over the Project.
- 4.28 *Pre-construction Phase Services*: The term "Pre-construction Phase Services" shall mean the services which the Construction Manager shall perform during the design phase of the Project including, but not limited to, constructability analysis, value engineering recommendations, cost estimates, due diligence, pre-qualification of Subcontractor and suppliers, conducting bid openings, preparation and submittal of GMP proposal to the Town.

- 4.29 *Project Team*: The term "Project Team" shall mean the Town, Construction Manager, Project Architect and its sub-consultants, plus other participants as authorized by the Town and other consultants, if any, hired by the Town to assist in completion of the Project.
- 4.30 *Schedule of Values*: The term "Schedule of Values" shall mean the schedule of values, setting forth the detailed cost breakdown, including labor, materials and taxes, of the GMP set forth in the applicable GMP Proposal, the sum of which shall not exceed the GMP.
- 4.31 *Scope of the Work*: The term "Scope of the Work" shall mean all services, labor, materials equipment, operations and construction management services that are indicated in, or reasonably inferable from the Contract Documents.
- 4.32 *Specifications*: The "Specifications" consist of any and all written requirements for materials, equipment, construction systems, standards and workmanship for the Work which are identified as the Specifications in the GMP Amendment, Contract Amendment(s), or Construction Change Directive(s) issued and executed in accordance with the Agreement.

4.33 Subcontractor

- 4.33.1 A "Subcontractor" is a person or entity which has a direct contract with the Construction Manager to perform or supply a portion of the Work and the term includes such Subcontractor's authorized representatives. The Construction Manager shall obtain prior written approval of the Town prior to changing or modifying the Subcontractor and other professional consultants. Any such services performed by any Subcontractor shall be passed through to Town without additional charge by the Contractor. All such work shall be itemized on invoices from such Subcontractor, showing work performed and charges incurred. Notwithstanding anything in this Section or the Agreement to the contrary, for all additional costs incurred by subcontractors, and duly authorized by the Town in writing, the Contractor shall be entitled to include a fee at the same percentage negotiated in the GMP Amendment, its bond costs, and its insurance costs and shall provide supporting documentation of increased bonding and insurance coverage to the Town.
- 4.33.2 The Construction Manager represents that it has made and will make reasonable investigation of all Subcontractor to be utilized in the performance of work under this Agreement to determine that they possess the skill, knowledge and experience necessary to enable them to perform the services required. Nothing in this Agreement shall relieve the Construction Manager of its prime and sole responsibility for the performance of the Work under this Agreement.
- 4.33.3 All rates, multipliers and any other fees charged by any Subcontractor shall be not more than those rates, multipliers and other fees in any contracts that any such Subcontractor may have either with the Town directly or as a Subcontractor under some other Town agreement or more than what is typically charged in the industry.
- 4.33.4 Construction Manager shall bind each and every approved Subcontractor to the terms stated in this Section and shall require the proper licensing of such Subcontractor.

- 4.33.5 If any of the services outlined in this Agreement are furnished by Construction Manager by obtaining the services of Subcontractor, Construction Manager shall provide Town with proposals and contracts between the Subcontractor and Construction Manager outlining the services to be performed and the charges for same, together with any other documentation required by Town.
- 4.34 Substantial Completion: The term "Substantial Completion" is as defined in the Contract Documents, as same may be amended. It is that stage in the progress of the Work when the Project is sufficiently complete in accordance with the Contract Documents, the Town can utilize the Project for its intended purpose.
- 4.35 Substantial Completion Date: The "Substantial Completion Date" shall mean the date which the A/E certifies to the Town by means of a certificate of Substantial Completion as the date when the Construction Manager has achieved substantial completion of the Project or any phase thereof in accordance with the Town's General Conditions of the Contract Documents and applicable laws and the Town of Highland Beach's Building Department issues a Temporary Certificate of Occupancy (TCO). Notwithstanding the preceding, if a situation arises beyond the control of the Contractor, and the issuance of a Certificate of Temporary Occupancy (TCO) is granted by the Building Department, then the Town may deem at its sole and reasonable discretion that the Project or any phase thereof has been Substantially Completed.
- 4.36 *Substitutions*: A Town-approved deviation from the brand or type of materials products or equipment is specified in the Construction Documents, as accomplished herein.
- 4.37 *Taxes*: The term "Taxes" shall mean all taxes related to the performance of the Work or any portion thereof, including but not limited to, all sales, consumer, use, occupational, excise, social security, unemployment compensation and similar taxes.
- 4.38 Work: The term "Work" means all supervision, labor materials and equipment required by the Contract Documents to be provided by or through the Construction Manager for the entire Project and all other services necessary to fulfill the Construction Manager's obligations hereunder to perform the Scope of the Work, including, as the context may require, any portion of the Work with respect to the Project. The uncapitalized term work is used in its ordinary sense.
- 4.39 *Worksite*: The precise Project locations as designated by the Town, where Work is to be done by Contractor or its Subcontractor under this Agreement, in accordance with the terms, conditions and specifications contained in the Contract Documents.
- 4.40 Force Majeure: "Force Majeure" shall mean any delay occasioned by superior or irresistible force(s) occasioned by violence in nature without the interference of human agency such as hurricanes, tornados, flood and loss caused by fire and other similar unavoidable casualties; changes in federal law, state or local laws, ordinances, codes or regulations, enacted after the date of this Agreement and having a substantial impact on the Project; other causes beyond the parties control; or by any other such causes which the Town and the Construction Manager decide in writing justify the delay. Provided, however, that market conditions, labor conditions, construction industry price trends, and similar matters which normally impact on the bidding process shall not be considered a Force Majeure.

- 4.41 *Value Engineering*: Value Engineering is a project evaluation technique used during the design process that seeks to reduce costs and/or increase value by analyzing the functional requirements of a project's materials, methods, components and subsystems consistent with specified performance, reliability, maintainability, aesthetic, safety, and security criteria to ensure that it provides the best use of available project funds.
- 4.42 *Final Completion:* Final Completion refers to that stage in the Project when all Work has been completed, the Town has taken beneficial occupancy, all punch lists have been completed, all as-built drawings, operations and maintenance manuals, warranties and other Project records have been delivered, all waivers and releases have been negotiated and executed, all consents of surety to final payment have been delivered, and all other requirements of this Agreement relating to Final Completion have been met, in accordance with the Contract Documents as certified by the Project Architect and the Town, so that Final Payment to the CM can be issued by the Town.

ARTICLE 5 – RELATIONSHIP OF TOWN AND CONSTRUCTION MANAGER

- 5.1. The Construction Manager accepts the relationship of trust and confidence established between it and the Town by this Agreement. The Construction Manager represents that it will furnish its best skill and judgment in performing the Contractor's services and the Work and shall always act to further the interest of the Town in the expeditious completion of the Project, at the lowest responsible cost to the Town, and in strict accordance with the Contract Documents and prudent and customary construction practices.
- 5.2. By signing this Agreement, the Construction Manager accepts a fiduciary duty with the Town and warrants and represents to the Town that the Construction Manager:
 - 5.2.1. Has all licenses and certifications required by applicable law to perform the Contractor's services and the Work;
 - 5.2.2. Is experienced in all aspects of preconstruction and construction planning for projects similar to the Project;
 - 5.2.3. Will act in the Town's highest and best interest in performing the Contractor's services and the Work; and
 - 5.2.4. That no employee or affiliate of the Construction Manager, including all Subcontractor, suppliers, at any tier, has been convicted of a public entity crime, fraud, theft, and/or property damage crime within the preceding thirty-six (36) months from the date of execution of this Agreement, pursuant to Section 287.133, Florida Statutes.

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

ARTICLE 6 – DUTIES AND RESPONSIBILITIES

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

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

- 6.2 Contractor covenants to furnish its professional skill and judgment based on industry standards in furthering the interests of the Town. Contractor agrees to furnish efficient business administration and superintendence based upon industry standards to complete the Project in the most expeditious and economical manner consistent with the interests of the Town.
- 6.3 Contractor shall become thoroughly familiar with the evolving architectural, civil, mechanical, plumbing, electrical, and structural plans and specifications. Contractor shall submit to the Town and Project Team such comments as may be appropriate concerning construction feasibility and practicality.
- 6.4 Contractor shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of local labor and materials, community relations and any other factors pertinent to saving time and cost.
- 6.5 Contractor shall take such measures as appropriate to provide that construction requirements will be covered in the separate subcontracts performed without duplication or overlap, sequenced to maintain completion of all Work on schedule.
- 6.6 Contractor shall supervise and direct the Work, using the highest quality established by industry standards. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement, unless Contract Documents give other specific instructions concerning these matters.
- 6.7 Contractor shall be responsible to the Town for the acts and omissions of the Contractor's employees, Subcontractor and their agents and any employees and other persons performing portions of the Work under contract with the Contractor.
- 6.8 Contractor shall inspect all materials delivered to the site and shall reject any materials that do not conform to the Contract Documents.
- 6.9 Contractor shall employ sufficient, competent personnel who shall be in attendance at the Project site during the performance of the Work.
- 6.10 Contractor shall arrange for all Worksite facilities necessary to enable the Contractor, Subcontractor, and Project Manager to perform their respective duties in the management, conduct, inspection, and supervision of Work.
- 6.11 Contractor shall provide Project administrative functions including but not limited to the following:
 - 6.11.1 Develop and implement a procedure for review, processing, and payment of invoices by Subcontractor for progress and final payments;

- 6.11.2 Determine when the Work or designated portions thereof are ready for the Substantial Completion inspection;
- 6.11.3 Monitor in order to provide notice to the Town that the Project is ready for final inspection, and secure and transmit to the Project Manager, all required guarantees, affidavits, releases, Bonds and waivers, manuals, record Drawings, and maintenance books as are applicable; and
- 6.11.4 Keep full and accurate records of all costs incurred and items billed in connection with the performance of the Work, which records shall be open to audit by the Town or its authorized representative during performance of the Work and until three (3) years after final payment.
- 6.12 Contractor shall be the single point of interface with all Subcontractor for the Town and all of its agents and representatives.
- 6.13 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 6.14 Contractor shall develop and maintain a program to ensure quality control of the Work. Contractor shall supervise the Work of all Subcontractor providing instructions to each when their Work does not conform to the requirements of the Contract Documents and shall continue to exert its influence and control over each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. The Town shall be the final judge of performance and acceptability.
- 6.15 Contractor shall perform the Work in accordance with the Contract Documents. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Town, it shall assume full responsibility for such Work, and shall bear the attributable costs.
- 6.16 All inspections shall be made for conformance with the applicable building codes, compliance with Drawings and specifications, and quality. Costs for any re-inspections of Work found defective and subsequently repaired shall be borne by the Contractor.
- 6.17 Contractor warrants and accepts that any and all repair work required at any phase of the Project, when caused by Contractor or Contractor's subcontractors, shall be deemed the responsibility of the Contractor at no additional cost to the Town.
 - 6.17.1 The Contractor shall develop for the Town an approval process for Project specific procedures manual detailing the entire Project process, including at minimum the following:
 - a) The RFQ and all corresponding forms and attachments;
 - b) This Agreement;

- c) The GMP Amendment and all corresponding forms and attachment;
- d) All Contract Documents, which include, Project Specifications, Construction Managers Proposal, Qualifications, and Assumptions, Construction Managers Salary and Wake Schedule, Project Schedule; Onsite Management and Supervisory Schedule; and Schedule of Values;
- e) Construction coordination, scheduling, communication and documentation procedures among the Contractor, the Architect/Engineer, Subcontractor(s), sub consultant(s), and other departments or organizations who require coordination with and/or input into the Work;
- f) Project reports (bi-weekly and final report);
- g) Requests for Information;
- h) Contract Amendment(s) process;
- i) Shop Drawing submittal/product data and samples; and
- i) Project closeout/commissioning.

Said procedures manual shall be presented no later than with first application for payment.

- 6.18 If the Town elects to "fast-track" or develop the Project in multiple phases, the Construction Manager shall organize and perform its services as appropriate for each phase. Each phase of the Project may have a unique schedule for completion and a specific GMP Proposal, at the Town's sole discretion.
- 6.19 The Contractor shall cooperate with the Project Architect and endeavor to further the interests of the Town and the Project. The Construction Manager shall furnish Pre-Construction Phase Services and Construction Phase Services and complete the Project in an expeditious and economical manner consistent with the interests of the Town and in accordance with the Project Schedule.

ARTICLE 7 – INTENTIONALLY OMITTED

<u>ARTICLE 8 – PRE-CONSTRUCTION PHASE SERVICES</u>

The Construction Manager's Pre-Construction Phase services shall commence upon the date specified in a Notice to Proceed with Pre-Construction Phase Services issued by Town and shall continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Construction Manager is not entitled to reimbursement for any costs incurred for Pre-Construction Phase Services performed before issuance of the Notice to Proceed. Pre-Construction Phase Services may overlap Construction Phase Services. The Construction Manager shall perform the following Pre-Construction Phase Services.

8.1 General Coordination

8.1.1 The Construction Manager's Pre-Construction Phase Services team shall attend Project Team meetings with the Town, the Town's representatives, and the Project Architect at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent

Project Team meetings are anticipated prior to the Town's acceptance of the GMP and during completion of the Construction Documents.

- 8.1.2 Provide a preliminary evaluation of the Project's proposed Scope of Work cost components and the Town's adopted Construction Budget related thereto.
- 8.1.3 Review and understand the standards and requirements in Town's General Conditions of the Construction Contract and perform all services in accordance with those standards and requirements.
- 8.1.4 Visit the site and inspect the existing on-site and off-site conditions, as well as perform preliminary due diligence investigation with regards to existing utilities available for the Project.
- 8.1.5 Participate as a member of the Project Team in the development of the Project facilities program, if such program has not been developed prior to the effective date of this Agreement.
- 8.1.6 Provide recommendations and information to the Project Team on: site usage and site improvements; building systems, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of the Construction Manager and Town's separate Contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the Project Schedule approved by the Town and the adopted Construction Budget.
- 8.1.7 Assist the Town, if needed, in selecting and directing the services of surveyors, soils engineers, existing facility surveys, testing and balancing, commissioning, environmental surveys or other special consultants to develop additional information for the design or construction of the Project.
- 8.1.8 At Town's request, attend public meetings and hearings concerning the development and progress of the Project.

8.2 Constructability Program

- 8.2.1 Implement and conduct a constructability program to identify and document Project cost and schedule savings opportunities, in accordance with accepted industry practices.
- 8.2.2 Prepare a "Constructability Report" that identifies items that in the Construction Manager's opinion may impact either the construction cost or schedule of the Project. The Constructability Report shall address the overall coordination of Project Drawings, Specifications, and details and identify discrepancies and lack of clarity that may generate

cost overruns or delays for the Project. The Constructability Report shall be updated by the Construction Manager at least monthly, or sooner if necessary, during the Pre-Construction Phase.

8.2.3 Provide and implement a system for tracking questions, resolutions, decisions, directions and other information matters that arise during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved by the Town and updated by the Construction Manager at least monthly, or sooner if necessary, during the Pre-Construction Phase.

8.3 Scheduling

- 8.3.1 Develop a critical path method schedule (CPM Schedule) for Project Team review and the Town's approval, that coordinates and integrates activities on the Project, including the Construction Manager's services, the Project Architect's design services, commissioning, the work of other consultants and suppliers, and the Town's activities with the anticipated construction schedules for other Contractors. The CPM Schedule must identify all major milestones through Project Final Completion.
- 8.3.2 The Construction Manager shall update the CPM Schedule, as needed, throughout the Pre-Construction and Construction Phases of the Project.
- 8.3.3 The CPM Schedule shall include other detailed schedule activities as directed by the Town including, but not limited to, Town-managed work under separate contracts such as equipment, furniture and furnishings, project security, property protection, life-safety systems, information and computer technology systems.

8.4 Budget and Cost Reconciliation

- 8.4.1 The Construction Manager is responsible for preparing and updating all procurement and construction cost estimates and distributing them to the Project Team throughout the duration of the Project.
- 8.4.2 Provide estimated construction cost reports at the required stages of completion of the schematic design, design development, and construction documents phases of the Project. The Construction Manager's reports for the design development and construction documents phases shall be detailed estimates derived from cost quantity surveys based on unit prices for labor, materials, overhead and profit, organized in current Construction Specifications Institute Division format for each portion of the Work.
- 8.4.3 Provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the scope or quality of the Project and providing ongoing updates of their cost and budget impact. Advise the Project Team immediately if the Construction Manager has reason to believe that their most current estimate either exceeds the adopted Construction Budget or is not in line with the preliminary CPM Schedule requirements. If so, the Construction Manager shall prepare and submit to the Project Team reasonable strategies (solutions) for bringing the Project in line with the adopted Budget and proposed CPM Schedule.

8.5 Coordination of Design and Construction Contract Documents

- 8.5.1 Review all Drawings, Specifications, and other Construction Documents as they are developed by the Project Architect during the schematic design, design development, and construction documents design phases of the Project.
- 8.5.2 Coordinate with the Project Team regarding the selection of materials, equipment, component systems, and types of construction to be used for the Project. Provide input and recommendations to the Project Team regarding proposed site layout, construction feasibility, availability of labor and materials, procurement time requirements, and construction sequencing.
- 8.5.3 Advise Town of any error, inconsistency or omission discovered in the Drawings, Specifications, and other Construction Documents.
- 8.5.4 Advise Town regarding recommended adjustments to the Project scope, systems or other options for keeping the Project cost within the adopted Budget.
- 8.5.5 Review the Construction Documents for compliance with all applicable laws, rules and regulations and with Town requirements.

8.6 Construction Planning and Procurement Package Strategy

- 8.6.1 Identify equipment or material requiring extended delivery times and advise Town on expedited procurement of those items. Advise Town and Project Architect on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by Town, and subject to Town's prior approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.
- 8.6.2 Make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the soliciting of offers and awarding of construction subcontracts in a manner that promotes the interests of the Project and the Town. These recommendations may include, but are not limited to, phased or staged construction or multiple separate contracts. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, MWBE and/or DBE Contractor participation, and other factors.
- 8.6.3 Review the Construction Documents with the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractor or Town's separate Contractors.

- 8.6.4 Develop a procurement package strategy in coordination with the Project Team that addresses the entire scope of Work for each phase and stage of the Project. In developing the procurement package strategy, the Construction Manager shall clearly identify all procurement packages that the Construction Manager intends to self-perform for review and approval by the Town. The Construction Manager's procurement package strategy shall be reviewed with the Project Team on a regular basis and revised throughout the buyout of the Project in order to promote the best interests of the Project and the Town.
- 8.6.5 Refine, update and implement proposed MWBE and/or DBE subcontracting plans to promote diversity in the procurement of goods and services for the Project.
- 8.6.6 Advise Town of any tests to be performed and assist Town in selecting testing laboratories and consultants, if needed, without assuming direct responsibility for the work of such laboratories and consultants.
- 8.6.7 Construction Manager shall review the Construction Documents to ensure that they contain adequate provision for all temporary facilities necessary for performance of the Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.
- 8.6.8 Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases. Make recommendations that minimize adverse effects of labor shortages.
- 8.6.9 Consult with and make recommendations to the Town on the acquisition schedule for fixtures, furniture and equipment, and coordinate with the Town as may be required to meet the Schedule.

8.7 Bidding Phase

- 8.7.1 <u>Prequalification Plan</u> The Contractor shall prepare and submit a Subcontractor's prequalification plan for review and approval by the Project Team. The Contractor shall submit their list of pre-approved Subcontractor for each element of the Work for review and approval by the Project Team. The Town reserves the right to reject any Subcontractor proposed by the Contractor for this Project.
- 8.7.2 Any claims, objections or disputes arising out of the prequalification plan or list are the sole responsibility of the Contractor. The Contractor shall hold harmless, indemnify, and defend the Town, its employees, agents, and representatives in any matter arising out of the prequalification plan and/or the Subcontractor list, except where the sole cause of the matter is a Town directed decision on this specific matter.

- 8.7.3 Scope of Work The Contractor shall receive subcontract proposals which, when combined with the work the Contractor intends to do with its own forces, shall represent the entirety of the Scope of Work required of this Agreement.
- 8.7.4 Pre-Bid Conferences The Contractor shall schedule and conduct pre-bid conferences for Subcontractor, vendors and suppliers interested in participating in this Project. The Contractor shall coordinate the scheduling of such pre-bid conferences with the Project Team members.
- 8.7.5 Subcontractor Bidding The Contractor shall properly advertise and schedule in coordination with the Project Team the opening, review and award of sealed bids to qualified responsive and responsible Subcontractor. Said bids from Subcontractor shall be in writing and shall be opened and reviewed in conjunction with the Town's representative and the Project Architect.

<u>ARTICLE 9 – GUARANTTED MAXIMUM PRICE PROPOSAL</u>

- 9.1 When the Parties agree that the design of the Project is sufficiently developed and documented to allow detailed pricing of its construction, the Construction Manager shall prepare and submit a Guaranteed Maximum Price (GMP) Proposal to the Town. The GMP Proposal must remain valid for a period not-to-exceed ninety (90) days from submittal to the Town.
- 9.2 In developing the GMP Proposal, the Construction Manager shall coordinate efforts with the Project Architect to identify qualifications, clarifications, assumptions, exclusions, value engineering and any other factors relevant to establishment of a GMP. The Construction Manager shall review development of the GMP Proposal with the Town on an ongoing basis to address clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, and other matters relevant to the establishment of a GMP.
- 9.3 The GMP Proposal must include a written description of how it was derived that specifically identifies the clarifications and assumptions made by the Construction Manager in developing the GMP and the monetary amounts attributable to them. The GMP Proposal shall include, without limitation, a breakdown of Construction Manager's proposed General Conditions and Cost of the Work organized by trade, contingency amounts, Construction Manager's Fee, as well as the proposed construction schedule (calendar days duration), including milestones for Substantial Completion and Final Completion.
- 9.4 In the event that the Construction Documents are not complete, the GMP Proposal shall allow for reasonably expected changes and refinements in the Drawings and Specifications through completion, except for material changes in scope.
- 9.5 Included with its GMP Proposal, Construction Manager shall provide two complete, bound sets of the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project as developed at the time of the GMP Proposal and that are relevant to the establishment of the GMP. The bound supporting documents shall be referenced in and incorporated into the GMP Proposal.

- 9.6 The GMP Proposal and all supporting documents shall identify and describe all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work and for establishment of the Guaranteed Maximum Price. The GMP Proposal and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality of material and workmanship shall prevail over all other interpretations.
- 9.7 In submitting the GMP Proposal, the Construction Manager represents that it will provide every item, system or element of Work that is identified, shown or specified in the GMP Proposal or the supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically excepted by the Town. Upon Town's acceptance of the GMP Proposal, the Construction Manager shall not be entitled to any increase in the Guaranteed Maximum Price due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the Construction Documents or the supporting documents used to establish the GMP.
- 9.8 The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement must be clearly and conspicuously identified to the Town in writing and specifically accepted by the Town. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by the Town and the terms of this Agreement and its attachments, the terms of the Agreement and its attachments shall control.
- 9.9 Town may accept or reject the GMP Proposal or attempt to negotiate its terms with the Construction Manager. In the event that the GMP Proposal is not accepted by the Town, then the Town may pursue other options including, but not limited to, the following:
 - a) Reject the GMP Proposal and request that the Construction Manager and Project Architect work together to develop solutions, including value engineering recommendations and other cost saving measures, to reconcile the proposed cost of the Project with the adopted Budget and to submit for review and approval by the Town, along with a revised GMP Proposal; or,
 - b) Reject the GMP Proposal, terminate this Agreement with the Contractor and take possession of the plans, specifications and other documents related to this Project. Moreover, the Town reserves the right to proceed with whichever course of action it considers to be in its best interest including, but not limited to, having the Project bid (priced) out and awarded to another firm. If so, the Contractor shall be compensated only for that percentage of their Pre-Construction Services Fee fully performed through the date of termination.
- 9.10 Upon acceptance by the Town of the GMP Proposal in writing, both parties shall execute the GMP Proposal and the terms of the GMP Proposal, including the Guaranteed Maximum Price

and the supporting documents, shall become part of the Contract between the Town and the Construction Manager.

- 9.11 Following acceptance of the GMP Proposal by the Town, the Construction Manager shall continue to monitor the development of the Construction Documents so that, when complete, the Construction Documents adequately incorporate and resolve all qualifications, assumptions, clarifications, exclusions and value engineering issues identified in the GMP Proposal. During the Construction Documents stage, the Construction Manager and the Project Architect shall jointly deliver a monthly status report to the Town describing the progress on the incorporation of all qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the establishment of the GMP into the Construction Documents. The monthly status report shall also include an updated start-to-finish project schedule that encompasses the Project Architect's activities, the Contractor's activities, and the Town's commissioning and occupancy activities, short-term schedules, and production rates for key elements of the Project as determined by the Town.
- 9.12 The Parties may agree to convert the GMP to a lump sum contract amount at any time after the Construction Manager has received bids or proposals from trade Contractors or Subcontractor for the performance of all major elements of the Work. In preparing a lump sum conversion proposal, the General Contractor must provide the following information:
 - a) The stage of completion of the Project;
 - b) The trade packages that have been completely bought out;
 - c) The trade packages remaining that have not been bought out;
 - d) A complete line item breakdown of the calculations used to establish a lump sum amount based on the GMP Schedule of Values;
 - e) An accounting of all savings amounts that are to be returned to the Town as part of the lump sum calculation; and
 - f) Any other Project information requested by the Town.
- 9.13 The Construction Manager shall document the actual Cost of the Work at buyout as compared to the Guaranteed Maximum Price Proposal and shall report this information to the Town monthly throughout the Construction Phase.

<u>ARTICLE 10 – CONSTRUCTION PHASE SERVICES</u>

The Construction Phase shall be deemed to commence upon the date specified in a signed Notice-to-Proceed issued by the Town after approval of the GMP Proposal and shall continue until Final Completion of all Work. The Pre-Construction Phase Services may overlap Construction Phase Services. The Construction Manager shall not incur any Subcontractor costs for construction of the Work prior to issuance by Town of written authorization to commence such Work. The Construction Manager shall perform the following Construction Phase Services.

10.1. Construction Obligations Generally

10.1.1. The Contractor shall designate and maintain at all times during the course of the Work a Project superintendent. Upon execution of this Agreement, Contractor shall notify the A/E in writing of the superintendent's name, address, and telephone number. Contractor's superintendent will be in charge of the operations of Contractor in the

performance of the Work, but only Contractor's Vice Presidents and/or President are authorized to bind Contractor and to accept any notice.

10.1.2. Contractor shall provide administrative, management and related services to coordinate, schedule, supervise, and inspect the activities and responsibilities of the Subcontractor with each other and with those of Contractor, Town and the A/E. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under Contractor. The Contractor shall transmit to the A/E requests for interpretations of the meaning and intent of the Contract Documents and assist in the resolution of questions that may arise consistent with the Contract Documents and utilizing information from the Subcontractor, Contractor shall coordinate the sequence of construction and assignment of space in areas where the Subcontractor are performing Work.

10.1.3. Contractor shall schedule and conduct a preconstruction meeting and weekly meetings at the Project Site to discuss such matters as procedures, progress, and scheduling. Unless otherwise directed by Town, Contractor shall prepare and promptly distribute minutes to Town, the A/E and, as necessary, Subcontractor.

10.1.4. S cheduling; Records

10.1.4.1. Utilizing the Project Schedule, Contractor shall periodically (but no less than monthly) update the Project Schedule, incorporating the activities of the Subcontractor on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products requiring long lead time and procurement. The Project Schedule shall show portions of the Project having completion priority. Contractor shall update and reissue the Project Schedule as required to show current conditions. If an update indicates that the previously approved Project Schedule or significant milestones thereon may not be met, Contractor shall recommend corrective action to Town and the A/E. If such delay is the result of the fault or neglect of Contractor or any Subcontractor or supplier, Contractor shall implement such corrective action without additional cost to Town.

10.1.4.2. Contractor shall record the progress of the Project. The Contractor shall submit written progress reports to Town and A/E including information of each Subcontractor and each Subcontractor's Work, as well as the entire Project, showing percentages of completion. Contractor shall keep a daily log containing a record of weather, each Subcontractor's work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as Town may reasonably require.

10.1.5. Contractor shall construct the Project and perform all Work in a good and workmanlike manner and in strict accordance with the Contract Documents, using only new materials and skilled workmen. All material must be of the specified quality, and equal to the approved samples, if samples have been submitted. Contractor shall supervise and

direct the Work, using Contractor's best skill; attention and judgment without limitation, the failure to comply with the requirements of this subparagraph shall be a material breach of the Contract.

- 10.1.6. It shall be the duty of Contractor to call the A/E's attention to ambiguities, conflicts, errors or omissions in the Contract Documents of which Contractor knew or a similarly situated Contractor reasonably should have known and request instructions before proceeding with the Work. If Contractor fails to request such clarification and proceeds with construction where such an ambiguity, conflict, error or omission is present, Contractor shall do so at its own risk and shall receive no extra compensation if such construction does not comply with the intent of the A/E and must, therefore, be removed and replaced at the sole cost of Contractor, in other words, the Contractor's cost to remove and replace the noncompliance Work shall not be a reimbursable Cost of the Work.
- 10.1.7. Any Work not strictly conforming to the requirements of the Contract Documents shall be considered defective. All defective Work or material shall be removed from the premises by Contractor, whether in place or not, and shall be replaced with new and satisfactory Work or material, in such manner as Town may direct at its sole discretion, and at the sole cost and expense of Contractor, in other words, the Contractor's cost to remove and replace the defective Work shall not be a reimbursable Cost of the Work. All material and workmanship of whatever description shall be subject to the inspection of, and rejection by Town, if not in strict conformance with the Contract Documents or any portion thereof.
- 10.1.8. The use of the words "or equal" in the Specifications following the name of any manufacturer, vendor or proprietary product will mean that, in the opinion of the Town, articles or materials which are offered as a substitute are equal in quality and performance to the articles or materials specified. Contractor must submit requests for substitution to Town, and will not proceed with the installation or use any proposed substitution without written permission from the A/E.
- 10.1.9. On all questions concerning the acceptability of material, machinery and classifications of material, execution of the Work, conflicts of interest of Contractor performing of related Work, and the determination of costs, the decision of the A/E shall be final and binding upon all parties, if consistent with the Contract Documents.
- 10.1.10. Contractor shall immediately correct any defective or imperfect Work, which may be discovered by any Person before final payment under this Agreement. Such correction and/or replacement shall be performed without extra charge or time extension of the Project Schedule, notwithstanding that it may have been overlooked in previous inspections. The Town's inspection or failure to inspect the Work or any part thereof shall not relieve Contractor from any obligation to perform the Work as specified in the Contract Documents.
- 10.1.11. At least forty-eight (48) hours in advance of the start of construction, Contractor shall advise all residents and businesses in the immediate vicinity of the Project and/or that are potentially affected by the contemplated activity of the type of Work that is

to be undertaken and its approximate duration. Contractor shall take all necessary steps to minimize the duration of any adverse effect.

- 10.1.12. In the event that the Work is likely to cause interruption of service to the surrounding residents, the Contractor shall request written approval from the Town's representative and shall notify the affected residents in writing of the pending interruption at least forty-eight (48) hours prior to the scheduled interruption. Contractor shall take all necessary steps to minimize the duration of any such interruption.
- 10.1.13. Access to adjacent properties, cross streets or use of streets scheduled for improvement must be reasonably maintained and fully re-established at the end of each workday.
- 10.1.14. Contractor shall maintain dust abatement activities for the duration of the Project, as may be required or necessary, including weekends and holidays, including, without limitation, through implementation of the following measures:
 - 10.1.14.1. Contractor shall maintain adequate moisture levels in the surface materials to eliminate blowing dust from these materials; and
 - 10.1.14.2. All haul trucks, whether involved in delivery or removal activities, shall be covered and/or tarped in order to avoid the loss of material from trucks while being transported due to winds or the movement of the truck.
- 10.1.15. Protection of Work and Cleaning Up. Contractor shall be responsible for the care of all Work until its completion and final acceptance, and Contractor shall, at its own expense, replace damaged or lost material and repair damaged parts of the Work, or the same may be done by Town at Contractor's expense, and Contractor and its sureties shall be liable therefore. Contractor shall remove from the vicinity of the completed Work all plant equipment and materials belonging to Contractor or used under Contractor's direction during construction. Contractor shall clean up all waste or excess materials within the established work limits within the Project so as to make a neat and workmanlike finish to the entire Project, and in the event of Contractor's failure to remove said materials, the same may be removed by Town at the expense of Contractor, and Contractor and its sureties shall be liable therefore. All new concrete construction that becomes broken or shows evidence of cracks shall be completely replaced at Contractor's expense subject to the standards set forth in the Contract Documents. Under no circumstances will patch Work be performed to repair new concrete Work.
- 10.2. <u>Protection of Persons and Property Other Than the Work</u>. Contractor shall protect against injury to any public or private property encountered in the Work. All obstructions to traffic shall be guarded by barriers and illuminated at night. Contractor shall not trespass upon private property. Access to private property shall be by written permission of the property owner, as may be obtained by Contractor. Under all circumstances Contractor must comply with the laws and regulations relative to the safety of Persons and property and the interruption of traffic, as well as the convenience of the public. Contractor will be held responsible for and required to make good at its own expense, all damage to Persons and property caused by carelessness or neglect on the

part of Contractor or Subcontractor, or the agent or employees of either, during the progress of the Work and until its final acceptance. Prior to the commencement of construction, Contractor shall contact adjacent property Towns to the property on which Work will be located and which have structures such as fences, buildings, etc., adjacent to the proposed construction, and note with Town, any existing damage. Further damage caused by Contractor or a Subcontractor, or employee or agent of either, shall be repaired to the satisfaction of Town, at the sole cost of Contractor, in other words, the Contractor's cost to repair damage shall not be a reimbursable Cost of the Work. Notwithstanding anything in this Section or the Agreement to the contrary, Town shall be responsible for providing access to adjacent properties, and Contractor agrees to assist Town with coordination with adjacent property owners.

10.3. Subcontractors

- 10.3.1. Those portions of the Work that Contractor does not customarily perform with Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with Contractor. At the request of Town, Contractor shall deliver copies of all executed subcontracts to Town. Town's review of any and all subcontracts is for the sole benefit of Town. Town's failure to object to any provision in any subcontract shall not be construed as Town's acceptance of such provision.
- 10.3.2. All subcontracts must be in writing and will provide that all Work to be performed hereunder will be performed in strict accordance with the terms of the Contract.
- 10.3.3. The Contractor shall make available to each proposed Subcontractor, prior to the execution of a subcontract, copies of the Contract Documents to which the Subcontractor will be bound to.
- 10.3.4. Subcontractor must submit experience, bonding capability and financial condition to Contractor. The Subcontractor experience, bonding capability and financial condition must demonstrate that adequate assets and equipment are available to properly perform the subcontract.
- 10.3.5. Subcontractor's exclusive remedy for delays in the performance of the Agreement caused by Force Majeure events or by delays claimed to be caused by the Town, or attributable to the Town, or on claims based on breach of contract or negligence, shall be an extension of its subcontract time.
- 10.3.6. Contractor shall be responsible to the Town for the acts and omissions of its employees, agents and Subcontractor, their agents and employees, and all other persons performing any of the Work or supplying materials under a contract to the Contractor.
- 10.3.7. The subcontracting of any or all of the Work for this Project will not relieve the Contractor of any part of its responsibility under the Contract. In case the terms of the subcontract are unsatisfactory, in the reasonable opinion of Town, or in case the Work being done under any subcontract is not conducted in strict accordance with the Contract Documents, Contractor shall, upon written notice to this effect, cause such Work to be

corrected. Any loss or damage that may be suffered on account of such action shall be borne solely by Contractor, in other words, the Contractor's loss or damage shall not be a reimbursable Cost of the Work.

10.4. Construction Supervision and Administration Site Logistics

- 10.4.1. The CM will develop a plan for site logistics, including plans for ingress and egress, street right-of-way encroachments (including lane and sidewalk closures), signage, storage of materials and equipment, site offices, temporary utilities, staging, hoists and cranes, waste disposal, security, and any other logistical issues that could affect performance of the Work to be provided by the CM.
- 10.4.2. Contractor shall schedule and conduct meetings at regular intervals, but no less frequently that once per week (or such other period as the Parties may agree), during which the Town, Project Architect, Contractor and appropriate Subcontractor can discuss the status of the Work. Contractor shall prepare and promptly distribute meeting minutes, which shall be subject to the review and approval of Town.
- 10.4.3. Contractor shall provide monthly written reports to Town and the A/E on the progress of the entire Work. Contractor shall maintain a daily log containing a record of weather, Subcontractor working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as Town may reasonably require. The log shall be available to Town and the A/E upon request.
- 10.4.4. Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. Contractor shall identify variances between actual and estimated costs and report the variances to Town and A/E at regular intervals, but not less than on a monthly basis, which report shall be submitted with each Application for Payment.

10.5. <u>Safety</u>

- 10.5.1. Without limitation, the Occupational Safety and Health Act (OSHA) Standard for Construction (Title 29, Code of Federal Regulations, Part 1926 as amended) and the Town's Safety Regulations contained in the General Conditions of the Construction Contract are both applicable and enforceable under this Agreement.
- 10.5.2. In accordance with applicable federal, state, and local law, the entry of confined spaces shall not be allowed until the air quality of these spaces has been tested and found to be of sufficient quality to support human life. Testing of these spaces will be undertaken by an employee or consultant of the Contractor, trained in the use of air quality testing equipment.

- 10.5.3. Prior to the commencement of construction activities on this Project, the Contractor shall submit an Accident Prevention Plan to the Project Team for review and approval. This Plan shall address all phases of construction to be undertaken for this Project, as agreed to by the parties. The Plan shall also address measures to control hazards associated with materials (MSDS), equipment, and safety inspections.
- 10.5.4. In the event the Contractor encounters an unforeseen hazardous material or condition, or any substance reasonably believed to be a hazardous material at the Project site, the Contractor shall immediately notify the Town and A/E in writing. The Work in the affected area will not resume except by written approval and agreement of the Town and Contractor, once the condition has been adequately assessed and properly mitigated. As a result of any delay caused by such an unforeseen condition, the Contractor shall be entitled to make a claim for a time extension in the Project schedule, provided it has otherwise fulfilled its obligations under this Agreement.
- 10.5.5. Contractor will provide the name of a designated safety staff member for coordination during the life of the Project.

10.6. Roads

10.6.1. Contractor may not close all or any part of a street or road without the prior written approval of the Town. Streets and roads subject to interference during the execution of the Work shall be kept open by the Contractor until the Work is completed, unless otherwise approved in writing by Town. The Contractor shall submit their proposed Maintenance of Traffic (MOT) plan for review and approval to the A/E and Town's representative.

10.7. Utilities

- 10.7.1. Contractor is solely responsible for investigating and notifying all utility companies, all pipe line operators or other utility parties affected by the Work on this Project, and shall make all reasonable efforts to have all necessary adjustments of the public or private utility fixtures, pipelines, and other appurtenances within or adjacent to the limits of construction made as soon as practicable. Contractor shall be solely responsible for the notification of and coordination of Work with the applicable utility company to avoid any delays with the Project Schedule. If any portion of the Work is to be performed adjacent to or across utility lines, Contractor must verify the locations in the field and take the necessary precautions before proceeding to work close to or across any existing underground utility line.
- 10.7.2. It shall be the Contractor's sole responsibility to notify the applicable utility companies at least seventy-two (72) hours prior to the start of construction and to coordinate its work with the utility company. Any damage caused by Contractor or their sub-contractors to existing utilities shall be repaired at Contractor's expense and the Town will not be responsible for any direct or indirect damage to utilities.

10.7.3. In the event that the Contractor has fulfilled its obligations under this Agreement, any delays to the Project caused by utility companies may entitle the Contractor to make a request for time extension.

10.8. Relation to Other Work

- 10.8.1. The Town reserves the right to award separate contracts in connection with any other work or operations on the Project site. If the Contractor believes that delays or additional costs to the Project result from the Town's actions, then the Contractor may make such claim as provided in this Agreement.
- 10.8.2. If part of the Contractor's Work depends for proper execution or results upon construction or operations by a separate contractor hired by the Town, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Town and Project Architect as to the apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and timely completion.
- 10.9. <u>Environmental Mitigation Measures</u>: The project may include environmental mitigation measures. The Contractor shall be responsible for ensuring strict and complete compliance by its subcontractors, material men and employees with the applicable plan requirements and conditions established by the appropriate regulatory agencies.
- 10.10. <u>Professional Services</u>: The Contractor is generally not required to provide professional services which constitute the practice of architecture or engineering for design of the Project, unless such services are specifically required by the Contract Documents for a portion of the Work or unless Contractor has specifically agreed to provide such services. If so, the Contractor shall ensure that such services are performed by appropriately licensed professionals.

10.11. Changes in the Work

10.11.1. Generally.

- 10.11.1.1. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in this paragraph and elsewhere in the Contract Documents.
- 10.11.1.2. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

10.11.2. Change Orders.

10.11.2.1 A Change Order is a written instrument prepared by Town and signed by Town and Contractor, stating their agreement upon all of the following:

- (i) the change(s) in the Work;
- (ii) the amount of the adjustment, if any, in the Guaranteed Maximum Price; and
- (iii) the extent of the adjustment, if any, in the Date of Substantial Completion.

10.11.3. Construction Change Directives.

- 10.11.3.1 A Construction Change Directive is a written order prepared by Town directing a change in the Work prior to agreement on adjustment, if any, in the Guaranteed Maximum Price or Date of Substantial Completion, or both. Town may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Guaranteed Maximum Price and Date of Substantial Completion being adjusted accordingly.
- 10.11.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- 10.11.3.3. If the Construction Change Directive provides for an adjustment the Guaranteed Maximum Price, the adjustment shall be based on one of the following methods:
 - (i) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; or
 - (ii) unit prices reflected in the Guaranteed Maximum Price package or subsequently agreed upon.
- 10.11.3.4. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the A/E and Town of Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Guaranteed Maximum Price or Date of Substantial Completion.
- 10.11.3.5. A Construction Change Directive signed by Contractor indicates the agreement of Contractor therewith, including adjustment in the Guaranteed Maximum Price and Date of Substantial Completion or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
- 10.11.3.6. If Contractor does not respond promptly or disagrees with the method for adjustment in the Guaranteed Maximum Price, the method and the adjustment shall be determined by the A/E on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase or decrease in the Guaranteed Maximum Price, a reasonable allowance for overhead and profit, not to exceed the percentage equal to the original

Contractor's Fee. In such case, Contractor shall keep and present, in such form as Town may reasonably prescribe, an itemized accounting together with appropriate supporting data.

- 10.11.3.7. The amount of credit to be allowed by Contractor to the Town for a deletion or change that results in a net decrease in the Guaranteed Maximum Price shall be actual net cost as agreed to by Town and Contractor, or in the absence of such agreement as confirmed by the A/E in the same manner as set forth herein. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
- 10.11.3.8. Pending final determination of the total cost of a Construction Change Directive to the Town, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by an Extra Work Order indicating the Parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the A/E will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Guaranteed Maximum Price on the same basis as an Extra Work Order, subject to the right of either party to disagree and assert a claim therefore; provided that no such disagreement or claim shall delay the progress of the Work.
- 10.11.3.9. When the Town and the Contractor agree with the determination made by the A/E concerning the adjustments in the Guaranteed Maximum Price and Date of Substantial Completion, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.
- 10.11.4. *Minor Changes in the Work*: The Town has the authority to order minor changes in the Work not involving adjustment in the Guaranteed Maximum Price or extension of the Date of Substantial Completion and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on Town and the Contractor. The Contractor shall carry out such written orders promptly.
- 10.12. <u>As-Builts</u>: In consultation with the A/E, the Contractor shall be responsible for the preparation and furnishing of As-Built Drawings. Contractor shall obtain one set of Plans from the A/E and shall periodically, but no less than once per month, record, in red colored pencil, all cases where actual field construction differs from Work shown on Plans. Utilizing the set of Plans that have been marked-up by Contractor to represent field conditions, prepare a set of reproducible record drawings showing those changes made during the construction progress. Record drawing information will be based on marked-up prints, Plans, and other data furnished.

10.13. Liquidated Damages

10.13.1 If Contractor neglects, fails or refuse to complete the Work on or before the date of Substantial Completion, or any proper time extension thereof granted by the Town,

then the Contractor as part of consideration for the Town's award of this Contract, agrees to pay the Town an amount of Five Hundred Dollars (\$500) per day, not as a penalty but as liquidated damages for such breach of contract, for each and every calendar day beyond the stipulated date of Substantial Completion that the Project is not Substantially Complete. The aforementioned daily amount of liquidated damages is fixed and agreed upon by and between the Contractor and the Town due to the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Town would sustain due to such a delay, and therefore said amount is agreed to be the amount of damages which Town would sustain and shall be deducted by the Town from any remaining funds due to the Contractor.

10.13.3. It is further agreed that time is of the essence of each and every portion of this Contract wherein a definite and certain length of time if fixed for the performance of any act whatsoever. Further, where Contractor is allowed an additional time for the completion of any Work, the new time limit fixed by such extension shall be of the essence of this Contract.

10.13.4. Contractor shall not be charged with liquidated damages when the delay in Substantial Completion of the Work is due to the following causes ("Excusable Delays"), if such causes were unforeseen and beyond the control and without the fault or negligence of Contractor, any Subcontractor, anyone directly or indirectly employed by them, or anyone for whom they are liable: acts of God or of the public enemy, acts of another Contractor in the performance of a contract with Town (provided Contractor has fulfilled its obligations), fires, floods, epidemics, quarantine restrictions, strikes, and Without limitation as to the causes of delay excluded from Excusable Delays, such an unforeseeable cause shall not include shortage of labor (other than due to strikes), delays in delivery of materials, equipment, or specially fabricated items. To be entitled to the relief from Excusable Delays, Contractor shall, within ten (10) days from the beginning of such delay, notify Town, in writing, of the cause of such delay. The Project Manager shall ascertain the facts and extent of the delay and shall notify Contractor within a reasonable time as to his or her determination of the cause of the delay, whether it is excusable under this clause, and the extension in the time for performance of the Work, if any, that will be granted. Such determination made in good faith shall be binding on the Parties. Except as specifically provided in this Agreement, in the case of an Excusable Delay, Contractor shall not be entitled to additional compensation, but shall, as its sole remedy, be entitled to an extension of the time in which to perform the Work. The failure of Contractor to provide the notice specified herein shall constitute a waiver of and bar to any claim for delay, except as specified in this Agreement.

ARTICLE 11 - INSPECTION

11.1. <u>NOTIFICATION</u>: IT IS THE RESPONSIBILITY OF Contractor TO CONSTRUCT THE WORK IN STRICT ACCORDANCE WITH THE CONTRACT DOCUMENTS, APPLICABLE BUILDING CODES, ORDINANCES, REGULATIONS, STATUTES AND OTHER LAWS. IT SHALL BE THE RESPONSIBILITY OF THE Contractor TO NOTIFY THE Town AT LEAST FORTY- EIGHT (48) HOURS BEFORE COVERING WORK WHICH Town IS ENTITLED TO INSPECT PURSUANT TO THIS ARTICLE. IN NO EVENT SHALL ANY INSPECTION

OR FAILURE TO INSPECT BY THE Town RELIEVE THE Contractor OF THIS RESPONSIBILITY TO CONSTRUCT THE WORK IN SUCH ACCORDANCE WITH THE REQUIREMENTS OF THE CONTRACT DOCUMENTS.

- 11.2. <u>Generally</u>: Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, Contractor shall coordinate such tests, inspections and approvals with an independent testing laboratory, or with the appropriate public authority contracted by Town, and Town shall bear all related costs of tests, inspections and approvals. The Contractor shall give the A/E timely notice of when and where tests and inspections are to be made so that the A/E may be present for such procedures.
- 11.3. <u>Additional Testing</u>: If the A/E, Town or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Paragraph 11.2, the A/E will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity reasonably acceptable to Town, and the Contractor shall give timely notice to the A/E of when and where tests and inspections are to be made so that the A/E may be present for such procedures. Such costs, except as provided in Paragraph 11.4, shall be at Town expense.
- 11.4. <u>Costs of Retesting</u>: If such procedures for testing, inspection or approval under Paragraphs 11.2 and 11.3 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the A/E's services and expenses shall be at the Contractor's expense, in other words, the Contractor's expense shall not be a reimbursable Cost of the Work.
- 11.5. <u>Certificates</u>: Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the A/E and the A/E.
- 11.6. <u>No Delay of Project</u>: Test or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.
- 11.7. <u>Quality Assurance</u>: Contractor shall implement and observe a program of quality assurance as set forth in the Contract Documents or as otherwise reasonably directed by the A/E.

11.8. Information and Services

- 11.8.1 Upon Contractor's request, Town will provide information in a timely manner regarding the requirements of the Project, including a program which sets forth the Town's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.
- 11.8.2 The Town will establish and update an overall budget for the Project, based on consultation with Contractor and A/E, which will include contingencies for changes in the

Work and other costs, which are the responsibility of the Town.

- 11.9 <u>Town's Representative</u>: The designated Town's Representative will be considered the administrator of this Contract on behalf of the Town, and will be the evaluator of the Contractor's performance of their services under this Agreement. All references to the A/E in these documents shall include the A/E and the Town's representative. The A/E, or properly authorized agents, will:
 - 11.9.1 Manage the Project on behalf of Town;
 - 11.9.2 Calculate and determine the quantity of the Work performed; and
 - 11.9.3 Inspect all Work for acceptance or rejection. The A/E has full authority to reject or condemn any Work, which does not conform to the terms and conditions of the Contract Documents.

ARTICLE 12 – INTENT OF AGREEMENT

- 12.1 The execution of this Agreement is a representation that the Contractor has carefully examined the Contract Documents and the site, and represents that the Contractor is thoroughly familiar with the nature and location of the Project, the Worksite, the specific conditions under which the Services are to be performed, and all matters which may in any way affect the Work or its performance. The Contractor further represents that, as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of the Contractor's failure to follow the foregoing procedure and to familiarize itself with all local conditions and the Contract Documents will not be permitted.
- 12.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Project by the Contractor. The Contract Documents are complimentary, and what is required by any one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonable inferable from them as being necessary to produce the intended results.
- 12.3 In the event of conflicting provisions in the specifications or the Drawings, the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; and the more expensive item will take precedence over the less expensive. On all Drawings, figures take precedence over scaled dimensions. Scaling of dimensions, if done, is done at the Contractor's own risk.
- 12.4 Organization of the specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractor or in establishing the extent of Work to be performed by any trade.
- 12.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

<u>ARTICLE 13 – TERM OF AGREEMENT</u>

- 13.1 Subject to authorized adjustments, the Term of Agreement shall be for the agreed upon time by the parties following the Town's issuance of its Notice to Proceed to Contractor, which shall constitute the guaranteed time upon which Contractor is to complete the Project in accordance with the terms, conditions and specifications contained in this Agreement, unless terminated earlier by the Town.
- 13.2 Contractor agrees that the Work shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion within the agreed Time Schedule. Failure to achieve timely final Project completion shall be regarded as a material breach of this Agreement and shall be subject to the appropriate remedies available at law. This Agreement shall remain in full force and effect until the completion of the Project by the Contractor and the Town's acceptance of the Project.
- 13.3 Minor adjustments to the time for performance which are approved in writing by the Town in advance, shall not constitute non-performance by Contractor. Any impact on the time for performance shall be determined and the Time Schedule for completion of Work will be modified accordingly.
- 13.4 When, in the opinion of the Town, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform Work or any portion thereof, the Town may request that the Contractor, within a reasonable time frame set forth in the Town's request, provide adequate assurances to the Town in writing, of Contractor's ability to perform in accordance with terms of this Agreement. In the event that the Contractor fails to provide the Town the requested assurances within the prescribed time frame, the Town may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.
- 13.5 Contractor shall be required to show just cause for delays or for additional time requests. Failure to comply with this subparagraph shall be sufficient grounds for the Town to find the Contractor in substantial default and certify that sufficient cause exists to terminate the Agreement or to withhold payment to the Contractor until an updated Time Schedule, acceptable to the Town, is obtained. Such failure shall not be cause for additional time.
- 13.6 In the event the Term of Agreement date is extended, regardless of whether delay is caused by any act or neglect of the Town or Force-Majeure Event, or is attributable to the Town, the Contractor's sole and exclusive remedy is an equal extension of time.
- 13.7 Notwithstanding the provisions of this Article, this Agreement may be terminated by the Town at any time, with or without cause, at its sole discretion.

ARTICLE 14 – CONTRACTOR RESPONSIBILITIES

14.1 Contractor shall confine operations at the Worksite to areas permitted by law, ordinances, permits and Contract Documents, and shall not unreasonably encumber the Worksite with personnel, materials or equipment.

14.2 Contractor shall keep the Worksite premises and surrounding areas free from accumulation of waste materials or rubbish caused by the Work. At completion, the Contractor shall remove from the Worksite all waste materials, debris, rubbish, tools, equipment, machinery and surplus materials. Failure to clean Worksite as provided herein may cause the Town to do so, and the cost thereof shall be charged to the Project Amount.

ARTICLE 15 – TOWN'S RESPONSIBILITY

- 15.1 The Town shall provide information regarding its requirements for the Project, with reasonable promptness to avoid delay in the orderly progress of the Work.
- 15.2 The Town shall designate a Project Manager who shall be fully acquainted with the Project and shall define the lines of Town authority to approve Change Orders and render decisions promptly and furnish information expeditiously.
- 15.3 The Town, unless otherwise agreed, shall furnish the site of the Project, all surveys describing the physical characteristics, soil reports, subsurface investigations, legal limitations, known utility locations, covenants, deed restrictions and a legal description if required for the Project.
- 15.4 If the Town becomes aware of any fault or defect in a phase of the Project or non-conformance with the Drawings and specifications, the Town shall give prompt written notice thereof to the Contractor.
- 15.5 The Project Manager shall communicate with Subcontractor or suppliers only through the Contractor, while such method of communication is effective in maintaining the Project's Time Schedule and quality standards.
- 15.6 The Town expects the Contractor to recognize, coordinate and comply with the Permitting Authorities.
- 15.7 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out Work in accordance with the requirements of the Contract Documents, Florida Building Code, and State of Florida, Palm Beach County and Town codes, rules and regulations, then the Town Manager, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of the Town to stop Work on the Project shall not give rise to a duty on the part of the Town, to the benefit of the Contractor, Subcontractor, or any other person or entity.

ARTICLE 16 – INDEPENDENT CONTRACTOR

16.1 Contractor has been procured and is being engaged by the Town as an independent Contractor, and not as an agent or employee of the Town. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the Town, nor any rights generally afforded classified or unclassified employees of the Town. Contractor further understands that Florida workers' compensation benefits available to employees of the

Town, are not available to Contractor. Therefore, Contractor agrees to provide workers' compensation insurance, as required by Florida law, for any employee or agent of Contractor rendering Work to the Town under this Agreement.

ARTICLE 17 – CHANGES IN THE WORK

- 17.1 The Town, without invalidating this Agreement, may order changes in the work within the general scope of this Agreement consisting of additions, deletions or other revisions. The Project Amount and the Substantial Completion date may be adjusted accordingly upon executed amendments. All other minor changes in the Project shall be authorized by Change Order, subject to any limitations in the Contract Documents.
- 17.2 Changes in the Project shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order. Before any Work is begun on any Change Order, a written authorization from the Town must be issued and then forward the same to the Architect-Engineer for its review

ARTICLE 18 - ENVIRONMENTAL AND SAFETY REQUIREMENTS

- 18.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Agreement.
- 18.2 Contractor shall provide a safety program for the Project to meet U.S. Department of Labor Occupational Safety and Health Administration (OSHA) requirements and monitor Subcontractor for compliance in the performance of Work in accordance with the best acceptable safety practice.
- 18.3 Contractor shall schedule the services of independent testing laboratories required by Permitting Authorities to provide the necessary testing of materials to ensure conformance with environmental regulations.
- 18.4 Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
 - 18.4.1 Workers on the Project and all other persons who may be affected thereby;
 - 18.4.2Materials and equipment to be incorporated in the Project, whether in storage on or off the Worksite, under care, custody or control of the Contractor or Subcontractor;
 - 18.4.3Other public or private property at the Worksite and adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
 - 18.4.4All alcoholic beverages, smoking and drugs shall be prohibited from the Project Worksite.
- 18.5 All workers on the Project site shall wear appropriate and uniform-like attire and shall have visible identification as being employees of the Contractor or Subcontractor.

- 18.6 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property, their protection from damage, injury or loss in accordance with the Safety and Health Regulations for Construction, 29 C.F.R. § 1926.
- 18.7 The Contractor shall erect and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying users of adjacent sites and utilities.
- 18.8 When the removal of asbestos, PCB's, petroleum, radioactive material or any other toxic or hazardous material, in whatever form or states, is necessary for the execution of the Work, the Contractor shall immediately notify the Town and exercise the utmost care to carry on such activities by and under the supervision of properly qualified personnel. Contractor covenants that any such removal must be performed by a Florida licensed toxic or hazardous materials abatement Contractor in accordance with all applicable federal, state, and local rules and regulations.
- 18.9 Contractor shall promptly remedy any damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of the Town or anyone directly or indirectly employed by either of them and whose acts are not attributable to the fault or negligence of the Contractor. Notwithstanding anything in this Section or the Agreement to the contrary, Contractor's obligations under this Section shall not apply to damage and loss to property caused by Town or Town's separate contractor.
- 18.10 Contractor shall designate a responsible person at the Worksite whose duty shall be prevention of accidents or injury to property or person.
- 18.11 Contractor shall not load or permit any part of the Worksite to be so loaded or congested, so as to endanger the site, any property, or deteriorate safety conditions.
- 18.12 Contractor shall promptly report to the Town and all accidents arising out of or in connection with the Work.

ARTICLE 19 - TESTS AND INSPECTIONS

19.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Town, or with the appropriate Permitting Authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Project Manager timely notice of when and where tests and inspections are to be made so as to allow him the opportunity to observe such procedures, if needed. The Contractor shall support and cooperate with all tests and inspections.

- 19.2 If such procedures for testing, inspection or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures.
- 19.3 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Town.
- 19.4 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.
- 19.5 It is understood and agreed by the Contractor that the Highland Beach Building Department and its inspectors are professionals who are dedicated to providing efficient and courteous service to all residents, professionals, Contractors and the public at large through plans processing, inspections and building maintenance, which ensures the protection of the citizens and enhances the quality of life within the Town. For the purposes of this Project, the Building Department is not a surrogate of the Town. All decisions by the Building Department as to whether some aspect of the Project is or is not in compliance with the Florida Building Code, Florida Fire Prevention Code and/or any other applicable codes, regulations, laws and ordinances are independent of and not deemed to be an act or a decision by the Town. The Contractor agrees that it shall be the responsibility of the Contractor to ensure compliance with all applicable codes, regulations, law and ordinances. The Contractor warrants and accepts that any and all work necessitated by inspections which is not prescribed in the plans, specifications or Drawings, but necessitated to bring the Project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures and/or considered inside the contemplation of the Contract Documents, shall be deemed the responsibility of the Contractor at no additional cost to the Town.

ARTICLE 20 – CORRECTION OF WORK

- 20.1 The Contractor shall promptly correct Work rejected by the Town or Permitting Authorities or failing to conform to the requirements of the Contract Documents, whether observed before or after the completion of the Project. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections.
- 20.2 If, within one (1) year after the date of completion of the Project, or after the date for commencement of warranties and guarantees established under by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Town to do so unless the Town has previously given the Contractor a written acceptance of such condition.
- 20.3 Contractor shall remove from the Worksite and then correct any portions of the Work which are not in accordance with the requirements of the Contract Documents.
- 20.4 Contractor shall bear the cost of correcting destroyed or damaged portions of the Project, whether completed or partially completed, caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- 20.5 If the Town prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Town may do so instead of requiring its removal and correction, in which

case the PROJECT AMOUNT will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 21 - CONFLICTS OF INTEREST

- 21.1 Contractor represents and warrants to the Town that it has not employed or retained any person or company employed by the Town to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.
- 21.2 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the Town in connection with this Agreement has any personal financial interest, directly or indirectly, with Contractors or vendors providing professional services on projects assigned to the Contractor, except as fully disclosed and approved by the Town. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

ARTICLE 22 - TERMINATION OF AGREEMENT AND DEFAULT

22.1 <u>Termination for Convenience</u>: In addition to other rights the Town may have at law and pursuant to the Contract Documents with respect to cancellation and termination of the Contract, the Town may, in its sole discretion, terminate for the Town's convenience the performance of Work under this Contract, in whole or in part, at any time upon written notice to the Contractor. The Town shall effectuate such Termination for Convenience by delivering to the Contractor a Notice of Termination for Convenience, specifying the applicable scope and effective date of termination, which termination shall be deemed operative as of the effective date specified therein without any further written notices from the Town required. Such Termination for Convenience shall not be deemed a breach of the Contract, and may be issued by the Town with or without cause.

Upon receipt of such Notice of Termination for Convenience from the Town, and except as otherwise directed by the Town, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:

- 22.1.1 Stop the Work specified as terminated in the Notice of Termination for Convenience;
- 22.1.2 Promptly notify all Subcontractors of such termination, cancel all contracts and purchase orders to the extent they relate to the Work terminated to the fullest extent possible and take such other actions as are necessary to minimize demobilization and termination costs for such cancellations;
- 22.1.3 Immediately deliver to the Town all Project records, in their original/native electronic format (i.e. CAD, Word, Excel, etc.), any and all other unfinished documents, and any and all warranties and guaranties for Work, equipment or materials already installed or purchased;
- 22.1.4 If specifically directed by the Town in writing, assign to the Town all right, title

and interest of Contractor under any contract, subcontract and/or purchase order, in which case the Town shall have the right and obligation to settle or to pay any outstanding claims arising from said contracts, subcontracts or purchase orders;

- 22.1.5 Place no further subcontracts or purchase orders for materials, services, or facilities, except as necessary to complete the portion of the Work not terminated (if any) under the Notice of Termination for Convenience;
- 22.1.6 As directed by the Town, transfer title and deliver to the Town (1) the fabricated and nonfabricated parts, Work in progress, completed Work, supplies and other material produced or required for the Work terminated; and (2) the completed or partially completed Project records that, if this Contract had been completed, would be required to be furnished to the Town;
- 22.1.7 Settle all outstanding liabilities and termination settlement proposals from the termination of any subcontracts or purchase orders, with the prior approval or ratification to the extent required by the Town (if any);
- 22.1.8 Take any action that may be necessary, or that the Town may direct, for the protection and preservation of the Project Site, including life safety and any property related to this Contract that is in the Contractor's possession and in which the Town has or may acquire an interest; and
- 22.1.9 Complete performance of the Work not terminated (if any).

Upon issuance of such Notice of Termination for Convenience, the Contractor shall only be entitled to payment for the Work satisfactorily performed up until the date of its receipt of such Notice of Termination for Convenience, but no later than the effective date specified therein. Payment for the Work satisfactorily performed shall be determined by the Town in good faith, in accordance with the percent completion of the Work, less all amounts previously paid to the Contractor in approved Applications for Payment, the reasonable costs of demobilization and reasonable costs, if any, for canceling contracts and purchase orders with Subcontractors to the extent such costs are not reasonably avoidable by the Contractor.

The Contractor shall submit, for the Town's review and consideration, a final termination payment proposal with substantiating documentation, including an updated Schedule of Values, within 30 days of the effective date of termination, unless extended in writing by the Town upon request. Such termination amount shall be mutually agreed upon by the Town and the Contractor and absent such agreement, the Town shall, no less than fifteen (15) days prior to making final payment, provide the Contractor with written notice of the amount the Town intends to pay to the Contractor. Such final payment so made to the Contractor shall be in full and final settlement for Work performed under this Contract, except to the extent the Contractor disputes such amount in a written notice delivered to and received by the Town prior to the Town's tendering such final payment.

22.2 Event of Default: The following shall each be considered an item of Default. If, after delivery of written notice from the Town to Contractor specifying such Default, the Contractor fails to promptly commence and thereafter complete the curing of such Default within a reasonable period of time, not to exceed twenty-one (21) days, after the delivery of such Notice of Default, it shall be deemed an Event of Default, which constitutes sufficient grounds for the Town to terminate Contractor for cause:

- 22.2.1 Failing to perform any portion of the Work in a manner consistent with the requirements of the Contract Documents or within the time required therein; or failing to use the Subcontractors, entities and personnel as identified and to the degree specified, in the Contract Documents, subject to substitutions approved by the Town in accordance with this Contract and the other Contract Documents;
- 22.2.2 Failing, for reasons other than an Excusable Delay, to begin the Work required promptly following the issuance of a Notice to Proceed;
- 22.2.3 Failing to perform the Work with sufficient manpower, workmen and equipment or with sufficient materials, with the effect of delaying the prosecution of the Work in accordance with the Project Schedule and/or delaying completion of any of the Project within the specified time;
- 22.2.4 Failing, for reasons other than an Excusable Delay, to timely complete the Project within the specified time;
- 22.2.5 Failing and/or refusing to remove, repair and/or replace any portion of the Work as may be rejected as defective or nonconforming with the terms and conditions of the Contract Documents:
- 22.2.6 Discontinuing the prosecution of the Work, except in the event of: 1) the issuance of a stop-work order by the Town; or 2) the inability of the Contractor to prosecute the Work because of an event giving rise to an Excusable Delay as set forth in this Contract for which Contractor has provided written notice of same in accordance with the Contract Documents;
- 22.2.7 Failing to provide sufficient evidence upon request that, in the Town's sole opinion, demonstrates the Contractor's financial ability to complete the Project;
- 22.2.8 An indictment is issued against the Contractor;
- 22.2.9 Failing to make payments to for materials or labor in accordance with the respective agreements;
- 22.2.10 Failing to provide the Town with a Recovery Schedule in accordance with the Contract Documents;
- 22.2.11 Persistently disregarding laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- 22.2.12 Fraud, misrepresentation or material misstatement by Contractor in the course of obtaining this Contract; and
- 22.2.13Failing to comply in any material respect with any of the terms of this Contract or the Contract Documents.

In no event shall the time period for curing a Default constitute an extension of the time for achieving Substantial Completion or a waiver of any of the Town's rights or remedies hereunder for a Default which is not cured as aforesaid.

22.3 <u>Termination of Contract for Cause</u>: The Town may terminate the Contractor for cause upon the occurrence of an Event of Default as defined herein, or for any other breach of the Contract or other Contract Documents by the Contractor that the Town, in its sole opinion, deems substantial and material, following written notice to the Contractor and the failure to timely and properly cure to the satisfaction of the Town in the time period set forth herein, or as otherwise specified in the Notice of Default.

Upon the occurrence of an Event of Default, and without any prejudice to any other rights or remedies of the Town, whether provided by this Contract, the other Contract Documents or as otherwise provided at law or in equity, the Town may issue a Notice of Termination for Cause to Contractor, copied to the Surety, rendering termination effective immediately, and may take any of the following actions, subject to any prior rights of the Surety:

- 22.3.1 Take possession of the Project Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by Contractor;
- 22.3.2 Accept assignments of subcontracts;
- 22.3.3 Direct Contractor to transfer title and deliver to the Town (1) the fabricated and non-fabricated parts, Work in progress, completed Work, supplies and other material produced or required for the Work terminated; and (2) the completed or partially completed Project records that, if this Contract had been completed, would be required to be furnished to the Town; and
- 22.3.4 Finish the Work by whatever reasonable method the Town may deem expedient.

Upon the issuance of a Notice of Termination for Cause, the Contractor shall:

- 22.3.5 Immediately deliver to the Town all Project records, in their original/native electronic format (i.e. CAD, Word, Excel, etc.), any and all other unfinished or partially completed documents, and any and all warranties and guaranties for Work, equipment or materials already installed or purchased;
- 22.3.6 If specifically directed by the Town in writing, assign to the Town all right, title and interest of Contractor under any contract, subcontract and/or purchase order, in which case the Town shall have the right and obligation to settle or to pay any outstanding claims arising from said contracts, subcontracts or purchase orders;
- 22.3.7 As directed by the Town, transfer title and deliver to the Town (1) the fabricated and nonfabricated parts, Work in progress, completed Work, supplies and other material produced or required for the Work terminated; and
- 22.3.8 Take any action that may be necessary, or that the Town may direct, for the protection and preservation of the Project Site, including life safety and property related

to this Contract that is in the Contractor's possession and in which the Town has or may acquire an interest.

All rights and remedies of the Town's Termination rights herein shall apply to all Defaults that are non-curable in nature, or that fail to be cured within the applicable cure period or are cured but in an untimely manner, and the Town shall not be obligated to accept such late cure.

Recourse to Performance and Payment Bond; Other Remedies: Upon the occurrence of an Event of Default, and irrespective of whether the Town has terminated the Contractor, the Town may (i) make demand upon the Surety to perform its obligations under the Performance Bond and Payment Bond, including completion of the Work, without requiring any further agreement (including, without limitation, not requiring any takeover agreement) or mandating termination of Contractor as a condition precedent to assuming the bond obligations; or (ii) in the alternative, the Town may take over and complete the Work of the Project, or any portion thereof, by its own devices, by entering into a new contract or contracts for the completion of the Work, or using such other methods as in the Town's sole opinion shall be required for the proper completion of the Work, including succeeding to the rights of the Contractor under all subcontracts.

The Town may also charge against the Performance and Payment Bond all fees and expenses for services incidental to ascertaining and collecting losses under the Performance and Payment Bond including, without limitation, accounting, engineering, and legal fees, together with any and all costs incurred in connection with renegotiation of the Contract.

22.5 <u>Costs and Expenses</u>: All damages, costs and expenses, including reasonable attorney's fees, incurred by the Town as a result of an uncured Default or a Default cured beyond the time limits stated herein (except to the extent the Town has expressly consented, in writing, to the Contractor's late cure of such Default), together with the costs of completing the Work, shall be deducted from any monies due or to become due to the Contractor under this Contract, irrespective of whether the Town ultimately terminates Contractor.

Upon issuing a Notice of Termination for Cause, the Town shall have no obligation to pay Contractor, and the Contractor shall not be entitled to receive, any money until such time as the Project has been completed and the costs to make repairs and/or complete the Project have been ascertained by the Town. In case such cost and expense is greater than the sum which would have been due and payable to the Contractor under this Contract for any portion of the Work satisfactorily performed, the Contractor and the Surety shall be jointly and severally liable and shall pay the difference to the Town upon demand.

22.6 <u>Termination If No Default or Erroneous Default</u>: If, after a Notice of Termination for Cause is issued by the Town, it is thereafter determined that the Contractor was not in default under the provisions of this Contract, or that any delay hereunder was an Excusable Delay, the termination shall be converted to a Termination for Convenience and the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause contained herein. The Contractor shall have no further recourse of any nature for wrongful termination.

- 22.7 <u>Remedies Not Exclusive</u>: Except as otherwise provided in the Contract Documents, no remedy under the terms of this Contract is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.
- 22.8 <u>Materiality and Non-Waiver of Breach</u>: Each requirement, duty, and obligation in the Contract Documents is material. The Town's failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or Amendment of this Contract. A waiver shall not be effective unless it is in writing and approved by the Town. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and the failure of the Town to exercise its rights and remedies under this Article at any time shall not constitute a waiver of such rights and remedies.
- 22.9 Contractor Right to Terminate Contract or Stop Work: If the Project should be stopped under an order of any court or other public authority for a period of more than ninety (90) days due to no act or fault of Contractor or persons or entities within its control, or if the Town should fail to pay the Contractor any material amount owing pursuant to an Approved Application for Payment in accordance with the Contract Documents and after receipt of all supporting documentation required by the Contract Documents, and if the Town fails to make such payment within ninety (90) days after receipt of written notice from the Contractor identifying the Approved Application for Payment for which payment is outstanding, then, unless the Town is withholding such payment pursuant to any provision of this Contract which entitles the Town to so withhold such payment, the Contractor shall have the right upon the expiration of the aforesaid ninety (90) day period to stop its performance of the Work, provided that Contractor has sent a Notice to Cure to the Town via certified mail, allowing for a 7 day cure period. In such event, Contractor may terminate this Contract and recover from Town payment for all Work executed and reasonable expense sustained (but excluding compensation for any item prohibited by any provisions of the Contract Documents). In the alternative to termination, Contractor shall not be obligated to recommence the Work until such time as the Town shall have made payment to the Contractor in respect of such Approved Application for Payment, plus any actual and reasonable related demobilization and start-up costs evidenced by documentation reasonably satisfactory to the Town. No act, event, circumstance or omission shall excuse or relieve the Contractor from the full and faithful performance of its obligations hereunder and the completion of the Work as herein provided for.

ARTICLE 23 – NOTICES

23.1 All notices, demands, correspondence and other communications between the Parties shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows or as the same may be changed from time to time:

For Contractor:

To

Town of Highland Beach Attn: Town Manager 3614 South Ocean Blvd. Highland Beach, Florida 33487

Town Attorney With a copy to:

- 23.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.
- 23.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

ARTICLE 24 – INDEMNIFICATION

- 24.1 Contractor shall defend, indemnify and hold harmless the Town, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of the Contractor, its officers, directors, agents, partners, Subcontractor, employees and managers in the performance of Work under this Agreement.
- 24.2 Contractor shall be fully responsible to Town for all acts and omissions of the Contractor, its employees, Subcontractor, suppliers, or other persons directly or indirectly employed by its Subcontractor or suppliers, and any other persons or organizations performing or furnishing supplies under a direct or indirect agreement with Contractor. Nothing in the Contract Documents shall create any contractual relationship between Town and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of Town to pay or to cause the payment of any money due any Subcontractor, supplier, employee or agent except as may otherwise be required by law.
- 24.3 The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillments or discharge of such obligations.
- 24.4 If any Subcontractor, supplier, laborer, or materialmen of Contractor or any other person directly or indirectly acting for or through Contractor files or attempts to file a mechanic's or construction lien against the real property on which the Work is performed or any part or against any personal property or improvements or make a claim against any monies due or to become due from the Town to Contractor or from Contractor to a Subcontractor, for or on account of any Work, labor, construction services, material, equipment, or other items furnished in connection with the Work, Contractor agrees to satisfy, remove, or discharge such lien or claim at its own expense by bond, payment, or otherwise within ten (10) Days of the filing or from receipt of written notice from the Town.
- 24.5 Contractor has visited the Worksite and is familiar with the local conditions under which the Work are to be performed and relieves the Town from any liability in regard to any matter not immediately brought to the attention of the Town.
- 24.6 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the Town's liability as set forth in Chapter 768, Florida Statutes. Additionally, the Town does not waive sovereign immunity, and no claim or award against the Town shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 25 – WARRANTY

- 25.1 The Contractor warrants to the Town that all materials and equipment included in the Project will be new except where indicated otherwise in the Contract Documents, and that such materials and equipment will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and specifications. The Contractor further agrees to correct all Work found by the Town to be defective in material and workmanship or not in conformance with the Contract Documents for a period of one year from the date of completion or for such longer periods of time as may be set forth in specific warranties contained in the specifications. The Contractor shall collect and deliver to the Town any specific written warranties given by others as required by the Contract Documents.
- 25.2 If, within one (1) year after the date of substantial completion or such longer period of time as may be prescribed by laws or regulations, or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, whether observed before or after acceptance by Town, Contractor shall promptly, without cost to Town, either correct such defective Work, or, if it has been rejected by Town, remove it from the site and replace it with non- defective Work that is satisfactorily correct to the Town. If Contractor does not promptly comply with the terms of such instructions, the Town may have the defective Work corrected and all direct, indirect and consequential costs of such removal and replacement, including but not limited to fees and charges of engineers, attorneys and other professionals, shall be paid by Contractor.
- 25.3 If any lien or claim remains unsatisfied after all payments are made, the Contractor shall refund to the Town all monies that the latter may be compelled to pay in discharging such liens or claims, including all costs and reasonable Attorney's fees. Any Subcontractor may seek relief from the surety and Contractor under Section 255.05, Florida Statutes.
- 25.4 In addition, the Contractor represents and warrants the following to the Town, as an inducement to the Town to enter into this Agreement, which representations and warranties shall survive the execution of the Agreement, final completion of the Project and final payment hereof:
 - 25.4.1 Contractor shall furnish the tools, materials, supplies, equipment and labor required to complete the Work and perform their obligations under the Contract Documents, and shall have sufficient experience and competence to do so;
 - 25.4.2 Contractor is authorized to do business in the State of Florida and is properly licensed by all necessary governmental, public and other authorities having jurisdiction over the Contractor and the Project; and
 - 25.4.3 The persons executing this Agreement, on behalf of the Contractor, are properly authorized to do so.
- 25.5 Contractor warrants that any and all Work, materials, services or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result, will be supplied by the Contractor at its own cost, whether or not specifically called for.

25.6 Contractor warrants and accepts that any and all Work, materials, services or equipment necessitated by the inspections of Town and/or Palm Beach County agencies, or other regulatory agencies as are applicable, to bring the Project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures, or considered inside the contemplation of the Contract Documents, shall be deemed the responsibility of the Contractor at no additional cost to the Town.

ARTICLE 26 - INSURANCE

- 26.1 Prior to the execution of this Agreement, the Contractor shall submit certificate(s) of insurance evidencing all required insurance coverage, as more particularly described in the RFQ, with the following minimum coverage:
 - 26.1.1 Commercial General Liability Minimum limit of \$1 Million per occurrence for bodily injury and property damage; this coverage shall also include personal, advertising injury and medical expense;
 - 26.1.2 Professional Liability (Errors and Omissions) – With minimum limit of One Million Dollars (\$1,000,000.00) covering any errors or omissions of the Contractor in the performance of professional Services; the Self Insured Retention shall not exceed \$25,000. If the self-insured retention (SIR) or deductible exceeds \$25,000, the Town reserves the right, but not the obligation, to review and request a copy of Contractor's most recent annual report or audited financial statement. Policies written on a "Claims-Made" basis shall include a Retroactive Date equal to or preceding the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Contract, the Contractor shall purchase a SERP with a minimum reporting period of not less than three (3) years. The requirement to purchase a SERP shall not relieve the Contractor of the obligation to provide replacement coverage. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims - made" form. If coverage is provided on a "claims - made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage;
 - 26.1.3 Commercial Automobile Liability Minimum limit of \$1 Million, covering any auto including owned, non-owned, hired or leased. In the event that the Contractor owns no automobiles, the Commercial Auto Liability requirement shall be amended allowing Contractor to maintain only Hired & Non-Owned Auto Liability. If vehicles are acquired throughout the term of the contract, the Contractor agrees to purchase "Owned Auto" coverage as of the date of acquisition. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or a separate Commercial Auto coverage form; and
 - Worker's Compensation As required by the State of Florida and in accordance to F.S.440, with statutory limits, and Employer's Liability with a minimum limit of \$1,000,000 per accident for bodily injury or disease.

- 26.2 Contractor shall not commence Work under this Agreement until after Contractor has obtained all of the minimum insurance coverage prescribed in the IFB and the policies of such insurance detailing the provisions of coverage have been received and approved by the Town.
- 26.3 The Town shall be named as an additional insured for claims caused in whole or in part by the Contractor, Subcontractor's, employees or assignee's negligent acts or omissions during the term of this Agreement. This provision shall not limit the Town's recovery for coverage under the Contractor's insurance policy.
- 26.4 Contractor shall not permit any Subcontractor to begin Services until after similar minimum insurance to cover Subcontractor has been obtained and approved.
- 26.5 In the event the insurance certificate provided by Contractor or Subcontractor indicates that the insurance shall terminate and lapse during the term of this Agreement, Contractor shall furnish, at least thirty (30) Days prior to expiration of the date of the insurance, a renewed certificates of insurance as proof that equal and like coverage and extension is in effect. Contractor shall not continue to perform the Services required by this Agreement unless all required insurance coverage remains in full force and effect.
- 26.6 All insurance policies required of the Contractor shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed managers upon whom service of process may be made in Palm Beach County, Florida.

ARTICLE 27 - PERFORMANCE AND PAYMENT BONDS

- 27.1 The Contractor is required to furnish to the Town a Performance Bond and Payment Bond, each in the amount of One Hundred percent (100%) of the total Project value ("Bonds"). Such Bonds may be in the following form: 1) a Cashier's Check, made payable to the Town of North Miami; 2) Bonds written by a surety company authorized to do business in the State of Florida, in accordance with Section 255.05, Florida Statutes; or 3) an Irrevocable Letter of Credit. If the latter is chosen, it must be written on a bank located in Palm Beach County, be in the amount of the Agreement and should clearly and expressly state that it cannot be revoked until express written approval has been given by the Town. The Town, to draw on same, would merely have to give written notice to the bank with a copy to the Contractor.
- 27.2 The Performance Bond shall secure and guarantee Contractor's faithful performance of this Agreement, including but not limited to Contractor's obligation to correct defects after final payment has been made as required by the Contract Documents. The Payment Bond shall secure and guarantee payment of all Subcontractor performing labor on the Project under this Agreement and furnishing supplies, materials or services in connection herewith. These Bonds shall be in effect through the duration of the Agreement plus the warranty period as required by the Contract Documents.
- 27.3 Each Bond shall be written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The Bonds required hereunder shall be executed by a responsible surety licensed in the State of Florida, and have at least the following minimum qualification in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc.,

Ambest Road, Oldwick, New Jersey 08858: B+ to A+. The Contractor shall require the attorney in fact

who executes the required Bonds on behalf of the surety to affix thereto a certified and current copy of this power of attorney indicating the monetary limit of such power.

- 27.4 If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other applicable laws or regulations, Contractor shall within three (3) Days substitute another Bond and surety, both of which must be acceptable to Town. If Contractor fails to make such substitution, Town may procure such required Bonds on behalf of Contractor at Contractor's expense.
- 27.5 The Town may, in the Town's sole discretion, inform surety of the progress of the Work, any defects in the Work, or any defaults of Contractor under the Contract Documents and obtain consents as necessary to protect the Town's rights, interest, privileges and benefits under and pursuant to any Bond issued in connection with the Project.
- 27.6 Contractor shall indemnify and hold harmless the Town and any agents, employees, representative from and against any claims, expenses, losses, costs, including reasonable attorneys' fees, as a result of any failure of Contractor to procure the Bonds required herein.

ARTICLE 28 - FORCE MAJEURE

- 28.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.
- 28.2 If conditions are encountered at the Worksite which are: 1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or 2) unknown physical conditions of an unusual nature, which differ materially from

those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing Party shall be given to the other Party promptly before conditions are disturbed, and in no event later than ten (10) Days after first observance of such conditions. The Project Manager will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for performance of any part of the Work, will recommend an equitable adjustment in the PROJECT AMOUNT or to the Term of Agreement or both. If the Project

Manager determines that the conditions at the Worksite are not materially different from those indicated in the Contract Documents and that no change in the PROJECT AMOUNT or to the Term of Agreement is justified, the Town shall so notify the Contractor in writing, stating the

reasons. Claims by the Contractor in opposition to such determination must be made within ten (10) Days after the Town has given notice of the decision.

ARTICLE 29 – NON-EXCLUSIVE AGREEMENT

- 29.1 The Work to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the Town from engaging other firms to perform Work.
- 29.2 The Town reserves the right to perform Work or operations related to the Project with the Town's own forces, or through the award of one or more separate contracts to one or more separate Contractors if the scope of the work changes during the term of this Agreement and the Town and Contractor are unable to agree as to the Contractor's timely performance of such changed scope of work. Additionally, the Town reserves the right to award separate contracts in connection with other portions of the Project or other construction or operations on the Worksite under conditions identical or substantially similar to these.

ARTICLE 30 – EMERGENCIES

30.1 In any emergency affecting the safety of persons or property, the Contractor shall act at the Contractor's discretion, to prevent threatened damage, injury or loss.

ARTICLE 31 - TOWNSHIP OF DOCUMENTS

- 31.1 All documents developed by Contractor under this Agreement shall be delivered to the Town by the Contractor upon completion of the Work and shall become property of the Town, without restriction or limitation of its use. The Contractor agrees that all documents generated hereto shall, unless exempt, be subject to the applicable provisions of the Public Records Law, under Chapter 119, Florida Statutes.
- 31.2 The Contractor shall additionally comply with Section 119.0701, Florida Statutes, including without limitation, the following conditions: (1) keep and maintain public records that ordinarily and necessarily would be required by the Town to perform this service; (2) provide the public with access to public records on the same terms and conditions as the Town would at the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from disclosure are not disclosed, except as authorized by law; (4) meet all requirements for retaining public records and transfer, at no cost to the Town, all public records in its possession upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from disclosure requirements; and (5) all electronically stored public records must be provided to the Town in a format compatible with the Town's information technology systems.
- 31.3 It is further understood by and between the Parties that any information, writings, tapes, Contract Documents, reports or any other matter whatsoever which is given by the Town to the Contractor pursuant to this Agreement shall at all times remain the property of the Town and shall not be used by the Contractor for any other purposes whatsoever without the written consent of the Town.

31.4 In the event the Agreement is terminated, Contractor agrees to provide the Town all such documents within ten (10) Days from the date the Agreement is terminated.

ARTICLE 32 – INTENTIONALLY OMITTED

ARTICLE 33 - MISCELLANEOUS PROVISIONS

- 33.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.
- 33.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.
- 33.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.
- 33.4 This Agreement and Contract Documents constitute the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.
- 33.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Palm Beach County, Florida.
- 33.6 The Town reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Work and for a period of three (3) years after final payment is made under this Agreement.
- 33.7 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.
- 33.8 Work shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the Town.
- 33.9 The Town of Highland Beach is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.
- 33.10 The professional Work to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the Town from engaging other firms to perform Work.
- 33.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.
- 33.12 The Contractor agrees that it shall not discriminate as to race, sex, color, creed, national Page 50 of 52

origin, or disability, in connection with its performance under this Agreement.

- 33.13 All other terms, conditions and requirements contained in the IFB, which have not been modified by this Agreement, shall remain in full force and effect.
- 33.14 In the event of any dispute arising under or related to this Agreement, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.
- 33.15 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.
- 33.16 Notwithstanding anything in this Agreement to the contrary, Contractor and Town waive all claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes (1) damages incurred by the Town for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and (2) damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination. Nothing contained in this Section shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.
- 33.17 Nothing in this agreement shall be construed to mean that the CM is responsible for the design of the project or that the CM assumes any professional responsibility or liability, in whole or in part, for the design of the Project nor does the CM assume any of the contractual or customary duties of the Architect, its sub-consultants or any other parties not specified by this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST: Corporate Secretary or Witness:	"Contractor":	
Witnessed By:	Signed By:	
Witness Name:	Print Name:	

Witness Date:	Signature Date:	
ATTEST:	Town of Highland Beach, a Flomunicipal Corporation: "Town"	orida
By:	By:	
Town Clerk	Town Manager	
APPROVED AS TO FORM AND Legal sufficiency:		
By: Town Attorney		