

TOWN OF HIGHLAND BEACH

REQUEST FOR PROPOSALS

UNDERGROUND CONTRACTOR SERVICES

RFP NO. 20-003



**NOTICE INVITING BID
TOWN OF HIGHLAND BEACH**

The Town of Highland Beach (Owner) will receive sealed bids on the date and time specified below. The work generally consists of the following: Furnishing all labor, materials, equipment, incidentals and appurtenances for the routine and emergency water and sewer distribution system and collection system repairs. Including but not limited to water & sewer main piping installations, water & sewer service piping installations, piping point repairs, sewer manhole repairs, sewer lining, lift station wet wells, lift station control panels, emergency by-pass, valve repair or replacements, meter & vault repair & replacements, backflow preventer repair & replacements and all associated road, driveway or sidewalk repairs or restoration. The Owner shall order Work Authorization for services required but make no guarantee as to the quantity, number, type, or tests that will be ordered. Work Authorizations shall be issued by the as needed throughout the duration of the Contract Term.

SUBMITTING PROPOSALS: Sealed bids (one original and two copies) will be received in the Office of the Town Clerk, Town of Highland Beach, 3614 S. Ocean Boulevard, Highland Beach, Florida 33487 until **3:00 p.m. on March 11, 2020.** All bids received will be opened and read at the close of bidding in the Commission Chambers of Town Hall. All bidders or their representatives are invited to be present.

It will be the sole responsibility of the bidder to deliver their proposal to the Office of the Town Clerk on or before the date and time specified. A **Mandatory Pre-Bid Conference** will be held at **11:00 a.m. on Thursday, February 20, 2020** at the Town of Highland Beach Commission Chambers, Town Hall, 3614 S. Ocean Boulevard, Highland Beach, Florida 33487. All interested parties are required to attend the pre-bid meeting.

NO FAXED BIDS WILL BE ACCEPTED. Bids must be submitted in a sealed envelope and plainly marked on the outside of the envelope; the bidder's name and address followed by "**SEALED BID FOR Town of Highland Beach Underground Contractor Services BID NO. 20-003**" address where bid is to be delivered or mailed to, and the date and time of bid opening. Bids must be submitted on the Bid Proposal Form(s) provided herein. Failure to do so may be cause for bid to be rejected. Proposals having an erasure or correction must be initialed by the bidder in ink. Bids shall be signed in ink; all quotations shall be typewritten and filled in with pen and ink.

CONTRACT TERM: The contract shall be for an initial period of three (3) years commencing on the date of issuance of a Notice to Proceed. The contract may be extended for one (1) two (2) year renewal terms under the same terms and conditions, if mutually agreed upon by both parties. Prior to extending any contract, and in exercising its discretion in its extension rights, the Owner shall review the contractor's past performance, record of complaints, and compliance with the contract terms. The form and legal sufficiency of the Contract shall be subject to the approval of the Town Attorney.

PUBLIC PERFORMANCE BOND: All Work Authorizations that exceed \$25,000.00 will require, a 100% Performance Bond. Three methods of bonds are acceptable:

1. A Surety Bond written by a surety company authorized to do business in the State of Florida. Surety bonds shall comply with Section 287.0935; Florida Statutes;
2. An Irrevocable Letter of Credit (ILC) issued by a bank located in Palm Beach County. The ILC shall be in the total amount of the contract and shall clearly state that it cannot be revoked until express written approval has been given by the Owner. The Owner, to draw on same, must give written notice to the bank, with a copy to the successful Bidder.
3. A Cashier's Check made payable to the Town of Highland Beach. Cashier's Check will be deposited into an escrow account for the term of the project and refunded to contractor only upon satisfactory completion of each Work Authorization.

INFORMATION OR CLARIFICATION: All communications and technical questions relative to this Work shall be directed to the Town of Highland Beach Office of the Town Clerk. (Lanelda Gaskins, MMC) at 561-278-4548 (phone) and lgaskins@highlandbeach.us (email), until **February 1, 2020.**

The Town of Highland Beach reserves the right to waive informalities in any bid and further reserves the right to reject any and all bids and to take any other action that may be deemed necessary in its best interest.

INSTRUCTIONS TO BIDDERS

1. DEFINED TERMS. Terms used in these Instructions to Bidders and the Notice Inviting Bids which are defined in the General Conditions have the meanings assigned to them in the General Conditions. The term "Bidder" means one who submits a Bid directly to OWNER, as distinct from a sub-bidder, who submits a Bid to a Bidder.

2. COMPETENCY OF BIDDERS. In selecting the Bidder deemed to be in the best interest of the Town of Highland Beach consideration will be given not only to the financial standing but also to the general competency of the Bidder for the performance of the WORK covered by the Bid. To this end, each Bid shall be supported by a statement of the Bidder's experience as of recent date on the form entitled "INFORMATION REQUIRED OF BIDDER," bound herein. No Bid for the WORK will be accepted from a contractor or subcontractor who does not hold a valid contractor's license in the Town of Highland Beach, State and County where the WORK is to be performed (if required by the State and County) applicable to the type of work bid upon at the time of opening Bids.

3. DISQUALIFICATION OF BIDDERS. More than one bid from an individual, firm, partnership, corporation, or association under the same or different names will not be considered. If the OWNER believes that any Bidder is interested/involved in more than one Bid for the WORK contemplated, all Bids in which such Bidder is interested/involved will be rejected. If the OWNER believes that collusion exists among the Bidders, all Bids will be rejected.

4. BIDDER'S EXAMINATION OF CONTRACT DOCUMENTS. Bidders are expected to examine the Contract Documents, delivery schedules, bid prices and extensions and all instructions pertaining to supplies and services. Failure to do so shall be at the Bidder's risk. In the case of a discrepancy in computing the total amount of the bid, the UNIT PRICE quoted shall govern.

5. INTERPRETATIONS: All questions about the meaning or intent of the Contract Documents are to be directed to the Owner in writing. The Owner will contact the Engineer when deemed necessary to assist with clarifications or interpretations of the Contract Documents. Interpretations or clarifications considered necessary by the Owner in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by the Owner as having received the Contract Documents. Questions received less than 7 calendar days prior to the date for opening of Bids may not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6. BID SECURITY, BONDS: Each Bid shall be accompanied by a certified or cashier's check or approved Bid Bond as stated in the above Notice Inviting Bids. Said check or bond shall be made payable to the OWNER and shall be given as guarantee that the Bidder, if awarded the WORK will enter into an Agreement with the OWNER, and shall furnish the necessary Insurance Certificates, Payment Bond and Performance Bond, each of said bonds to be in the amount stated in the Agreement. In case of refusal or failure to enter into said Agreement, the check or Bid Bond, as the case maybe, shall be forfeited to the OWNER. If the Bidder elected to furnish a Bid Bond as its Bid Security, the Bidder shall use the Bid Bond form bound herein, or one conforming substantially to it in form.

7. RETURN OF BID SECURITY: Within 14 days after award of the Contract, The OWNER will return the Bid securities accompanying such of the Bids as are not considered in making the award. All other Bid securities will be held until the Agreement has been finally executed. They will then be returned to the respective Bidders whose Bids they accompany.

8. BID FORM: The Bid shall be made on copies of the bidding schedule bound herein.

9. SUBMISSION OF BIDS: Refer to NOTICE INVITING BIDS.

10. DISCREPANCIES IN BIDS: In the event there is more than one Bid item in a Bidding schedule, the Bidder shall furnish a price for all Bid items in the schedule, and failure to do so will render the Bid non-responsive and may cause its rejection. In the event there are unit price Bid items in a bidding schedule and the "amount" indicated for a unit price bid item does not equal the product of the unit price and

quantity, the unit price shall govern and the amount will be corrected accordingly, and the Bidder shall be bound by said correction. In the event there is more than one bid item in the bidding schedule and the total indicated for the schedule does not agree with the sum of the prices bid on the individual items, the prices bid on the individual items shall govern and the total for the schedule will be corrected accordingly, and the Bidder shall be bound by said correction.

11. QUANTITIES OF WORK: The quantities set forth in the bid form are approximate only and are given to establish a uniform basis for the comparison of bids. The Owner does not expressly or indirectly agree that the actual amount of work to be done in the performance of the contract will correspond with the quantities in the Bid Proposal; the amount of work to be done may be more or less than the said quantities and may be increased or decreased by the Owner as circumstances may require. The increase or decrease of any quantity shall not be regarded as grounds for an increase in the unit price or in the time allowed for the completion of the work, except as provided in the specific language of the issued Work Authorization.

The quantities for payment under this Contract shall be full compensation determined by actual measurement of the completed items, in place, ready for service, and accepted by the Owner, unless otherwise specified. The Owner or his Engineer Representative will witness all field measurements.

12. PRICE ADJUSTMENTS: It is requested that bidders quote fixed prices that will be guaranteed to the Owner for a period of 90 days, commencing on the date of the Bid submission. Bidder acknowledges that, in certain circumstances, the Owner may require this amount of time to evaluate and award a bid.

Bidder's prices shall remain fixed and firm for a period of no less than thirty-six (36) months from the time of contract commencement. After the initial contract term, bidder shall have the option to request price adjustments. Any request for price adjustments must be issued at least sixty (60) days prior to the contract anniversary date. The Owner will consider a price adjustment based on the most current Consumer Price Index for All Urban Consumers (CPI-U), Bureau of Labor Statistics. It is the bidder's responsibility to request any pricing adjustment under this provision. If no price increase has been requested, the Owner will assume that the bidder has agreed to continue under the same price allowed in the current term. Any adjustment request received after the commencement of a new annual period may not be considered.

13. WITHDRAWAL OF BID: The Bid may be withdrawn by the Bidder by means of a written request, signed by the Bidder or its properly authorized representative. Such written request must be delivered to the place stipulated in the Notice Inviting Bids for receipt of Bids prior to the scheduled closing time for receipt of Bids.

14. MODIFICATIONS AND UNAUTHORIZED ALTERNATIVE BIDS. Unauthorized conditions, limitations, or provisos attached to the Bid will render it informal and may cause its rejection as being non-responsive. The completed Bid Forms shall be without interlineations, alterations or erasures in the printed text. Alternative Bids will not be considered unless called for. Oral, telegraphic, or telephonic Bids or modifications will not be considered.

15. LIQUIDATED DAMAGES: Liquidated damages of \$250 per day will be deducted from the contract sum for the unit cost of service for each calendar day elapsing beyond the specified time for completion for each Work Authorization without prior approval for an extension from the Owner's Designee.

16. AWARD OF CONTRACT: The contract will be awarded to the lowest responsive, responsible Bidder whose Bid, conforming to the Solicitation, is most advantageous to the Owner. The lowest responsive, responsible Bidder(s) will be determined in conjunction with the methods described below.

16.1: Bidder must bid on all items listed on Bid Form to qualify for award of the contract.

16.2: The Owner reserves the right to reject all bids or any portion of any bid the Owner deems necessary for the best interest of the Town of Highland Beach, to accept any item or group of items unless qualified by the Bidder, to acquire additional quantities at prices quoted on the Bid Form unless additional quantities are not acceptable, in which case the Bid Form must be noted "BID IS FOR SPECIFIED QUANTITY ONLY." All awards made as a result of this bid shall conform to applicable Florida Statutes and the Town of Highland Beach Ordinances and Code.

16.3: Bid prices should be submitted with the understanding that the Owner is not authorized to pay service charges, which may be imposed due to the late payment of an invoice, which has become delinquent.

16.4: The Owner shall award a contract to a Bidder through action taken by the Commission of the Town of Highland Beach (the "Town Commission") at a duly authorized meeting.

16.5: The General Terms and Conditions, the Special Conditions, the Technical Specifications, the Bidder's Proposal, the Contract referenced and the Work Authorizations are collectively an integral part of the contract between the Owner and the successful Bidder.

16.6: While the Town Commission may determine to award a contract to a Bidder(s) under this Solicitation, said award may be conditional on the subsequent submission of other documents as specified in the Bid Form of this solicitation. The Bidder shall be in default of the contractual obligations if any of these documents are not submitted in a timely manner and in the form(s) required by the Owner. If the Bidder is in default, the Owner, will void its acceptance of the Bidder's offer and may determine to accept the offer from the second lowest responsive, responsible Bidder or re-solicit Bids. The Owner may, at its sole option, seek monetary restitution from the Bidder as a result of damages or excess costs sustained and/or may prohibit the Bidder from submitting future Bids for a period of one year.

The Owner reserves the right to automatically extend the contract for a maximum period not to exceed one hundred and eighty (180) calendar days, in order to provide Town Departments with continual service and supplies while a new contract is being solicited, evaluated and/or awarded. If this right is exercised, the Owner shall notify the Bidder, in writing, of its intent to extend the contract for a definitive period of time prior to the effective date of the extension. By affixing its authorized signature to this Bid Form, the Bidder hereby acknowledges and agrees to this right of the Owner.

17. EXECUTION OF AGREEMENT: The Bidder to whom award is made shall execute a written agreement with the OWNER on the form of agreement provided, shall secure all insurance, and shall furnish all certificates and bonds required by the Contract Documents within 14 calendar days after receipt of the Agreement Forms from the Owner. Failure or refusal to enter into an Agreement as herein provided or to conform to any stipulated requirements in connection therewith shall be just cause for annulment of the award and forfeiture of the Bid Security. If the bidder who has been awarded the bid pursuant to paragraph 16 refuses or fails to execute the agreement, the Owner may award the Contract to whichever bidder it determines next best serves its interest. On the failure or refusal of such second or third Bidder (who has been awarded the contract) to execute the Agreement each such Bidder's Bid Security shall be likewise forfeited to the Owner.

18. GOVERNMENT RESTRICTIONS: In the event any governmental restrictions may be imposed which would necessitate alteration of the material quality, workmanship, or performance of the items/services offered on the bid prior to delivery/performance, it shall be the responsibility of the successful bidder to notify the Town at once, indicating in their letter the specific regulation which required an alteration. The Town of Highland Beach reserves the right to accept any such alteration, including any price adjustments occasioned hereby, or to cancel the contract at no further expense to the Town.

19. PUBLIC ENTITY CRIMES INFORMATION STATEMENT: A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant 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 36 months from the date of being placed on the convicted vendor list.

20. DISCRIMINATORY VENDOR LIST: An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

21. COPYRIGHTS OR PATENT RIGHTS: Bidder warrants that there has been no violation of copyrights or patent rights in manufacturing, producing, or selling the goods shipped or ordered, as a result of this bid.

22. TAXES: The Town of Highland Beach is exempt from all Federal and State taxes.

23. STANDARDS OF SAFETY: The bidder warrants that the product(s) and services supplied to the Town conforms in all respects to the standards set forth in the Occupational Safety and Health Act and its amendments and to any industry standards if applicable. Bid Proposal must be accompanied by Material Safety Data Sheet(s). (See attachment - Compliance with Occupational Safety and Health Act).

24. ASSIGNMENT: The contractor shall not transfer or assign the performance required by this bid without the proper written consent of the Town of Highland Beach. Any award issued pursuant to this bid invitation and monies which may become due hereunder are not assignable except with prior written approval of the Town of Highland Beach.

25. NO BID: See Town of Highland Beach "Statement of No Bid" form incorporated into the bid proposal package.

26. OMISSION OF DETAILS: Omission of any essential details from these documents will not relieve the contractor of supplying such work as specified.

27. REGULATIONS: All applicable laws and regulations of the Federal Government, State of Florida, Palm Beach County and Ordinances of the Town of Highland Beach will apply to any resulting award of contract.

28. PERMITS: The contractor will be required to obtain all necessary permits associated with any Work Authorization issued from the Town of Highland Beach, FDEP, FDOT and SFWMD.

29. NOTICE TO PROCEED: The contractor shall commence work within ten (10) days after receipt of Notice to Proceed from the Owner unless otherwise stated. The contract period shall commence on the date of issuance of the Notice to Proceed. Issuance of each Work Authorization by the Owner will serve as the Notice to Proceed for specified work under this overall contract.

30. LIABILITY INSURANCE: The bidder will assume the full duty, obligation and expense of obtaining all insurance required. The Town of Highland Beach shall be an additional insured under all policies required by this proposal. The successful bidder shall furnish to the Town of Highland Beach, 3614 S. Ocean Boulevard, Highland Beach, Florida 33487 certificates of insurance which indicate the insurance coverage have been obtained or otherwise secured in a manner satisfactory to the Town in an amount equal to 100% of the requirements provided herein and shall be presented to the Town prior to issuance of any contract(s) or award(s) document(s) which meets the requirements as outlined on the accompanying Agreement.

31. INDEMNIFICATION: Contractor agrees to indemnify, defend, save, and hold harmless the Town of Highland Beach, their officers and employees, from or on account of all damages, losses, liabilities and costs to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of this construction contract.

32. IDENTICAL TIE BIDS: Whenever two or more Bids which are equal with respect to price, quality and service are received by the Owner 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. Refer to Attachment - Drug Free Workplace Program Form.

33. CONFLICT OF INTEREST: For purposes of determining any possible conflict of interest, all bidders must disclose if any Town of Highland Beach employee is also an owner, corporate officer, or employee of their business

Indicate either "Yes" (a town employee is also associated with your business), or "No". If "Yes", give person(s) name(s) and position(s) with your business.

NO _____ YES _____ NAME & POSITION _____

(Note: If answer is "Yes", you must file a statement with the Supervisor of Elections, pursuant to Florida Statutes 112.313.)

34. FORCE MAJEURE: Seller's failure to make, or buyer's failure to take, any delivery or deliveries when due, if caused by Force Majeure as hereinafter defined, shall not constitute a default hereunder nor subject the party so failing to any liability to the other, provided however, the party affected by such Force Majeure shall promptly notify the other of the existence thereof and its expected duration and the estimated effect thereof upon its ability obligations hereunder.

Such party shall promptly notify the other party when such Force Majeure circumstances has ceased to effect its ability to perform its obligations hereunder. The quantity to be delivered hereunder shall be reduced to the extent of the deliveries omitted for such cause or causes, unless both parties agree that the total quantity delivered hereunder remain unchanged. As used herein, the term Force Majeure shall mean and include and ACT OF GOD or the public enemy, accident, explosion, fire, storm, earthquake, flood, drought, perils of the sea, strikes, lockouts, labor troubles, riots, sabotage, embargo, war (whether or not declared and whether or not the United States is a participant) Federal, State, or Municipal Law, regulation, order license, priority, seizure, requisition, or allocation, failure to delay of transportation shortage of or inability to obtain supplies, equipment, fuel or labor, or any other circumstances of a similar or different nature beyond the reasonable control of the party so failing.

35. WARRANTIES: Warranty of Merchantability - Successful offeror warrants that all equipment and materials to be supplied pursuant to the Agreement will be merchantable, or good quality and free from defects, whether patent or latent in material and workmanship.

Warranty of Material and Workmanship - Successful Offeror warrants all material and workmanship for a minimum of one (1) year from date of completion and acceptance by the Owner for any Work Authorization issued under this Contract. If within one (1) year after acceptance by the Town, or within such longer period of time as may be prescribed by Law any of the work is found to be defective or not in accordance with the contract documents, successful offeror shall promptly after receipt of written notice from the Owner to do so, promptly correct the work unless the Owner has previously given successful offeror a written acceptance of such condition. This obligation shall survive termination of the contract.

Warranty of Fitness for a Particular Purpose - Successful offeror warrants the equipment shall be fit for and sufficient for the purpose(s) intended and outlined within this proposal package. Successful Offeror understands and agrees that the Owner is purchasing the equipment in reliance upon the skill of successful offeror in furnishing the equipment suitable for the purpose stated.

If the equipment cannot be used in the manner stated in the proposal, then the Owner, at its sole discretion, may return the equipment to successful offeror for a full refund of any and all moneys paid for the equipment.

Warranty of Title - Successful Offeror warrants that all equipment delivered under the contract shall be of new manufacture and that successful offeror possesses good and clear title to said equipment and there are no pending liens, claims or encumbrance whatsoever against said equipment.

36. 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 or his/her designee, who shall reduce his/her decision to writing and furnish copy thereof to the Contractor. The decision by 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, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not supported by substantial evidence.

37. LITIGATION VENUE: The parties waive the privilege of venue and agree that all litigation between them shall take place in the state court in Palm Beach County, Florida. The parties waive jury trial for all disputes.

38. CANCELLATION FOR UNAPPROPRIATED FUNDS: The obligation of the Owner for payment to a Contractor is limited to the availability of funds appropriated in current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

39. SPECIAL CONDITIONS: Any and all Special Conditions that may vary from the General Conditions shall have precedence.

40. CONE OF SILENCE: Pursuant to Section 2-355 of the Palm Beach County Code of Ordinances, all Solicitations, as of the deadline to submit the proposal and until the appropriate authority has approved an award recommendation, are under the "Cone of Silence".

41. COMPLETE PROJECT REQUIRED: Contractor shall complete the work outlined in the Scope of Work as well as any future Work Authorizations. Completed work shall meet all specifications identified therein. Failure to list any item or classes under the Scope of Work shall not relieve the contractor from furnishing, installing or performing such work where required by any part of these specifications, or necessary for the satisfactory completion of the project.

42. NON-CONFORMANCE TO CONTRACT CONDITIONS: Items may be tested for compliance with specifications. Items delivered, not conforming to specifications, may be rejected and returned at Contractor's expense. These items and items not delivered as per delivery date in bid and/or Purchase order or Work Authorization may be purchased on the open market with any increase in cost charged to the Bidder. Any violation of these stipulations may also result in the Contractor's name being placed on the Town's Unapproved Vendor List.

BID PROPOSAL FORM BID NO. -

**BID TO: TOWN COMMISSION
 TOWN OF HIGHLAND BEACH**

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the OWNER in the form included in the Contract Documents to perform the WORK as specified or indicated in said Contract Documents entitled:

Town of Highland Beach Underground Contractor Continuing Services

2. Bidder accepts all of the terms and conditions of the Contract Documents, including without limitation those in the Notice Inviting Bids and Instructions to Bidders, dealing with the disposition of the Bid Security.

3. The Bid will remain open for the period stated in the Notice Inviting Bids unless otherwise required by law. Bidder will enter into an Agreement within the time and in the manner required in the Notice Inviting Bids and the Instructions to Bidders, and will furnish the insurance certificates, and Performance Bond required by the Contract Documents.

4. Bidder has examined copies of all the Contract Documents including the following addenda (receipt of all of which is acknowledged):

Number	Date
_____	_____
_____	_____
_____	_____
_____	_____

5. Bidder has familiarized itself with the nature and extent of the Contract Documents, locality where the WORK is to be performed, the legal requirements (federal, state and local laws, ordinances, rules and regulations), and the conditions affecting cost, progress or performance of the WORK and has made such independent investigations as Bidder deems necessary.

6. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid. Bidder has not solicited or induced any person, firm or corporation to refrain from bidding and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over the Owner.

To all the foregoing, and including all Bid Schedule(s) and Information Required of Bidder contained in this Bid Form, said Bidder further agrees to complete the WORK required under the Contract Documents within the Contract Time stipulated in said Contract Documents, and to accept in full payment thereof the Contract Price based on the Total Bid Price(s) named in the aforementioned Bidding Schedule(s).

7. Bidder shall guarantee the Total Bid Price for a period of 90 calendar days from the date of bid opening.

NAME OF FIRM _____

ADDRESS: _____

NAME OF SIGNER _____

(Print or Type)

TITLE OF SIGNER _____

SIGNATURE: _____ DATE: _____

TELEPHONE NO.: _____ FACSIMILE NO. _____

SCHEDULE OF BID PRICES – BID NO. - -

TO: TOWN OF HIGHLAND BEACH

(Please fill in all blanks and return with your proposal.)

In accordance with your request for proposals and the specifications contained herein, the undersigned proposes the following:

All Quantities Estimated and not Guaranteed.

ITEM NO.	DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE (in words)	UNIT PRICE	EXTENDED TOTAL PRICE
GENERAL CONDITIONS: *ALL GENERAL CONDITIONS ITEMS (#1 - #8) TO BE INCLUDED IN THE UNIT BID PRICES LISTED BELOW.						
*1	Site Mobilization /Demobilization					
*2	Bonds and Insurance					
*3	Maintenance of Traffic					
*4	Trench Safety and Special Shoring					
*5	Preconstruction Video of Project Site					
*6	Survey Layout and As-Built Record Drawings					
*7	NPDES Permit/Erosion Protection Measures					
*8	Indemnification					
WATER SYSTEM						
9	8" PVC C-900 (DR 18) Pipe (Push-On)	LF	200		\$	\$
				_____ Dollars		
				_____ Cents		

10	8" PVC C-900 (DR 18) Pipe (RJ)	LF	200		\$	\$
				Dollars		
				Cents		
11	8" DIP CL 52 (Flanged & MJ) Pipe	LF	100		\$	\$
				Dollars		
				Cents		
12	2" PVC Schedule 80 WM Pipe (Solvent Welded)	LF	50		\$	\$
				Dollars		
				Cents		
13	Abandon In-Place and Grout Existing 4" – 14" WM, incl. Caps	LF	500		\$	\$
				Dollars		
				Cents		
14	Remove Existing 4" - 14" WM	LF	100		\$	\$
				Dollars		
				Cents		
15	Fire Hydrant Assembly Including Valves and 8X6 Tees	EA	5		\$	\$
				Dollars		
				Cents		
16	Remove Existing Fire Hydrant	EA	5		\$	\$
				Dollars		
				Cents		
17	4" Gate Valve and Box	EA	4		\$	\$
				Dollars		
				Cents		
18	6" Gate Valve and Box	EA	4		\$	\$
				Dollars		
				Cents		

19	8" Gate Valve and Box	EA	4		\$	\$
				Dollars		
				Cents		
20	10" Gate Valve and Box	EA	2		\$	\$
				Dollars		
				Cents		
21	14" Gate Valve and Box	EA	2		\$	\$
				Dollars		
				Cents		
22	14" x 8" Tapping Sleeve and 8" Tapping Gate Valve	EA	2		\$	\$
				Dollars		
				Cents		
23	10" x 8" Tapping Sleeve and 8" Tapping Gate Valve	EA	2		\$	\$
				Dollars		
				Cents		
24	8" x 6" Tapping Sleeve and 6" Tapping Gate Valve	EA	2		\$	\$
				Dollars		
				Cents		
25	6" x 4" Tapping Sleeve and 4" Tapping Gate Valve	EA	2		\$	\$
				Dollars		
				Cents		
26	4" - 8" Linestop	EA	5		\$	\$
				Dollars		
				Cents		
27	10" - 14" Linestop	EA	2		\$	\$
				Dollars		
				Cents		

28	4" – 8" Insertion Valve	EA	2		\$	\$
				Dollars		
				Cents		
29	10" – 14" Insertion Valve	EA	2		\$	\$
				Dollars		
				Cents		
30	DIP Domestic Fittings (cement lined)	TONS	2		\$	\$
				Dollars		
				Cents		
31	2" Single WS (short) – connect to existing meter box	EA	10		\$	\$
				Dollars		
				Cents		
32	2" Single WS (long) – connect to existing meter box	EA	10		\$	\$
				Dollars		
				Cents		
33	Relocate existing meter box inside of ROW	EA	8		\$	\$
				Dollars		
				Cents		
34	Replace Existing Water Meter Box w/ New Water Meter Box	EA	8		\$	\$
				Dollars		
				Cents		
35	2" Single Meter Service (meter box, 2" meter, piping)	EA	3		\$	\$
				Dollars		
				Cents		
36	2" SCH 40 Single Irrigation Service Pipe	LF	30		\$	\$
				Dollars		
				Cents		

37	4" Single Meter Service (4" meter, iso-valve, flg piping & fittings)	EA	10		\$	\$
				Dollars		
				Cents		
38	2" Backflow Device (RPZ type)	EA	1		\$	\$
				Dollars		
				Cents		
39	Dual 3" Backflow Assembly (RPZ type)	EA	1		\$	\$
				Dollars		
				Cents		
40	2" Corp Stop with 4" Double Strap Tapping Saddle	EA	1		\$	\$
				Dollars		
				Cents		
41	Shutdown Connection to Existing 4" – 14" WM	EA	5		\$	\$
				Dollars		
				Cents		
42	Connect New 2" Water Service To Existing 1-1/2" Fire Line	EA	1		\$	\$
				Dollars		
				Cents		
43	Remove Existing WM Vault	EA	2		\$	\$
				Dollars		
				Cents		
44	Remove Existing BFP	EA	4		\$	\$
				Dollars		
				Cents		
45	Remove Existing Valve Box (4'x4' conc.)	EA	2		\$	\$
				Dollars		
				Cents		

46	Temporary Sample Point	EA	3	_____	\$	\$
				Dollars		

				Cents		
47	Remove & Replace Tree within ROW	EA	2	_____	\$	\$
				Dollars		

				Cents		
48	Open Cut Pavement Repair	LF	50	_____	\$	\$
				Dollars		

				Cents		
49	1" Mill and 1" Resurface (S-III) Town Roads	SY	900	_____	\$	\$
				Dollars		

				Cents		
50	1" Mill and 1" Resurface (Friction Course) FDOT Roads	SY	900	_____	\$	\$
				Dollars		

				Cents		
51	Total Road Reconstruction/Open Cut Trench Repair (2" Asphalt, 8" Limerock, 12" Stabilized Subgrade)	SY	900	_____	\$	\$
				Dollars		

				Cents		
52	Remove & Replace 6' Wide Asphalt Walk	LF	25	_____	\$	\$
				Dollars		

				Cents		
53	Remove & Replace Paver Driveway	SF	200	_____	\$	\$
				Dollars		

				Cents		
54	Remove & Replace Concrete Driveway	SF	400	_____	\$	\$
				Dollars		

				Cents		

55	Remove & Replace Asphalt Driveway	SF	200		\$	\$
				Dollars		
				Cents		
56	Remove & Replace Decorative Driveway	SF	200		\$	\$
				Dollars		
				Cents		
57	Remove & Replace Header Curb	LF	25		\$	\$
				Dollars		
				Cents		
58	Remove & Replace Paver Speed Hump	LS	1		\$	\$
				Dollars		
				Cents		
59	Remove & Replace "Type D" Curb	LF	50		\$	\$
				Dollars		
				Cents		
60	Remove & Reinstall Mailboxes	EA	5		\$	\$
				Dollars		
				Cents		
61	Sewer Lateral Repair / Adjustments	EA	10		\$	\$
				Dollars		
				Cents		
62	Flowable Fill	CY	50		\$	\$
				Dollars		
				Cents		
63	Thermoplastic Pavement Markings	LS	1		\$	\$
				Dollars		
				Cents		

SEWER SYSTEM

64	4" ARV Assembly w/ Manhole	EA	1	_____	\$	\$
				Dollars		

				Cents		
65	4" PVC C-900 FM Pipe (Restrained Joints)	LF	50	_____	\$	\$
				Dollars		

				Cents		
66	6" PVC C-900 FM Pipe (Restrained Joints)	LF	20	_____	\$	\$
				Dollars		

				Cents		
67	8" PVC C-900 FM Pipe (Restrained Joints)	LF	20	_____	\$	\$
				Dollars		

				Cents		
68	4" - 8" Plug Valve w/ Valve Box	EA	5	_____	\$	\$
				Dollars		

				Cents		
69	Coat Interior Existing Sewer MH (Mainstay 2 Part)	EA	8	_____	\$	\$
				Dollars		

				Cents		
70	Adjust Sewer MH Rim	EA	5	_____	\$	\$
				Dollars		

				Cents		
71	Sewer Flow Bypass Pumping	LS	1	_____	\$	\$
				Dollars		

				Cents		
72	Remove Existing Sewer Pipe	LF	25	_____	\$	\$
				Dollars		

				Cents		

73	8" PVC SDR 26 Sewer Pipe 0' – 10' Depth	LF	100	_____	\$	\$
				Dollars		

				Cents		
74	Single 4"-6" Sewer Lateral w/ Cleanout	EA	10	_____	\$	\$
				Dollars		

				Cents		
75	Double 4"-6" Sewer Lateral w/ Cleanout	EA	5	_____	\$	\$
				Dollars		

				Cents		
76	DIP Epoxy Lined (P401) FM Fittings	TONS	2	_____	\$	\$
				Dollars		

				Cents		

TOTAL COST OF BID \$ _____
 BID ITEMS 1 – 76 (in numbers)

TOTAL COST OF BID _____
 BID ITEMS 1 – 76 (in words) **Dollars**

Cents

The Contract shall be awarded on the Total Bid Amount

(Amounts are to be shown in both words and figures. In case of discrepancies, the amount shown in words will govern for each bid item, unit price, and total bid. Extended unit price shall prevail over total price for bid items based upon unit price.)

ALL BIDS MUST BE SIGNED WITH THE VENDOR NAME AND BY AN OFFICER OR EMPLOYEE HAVING THE AUTHORITY TO BIND THE COMPANY OR FIRM BY SIGNATURE.

PUBLIC ENTITY CRIMES FORM ATTACHED? YES _____ NO _____

NON-COLLUSION AFFIDAVIT ENCLOSED? YES _____ NO _____

HAVE YOUR INSURANCE REPRESENTATIVE REVIEW THE SAMPLE INSURANCE CERTIFICATE TO ENSURE COMPLIANCE.

BIDDER'S GENERAL INFORMATION:

The Bidder shall furnish the following information. The undersigned guarantees the truth and accuracy of all statements and answers herein contained. Additional sheets shall be attached as required. Failure to complete Item Nos. 1 - 13 will cause the bid to be non-responsive and may cause its rejection. In any event, no award will be made until all of the Bidder's General Information (i.e., items I through 13 inclusive) is delivered to the OWNER.

(1) CONTRACTOR'S name and address:

(2) CONTRACTOR'S telephone number:

(3) CONTRACTOR'S license: Primary classification

State License Number _____ Supplemental
classifications held, if any: _____

Name of Licensee, if different from (1) above: _____

(4) Name of person and title who reviewed Town Work Area &
Contract Documents for your firm:

Name: _____ Date of Review: _____

Title: _____

(5) How many years has your organization been in business in the State of Florida as a
Contractor? _____

(6) What is the last project of this nature (water or sewer at least 8-inches in diameter,
installed by open-cut methods in residential neighborhood) that you have completed as
Prime Contractor for a municipality in Florida? (This must be filled out below or Bid may
be considered non-responsive.)

Project: _____

Year Complete: _____

Municipality: _____

(7) Have you ever failed to complete work awarded to your Company? If so, where and why?

(8) Name, address, and telephone number of surety company and agent who will provide the required bonds on this contract:

(9) ATTACHED TO THIS BID the experience resume of the person who will be designated chief construction superintendent or on site construction manager.

(10) ATTACHED TO THIS BID a financial statement, references, and other information, sufficiently comprehensive to permit an appraisal of CONTRACTOR'S current financial condition.

(11) List 5 projects completed as Prime Contractor in last 5 years in Florida involving work of similar type and complexity (water or sewer at least 8-inches in diameter, installed by open-cut methods in residential neighborhood) that you have completed as Prime Contractor for a municipality in Florida? (This must be filled out below or Bid may be considered non-responsive.):

a. Project Name: _____

Contract Price: _____

Detailed Description of Work: _____

Name, Address and Telephone Number of Owner: _____

b. Project Name: _____

Contract Price: _____

Detailed Description of Work: _____

Name, Address and Telephone Number of Owner: _____

c. Project Name: _____

Contract Price: _____

Detailed Description of Work: _____

Name, Address and Telephone Number of Owner: _____

d. Project Name: _____

Contract Price: _____

Detailed Description of Work: _____

Name, Address and Telephone Number of Owner: _____

e. Project Name: _____

Contract Price: _____

Detailed Description of Work: _____

Name, Address and Telephone Number of Owner: _____

- (12) Subcontractors: The Bidder further proposes that as part of their submittal attached is a list of subcontracting firms or businesses will be awarded subcontracts for portions of the work in the event the bidder is awarded the Contract. For each Subcontractor listed, please provide Company name, address, phone number, license number, and years in business.

BID BOND

KNOW ALL MEN BY THESE PRESENTS,

That _____ as Principal, and _____ as Surety, are held and firmly bound unto TOWN OF HIGHLAND BEACH, hereinafter called "OWNER" in the sum of (\$ _____) _____ dollars,

(not less than 5 percent of the total amount of the Bid)

for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Principal has submitted a Bid to said Owner to perform the WORK required under the bidding schedule of the OWNER'S Contract Documents entitled:

Town of Highland Beach Water Main Replacement – Phase 1 and Phase 2

NOW THEREFORE, if said Principal is awarded a contract by said OWNER and, within the time and in the manner required in the "Notice Inviting Bids" and the "Instructions to Bidders" enters into a written Agreement on the form of the agreement bound with said Contract Documents, furnishes the required certificates of insurance, and furnishes the required Performance Bond, then this obligation shall be null and void, otherwise it shall remain in full force and effect. In the event suit is brought upon this bond by said OWNER and OWNER prevails, said Surety shall pay all costs incurred by said OWNER in such suit, including a reasonable attorney's fee to be fixed by the court.

SIGNED AND SEALED, this _____ day of _____, 2019

_____(SEAL) _____(SEAL)
(Principal) (Surety)

By: _____ By: _____

(SEAL AND NOTARIAL ACKNOWLEDGMENT OF SURETY)

**TOWN OF HIGHLAND BEACH
NON-COLLUSION AFFIDAVIT**

This affidavit is to be filled in and executed by the bidder, if the bid is made by a Corporation, then by its Chief Officer. This document must be submitted with the bid.

STATE OF _____

ss

COUNTY OF _____

being first duly sworn, deposes and says that _____

residing at _____ and _____

residing at _____ and _____

residing at _____ (is/are)

the only person(s) with (him/them) in the delivery of the materials bid upon or the services performed under these specifications; that the said bid is made without any connection or common interest in the profits with any other persons making any bid or proposal for the said work; that the said contract is on (his/their) part in all respects fair and without collusion or fraud; and also that no head of any department or any employee therein; or any officer of the Town of Highland Beach is directly or indirectly interested therein.

BIDDER'S AUTHORIZED SIGNATURE _____

Subscribed and sworn to before me this _____ day of _____, 2019

BID DESCRIPTION: Town of Highland Beach Water Main Replacement BID NO. -

DRUG-FREE WORKPLACE PROGRAM FORM

In accordance with Section 287.087, State of Florida Statutes, 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 for the procurement of commodities or contractual service, 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. In the event that none of the tied vendors have a Drug-free Workplace program in effect the Town reserves the right to make final Decisions in the Town's best interest. 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 employees 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 contendens to, any violation of Chapter 893 or of any controlled substance law of the United States of 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 convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation.

If bidder's company has a Drug-free Workplace Program, so certify below:

AS THE PERSON AUTHORIZED TO SIGN THE STATEMENT, I CERTIFY THAT THIS FIRM COMPLIES FULLY WITH THE ABOVE REQUIREMENTS.

SIGNATURE OF BIDDER: _____ **DATE:** _____

BID DESCRIPTION: Town of Highland Beach Water Main Replacement BID NO. -

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as **Contractor**, and _____ as **Surety**, are held and firmly bound unto the **TOWN OF HIGHLAND BEACH, FLORIDA** hereinafter called "**Owner**" in the sum of _____ dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said CONTRACTOR has been awarded and is about to enter into the annexed Agreement with said OWNER to perform the WORK as specified or indicated in the Contract Documents entitled:

Town of Highland Beach Water Main Replacement – Bid No. ____ - ____

NOW, THEREFORE, if the said CONTRACTOR shall fully and faithfully perform all the requirements of said Contract Documents required to be performed on its part, at the times and in the manner specified herein, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

PROVIDED, that any alterations in the WORK to be done or the materials to be furnished, or changes in the time of completion, which may be made pursuant to the terms of said Contract Documents, shall not in any way release said CONTRACTOR or said Surety thereunder, nor shall any extensions of time granted under the provisions of said Contract Documents, release either said CONTRACTOR or said Surety, and notice of such alterations or extensions of the Agreement is hereby waived by said Surety.

SIGNED and SEALED, this _____ day of _____, 2019.

(CONTRACTOR)

(SURETY)

BY: _____
(SIGNATURE)

BY: _____
(SIGNATURE)

STATE OF FLORIDA :
COUNTY OF PALM BEACH:

BEFORE ME PERSONALLY APPEARED THE ABOVE TO ME WELL KNOWN AND KNOWN TO ME TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO AND BEFORE ME THAT THEY EXECUTED SAID INSTRUMENT FOR THE PURPOSES THEREIN EXPRESSED.

WITNESS MY HAND AND OFFICIAL SEAL, THIS _____ DAY OF _____, 2019

NOTARY PUBLIC:

**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 _____
(print name of the public entity)

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 materiel misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means finding of guilt of a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or in formation after July 1, 1989, as a result of a jury verdict, nonjury 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:

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

2. 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 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 person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 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 or of the United States with the legal power to enter into a binding contract and which bids or applies 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.

_____ 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 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 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 vendor list. (Attach a copy of the final order).

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) 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 AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature)

Sworn to and subscribed before me this _____ day of _____, 20____

Personally known _____

Or Produced Identification _____ Notary Public – State of _____

(Type of identification)

My commission expires _____

(Printed, typed or stamped commissioned name of notary public)

CONTRACT

Between

TOWN OF HIGHLAND BEACH

and

Contractor's Name

for

Town of Highland Beach
Underground Contractor Continuing Services
Bid No. 20-003

This Contract is made this _____ day of _____, 2019, by and between the **Town of Highland Beach**, located at 3614 S. Ocean Blvd., Highland Beach, Florida 33487, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as the "Town" or "Owner", and _____, a corporation authorized to do business in the State of Florida, hereinafter referred to as "Contractor."

WITNESSTH:

WHEREAS, the Town issued an Invitation To Bid (ITB) for Underground Contractor Services in ITB number _____; and

WHEREAS, Contractor responded to the ITB and Contractor's Bid was selected as the most lowest and most responsive and responsible bidder; and

WHEREAS, the parties wish to enter into this Contract for the provision of various underground contractor services.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

Wherever used in this Contract or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.1.1 Change Order - A document which is signed by Contractor and Town and authorizes an addition, deletion or revision in the Work within the general scope of this Contract, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Contract.

1.1.2 Contract - The written agreement between Town and Contractor covering the Work to be performed including other Contract Documents that are attached to the Contract or made a part thereof.

1.1.3 Contract Documents - The entire contents of this Invitation to Bid, the General Terms and Conditions, the Special Conditions, the Technical Specifications, the Bidder's Proposal, the Contract referenced, any subsequent Work Authorizations or Change Orders are collectively an integral part of the contract between the Owner and the successful Bidder.

1.1.4 Defective - An adjective which when modifying the Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to final payment.

1.1.5 Effective Date of the Contract - The date indicated in the Contract on which the Contract becomes effective, but if no such date is indicated it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

1.1.6 ENGINEER – Baxter & Woodman or its authorized employees.

1.1.7 Notice to Proceed - A written notice given by Town to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform Contractor's obligations under the Contract Documents. The Contractor shall commence work on any Subsequent Work Authorization issued by the Owner within ten (10) days after receipt of Work Authorization from the Owner unless otherwise stated.

1.1.8 Project is the total overall contract scope of construction for which the Contractor is responsible under this agreement, including all labor, materials, equipment and transportation used or incorporated in such construction.

1.1.9 Specifications - Those portions of the Contract Documents consisting of written technical specifications, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

1.1.10 Subcontractor - An individual, firm or corporation having a direct Contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the site.

1.1.11 Supplier - A manufacturer, fabricator, supplier, distributor, material man or vendor.

1.1.12 TOWN - The Town Commission of the TOWN OF HIGHLAND BEACH, FLORIDA with whom Contractor has entered into an Contract and for whom the Work is to be provided.

1.1.13 Work - Work is the result of performing services, specifically, including but not limited to construction, furnishing labor, soil borings, equipment and materials incorporated used or incorporated in the construction of the entire project as required by the Contract Documents.

1.1.14 Written Amendment - A written amendment of the Contract Documents, signed by Owner and Contractor on or after the Effective Date of the Contract and normally dealing with the non-engineering, or non-technical aspects rather than strictly Work related aspects of the Contract Documents.

1.1.15 Work Authorization - A written work scope directive issued by the Owner which orders subsequent work under this overall Contract. Work Authorization utilize the established Unit Prices included in the Bid Form.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 This Contract shall be signed in not less than duplicate by the Owner and Contractor.

1.2.2 It is the intent of the Owner and Contractor that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent with and is reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.3 Enumeration of Contract Documents:

1.3.1 The Contract Documents which comprise the entire agreement between Owner and Contractor are attached to this Contract, made a part hereof and consist of the following:

- (1) This Contract and Bidding Requirements
- (2) Technical Specification Attachments
- (3) Construction performance bond, consisting of 1 page.
- (4) Insurance certificate, consisting of 1 page.
- (5) Notice of Award and Notice to Proceed.
- (6) All applicable provisions of State, Federal or local law.
- (7) Any modification or change orders delivered after execution of Contract.

IN THE EVENT OF CONFLICT, THE ABOVE LISTING OF DOCUMENTS SHALL TAKE PRECEDENCE IN THE ORDER THAT THEY ARE LISTED.

1.4 Intent:

It is the intent of the Owner to select and retain an Underground Contractor to perform on call Water & Sewer Repair and Rehabilitation services. The Underground Contractor will be selected based upon bid costs, qualifications, and ability to perform the required services during the stipulated contract period. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any

governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of contract award, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of Town, Contractor, or any of their consultants, agents or employees from those set forth in the Contract Documents.

1.5 Conflict, Error or Discrepancy:

If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, Contractor shall so report to Owner in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from the Town and/or ENGINEER.

1.6 Amending and Supplementing Contract Documents:

The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 1.6.1 A Change Order; or
- 1.6.2 A formal written amendment.
- 1.6.3 Work change directive.

1.7 Supplements, Minor Variations or Deviations:

In addition, the requirements of the Contract Documents may be supplemented and minor variations and deviations in the work may be authorized in one or more of the following ways:

- 1.7.1 ENGINEER'S approval of a shop drawing or sample; or
- 1.7.2 ENGINEER'S written interpretation or clarification.
- 1.7.3 A field order.

1.8 Representation of Contractor.

Execution of the Contract by the Contractor is a representation that Contractor has reviewed the Contract Documents and visited the general work area site and become familiar with the Town's Ordinances and local conditions under which the work is to be performed.

1.9 Before Commencing Operations:

Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon. Contractor shall promptly report in writing to Owner any conflict, error or discrepancy which Contractor may

discover and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby.

1.10 OWNERSHIP AND USE OF DOCUMENTS

1.10.1 The Contract Documents, specifications, designs, models, photographs, reports, surveys and other data provided with this Contract are and shall remain the property of the Town whether the project for which they are made is executed or not. This is not an assignment of any copyrights or other ownership rights which the ENGINEER maintains.

1.10.2 Submission or distribution of documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

ARTICLE 2

CONTRACTOR'S SERVICES AND RESPONSIBILITIES

2.1 SERVICES AND RESPONSIBILITIES

2.1.2 The Contractor shall assist the Owner and ENGINEER in filing documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

2.1.3 Unless otherwise provided in the Contract Documents, the Contractor shall provide or cause to be provided and shall pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

2.1.4 The Contractor shall be responsible for and shall coordinate all construction means, methods, techniques, sequences and procedures.

2.1.5 The Contractor shall keep the Owner informed of the progress and quality of the Work.

2.1.6 If requested in writing by the Owner, the Contractor, with reasonable promptness and in accordance with time limits agreed upon, shall interpret the requirements of the Contract Documents and shall decide, subject to determination by the ENGINEER, subject to demand for arbitration, claims, disputes and other matters in question relating to performance thereunder by both Owner and Contractor. Such interpretations and decisions shall be in writing, shall not be presumed to be correct and shall be given such weight as the arbitrator(s) or the court shall determine.

2.1.7 The Contractor shall correct Work which does not conform to the Construction Documents.

2.1.8 The Contractor warrants to the Owner that materials and equipment incorporated in the Work will be new unless otherwise specified, and that the Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. Work not conforming to these requirements shall be corrected in accordance with Article 9.

2.1.9 The Contractor shall pay all sales, consumer, use and similar taxes which were in effect at the time the Contractor's Proposal was first submitted to the Owner, and shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are either customarily secured after execution of this Contract or are legally required at the time the Contractor's Proposal was first submitted to the Owner.

2.1.10 The Contractor shall give notices and comply with laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

2.1.11 Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. The Contractor shall defend suits or claims for infringement of patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for such loss when a particular design, process or product of a particular manufacturer is required by the Owner. However, if the Contractor has reason to believe the use of a required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly given to the Owner.

2.1.12 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees and parties in privity of contract with the Contractor to perform a portion of the Work, including their agents and employees.

2.1.13 The Contractor shall keep the premises free from accumulation of waste materials or rubbish caused by the Contractor's operations. At the completion of the Work, the Contractor shall remove from and about the Project the Contractor's tools, construction equipment, machinery, surplus materials, waste materials and rubbish.

2.1.14 The Contractor shall prepare Change Orders for the Owner's approval and execution in accordance with this Contract and shall have authority to make minor changes in the design and construction consistent with the intent of this Contract not involving an adjustment in the contract sum or an extension of the contract time. The Contractor shall promptly inform the Owner in writing, of minor changes in the design and construction.

2.1.15 The Contractor shall notify the Owner when the Work or an agreed upon portion thereof is completed by issuing a written Statement of Completion which shall establish the Date of Project Completion for each subsequent Work Authorization. This Statement shall state the responsibility of each party for security, maintenance, heat, utilities, damage to the Work and insurance, shall include a list of items to be completed or

corrected and shall fix the time within which the Contractor shall complete items listed therein.

2.1.16 The Contractor shall maintain in good order at the site one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other Modifications, marked currently to record changes made during construction.

These shall be delivered to the Owner upon completion of the construction and prior to final payment.

2.2 BASIC SERVICES

The Work will consist of providing as needed Underground Contractor services to furnish all labor and materials for the Town of Highland Beach Water System and Wastewater Collection System Repairs and/or Rehabilitation. The services required by this contract shall include but not limited to the items in the bid schedule and technical specifications and criteria. The Owner shall order services required but make no guarantee as to the quantity, number, type, or tests that will be ordered. Services shall be requested as needed throughout the Contract Term.

Contractor will provide necessary weather protection against rain, wind, storms, heat as to maintain work.

All work to be guaranteed for a minimum of one (1) year from the date of final acceptance by the Town.

2.3 Intentionally deleted.

2.4 Shop Drawings and Samples:

2.4.1 Contractor shall submit shop drawings and sample or any other information requested by the Owner to enable review and approval of materials and/or procedures for any specific Work Authorization.

2.4.2 Contractor shall also submit to Owner for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents and shall be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

2.4.3 Before submission of each Shop Drawing or sample Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

2.4.4 At the time of each submission, Contractor shall give Owner specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to ENGINEER for review and

approval of each such variation. Failure to point out such departures shall not relieve Contractor from his responsibility to comply with the Contract Documents.

2.4.5 Approval of the Shop Drawings by Owner shall be general and shall not relieve Contractor of responsibility for the accuracy of such drawings nor for the proper fittings and construction of the work, nor for the furnishing of material or work required by the Contract and not indicated on the drawings. No work called for by any Shop Drawing shall be done until the drawings have been approved by ENGINEER.

2.5 Supervision and Superintendence:

Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying Contractor's best skill, attention and expertise. Contractor shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of construction. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

2.6 Resident Superintendent:

Contractor shall keep on the Work at all times during its progress a competent resident superintendent and any necessary assistants who shall not be replaced without written notice to Town unless the superintendent proves to be unsatisfactory to Contractor and ceases to be in his employ. The superintendent will be Contractor's representative at the site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor.

2.7 Labor:

2.7.1 Construction services shall be performed by qualified construction contractors licensed to do business in the State of Florida and suppliers, selected and paid by the Contractor

2.7.2 Contractor shall provide and pay for competent, suitably qualified personnel to perform the work as required by the Contract Documents. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during the hours of 8:00 a.m. and 6:00 p.m., and Contractor will not permit overtime Work or the performance of Work on Saturday, Sunday or any legal holiday without Town's written consent. Construction observation and/or inspection services needed beyond normal working hours as defined above, shall be paid for by the Contractor at an hourly rate of \$135.00 for each inspector providing such services.

2.8 Materials:

2.8.1 Unless otherwise specified herein, Contractor shall furnish, pay for and assume full responsibility for all materials, equipment, transportation, machinery, tools,

appliances, water, heat, utilities and all other facilities and services necessary for the furnishing, performance, testing, start-up and proper completion of the Work.

2.8.2 Contractor warrants that all materials and equipment shall be of good quality and new, unless otherwise provided in the Contract Documents and that the work will be free from defects whether patent or latent in nature. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents.

2.9 Concerning Subcontractors, Suppliers and Others:

2.9.1 Contractor shall be fully responsible to Town for all acts and omissions of the Contractor's employees, Subcontractors, Suppliers and other persons directly or indirectly employed by his Subcontractors, suppliers and of persons for whose acts any of them may be liable and any other persons and organizations performing or furnishing of the Work under a direct or indirect Contract 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 see to the payment of any moneys due any such Subcontractor, supplier or other person or organization except as may otherwise be required by laws and regulations.

2.9.2 All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Town.

Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

2.10 Permits:

Unless otherwise specified herein, the Contractor will secure and pay for all permits, impact fees, and licenses and will pay for all governmental charges and inspection fees necessary for the prosecution of the work. All permits and fees are required to be obtained and paid for by the Contractor.

2.11 Laws and Regulations:

Contractor shall comply with and give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to the performance of the Work. Town shall not be responsible for monitoring Contractor's compliance with any laws and regulations. Contractor shall promptly notify Town if the Contract Documents are observed by Contractor to be at variance therewith.

2.12 Risk of Loss; Title:

The risk of loss, injury or destruction shall be on Contractor until acceptance of the work by Town. Title to the Work shall pass to Town upon acceptance of the Work by Town.

2.13 Taxes:

Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by Contractor in accordance with the laws and regulations of the State of Florida and its political subdivisions. Contractor is responsible for reviewing the pertinent state statutes involving such taxes and complying with all requirements.

2.14 Use of Premises:

2.14.1 Contractor shall confine equipment, the storage of materials and equipment and the operations of workers to the project site and areas identified in and permitted by the Contract Documents and shall not unreasonably encumber the premises with equipment or other materials. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against Town by any such owner or occupant because of the performance of the Work, Contractor shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim. The general indemnification provided elsewhere in this Contract specifically applies to claims arising out of Contractor's use of the premises.

2.14.2 During the progress of the Work, Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by Town. Contractor shall restore to original condition all property not designated for alteration by the Contract Documents.

2.14.3 Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

2.15 Access to Work:

Contractor shall provide Town, Town's consultants, representatives and personnel, independent testing laboratories and governmental agencies with jurisdictional interests with access to the work at reasonable times for their observation, inspection and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's site safety procedures and programs so that they may comply therewith.

2.16 Safety and Protection:

2.16.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to prevent damage, injury or loss to all employees on the work site and other persons and organizations who may be affected thereby; all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and other property at the site or adjacent thereto.

2.16.2 Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

2.17 Indemnification:

The parties recognize that the Contractor is an independent contractor. Subject to the provisions and limitations of Chapter 255 Florida Statutes, the Contractor agrees to assume liability for and indemnify, hold harmless, and defend the Town, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, Contractors, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Agreement. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the Town in the enforcement of this indemnification provision. This includes claims made by the employees of the Contractor against the Town and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement.

Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against the Town and, in connection with such defense, shall appoint lead counsel, in each case at the Contractor's expense. The Town shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the Town before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the Town and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the Town, be detrimental in any material respect to the Town's reputation; (ii) the third party claim seeks an injunction or equitable relief against the Town; or (iii) the Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery

proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

Nothing contained in the foregoing indemnification shall be construed as a waiver of any immunity or limitation of liability the Town may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

2.18 Survival of obligations:

All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Contract, 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 Contract.

2.19 Correction and Removal of Defective Work:

If required by Town and ENGINEER, Contractor shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by ENGINEER and ENGINEER, remove it from the site and replace it with non-defective Work. Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, attorneys and other professionals) made necessary thereby.

ARTICLE 3

OWNER'S AND ENGINEER'S RESPONSIBILITIES

3.1 The Owner reserves the right to designate a representative authorized to act on the Owner's behalf with respect to any Work Authorization issued as part of this Project. The Owner or such authorized representative shall examine documents submitted by the Contractor and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of the Work.

3.2 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and Contractor agree in writing prior to execution of this Contract.

3.3 The Owner shall cooperate with the Contractor in securing building and other permits, licenses and inspections, and shall pay the fees for such permits, licenses and inspections if the cost of such fees is not identified as being included in the Contractor's Proposal.

3.4 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the Design or Construction Documents, the Owner shall give prompt written notice thereof to the Design/ Builder.

3.5 The Owner shall furnish required information and services and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of the design and construction.

3.6 The Owner shall communicate with contractors only through the Contractor.

3.7 Town shall furnish data required of Town under the Contract Documents promptly.

3.8 Except for permits and fees which are the responsibility of Contractor, Town shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or permanent changes in existing facilities.

3.9 If the work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, Town may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Town to stop the Work shall not give rise to any duty on the part of Town to exercise this right for the benefit of Contractor or any other party.

3.10 ENGINEER'S Responsibilities

3.10.1 If retained by the Town. The ENGINEER will be Town's representative during the construction period and until final payment is due.

3.10.2 Visits to Site:

ENGINEER will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER'S efforts will be directed toward providing for Town a greater degree of confidence that the completed work will conform to the Contract Documents. On the basis of such visits and on-site inspections, ENGINEER shall keep Town informed of the progress of the work and shall endeavor to guard Town against defects and deficiencies in the work.

3.10.3 Technical Clarifications and Interpretations:

ENGINEER will issue, with reasonable promptness, such written clarifications or interpretations of the technical requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Should Contractor fail to request interpretation of questionable items in the Contract Documents neither Town nor ENGINEER will thereafter entertain any excuse for failure to execute the work in a satisfactory manner.

3.10.4 ENGINEER will interpret and decide matters concerning performance under the requirements of the Contract Documents upon written request of either Town or Contractor. ENGINEER will make initial decisions on all claims, disputes or other matters in question between Town and Contractor. Written notice of each such claim, dispute or other matter will be delivered by claimant to ENGINEER and the other party but in no event later than three (3) days after the occurrence of the event giving rise

thereto and written supporting data will be submitted to the ENGINEER and other party within five (5) calendar days after such occurrence. All written decisions of the ENGINEER on any claim, dispute or other matter will be final and binding upon Town and Contractor unless a written notice of intention to appeal from ENGINEER'S written decision is delivered within five (5) days after the date of such decisions and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within thirty (30) days of the date of such decision. The rendering of a decision by ENGINEER with respect to any such claim, dispute, or matter (except any which have been waived by the making or acceptance of final payment) is a condition precedent to any exercise by Town or Contractor of such rights or remedies existing under the Contract Documents or by law.

3.10.5 Authorized Variations in work:

ENGINEER may authorize minor variations in the work from the technical requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a field order and will be binding on Town, and also on Contractor who shall perform the work involved promptly.

3.10.6 Rejecting Defective Work:

ENGINEER will have the authority to disapprove or reject work which ENGINEER believes to be defective, and will also have authority to require special inspections or testing of the work whether or not the work is fabricated, installed or completed.

ARTICLE 4

TIME

4.1 Time of Completion: The contract shall be for an initial period of three (3) years commencing on the date of issuance of a Notice to Proceed. The contract may be extended for one (1) two (2) year renewal terms under the same terms and conditions, if mutually agreed upon by both parties. Prior to extending any contract, and in exercising its discretion in its extension rights, the Owner shall review the contractor's past performance, record of complaints, and compliance with the contract terms. The form and legal sufficiency of the Contract shall be subject to the approval of the Town Attorney. The Contractor shall provide services as expeditiously as is consistent with reasonable skill and care and the orderly progress of design and construction.

4.2 Time is a very important factor in the performance of this work. Upon issuance of each work authorization by the Owner, the work performed under this Contract shall be commenced upon and completed within the time allotted as per each approved work authorization. The contractor is responsible for preparing a complete and detailed schedule and work sequence plan prior to commencing any work. Failure to achieve timely completion shall be regarded as a breach of this Contract and subject to appropriate remedies including but not limited to liability for liquidated damages.

4.3 If the Contractor is delayed in the progress of the Project by acts or neglect of the Owner, Owner's employees, separate contractors employed by the Owner, changes ordered in the Work not caused by the fault of the Contractor, labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or other causes beyond the Contractor's control, or by delay authorized by the Owner's pending arbitration or another cause which the Owner and Contractor agree is justifiable, the contract time shall be reasonably extended by Change Order.

4.4 Change of Contract Time: ALL TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE. NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE TOWN BY REASON OF ANY DELAYS. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from Town for direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of Town or its agents. Otherwise, Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to that extent specifically provided above. No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last ten (10) years of weather data as recorded by the United States Department of Commerce, National Oceanic and Atmospheric Administration at the Fort Lauderdale Weather Station.

4.5 No Recovery for Early Completion: If the Contractor submits a schedule or expresses an intention to complete the Work earlier than any required milestone or completion date, the Town shall not be liable to the Contractor for any costs incurred because of delay or hindrance should the Contractor be unable to complete the Work before such milestone or completion date. The duties, obligations and warranties of the Town to the Contractor shall be consistent with and applicable only to the completion of the Work and completion dates set forth in this Contract.

4.8 Liquidated Damages: Liquidated damages of \$250 per day will be deducted from the contract sum for the unit cost of service for each calendar day elapsing beyond the specified time for completion for each Work Authorization without prior approval for an extension from the Owner or there Engineer Designee.

ARTICLE 5

PAYMENTS

5.1 INVOICES:

Invoices documenting completed work shall be submitted at the completion of each request for work and must contain detailed information including the location and amount of work performed. Contractor shall submit an exact listing of completed work with submission of invoice for payment.

5.1.1 In accordance with Florida Statute section 255.078, for contracts for construction services, the Owner will withhold 10% retainage on any progress payment requests until all work is 50% complete. Once 50% complete, the rate of retainage shall be reduced to 5%. Retainage is calculated on the total contract cost which includes any change orders pre-approved by the Owner.

5.1.2 Within thirty (30) days of the Owner's receipt of a properly submitted and correct Application for Payment, the Owner shall make payment to the Contractor. Every effort will be made by the Owner to remit payment within 30 days of the invoice date, after satisfactory inspection. VENDORS WILL NOT BE PERMITTED TO PICK UP CHECKS FROM THE TOWN. ALL CHECKS WILL BE MAILED TO THE VENDOR'S REMIT TO ADDRESS ON FILE.

5.2 The Invoice or Application for Payment shall constitute a representation by the Contractor to the Owner that, to the best of the Contractor's knowledge, information and belief, the design and construction have progressed to the point indicated; the quality of the Work covered by the application is in accordance with the Contract Documents; and the Contractor is entitled to payment in the amount requested.

5.3 The Contractor shall pay each subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such subcontractor's work, the amount to which said subcontractor is entitled in accordance with the terms of the Contractor's contract with such subcontractor. The Contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in similar manner.

5.4 The Owner shall have no obligation to pay or to be responsible in any way for payment to a subcontractor of the Contractor except as may otherwise be required by law.

5.5 No progress payment or partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

5.6 The Contractor warrants that: (1) title to Work, materials and equipment covered by an Invoice or Application for Payment will pass to the Owner either by incorporation in construction or upon receipt of payment by the Contractor, whichever occurs first; (2) Work, materials and equipment covered by previous Applications for Payment are free and clear of liens, claims, security interests or encumbrances, hereinafter referred to as "liens"; and (3) no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or any other person performing work at the site or furnishing materials or equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

5.7 If the Contract provides for retainage, then at date of Completion or occupancy of the Work or any agreed upon portion thereof by the Owner, whichever occurs first, the Contractor may apply for and the Owner, if the Contractor has satisfied the requirements of the Contract relating to retainage, shall pay the Contractor the amount retained, if any, for the Work or for the portion completed or occupied, less the reasonable value of incorrect or incomplete Work. Final payment of such withheld sum shall be made upon correction or completion of such Work.

5.8 Final Inspection: Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Town and ENGINEER will make a final inspection and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

5.9 Town's Right to Withhold Payment: The Town may withhold in whole or in part, final payment or any progress payment to such extent as may be necessary to protect itself from loss on account of:

5.9.1 Defective work not remedied.

5.9.2 Claims filed or reasonable evidence indicating the probable filing of claims by other parties against the Contractor.

5.9.3 Failure of the Contractor to make payments to subcontractors or suppliers for materials or labor.

5.9.4 Damage to another contractor not remedied.

5.9.5 Liability for liquidated damages has been incurred by the Contractor.

5.9.6 Reasonable evidence that the work cannot be completed for the unpaid balance of the contract sum.

5.9.7 Reasonable evidence that the work will not be completed within the Contract time.

5.9.8 Failure to carry out the work in accordance with the Contract Documents.

When the above grounds are removed or resolved or the Contractor provides a surety bond or a consent of surety satisfactory to the Town which will protect the Town in the amount withheld, payment may be made in whole or in part.

ARTICLE 6

PROTECTION OF PERSONS AND PROPERTY

6.1 The Contractor shall be responsible for initiating, maintaining and providing supervision of OSHA standards for safety precautions and programs in connection with the Work.

6.2 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to (1) employees on the Work and other persons who may be affected thereby;(2) the Work and materials and equipment to be incorporated therein; and (3) other property at or adjacent to the site.

6.3 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and orders of public authorities bearing on the safety of persons and property and their protection from damage, injury or loss.

6.4 The Contractor shall be liable for damage or loss (other than damage or loss to property insured under the property insurance provided or required by the Contract Documents to be provided by the Owner) to property at the site caused in whole or in part by the Contractor, a contractor of the Contractor or anyone directly or indirectly employed by either of them, or by anyone for whose acts they may be liable.

6.5 HURRICANE PRECAUTIONS: During such periods of times that are designated by the United States Weather Bureau as a hurricane warning or alert; all construction materials or equipment will be secured against displacement by wind forces; provided that where a full complement of personnel is employed or otherwise in attendance, or engaged for such purposes, formal construction procedures or use of materials or equipment may continue allowing such reasonable time as may be necessary to secure such materials or equipment before winds of hurricane force are anticipated. Construction materials and equipment will be secured by guying and shoring, or removing or tying down loose materials, equipment and construction sheds.

ARTICLE 7

INSURANCE AND BONDS

7.1 CONTRACTOR'S LIABILITY INSURANCE

7.1.1 The Contractor shall purchase and maintain in a company or companies authorized to do business in the State of Florida, such insurance as will protect the Contractor from claims set forth below which may arise out of or result from operations under the Contract by the Contractor or by a contractor of the Contractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable:

.1 claims under workers' or workmen's compensation, disability benefit and other similar employee benefit laws which are applicable to the Work to be performed;

.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees under any applicable employer's liability law;

.3 claims for damages because of bodily injury, sickness or disease, or death of persons other than the Contractor's employees;

.4 claims for damages covered by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or (2) by another person;

.5 claims for damages, other than to the Work at the site, because of injury to or destruction of tangible property, including loss of use; and

.6 claims for damages for bodily injury or death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle.

7.1.2 The insurance required by the above Subparagraph 7.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever are greater.

7.1.3 The Contractor's liability insurance shall include contractual liability insurance applicable to the Contractor's obligations.

7.1.4 Certificates of Insurance, and copies of policies, acceptable to the Owner shall be delivered to the Owner at the time of execution of the Contract. These Certificates as well as insurance policies required by this Paragraph shall contain a provision that coverage will not be canceled or allowed to expire until at least thirty days prior written notice has been given to the Owner.

If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted along with the application for final payment.

7.2 Performance Bonds:

7.2.1 Within fifteen (15) calendar days after Notice of Award and in any event prior to commencing work, the Contractor shall execute and furnish to Town a performance bond and a payment bond, each 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 surety shall hold a current certificate of authority from the Secretary of Treasury of the United States as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular No. 570. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular and the excess risks must be protected by coinsurance, reinsurance, or other methods, in accordance with Treasury Circular 297, revised September 1, 1978 (31 DFR, Section 223.10, Section 223.11). Further, the surety company shall provide Town with evidence satisfactory to Town, that such excess risk has been protected in an acceptable manner. The surety company shall have at least the following minimum rating of B+ to A+, 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.

7.2.2 Bonds must be approved by the Town. The penal sum stated in each bond shall be the amount equal to the total amount payable under the terms of the contract. The performance bond shall be conditioned that the Contractor perform the contract in the time and manner prescribed in the contract. The payment bond shall be conditioned that the Contractor promptly make payments to all persons who supply the Contractor with labor, materials and supplies used directly or indirectly by the Contractor in the

prosecution of the work provided for in the Contract and shall provide that the surety shall pay the same in the amount not exceeding the sum provided in such bonds, together with interest at the maximum rate allowed by law; and that they shall indemnify and save harmless the Town to the extent of any and all payments in connection with the carrying out of said Contract which the Town may be required to make under the law.

7.2.3 Pursuant to the requirements of Section 255.05(l)(a), Florida Statutes, it shall be the duty of the Contractor to record the aforesaid payment and performance bonds in the public records of Palm Beach County, with the Contractor to pay all recording costs.

7.3 Bonds, Reduction After Final Payment: Such bonds shall continue in effect for one (1) year after final payment becomes due except as otherwise provided by law or regulation or by the Contract Documents with the final sum of said bonds reduced after final payment to an amount equal to twenty five percent (25%) of the Contract Price, or an additional bond shall be conditioned that Contractor shall correct any defective or faulty Work or material which appears within one (1) year after final completion of the Contract, upon notification by the Town.

7.4 Duty to Substitute Surety: If the surety on any Bond furnished by Contractor is declared bankruptcy 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 seven (7) days thereafter substitute another bond and surety, both of which must be acceptable to Town.

7.5 Insurance:

7.5.1 AT THE TIME OF EXECUTION OF THE CONTRACT, THE CONTRACTOR SHALL SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT THE TOWN OF HIGHLAND BEACH IS AN ADDITIONAL NAMED INSURED WITH RESPECT TO THE REQUIRED COVERAGE AND THE OPERATIONS OF THE CONTRACTOR UNDER THE CONTRACT. Insurance Companies selected must be acceptable by the Town. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be cancelled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to Town by certified mail.

The Contractor shall procure and maintain at its own expense and keep in effect during the full term of the Contract a policy or policies of insurance which must include the following coverage and minimum limits of liability: **Additionally, any subcontractor hired by the Contractor for this project shall provide insurance coverage as stated herein.**

(a) Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employers's Liability Act and the Homes Act. Employer's Liability Insurance shall be provided with a minimum of One Hundred Thousand and xx/100 dollars (\$100,000.00) per accident. Contractor

shall agree to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

(b) Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by the Contractor in the performance of the work with the following minimum limits of liability:

\$1,000,000.00 Combined single Limit, Bodily Injury and Property Damage Liability, per occurrence

(c) Comprehensive General Liability with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence

Coverage shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage:

1. Premises and operations;
2. Independent Contractors;
3. Product and Completed Operations Liability;
4. Broad Form Property Damage;
5. Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in the Contract; and
6. Personal Injury coverage with employment contractual exclusions removed and deleted.

7.5.2 The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the following minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide.

7.5.3 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against Town with the express intention of the parties being that the required insurance coverage protect both parties as the primary coverage for any and all losses covered by the above described insurance.

7.5.4 The Contractor shall ensure that any company issuing insurance to cover the requirements contained in this Contract agrees that they shall have no recourse against Town for payment or assessments in any form on any policy of insurance.

7.5.5 The clauses "Other Insurance Provisions" and "Insurers Duties in the Event of an occurrence, Claim or Suit" as it appears in any policy of insurance in which Town is named as an additional named insured shall not apply to Town. Town shall provide written notice of occurrence within a reasonable time of the actual notice of such an event.

7.5.6 The Contractor shall not commence performance of its obligations under this Contract until after it has obtained all of the minimum insurance herein described and the same has been approved.

7.5.7 The Contractor agrees to perform the work under the Contract as an independent Contractor, and not as a subcontractor, agent or employee of Town.

7.5.8 Violation of the terms of this paragraph and its subparts shall constitute a breach of the Contract and Town, at its sole discretion, may cancel the Contract and all rights, title and interest of the Contractor shall thereupon cease and terminate.

7.6 Town's Liability and Insurance: Town shall not be responsible for purchasing and maintaining any insurance to protect the interests of Contractor, subcontractors or others on the Work. Town specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Florida Statute section 768.28 and Florida Statute section 95.11.

7.7 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor, and its contractors and their agents and employees, for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused, to the extent covered by insurance under this Paragraph.

ARTICLE 8

CHANGES IN THE WORK

8.1 CHANGES IN THE WORK

8.1.1 TOWN, without invalidating this Contract, may order additions, deletions or revisions to the Work Authorizations issued. Such additions, deletions or revisions shall be authorized by a Written Amendment, Change Order or Work Directive Change.

8.1.2 All Change Orders which, individually or when cumulatively added to amounts authorized pursuant to prior change Orders for this project, increase the cost of the work to Town or which extend the time for completion, must be formally authorized and approved by the Town's Commission prior to their issuance and before work may begin. No claim against Town for extra work in furtherance of such change order shall be allowed unless prior approval has been obtained.

No claim against Town for extra work in furtherance of a Change Order shall be allowed unless prior approval pursuant to this section has been obtained.

8.1.3 The Contract Price and Contract Time shall be changed only by Change Order or written Amendment.

8.1.4 Proposed Change orders shall be prepared by the ENGINEER on forms provided by Town. When submitted for approval, they shall carry the signature of the ENGINEER and the Contractor.

8.1.5 If Town and Contractor are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract times that should be allowed as a result of a Work Change Directive, a claim may be made therefor.

8.1.6 Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract times with respect to any work performed that is not required by the Contract Documents as amended, modified and supplemented.

8.1.7 If notice of any change affecting the general scope of the work or the provisions of the Contract Documents is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor's responsibility and the amount of each applicable bond shall be adjusted accordingly.

8.1.8 Any claim for adjustment in the Contract Price or time shall be based upon written notice delivered by the party making the claim to the other parties and to ENGINEER not later than three (3) calendar days after the occurrence or event giving rise to the claims and stating the general nature of the claim. No claim for an adjustment in the Contract Price or an extension of the contract time will be valid if not submitted in accordance with this Paragraph.

8.1.9 The cost or credit to Town from a change in the work shall be determined by mutual agreement.

8.2 CHANGE ORDERS

8.2.1 A Change Order is a written order signed by the Owner and Contractor, and issued after execution of this Contract, authorizing a change in the Work or adjustment in the contract sum or contract time. The contract sum and contract time may be changed only by Change Order.

8.2.2 Cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

.1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 by unit prices stated in the Contract Documents or subsequently agreed upon;

.3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 by the method provided below.

8.2.3 If none of the methods set forth in Clauses 8.2.2.1, 8.2.2.2 or 8.2.2.3 is agreed upon, the Contractor, provided a written order signed by the Owner is received, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including the expenditures for design services and revisions to the Contract Documents. In case of an increase in the contract sum, the cost shall include a reasonable allowance for overhead and profit. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers' or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; additional costs of supervision and field office personnel directly attributable to the change, and fees paid to ENGINEERS, engineers and other professionals. Pending final determination of cost to the Owner, payments on account shall be made on the Application for Payment. The amount of credit to be allowed by the Contractor to the Owner for deletion or change which results in a net decrease in the contract sum will be actual net cost. 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 the net increase, if any, with respect to that change.

8.2.6 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order that application of agreed unit prices to quantities proposed will cause substantial inequity to the Owner or Contractor, applicable unit prices shall be equitably adjusted.

8.3 CONCEALED CONDITIONS

By execution of this Contract, Contractor has satisfied itself as to all conditions necessary to fulfill this contract. No contract adjustments shall be allowed for concealed conditions nor different site conditions than anticipated.

8.4 REGULATORY CHANGES

The Contractor shall be compensated for changes in the Work necessitated by the enactment or revision of codes, laws or regulations subsequent to the submission of the Contractor's Proposal.

ARTICLE 9

WARRANTIES, TESTS AND INSPECTIONS CORRECTION OF DEFECTIVE WORK

9.1 WARRANTY OF TITLE

The Contractor warrants to the Town that it possesses good, clear and marketable title to all equipment and materials provided hereunder and there are no pending liens, claims or encumbrances whatsoever against said equipment and materials.

9.2 WARRANTY OF SPECIFICATIONS

The Contractor warrants that all equipment, materials and workmanship furnished, whether furnished by the Contractor or its sub-contractors and suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted and that all services will be performed in a workmanlike manner.

9.3 WARRANTY OF MERCHANTABILITY

Contractor warrants that any and all equipment to be supplied pursuant to the Contract is merchantable, free from defects, whether patent or latent in material or workmanship and fit for the ordinary purposes for which it is intended.

9.4 CORRECTOIN PERIOD

Contractor warrants all material and workmanship for a minimum of one (1) year from date of acceptance by the Town. If within one (1) year after the date of final 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 and in accordance with Town's written instructions, either correct such defective work, or, if it has been rejected by Town, remove it from the site and replace it with work that is not defective and satisfactorily correct and remove and replace any damage to other work or the work of others resulting therefrom. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Town may have the defective workmanship corrected or the rejected Work removed and replaced, 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) will be paid by Contractor.

9.4.1 Where defective Work (and damage to other work resulting therefrom) has been corrected, removed or replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.

9.4.2 Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents. Establishment of the time period of one (1) year as described in Paragraph 9.4.1 relates only to the specific obligation of the Contractor to correct the work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to the Contractor' S obligation other than specifically to correct the work.

9.5 Contractor warrants to the Town that it will comply with all applicable federal, state and local laws, regulations and orders in carrying out its obligations under the Contract.

9.6 Contractor warrants to the Town that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the Contract.

9.7 Contractor warrants to the Town that the consummation of the work provided for in the Contract Documents will not result in the breach of any term or provision of, or constitute a default under any indenture, mortgage, contract, or agreement to which the Contractor is a party.

9.8 Contractor warrants that there has been no violation of copyrights of patent rights either in the United States of America or in foreign countries in connection with the work of the Contract.

9.9 No warranty, either express or implied, may be modified, excluded or disclaimed in any way by Contractor. All warranties shall remain in full force and effect, notwithstanding acceptance and payment by Town.

9.10 Tests and Inspections:

9.10.1 Contractor shall give Town timely notice of readiness of the work for all required inspections, tests or approvals. Contractor shall assume full responsibility, pay all costs in connection therewith and furnish Town the required certificates of inspection, testing or approval for all materials, equipment or the Work or any part thereof unless otherwise specified herein.

9.10.2 Inspectors shall have no authority to permit deviations from nor to relax any of the provisions of the Contract Documents, nor to delay the Contract by failure to inspect the materials and work with reasonable promptness.

9.10.3 The payment of any compensation whatever may be its character or form, or the giving of any gratuity or the granting of any favor by the Contractor to any inspectors, directly or indirectly is strictly prohibited and any such action on the part of the Contractor will constitute a breach of this Contract.

9.11 The Contractor shall promptly correct Work rejected by the Owner or known by the Contractor to be defective or failing to conform to the Construction Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, and shall correct Work under this Contract found to be defective or nonconforming within a period of one year from the date of Substantial Completion of the Work or designated portion thereof, or within such longer period provided by any applicable special warranty in the Contract Documents

9.12 Nothing contained in this Article 9 shall be construed to establish a period of limitation with respect to other obligations of the Contractor under this Contract. Paragraph 9.11 relates

only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than correction to the Work.

9.13 If the Contractor fails to correct the defective Work as required or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may stop the Work, or any portion thereof, until the cause for such order has been eliminated; however the Owner's right to stop the Work shall not give rise to a duty on the part of the Owner to exercise the right for benefit of the Contractor or other persons or entities.

9.14 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may give a second written notice to the Contractor and seven days following receipt by the Contractor of that second notice and without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor costs of correcting such deficiencies. If the payments then or thereafter due the contractor are not sufficient to cover the amount of the deduction, the Contractor shall pay the difference to the Owner.

ARTICLE 10

MISCELLANEOUS PROVISIONS

10.1 This Contract shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever; and (ii) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

10.2 The table of contents and the headings of articles and paragraphs are for convenience only and shall not modify rights and obligations created by this Contract.

10.3 In case a provision of this Contract is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

10.4 SUBCONTRACTS

10.4.1 The Contractor, as soon as practicable after execution of this Contract or any subsequent Work Authorizations, shall furnish to the Owner in writing the names of the persons or entities the Contractor will engage as subcontractors for the Project.

10.4.2 Nothing contained in the Contractor Contract Documents shall create a professional obligation or contractual relationship between the Owner and any third party.

10.5 CLAIMS FOR DAMAGES

Should either party to Contract suffer injury or damage to person or property because of an act or omission of the other party, the other party's employees or agents, or another for whose acts the other party is legally liable, claim shall be made in writing to the other party within a reasonable time after such injury or damage is or should have been first observed.

10.6 SUCCESSORS AND ASSIGNS

This Contract shall be binding on successors, assigns, and legal representatives of and persons in privity of contract with the Owner or Contractor. Neither party shall assign, sublet or transfer an interest in this Contract without the written consent of the other.

10.7 EXTENT OF AGREEMENT

This contract represents the entire agreement between the Owner and Contractor and supersedes any prior negotiations, representations or agreements. This Contract may be amended only by written instrument signed by both Owner and Contractor.

ARTICLE 11

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 12

TERMINATION OF THE AGREEMENT

12.1 TERMINATION BY THE OWNER

Town's Right to Terminate upon the occurrence of any one or more of the following events:

12.1.1 If Contractor commences a voluntary case under any chapter of the Bankruptcy Code as now or hereafter in effect, or if Contractor takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.

12.1.2 If a petition is filed against Contractor under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against Contractor under any other federal or state law in effect at the time relating to bankruptcy or insolvency.

12.1.3 If Contractor makes a general assignment for the benefit of creditors.

12.1.4 If a trustee, receiver, custodian or agent of Contractor is appointed under applicable law or under Contract, whose appointment or authority to take charge of property of Contractor is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of Contractor's creditors.

12.1.5 If Contractor admits in writing an inability to pay its debts generally as they become due.

12.1.6 If Contractor persistently fails to perform the Work in accordance with the Contract Documents (including but not limited to, failure to supply sufficient skilled Workers or suitable materials or equipment or failure to adhere to the progress schedule as same may be revised from time to time).

12.1.7 If Contractor disregards laws or regulations of any public body having jurisdiction.

12.1.8 If Contractor otherwise violates in any substantial way any provision of the Contract Documents Town may, after giving Contractor and the Surety seven (7) days written notice to the extent permitted by laws and regulations, terminate the services of the Contractor, exclude Contractor from the site and take possession of the Work and of all Contractor's tools, appliances, construction equipment and machinery at the site and use the same to full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which has paid Contractor but which are stored elsewhere, and finish the Work as Town may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished.

12.1.9 Termination for Convenience of Town:

Upon seven (7) days written notice to Contractor, Town may, without cause and without prejudice to any other right or remedy, terminate the agreement for Town's convenience whenever Town determines that such termination is in the best interests of Town.

Where the agreement is terminated for the convenience of Town, the notice of termination to Contractor must state that the Contract is being terminated for the convenience Town under the termination clause the effective date of the termination and the extent of termination. Upon receipt of the notice of termination for convenience, Contractor shall promptly discontinue all Work at the time and to the extent indicated on the notice of termination, terminated all outstanding Subcontractors and purchase orders to the extent that they relate to the terminated portion of the Contract, and refrain from placing further orders and Subcontracts. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

12.1.10 This Contract may be terminated by the Owner upon fourteen days' written notice to the Contractor in the event that the Project is abandoned. If such termination occurs, the Owner shall pay the Contractor for Work completed and for proven loss sustained upon materials, equipment, tools and construction equipment and machinery, including reasonable profit and applicable damages.

12.1.11 If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform the provisions of this Contract, the Owner may give written notice that the Owner intends to terminate this agreement. If the Design/ Builder fails to correct the defaults, failure or neglect within seven days after being given notice, the Owner may then give a second written notice and, after an additional seven days, the Owner may without prejudice to any other remedy make good such deficiencies and may deduct the cost thereof from the payment due the Contractor or, at the Owner's option, may terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Contractor and finish the Work by whatever method the Owner may deem expedient. If the unpaid balance of the contract sum exceeds the expense of finishing the Work, the excess shall be paid to the Contractor, but if the expense exceeds the unpaid balance, the Contractor shall pay the difference to the Owner.

ARTICLE 13

BASIS OF COMPENSATION

13.1 CHANGE IN CONTRACT PRICE

13.1.1 THE CONTRACT UNIT PRICES CONSTITUTES THE TOTAL COMPENSATION PAYABLE TO CONTRACTOR FOR PERFORMING THE WORK BASED ON FIELD MEASURED QUANTITIES (SUBJECT TO INDIVIDUAL WORK AUTHORIZATION ADJUSTMENTS). ALL DUTIES, RESPONSIBILITIES AND OBLIGATIONS ASSIGNED TO OR UNDERTAKEN BY CONTRACTOR SHALL BE AT HIS EXPENSE WITHOUT CHANGE IN CONTRACT PRICE.

13.1.2 THE CONTRACT PRICE MAY ONLY BE CHANGED BY A CHANGE ORDER OR BY A WRITTEN AMENDMENT. ANY CLAIM FOR AN INCREASE OR DECREASE

IN THE CONTRACT PRICE SHALL BE BASED ON WRITTEN NOTICE DELIVERED TO THE OWNER PROMPTLY (BUT IN NO EVENT LATER THAN THREE (3) DAYS) AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO THE AMOUNT OF THE CLAIM WITH SUPPORTING DATA SHALL BE DELIVERED WITHIN TWENTY (20) DAYS AND SHALL BE ACCOMPANIED BY CLAIMANT'S WRITTEN STATEMENT THAT THE AMOUNT CLAIMED COVERS ALL KNOWN AMOUNTS (DIRECT, INDIRECT AND CONSEQUENTIAL) TO WHICH THE CLAIMANT IS ENTITLED AS A RESULT OF THE OCCURRENCE OF SAID EVENT. NO RESOLUTION OF A CLAIM FOR ADJUSTMENT IN THE CONTRACT PRICE SHALL BE EFFECTIVE UNTIL APPROVED BY TOWN COMMISSION IN WRITING. NO CLAIM FOR ADJUSTMENT IN THE CONTRACT PRICE WILL BE VALID IF NOT SUBMITTED IN ACCORDANCE WITH THIS PARAGRAPH.

13.1.3 The value of any Work covered by a change order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.

.2 By mutual acceptance of a lump sum (which may include an allowance for overhead and profit including any subcontractor fees) which shall not exceed twenty five percent (25%). If the negotiated lump sum change order exceeds the percentages set forth for "Cost of Work" it must be accompanied by a detailed explanation justifying the increase.

.3 On the basis of the cost of the work (determined as provided in Paragraphs 13.2 and 13.3) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 13.4).

13.2 Cost of the Work in the Event of Change Order:

The term "Cost of the Work" means the sum of all direct costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by Town, such costs shall be in amounts no higher than those prevailing in the locality of the project, shall include only the following items and shall not include any of the costs itemized in Paragraph 13.3:

13.2.1 Payroll costs for employees in the direct employ of Contractor in the performance of the work under schedules of job classifications agreed upon by Town and Contractor. Payroll costs for employees not employed full time on the work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall not be included in the above unless authorized in writing by Town.

13.2.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and suppliers field services required in connection therewith. All cash discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to Town, and Contractor shall make provisions so that they may be obtained.

13.2.3 Payments made by Contractor to Subcontractors for work performed by Subcontractors.

13.2.4 Supplemental costs including the following:

.1 Cost, including transportation and maintenance of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work.

.2 Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Town with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with terms of said rental agreements, the rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

.3 Sales, consumer, use or similar taxes related to the Work, and for which Contractor is liable, imposed by laws and regulations.

.4 Royalty payments and fees for permits and licenses.

.5 The cost of utilities, fuel and sanitary facilities at the site.

.6 Minor expenses such as telegrams, long distance telephone calls, telephone service at site, express message and similar petty cash items in connection with the Work.

.7 Cost of premiums for additional bonds and insurance required because of changes in the Work.

13.3 Not Included in the Cost of the Work in the Event of Change Order:

The term cost of the Work shall not include any of the following:

13.3.1 Payroll costs and other compensation of Contractor's officers, executives, principals, (of partnership and sole proprietorships), general managers, engineers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in Contractor's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications

referred to in Paragraph 13.2.1 - all of which are to be considered administrative costs covered by Contractor's fee.

13.3.2 Expenses of Contractor's principal and branch offices other than Contractor's office at the site.

13.3.3 Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

13.3.4 Cost of premiums for all bonds and all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same.

13.3.5 Costs due to the negligence of Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

13.3.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.2.

13.4 Contractor's Fee in the Event of Change Order:

Contractor's fee allowed to Contractor for overhead and profit shall be determined as follows:

13.4.1 A mutually acceptable negotiated fee or:

13.4.2 For costs incurred under Paragraphs 13.2.1, 13.2.2 and 13.2.3 Contractor's fee shall not exceed five percent (5%).

13.4.3 No fee shall be payable on the basis of costs itemized under Paragraphs 13.2.4.1, 13.2.4.2, 13.2.4.3, 13.2.4.4, 13.2.4.5, 13.2.4.6, 13.2.4.7, 13.3, 13.3.1, 13.3.2, 13.3.3, 13.3.4, 13.3.5 and 13.3.6.

13.4.4 The amount of credit to be allowed by Contractor to Town for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease.

13.4.5 When both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 13.4.1, 13.4.2, 13.4.3 and 13.4.4.

13.5 Cost Breakdown Required in the Event of Change Order:

Whenever the cost of any Work is to be determined pursuant to Paragraphs 13.2 or 13.3, Contractor will submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data. Whenever a change in the work is to be based upon mutual acceptance of a lump sum, whether the amount is an addition, credit or no-change-in-cost, the Contractor shall submit an estimate substantiated by a complete itemized breakdown.

- (a) The breakdown shall list quantities and unit prices for materials, labor, equipment and other items of cost.

The Owner shall compensate the Contractor in accordance with Article 5, Payments, and the other provisions of this Contract as described below.

ARTICLE 14

OTHER PROVISIONS

14.1 NOTICE

All notices required by any of the Contract Documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested to the following:

The business address of Contractor is:

The business address of Owner or Town is:

Town of Highland Beach
3614 S. Ocean Boulevard
Highland Beach, Florida 33487

14.2 COMPUTATION OF TIME

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation. A calendar day of twenty four (24) hours measured from midnight to the next midnight shall constitute a day.

14.3 ADDITIONAL MISCELLANEOUS PROVISIONS

14.3.1 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.

14.3.2 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.

14.3.3 Contractor and its employees, volunteers and agents shall be and remain an independent contractors 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.

14.3.4 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.

14.3.5 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.

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

14.3.7 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.

14.4 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.

14.5 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@HIGHLANDBEACHUS.US.

14.6 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.

14.7 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 regards 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.

SIGNATURES ON FOLLOWING PAGE

