

**TOWN OF HIGHLAND BEACH CONSTRUCTION
MANAGEMENT AT-RISK
PRE-CONSTRUCTION SERVICES AGREEMENT
(RFQ No. 22-001)**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this day of _____, 2022 (the “Effective Date”) by and between the **Town of Highland Beach**, Florida municipal corporation, 3614 South Ocean Blvd, Highland Beach, FL (“Town”) and Kaufman Lynn Construction, Inc., a Florida Corporation organized and existing under the laws of the State of Florida, having its principal business office at 3185 S. Congress Avenue, Delray Beach, Florida (“Contractor”). 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 have authorized the Town Manager to enter into an agreement with Contractor for the provision of Construction Management At-Risk services for the Fire Station #6 Construction or Renovation; and

WHEREAS, the Town is seeking to engage the Contractor to perform certain pre-construction services related to the development of the Project, and the Contractor has recognized that the identified pre-construction services are essential for determining various aspects of the construction of the Fire Station.

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

ARTICLE 1 – RECITALS

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

ARTICLE 2 - SCOPE OF WORK

2.1 The Contractor has overall responsibility for, and shall provide, complete Pre-Construction Phase 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.

2.2 Starting on the Effective Date of this Agreement and continuing through the term of this Agreement, Contractor shall consult with, advise, assist and make recommendations as part of the services (the "Services") provided to Owner, and all other consultants and design professionals for the Project, including, without limitation, the architect ("Architect"), interior designer and the mechanical, electrical, plumbing, civil and structural engineers (collectively, the "Design Professionals") as follows:

2.2.1 Participation in the review of Design Documents: Contractor will review and make recommendations with respect to such factors as site conditions, foundations, selection of systems and materials, construction feasibility, costs, availability of labor and materials, time requirements for procurement, installation and construction. The reviews, recommendations, proposals and advice to be furnished by Contractor as part of the Services hereunder shall not constitute the performance of professional services beyond those commonly provided by persons or entities similar to Contractor performing similar services in Florida. In no event shall Contractor's Services be deemed to constitute the performance of professional services which are commonly provided by the Design Professionals or other engineers or consultants. All advice, proposals and recommendations furnished by Contractor as part of the Services are subject to review and approval of Owner, Architect and other Design Professionals;

2.2.2 Phasing /Logistics: Contractor shall prepare phasing and logistics plans for the Project and assist in the identification of the crane location, buckhoist location, delivery and drop off locations, as well as assist in identifying areas for parking and material lay-down;

2.2.3 Value Engineering: Contractor shall evaluate the Project's various systems and materials and advise Owner as to their initial costs. Contractor shall evaluate, and propose to Owner, alternative materials, systems construction methods and construction sequencing to achieve the most cost-effective means of implementing the Project's design requirements;

2.2.4 Subcontractors: Contractor shall identify subcontractors and with Owner's consent, discuss the Project with such subcontractors in connection with major scopes of work for the Project;

2.2.5 Initial Budget and Cost Consultation: Based upon the information provided by Owner, Contractor shall prepare and provide to Owner, for its review and approval, an initial total hard

cost budget for the Project that includes, without limitation, the estimated cost of all materials, labor, services and equipment necessary for the entire construction of the Project, all insurance costs, bond premiums, construction contingency, and the contractor's general conditions, general requirements, overhead and profit;

2.2.6 Scheduling: Contractor shall develop a preliminary construction schedule in P6 format (the "Preliminary Schedule");

2.2.7 Long Lead-Time Work: Contractor shall advise Owner as to advance procurement requirements necessary to meet the Preliminary Schedule and/or realize cost savings.

2.3 The Services that the Contractor shall be providing to the Town pursuant to this Agreement will be set forth as part of the deliverables, which is scheduled below:

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

3.1.4 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 Specifications;
- 3.2.4 Plans;
- 3.2.5 The RFQ; and
- 3.2.6 The Proposal.

ARTICLE 4 - DEFINITIONS

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

4.1 *Architect/Engineer or A/E*: The "Architect/Engineer" or "A/E" shall mean that person or firm designated as the architect/engineer for the Project, or any portion thereof. Also referred to as

the Consultant, this entity has entered into a separate agreement with the Town for design services for the Project. For purposes of this Agreement, the Architect/Engineer of record for the Project is PGAL, Inc.

4.2 *Budget:* The amount established by the Town to build this Project (i.e., "Construction Budget"). The Contractor herein acknowledges the Construction Budget established by the Town for this Project.

4.3 *Change Order:* A written document signed by the Parties authorizing an addition, deletion or revision to the 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 *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.

4.7 *Contract Amendment:* A "Contract Amendment" shall mean a written order to the Construction Manager approved by the Town, as specified in this Agreement, and signed by the Town's duly authorized representative, authorizing a change in the 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.

4.8 *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.

4.9 *Construction Manager's Pre-Construction Services Fee:* The Construction Manager's Fee for pre-construction services, including the cost of time and materials expended in completion of its pre-construction services for this Project, shall not exceed Sixty Thousand Dollars (**\$60,000.00**) as contemplated herein. Notwithstanding anything to the contrary, if the GMP Proposal is not accepted by the Town and this Agreement is terminated, the Construction Manager shall be entitled to receive only that portion of the Fee referenced herein, representing all Work performed to date of termination relating to the Project. The Construction Manager's Pre-Construction Fee shall be at the rate of ten thousand (**\$10,000.00**) per month, which shall not exceed six (6) months.

4.10 *General Contractor:* The term "General Contractor" shall refer to the Contractor, Kaufman Lynn Construction, Inc. The Contractor shall be duly licensed as a General Contractor

pursuant to Chapter 489, Florida Statutes.

4.11 *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.

4.12 *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.

4.13 *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.

4.14 *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.

4.15 *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.

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 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.

6.2 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.

6.3 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.

6.4 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.

6.5 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.

6.6 Contractor shall inspect all materials delivered to the site and shall reject any materials that do not conform to the Contract Documents.

6.7 Contractor shall provide Project administrative functions including but not limited to the following:

6.7.1 Develop and implement a procedure for review, processing, and payment of invoices by Subcontractor for progress and final payments;

6.7.2 Determine when the Work or designated portions thereof are ready for the Substantial Completion inspection;

6.7.3 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

6.7.4 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.

6.8 Contractor shall be the single point of interface with all Subcontractor for the Town and all of its agents and representatives.

6.9 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 –PRE-CONSTRUCTION SERVICES PHASE FEE

7.1 The Pre-Construction Phase Fee is the total compensation payable to the Construction Manager for the performance of Pre-Construction Phase Services for this Project. The Pre-Construction Phase Fee shall be an amount not-to-exceed Sixty Thousand Dollars (\$60,000.00).

7.2 The Construction Manager shall submit invoices based on the percentage of completion of the services, payable proportionally on a monthly basis based on the agreed to schedule approved by the Town. The Town shall make payment of undisputed amounts within thirty (30) days after receipt of an acceptable invoice, which shall be accompanied by sufficient supporting documentation and contain sufficient detail, to allow a proper audit of expenditures, should Town require one to be performed.

7.3 Except as otherwise authorized pursuant to Paragraph 7.5 below, the Construction Manager shall not be entitled to an increase in the Pre-Construction Phase Fee for any costs, expenses, liabilities or other obligations arising from their performance of Pre-Construction Phase Services.

7.4 Contractor agrees and understands that: (i) any and all Subcontractor used by the Contractor shall be paid by the Contractor and not paid directly by the Town; and (ii) any and all liabilities regarding payment to or use of Subcontractor for any of the work related to this agreement shall be borne solely by Contractor. Any work performed for the Contractor by a Subcontractor will be pursuant to an appropriate agreement between the Contractor and Subcontractor which specifically binds the Subcontractor to all applicable terms and conditions of the contract documents.

7.5 In the event that additional Pre-Construction Phase Services are required and approved by the Town in writing, the Construction Manager shall be entitled to additional compensation determined by one of the following:

7.6.1 A pre-determined lump sum amount; or

7.6.2 The hourly cost of the Construction Manager's employee or consultant who actually performs the Additional Services, based on the employee's Worker Wage Rate or prorated Monthly Salary Rate plus the actual cost of allowable expenses incurred in the performance of the Additional Services, plus an overhead and profit markup of ten percent (10%) of the total cost; or

7.6.3 As otherwise agreed to by the Construction Manager and the Town prior to the performance of the requested Additional Services.

ARTICLE 8 – PRE-CONSTRUCTION PHASE SERVICES

The Construction Manager's Pre-Construction Phase services shall commence upon the Effective Date and shall continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. The Construction Manager is not entitled to reimbursement for any costs incurred for Pre-Construction Phase Services performed before the Effective Date. Pre-Construction Phase Services may overlap Construction Phase Services. The Construction Manager shall perform the following Pre-Construction Phase Services, in addition to those obligations set forth in Article 2.

8.1 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 Prequalification Plan - The Contractor shall prepare and submit a Subcontractor's prequalification plan for review and approval by the Project Team. The Contractor shall submit their list of pre-approved Subcontractor for each element of the Work for review and approval by the Project Team. The Town reserves the right to reject any Subcontractor proposed by the Contractor for this Project.

8.7.2 Any claims, objections or disputes arising out of the prequalification plan or list are the sole responsibility of the Contractor. The Contractor shall hold harmless, indemnify, and defend the Town, its employees, agents, and representatives in any matter arising out of the prequalification plan and/or the Subcontractor list, except where the sole cause of the matter is a Town directed decision on this specific matter.

8.7.3 Scope of Work - The Contractor shall receive subcontract proposals which, when combined with the work the Contractor intends to do with its own forces, shall represent the entirety of the Scope of Work required of this Agreement.

8.7.4 Pre-Bid Conferences - The Contractor shall schedule and conduct pre-bid

conferences for Subcontractor, vendors and suppliers interested in participating in this Project. The Contractor shall coordinate the scheduling of such pre-bid conferences with the Project Team members.

8.7.5 Subcontractor Bidding - The Contractor shall properly advertise and schedule in coordination with the Project Team the opening, review and award of sealed bids to qualified responsive and responsible Subcontractor. Said bids from Subcontractor shall be in writing and shall be opened and reviewed in conjunction with the Town's representative and the Project Architect.

ARTICLE 9 – GUARANTEED MAXIMUM PRICE PROPOSAL

9.1 When the Parties agree that the design of the Project is sufficiently developed and documented to allow detailed pricing of its construction, the Construction Manager shall prepare and submit a Guaranteed Maximum Price (GMP) Proposal to the Town. The GMP Proposal must remain valid for a period not-to-exceed ninety (90) days from submittal to the Town.

9.2 In developing the GMP Proposal, the Construction Manager shall coordinate efforts with the Project Architect to identify qualifications, clarifications, assumptions, exclusions, value engineering and any other factors relevant to establishment of a GMP. The Construction Manager shall review development of the GMP Proposal with the Town on an ongoing basis to address clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, and other matters relevant to the establishment of a GMP.

9.3 The GMP Proposal must include a written description of how it was derived that specifically identifies the clarifications and assumptions made by the Construction Manager in developing the GMP and the monetary amounts attributable to them. The GMP Proposal shall include, without limitation, a breakdown of Construction Manager's proposed General Conditions and Cost of the Work organized by trade, contingency amounts, Construction Manager's Fee, as well as the proposed construction schedule (calendar days duration), including milestones for Substantial Completion and Final Completion.

9.4 In the event that the Construction Documents are not complete, the GMP Proposal shall allow for reasonably expected changes and refinements in the Drawings and Specifications through completion, except for material changes in scope.

9.5 Included with its GMP Proposal, Construction Manager shall provide two complete, bound sets of the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project as developed at the time of the GMP Proposal and that are relevant to the establishment of the GMP. The bound supporting documents shall be referenced in and incorporated into the GMP Proposal.

9.6 The GMP Proposal and all supporting documents shall identify and describe all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work and for establishment of the Guaranteed Maximum Price. The GMP Proposal and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality of material and workmanship shall prevail over all other interpretations.

9.7 In submitting the GMP Proposal, the Construction Manager represents that it will provide every item, system or element of Work that is identified, shown or specified in the GMP Proposal or the supporting documents, along with all necessary or ancillary materials and equipment for

their complete operating installation, unless specifically excepted by the Town. Upon Town's acceptance of the GMP Proposal, the Construction Manager shall not be entitled to any increase in the Guaranteed Maximum Price due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the Construction Documents or the supporting documents used to establish the GMP.

9.8 The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement must be clearly and conspicuously identified to the Town in writing and specifically accepted by the Town. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by the Town and the terms of this Agreement and its attachments, the terms of the Agreement and its attachments shall control.

9.9 Town may accept or reject the GMP Proposal or attempt to negotiate its terms with the Construction Manager. In the event that the GMP Proposal is not accepted by the Town, then the Town may pursue other options including, but not limited to, the following:

a) Reject the GMP Proposal and request that the Construction Manager and Project Architect work together to develop solutions, including value engineering recommendations and other cost saving measures, to reconcile the proposed cost of the Project with the adopted Budget and to submit for review and approval by the Town, along with a revised GMP Proposal; or,

b) Reject the GMP Proposal, terminate this Agreement with the Contractor and take possession of the plans, specifications and other documents related to this Project. Moreover, the Town reserves the right to proceed with whichever course of action it considers to be in its best interest including, but not limited to, having the Project bid (priced) out and awarded to another firm. If so, the Contractor shall be compensated only for that percentage of their Pre-Construction Services Fee fully performed through the date of termination.

9.10 Upon acceptance by the Town of the GMP Proposal in writing, both parties shall execute the GMP Proposal and the terms of the GMP Proposal, including the Guaranteed Maximum Price and the supporting documents, shall become part of the Contract between the Town and the Construction Manager.

9.11 Following acceptance of the GMP Proposal by the Town, the Construction Manager shall continue to monitor the development of the Construction Documents so that, when complete, the Construction Documents adequately incorporate and resolve all qualifications, assumptions, clarifications, exclusions and value engineering issues identified in the GMP Proposal. During the Construction Documents stage, the Construction Manager and the Project Architect shall jointly deliver a monthly status report to the Town describing the progress on the incorporation of all qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the establishment of the GMP into the Construction Documents. The monthly status report shall also include an updated start-to-finish project schedule that encompasses the Project Architect's activities, the Contractor's activities, and the Town's commissioning and occupancy activities, short-term schedules, and production rates for key elements of the Project as determined by the Town.

9.12 The Parties may agree to convert the GMP to a lump sum contract amount at any time after the Construction Manager has received bids or proposals from trade Contractors or Subcontractor for the performance of all major elements of the Work. In preparing a lump sum conversion proposal, the General Contractor must provide the following information:

- a) The stage of completion of the Project;
- b) The trade packages that have been completely bought out;
- c) The trade packages remaining that have not been bought out;
- d) A complete line-item breakdown of the calculations used to establish a lump sum amount based on the GMP Schedule of Values;
- e) An accounting of all savings amounts that are to be returned to the Town as part of the lump sum calculation; and
- f) Any other Project information requested by the Town.

9.13 The Construction Manager shall document the actual Cost of the Work at buyout as compared to the Guaranteed Maximum Price Proposal and shall report this information to the Town monthly throughout the Construction Phase.

ARTICLE 13 – TERM OF AGREEMENT

13.1 This Agreement shall commence on the Effective Date set forth above and shall remain in full force and effect until the earlier of the following occurs:

- (i) The Parties' execution of a GMP contract for the construction of entire Project (the "Construction Management At-Risk Services Agreement") upon which time this Agreement shall be deemed terminated and cancelled, unless otherwise agreed by the Parties in writing;
- (ii) Either Party's termination of this Agreement in accordance with paragraph 6 below; or
- (iii) They shall not exceed threshold amount of \$60,000 has been attained for the Agreement.

13.2 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.

13.3 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.

13.4 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.

ARTICLE 15 – INTENTIONALLY OMITTED

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 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 Termination for Convenience: 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

22.2.13 Failing 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 Termination of Contract for Cause: 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.

22.4 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 Costs and Expenses: 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 are 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 Termination If No Default or Erroneous Default: 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 Remedies Not Exclusive: 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 Materiality and Non-Waiver of Breach: 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

With a copy to: Town Attorney

23.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

23.3 In the event there is a change of address, and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

ARTICLE 24 – INDEMNIFICATION

24.1 Contractor shall defend, indemnify and hold harmless the Town, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of the Contractor, its officers, directors, agents, partners, Subcontractor, employees and managers in the performance of Work under this Agreement.

24.2 Contractor shall be fully responsible to Town for all acts and omissions of the Contractor, its employees, Subcontractor, suppliers, or other persons directly or indirectly employed by its Subcontractor or suppliers, and any other persons or organizations performing or furnishing supplies under a direct or indirect agreement with Contractor. Nothing in the Contract Documents shall create any contractual relationship between Town and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of Town to pay or to cause the payment of any money due any Subcontractor, supplier, employee or agent except as may otherwise be required by law.

24.3 The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillments or discharge of such obligations.

24.4 If any Subcontractor, supplier, laborer, or materialmen of Contractor or any other person directly or indirectly acting for or through Contractor files or attempts to file a mechanic's or construction lien against the real property on which the Work is performed or any part or against any personal property or improvements or make a claim against any monies due or to become due from the Town to Contractor or from Contractor to a Subcontractor, for or on account of any Work, labor, construction services, material, equipment, or other items furnished in connection with the Work, Contractor agrees to satisfy, remove, or discharge such lien or claim at its own expense by bond, payment, or otherwise within ten (10) Days of the filing or from receipt of written notice from the Town.

24.5 Contractor has visited the Worksite and is familiar with the local conditions under which the Work are to be performed and relieves the Town from any liability in regard to any matter not immediately brought to the attention of the Town.

24.6 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the Town's liability as set forth in Chapter 768, Florida Statutes. Additionally, the Town does not waive sovereign immunity, and no claim or award against the Town shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 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

26.1.4 Worker’s Compensation - As required by the State of Florida and in accordance with F.S.440, with statutory limits, and Employer’s Liability with a minimum limit of \$1,000,000 per accident for bodily injury or disease.

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 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 - DISPUTES

EXCEPT AS OTHERWISE PROVIDED IN THE CONTRACT, ANY DISPUTE ARISING UNDER THIS CONTRACT WHICH IS NOT DISPOSED OF BY AGREEMENT SHALL BE DECIDED BY THE TOWN MANAGER OF THE TOWN OF HIGHLAND BEACH, FLORIDA, WHO SHALL REDUCE HIS/HER DECISION IN WRITING AND FURNISH A COPY THEREOF TO THE CONTRACTOR. THE DECISION OF THE TOWN MANAGER OF THE TOWN OF HIGHLAND BEACH, FLORIDA, SHALL BE FINAL AND CONCLUSIVE UNLESS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE FRAUDULENT, CAPRICIOUS, ARBITRARILY, OR GROSSLY ERRONEOUS AS TO NECESSARILY IMPLY BAD FAITH, OR NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

ARTICLE 33 - MISCELLANEOUS PROVISIONS

33.1 The duties and obligations imposed by this Contract and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guaranties and obligations imposed upon Contractor and all of the rights and remedies available to Town thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents,, and the provisions of this Paragraph will survive final payment and termination or completion of the Contract.

33.2 Contractor shall not assign or transfer the Contract or its rights, title or interests therein without Town's prior written approval. The obligations undertaken by Contractor pursuant to the Contract shall not be delegated or assigned to any other person or firm unless Town shall first consent in writing to the assignment. Violation of the terms of this Paragraph shall constitute a breach of Contract by Contractor and the Town may, at its discretion, cancel the Contract and all rights, title and interest of Contractor shall thereupon cease and terminate.

33.3 Contractor and its employees, volunteers and agents shall be and remain an independent contractor and not agents or employees of Town with respect to all of the acts and services performed by and under the terms of this Contract. This Contract shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties hereto.

33.4 Town reserves the right to audit the records of Contractor relating in any way to the work to be performed pursuant to this Contract at any time during the performance and term of the Contract and for a period of three (3) years after completion and acceptance by Town. If required by Town, Contractor agrees to submit to an audit by an independent certified public accountant selected by Town. Contractor shall allow Town to inspect, examine and review the records of Contractor at any and all times during normal business hours during the term of the Contract.

33.5 The remedies expressly **provided** in this Contract to Town shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of Town now or hereafter existing at law or in equity.

33.6 The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida.

33.7 Should any part, term or provision of this Contract be by the courts decided to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portion or provision shall not be affected thereby.

33.8 TOWN AND CONTRACTOR HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY ACTION, PROCEEDING, LAWSUIT OR COUNTERCLAIM BASED UPON THE CONTRACT, ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE CONSTRUCTION OF THE WORK, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR THE ACTIONS OR INACTIONS OF ANY PARTY.

33.9 **Public Records:** The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the Town as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the Town to perform the service.
- (b) Upon request from the Town's custodian of public records or designee, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the Town.
- (d) Upon completion of this Contract, transfer, at no cost, to the Town all public records in possession of the Contractor or keep and maintain public records required by the Town to perform the service. If the Contractor transfers all public records to the Town upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's

custodian of public records or designee, in a format that is compatible with the information technology systems of the Town.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT (561) 278-4548, 3614 S. OCEAN BLVD., HIGHLAND BEACH, FL 33487 OR AT LGASKINS@HIGHLANDBEACH.US.

33.9 PALM BEACH COUNTY IG: In accordance with Palm Beach County ordinance number 2011-009, the Contractor acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

33.10 Scrutinized Companies:

- A. Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the Town may immediately terminate this Contract at its sole option if the Contractor or any of its subcontractors are found to have submitted a false certification; or if the Contractor or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Contract.
- B. If this Contract is for one million dollars or more, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the Town may immediately terminate this Contract at its sole option if the Contractor, or any of its subcontractors are found to have submitted a false certification; or if the Contractor or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Contract.
- C. The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract.
- D. The Contractor agrees that the certifications in this section shall be effective and relied upon by the Town for the term of this Contract, including any and all renewals.
- E. The Contractor agrees that if it or any of its subcontractors' status changes in regard to any certification herein, the Contractor shall immediately notify the Town of the same.
- F. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

33.11 **E-VERIFY**. Pursuant to Section 448.095(2), Florida Statutes, the Contractor shall:

- a. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;
- b. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien;
- c. Maintain copies of all subcontractor affidavits for the duration of this Agreement;
- d. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- e. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and
- f. Be aware that if the Town terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the Contractor may not be awarded a public contract for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the Town as a result of the termination of the Agreement.

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

ATTEST:

Corporate Secretary or Witness:

,

“Contractor”:

Witnessed By: _____

Signed By: _____

Witness Name: _____

Print Name: _____

Witness Date: _____

Signature Date: _____

ATTEST:

Town of Highland Beach, a Florida municipal

Corporation:

“Town”

By: _____

By: _____

Town Clerk

Town Manager

APPROVED AS TO FORM AND

Legal sufficiency:

By: _____

Town Attorney