

RESOLUTION NO. 2024-3342

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, SELECTING AND AWARDING A CONTRACT FOR CONSTRUCTION MANAGER AT RISK (CMAR) SERVICES TO THE WHITING-TURNER CONTRACTING COMPANY, PURSUANT TO RFQ. NO. 2024-02; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE TERMS AND CONDITIONS FOR THE OVERHEAD/UNDERGROUND CONVERSION PROGRAM FOR AREA 3-NORTH PROJECT; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on August 7, 2024, the Town of Surfside ("Town") issued and advertised Request for Qualifications ("RFQ") No. 2024-02 to competitively procure related services in connection with the Town of Surfside Overhead/Underground Conversion Program for Area 3-North, ("Services"); and

WHEREAS, in response to the RFQ. 2024-02, the Town conducted a bid opening on October 1, 2024, and received two (2) sealed proposals; and

WHEREAS, the Town's Capital Improvement Projects Director, together with the Town's Public Works Director and Town of Golden Beach, Building Department Manager ("Consultant"), evaluated the proposals ("Evaluation"); and

WHEREAS, the Evaluation conducted by the Consultant resulted in the recommendation of Whiting-Turner Contracting Company to serve as the Town's Construction Manager At Risk ("CMAR"); and

WHEREAS, the Town wishes to accept Consultant's recommendation and select the CMAR and award a contract for the Project, in substantially the form attached hereto as Exhibit "A" (the "Contract"), subject to final approval as to form and content by the Town Manager and legal sufficiency by the Town Attorney; and

WHEREAS, the Town Commission finds that it is in the best interest of the Town to proceed as indicated in this Resolution and authorize negotiations with the qualified CMAR in order to enter into the Construction Manager-At-Risk-Contract appended hereto as Exhibit "A";

WHEREAS, the Town Commission finds that the award of the Contract for the Services to the CMAR and this Resolution are in the best interest and welfare of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AS FOLLOWS:

Section 1. Recitals. The above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Award. The CMAR is awarded the Contract for the Services pursuant to RFQ 2024-02.

Section 3. Approval and Authorization to Negotiate and Execute Contract. The Town Manager is authorized to negotiate terms and conditions in substantially the form attached hereto as Exhibit "A," with Whiting-Turner Contracting Company, including a scope of services and fees for the Services subject to the approval as to form and legal sufficiency by the Town Manager and Town Attorney.

Section 4. Implementation. The Town Manager and Town Attorney are hereby authorized to take any and all actions necessary to implement the Project, the Contract for the Project, and for the purposes of this Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this 12th day of November, 2024.

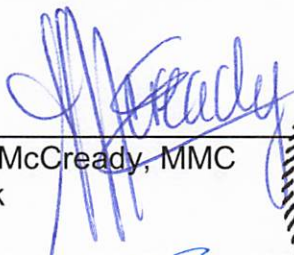
Motion By: Commissioner Velasquez

Second By: Commissioner Coto

FINAL VOTE ON ADOPTION:

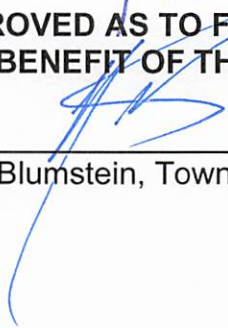
Commissioner Ruben A. Coto	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Yes</u>
Commissioner Gerardo Vildostegui	<u>Yes</u>
Vice Mayor Tina Paul	<u>Yes</u>
Mayor Charles W. Burkett	<u>Yes</u>

ATTEST:




Sandra N. McCready, MMC
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



Mark Blumstein, Town Attorney



Charles W. Burkett, Mayor

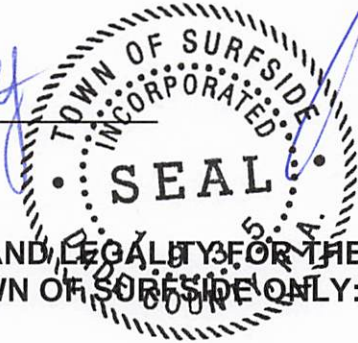


EXHIBIT "A"
CONSTRUCTION MANAGER AT RISK
CONTRACT



CONSTRUCTION MANAGER-AT-RISK CONTRACT

THIS Contract made and entered into this _____ day of _____, 202X, between THE TOWN OF SURFSIDE, a political subdivision of the State of Florida (“Owner”), and XXXXXX. (“Construction Manager”).

WITNESSETH:

That the said Construction Manager having been awarded the Contract for the:

TOWN-WIDE UTILITY UNDERGROUNDING AREA 3-NORTH,

SURFSIDE, FLORIDA

RFQ NO. XXX, OPTION TO EXTEND ADDITIONAL PHASES EXERCISED

In accordance with the Request for Qualifications therefore, and for and in consideration of the promises and of the covenants and agreements, and of the payments herein specified, to be made and performed by the Construction Manager and the Owner, the Construction Manager hereby covenants and agrees to and with the Owner to undertake and execute all of the said named work, in a good, substantial and workmanlike manner, and to furnish and pay for all materials, labor, supervision, equipment, supplies, fees, expertise, incidentals and services necessary to fully complete all Work, as defined in Article 1.4.8 below, in accordance with all requirements of the Contract Documents, and in accordance with all applicable codes and governing regulations. The Contract Documents consist of this Contract, the General Conditions GC-1 through and including GC-77, and the following **Attachments** and **Exhibits**:

Attachments:

1. Certificate of Insurance- Workers’ Compensation, General Liability and Automobile Liability Coverage;
2. Performance and Payment Bonds;
3. The Request for Qualifications RFQ NO. XXXXX;
4. XXXXXXX. CM at Risk Proposal Dated
5. Pre-construction Services
6. Guaranteed Maximum Price Summary Sheet;
7. Specifications Log, Drawings Log, Project Schedule; and

XXXXX- Guaranteed Maximum Price “Exhibits”:

- A. Direct Construction Costs (11 pages);
- B. General Conditions (7) pages);
- C. Construction Phase Management (2 page);

- D. Exceptions & Clarifications (5 pages);
- E. Guaranteed Maximum Price (3 pages)

ARTICLE 1

The Construction Team and Extent of Contract

1.1 The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Contract, and agrees to furnish the Construction Manager's best skill and judgment, and to cooperate with the Design Consultant in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to use Construction Manager's best efforts to perform and complete the Project in an expeditious and economical manner consistent with the interests of the Owner. Notwithstanding any provisions of this contract to the contrary, nothing in this contract creates a fiduciary relationship between the Owner and the Construction Manager.

1.1.1 Construction Manager understands and agrees that a material inducement for the Owner entering into this Contract, following a competitive award process authorized under Florida law, was Construction Manager's representations about its expertise in the scheduling, sequencing and construction of the Town-Wide Overhead Utility Undergrounding Area 3-North; Utility Undergrounding Conduit Installation as well as its superior familiarity with the unique local conditions and geography of the Town of Surfside, and the project limits. Construction Manager understands that time is of the essence in connection with the performance of the Work set forth in this Contract, and that even a minor breach of its terms may have a substantial, adverse impact upon the Owner, adjacent merchants, and the seasonal nature of Town of Surfside's economy, including the lifestyles of its residents and visitors. Accordingly, Construction Manager hereby affirms that the foregoing is true and correct, and that all anticipated costs to achieve the schedule and design intent have been included in the GMP for the Project.

1.2 The Construction Team. The Construction Manager, the Owner, and the Design Consultant (the "Construction Team") will cooperate together through the completion of construction. The Construction Manager shall provide leadership to the Construction Team on all matters relating to construction. The Design Consultant will provide leadership to the Construction Team on all matters relating to design. Nothing herein is intended to make the Owner liable for the acts or deeds of the Construction Manager, it being understood that Construction Manager at all times is an independent contractor.

1.3 Extent of Contract. This Contract is complementary to the Specifications, Drawings, and the General Conditions of the Contract, and together represents the entire integrated agreement between the Owner and the Construction Manager, superseding all prior negotiations, representations or agreements, either written or oral. Where this Contract is expressly in conflict with the General Conditions of the Contract, this Contract will prevail. Where this Contract is silent, the General Conditions of the Contract, and the requirements of the Specifications and Drawings and will prevail, in that order. This Contract may be amended only by written instrument signed by the Owner and the Construction Manager.

1.4 Terms used in the Contract shall have the following meanings:

1.4.1 “Owner” means The Town of Surfside, Florida, or “Town,” and the terms may be used interchangeably.

1.4.2 “Project” means the Town-Wide Overhead Utility Undergrounding Area 3 North; Utility Undergrounding Conduit Installation, located as noted above;

1.4.3 “Design Consultant” shall mean Kimley-Horn and Associates, Inc.

1.4.4 “Contractor” means Construction Manager, and the terms may be used interchangeably;

1.4.5 “Subcontractor” means one who takes a portion of the contract from the construction manager or from another subcontractor;

1.4.6 “Contract Sum” means Guaranteed Maximum Price (“GMP”), and the terms may be used interchangeably;

1.4.7 “Construction Team” means Owner, Design Consultant and Construction Manager; and

1.4.8 “Work” means the totality of the obligations, including construction and other services, imposed on the Construction Manager by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, services, fees, expertise and incidentals provided or to be provided by the Construction Manager to fulfill the Construction Manager’s obligations.

ARTICLE 2

Construction Phase

2.0 Unless otherwise authorized by the Owner, in writing, all Work shall be performed under Contracts with the Construction Manager. THE CONSTRUCTION MANAGER SHALL, WITHOUT LIMITATION:

1. Administer the Construction Phase as provided herein and in the General Conditions of the Contract.
2. Commence actual construction of the Work on xxx,xx1, 20xx, and the acquisition of materials, subcontractor and supplier commitments within ten (10) days after receipt of a written Notice to Proceed from the Owner;
3. Maintain exclusively for this Project a competent staff at the Project site to coordinate and direct the Work and progress of the Sub-Contractors on the Project; provided however, that one or more of Construction Manager’s project team shall be at the jobsite at all times when work is being performed by its subcontractors or others for whom Construction Manager is directly or vicariously responsible under this Contract. The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the work and progress of the Subcontractors and shall provide no less than those personnel during the respective phases of construction that are set forth in **Exhibit “C”** to this Contract. Construction Manager shall not change any of those persons agreed to by Owner for the positions set forth in **Exhibit “C”** unless mutually agreed to by the Owner and Construction Manager, in writing. In such case, the Owner shall have the right of approval of the

qualifications of replacement personnel. All of the Construction Manager's on-site management and supervisory personnel shall be consistent with the RFP presentation that preceded the execution of this Contract, and shall not be removed or replaced without the Owner's written consent. The Owner shall have the right to direct the Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event, the Construction Manager shall promptly replace such personnel, without entitlement to additional compensation or additional time for the replacement.

- a) It is expressly understood and agreed that the amount of \$xxxx.xxx for the line-item personnel set forth in **Exhibit "C"** is a lump sum amount and covers the entire duration of the project, and shall be paid in equal monthly installments, but subject to retainage. It is not subject to audit. To the extent that Construction Manager exceeds said amount, or requires additional personnel to properly and timely discharge its obligations and duties under the Contract, there shall be no entitlement to additional compensation, unless the Contract time is extended due to excusable and compensable changes in the Work or contract duration.

2.1 Establish and maintain a) on-site organization and lines of authority in order to carry out the overall plans of the Construction Team; b) Identify an on-site staff member to represent the Construction Manager, on a daily basis, with authority to negotiate Change Orders and contract modifications with Sub-Contractors that do not create changes in project design or specifications; c) Make available such executive personnel as necessary to execute Change Orders or other contract modifications on behalf of the Construction Manager so as not to delay the progress of the Work.

2.2 Establish and maintain a) procedures for coordination among the Owner, Design Consultant, Sub-Contractors and Construction Manager with respect to all aspects of the Work; b) Implement such procedures, incorporate them into a Project resource manual, and distribute manuals to the Construction Team.

2.3 Require of the various Sub-Contractors such Coordination Drawings as may be necessary to properly coordinate the Work among the Sub-Contractors.

2.4 In collaboration with the Design Consultant, establish and implement procedures for tracking and expediting the processing of shop drawings, samples, Requests for Information ("RFI's"), and other submittals as required by the General Conditions of the Contract.

2.5 Schedule and conduct bi-weekly or more frequent progress meetings with Sub-Contractors to review such matters as job procedures, job safety, construction progress, schedule, shop drawing status and other information as necessary. Construction Manager shall provide prior notice to Owner and Design Consultant of all such meetings, and prepare and distribute minutes. Additionally, Construction Manager shall schedule and attend Team meetings with the Design Consultant and Owner.

2.6 Review the Project schedule with the various Sub-Contractors and review, or expand the level of detail to incorporate specific Sub-Contractor input consistent with the overall completion requirements. Construction Manager shall regularly monitor and update the Project Schedule and various sub-networks as construction progresses; identify potential variances between scheduled and probable completion dates, review schedule for Work not started, or incomplete, and make adjustments in the schedule to meet the scheduled completion date. Construction Manager shall provide summary

reports of each monitoring and document all changes in schedule, and prepare regular schedule updates and reporting which shall be included as part of the monthly Project report.

2.7 Determine the adequacy of the Sub-Contractors' personnel and equipment, and the availability of materials and supplies to meet the schedule. In consultation with the Owner and the Design Consultant, take necessary corrective actions when requirements of a Sub-Contract or a Sub-Contract Schedule are not being met.

2.8 If applicable, whenever Owner-Furnished Contractor-Installed ("OFICI") materials or equipment are shipped to the Project site, the Construction Manager shall notify the Owner and shall be responsible for their inspection and proper storage (unless purchase in connection with **Attachment "8"**), and incorporation into the Work.

2.9 Develop and maintain an effective system of Project cost control which is satisfactory to the Owner. Revise and refine the initially approved Project Construction budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise Owner and Design Consultant whenever projected costs exceed budgets or estimates. Cost Control reports shall be included as part of the monthly Project report.

2.10 Maintain a system of accounting satisfactory to Owner and consistent with generally accepted construction accounting principles. The Construction Manager shall preserve all accounting records for a period of four (4) years after final acceptance of the Work or as otherwise requested in writing by the Owner. The Owner, or the Owner's auditors shall have access to all such accounting records, supporting documentation, correspondence, subcontracts, purchase orders, and other things relating to this Contract, at any time during regular business hours, both throughout the performance of the Work, and for a period of four (4) years after final payment of the Work.

2.11 Develop and implement a system for the preparation, review and processing of Change Orders. Without assuming any of the Design Consultant's responsibilities for, among other things, design, recommend necessary or desirable changes to the Owner and the Design Consultant, review requests for changes and submit recommendations to the Owner and Design Consultant for approval.

2.12 When requested by the Owner or Design Consultant, promptly prepare and submit informal estimates of probable cost for changes proposed in the Work including similar estimates from the Sub-Contractors. If directed by the Owner, promptly secure formal written Change Order Proposals from such Sub-Contractors.

2.13 Be responsible for initiating, maintaining and supervising effective safety programs and require similar programs of the Sub-Contractors. The OSHA guidelines shall serve as the basis for the construction safety program

2.14 Promptly notify the Owner and, where applicable, the Owner's Risk Manager, in writing, upon receiving notice of filing of any charge of non-compliance from OSHA, or upon receiving notification that a federal or state inspector shall visit or is visiting the Project site.

2.15 At progress meetings with Sub-Contractors, conduct a review of job safety and accident prevention, and prepare minutes of such meetings that will be available to the Owner's Representative

on request. The minutes of job safety and accident prevention portion of such progress meetings shall be made available to the Owner's Risk Manager, where applicable, upon request.

2.16 Designate a full-time staff member as the Project safety director who shall oversee job safety and accident prevention for the Construction Manager and Sub-Contractors involved in the Work, in addition to any other responsibilities assigned to such staff member.

2.17 Make provisions for Project security acceptable to the Owner, to protect the Project site and materials stored off-site, or on-site, against theft, vandalism, fire and accidents, damage, or injury to person(s) or property, etc., as required by job and location conditions.

2.18 Record the progress of the Project. Submit written monthly progress reports to the Owner and the Engineer including information on the Sub-Contractors' Work, the percentage of completion, current estimating, computerized updated monthly Bar Chart scheduling and Project accounting reports, including Estimated Time to Completion and Estimated Cost to Complete. Keep a daily log available to the Owner and the Design Consultant. Report and record such additional information related to construction as may be requested by the Owner.

2.19 The Construction Manager shall be responsible for the removal, encapsulation, transportation and disposal of any hazardous material, including, without limitation, lead-based paint, and any asbestos or asbestos-related products as may be required in connection with the Work. Hazardous material, described by federal guidelines brought by the Construction Manager or the Sub-Contractors shall remain their responsibility for proper disposal. Any hazardous material not specifically shown on the documents, or which was not discovered or should have been discovered during performance of the Pre-Con Agreement, shall be considered a concealed condition and may become the responsibility of the Construction Manager in a Change Order increasing the Guaranteed Maximum Price for any additional costs incurred in connection therewith. Such Change Order shall be submitted in as timely a manner as is reasonably possible after discovery of the concealed condition, as more particularly set forth in the General Conditions.

ARTICLE 3

Additional Services

3.1 Upon the mutual agreement of the Owner and the Construction Manager, and upon written authorization from the Owner, the Construction Manager may provide additional services that are beyond the scope of the Basic Services described in Article 2 herein. The Construction Manager shall be compensated for such additional services by Change Order to be negotiated by the Owner and the Construction Manager at the time of the additional service request, as set forth in the General Conditions.

ARTICLE 4

Owner's Responsibilities

4.1 The Owner will designate a representative to act in its behalf. This representative, or his/her designee will receive progress reports of the Work from the Construction Manager, serve as liaison with the Construction Manager and the Design Consultant, receive and process communications and paperwork, and represent the Owner in the day-to-day conduct of the Project. The Construction Manager will be notified in writing of the representative and of his/her designee or any changes thereto.

ARTICLE 5

Schedule

5.1 The performance of the Work under the Construction Phase of this Contract shall be **Substantially Completed** by the Construction Manager on or before XXX, 20XX time being of the essence in this Contract, as more particularly set forth in **Attachment "7"** hereto attached and made a part hereof, and receipt of permits, as may be later adjusted by Change Order(s), if any, and subject to adjustment for delays as otherwise provided for in this Contract.

5.2 The Construction Manager agrees to complete the Work in accordance with the agreed upon substantial completion date and final completion date set forth in **Attachment "7."** The Construction Manager acknowledges that time is of the essence throughout this Contract, and that failure to complete the Project within the time set forth in the approved schedule will result in substantial damages to the Owner that are impossible to precisely ascertain. Upon failure of the Construction Manager to substantially complete the Project within the specified period of time, plus approved time extensions, Construction Manager shall pay to the Owner, as liquidated damages and not as a penalty, the sum of **\$1000.00** for each calendar day in excess of the established substantial contract completion date, plus approved time extensions. After achieving substantial completion, should Construction Manager fail to complete the remaining Work within the time specified for final completion in **Attachment "7"**, plus approved time extensions, if any, and after providing Construction Manager with seven (7) days advance written notice, Owner shall have the right to complete the work through other means, and the costs therefore shall be set-off against retainage remaining in the contract balances, which, if insufficient, the balance shall be paid to Owner by Construction Manager, or its performance bond Surety.

5.3 Construction Manager shall expedite the Work by whatever means the Construction Manager may use, including, without limitation, increasing staffing or working overtime to bring the Work back within the agreed construction schedule. If expediting the Work is required due to reasons within the control or responsibility of the Construction Manager, then the additional costs incurred shall be chargeable to the Cost of the Work as part of, and subject to the GMP. If the expediting of the Work is required due to reasons outside the control or responsibility of the Construction Manager, then in such event, the additional costs incurred shall be the subject of an appropriate adjustment by Change Order, as elsewhere provided for in the General Conditions.

5.4 The Owner shall have the right to occupy, or use, any portion of the Work prior to completion of the Project. If use or occupancy ahead of schedule affects the cost of the Project or the schedule for

the Work, the Construction Manager shall so notify the Owner, in writing, and the use or occupancy will be treated as a Change to the Work in accordance with Article 9, herein.

ARTICLE 6

Guaranteed Maximum Price

6.1 The “Guaranteed Maximum Price” (GMP) includes Cost of the Work required by the Contract Documents as defined in Article 8 herein, and the Construction Manager’s Fee as defined in Article 7 below. The sum of the Cost of the Work and the Construction Manager’s Fee is guaranteed by the Construction Manager not to exceed the amount of **XXC million XXXX hundred XXXX hundred XXX dollars (\$XXXX)**, subject to additions and deductions by Change Order as provided for in the Contract Documents. Costs which would cause the GMP to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

6.2 The GMP includes those taxes in the cost of the Work that are legally enacted at the time that this Contract is fully executed by the parties hereto.

6.3 All savings within the GMP shall inure to the benefit of the Owner exclusively. An adjusting Change Order shall be issued either when a final accounting is submitted upon Final Completion of the Work, or at such earlier time as agreed to by the Owner and the Construction Manager. “Savings” are the net difference obtained by deducting from the GMP (as adjusted by Change Orders, if any), the unexpended portions of the Construction Contingency, and the actual expenditures representing the Cost of the Work, as defined in Article 8, herein, including, without limiting the generality hereof, any units quantified in Exhibit “A” not furnished and installed. Liquidated damages, if any, are not a part of this calculation.

6.4 The GMP does not include a “Construction Contingency”, however an owner expense budget of **XXXXXXXX** dollars may be utilized, upon written approval beforehand by Owner, for the purpose of defraying the expenses due to unforeseen circumstances relating to construction such as, but not necessarily limited to, increases in subcontractor costs due to insolvency, correction of defective work (provided that such defective Work was not caused by the negligence or failure to fulfill a specific responsibility of the Construction Manager), and only to the extent that the costs therefore are not recoverable by Construction Manager from insurance, sureties, Subcontractors or suppliers), overtime ordered by the Owner to improve the schedule but not to make up for lost time due to Construction Manager’s delays, field issues/conditions which were not anticipated and which result in documented costs to the Work, Owner Furnished/Contractor Installed (“OFCI”) material or OFCI equipment failures, and any other cost agreed to mutually by the parties, in writing. The Contractor shall furnish documentation evidencing expenditures charged to this Contingency prior to the release of funds by the Owner. The necessary documentation, and the sufficiency thereof, required for invading the Construction Contingency fund shall be reasonably determined by the Owner. The Design Consultant shall verify the actual costs, if requested by Owner.

6.5 By execution of this Contract, the Construction Manager certifies that costs supporting the fees specified in this Contract are accurate, complete and current at the time of negotiations; and that any other costs that may be furnished the Owner in the future to support any additional fees that may be authorized will also be accurate and complete. The fees specified in this Contract, and any additional

fees that may be authorized in the future, may be adjusted to the extent of any increase due to inaccurate, incomplete, or non-current factual unit costs.

ARTICLE 7

Payments to Construction Manager

7.1 In consideration of the performance of the Contract, the Owner agrees to pay the Construction Manager, as compensation for its services, as set forth below:

7.1.1 Preconstruction services, for a total amount of \$XXXX,XXX, were completed prior to this agreement within a different contract; therefore, it is excluded from the GMP.

7.1.2 In consideration of the performance of the Work arising out of and in connection with this Contract, Owner agrees to pay the Construction Manager, as total compensation for its labor materials, equipment, management, and services, a Construction Manager at Risk fee ("CMAR") in the amount of \$XXXX,XXX, to be paid monthly on a percentage of completion basis, and subject to the retainage provisions set forth in the General Conditions. The CMAR includes Construction Manager's overhead, profit, and the items enumerated in Article 7.2 through and including 7.2.9 below.

Overhead, profit and bond allowance for compensable Change Orders not funded from the Construction Contingency: Subcontractor overhead and profit not to exceed 10%; Construction Manager overhead and profit not to exceed 10%.

7.1.2.1 As required by Section 255.073, F.S., within ten (10) days from receipt of payment from the Owner, the Construction Manager shall pay each Sub-Contractor out of the amount paid to the Construction Manager on account of such Sub-Contractor's Work, the amount to which said subcontractor is entitled reflecting the percentage actually retained, if any, from payments to the Construction Manager on account of said Sub-Contractor's Work. The Construction Manager shall, by appropriate agreement with each Sub-Contractor, require each Sub-Contractor to make payments to its Sub-subcontractors in a similar manner, pursuant to the above Florida statute. Make payments to its Subcontractors in a similar manner, as set forth in the above-cited Florida statute.

7.1.3 Pay requests for the Construction Phase shall be documented in accordance with the General Conditions.

7.1.4 Except for the costs enumerated in Exhibit "C," applications for payment shall be predicated on a percentage of completion basis. All payments are subject to retainage as elsewhere provided for in the Contract Documents.

7.2 Construction Manager's CMAR Fee includes, without limitation, the following:

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

7.2.2 General operating expenses of the Construction Manager’s principal and branch offices other than the field office.

7.2.3 Any part of the Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work.

7.2.4 Overhead and profit, or general expenses of any kind, except as may be expressly Included in Article 8, herein, as Cost of the Work.

7.2.5 All travel and per diem costs of Construction Manager’s employees and consultants.

7.2.6 Those services set forth in Article 2 and its subparts.

7.2.7 Expenses such as long distance telephone calls, internet service, web sites, and cell phones provided to or by Construction Manager’s personnel, telephone service at the site, postage, office supplies, courier and express delivery services, and similar items in connection with the Work, unless otherwise provided for in **Exhibit “B.”**

7.2.8 Cost of equipment such as typewriters, cameras, radios, computers, pagers, copiers, facsimile equipment, telephones, cell phones, dictating units, trailers, vehicles, and furniture purchased or rented by the Construction Manager, unless otherwise provided for in **Exhibit “B.”**

7.2.9 All costs incurred during the guarantee period following Final construction of the Project.

7.3 Adjustments in the Construction Manager’s Fixed Fee will only be made, as follows:

7.3.1 Adjustments due to Changes in the Work shall be made as described in the Contract Documents.

ARTICLE 8

Cost of the Work

8.1 The term “Cost of the Work” shall mean costs, including General Conditions costs, as identified in **Exhibit “B”** and the Construction Management Services Fee (CMSF,” **Exhibit “C”**) ((**Exhibits “B”** and **“C”** costs, however, are guaranteed hard and not subject to audit), incurred specifically in and about the performance of the Work as described and defined in Paragraph 8.2, below, and paid or incurred by the Construction Manager, which are not included in Paragraph 7.2, less any reimbursement for scrap value and cash or trade discounts, subject to Article 10, herein. The term “wages” used herein shall include the straight time and overtime pay authorized in writing by the Owner, and the cost of associated employee benefits. Employee benefits include, but are not limited to, unemployment taxes , social security taxes, compensated absences not including vacation time (under limited circumstances, such as extended self –performance by Construction Manager due to subcontractor default or jobsite emergency, “vacation time” may be compensable, provided self-performance is approved by Owner beforehand, in writing), and other mandatory and customary contributions and fringe benefits insofar as such costs are based on wages, salaries, or other remuneration paid to employees of the Construction Manager, excluding bonuses.

8.1.1 The GMP includes the amounts set forth in **Exhibits “B” (\$XXXX,XX) and “C” (\$XXX,XXX)** for General Conditions and CM services, respectively. These numbers are lump sum, and not subject to audit; provided, however, that it is expressly understood and agreed by the parties that the amounts for the line items in said **Exhibits “B” and “C”** are lump sums and intended to cover the entire duration of the project. To the extent that Construction Manager exceeds said amounts, or requires additional personnel, materials, services and equipment to properly and timely discharge its obligations and duties under the Contract, there shall be absolutely no entitlement to additional compensation, unless the Contract time is extended due to excusable and compensable changes in the Work that increase the GMP and/or contract duration.

8.1.2 Subject to the GMP, the Owner agrees to pay the Construction Manager for the Cost of the Work as defined in Article 8, herein, and its subparts, through completion of the Work, plus the Construction Management Services Fee (“CMSF”, **Exhibit “C”**) which shall be paid in equal monthly installments, and subject to retainage as elsewhere provided for herein.

8.2 Cost of the Work includes, and is limited to, actual documented expenditure for the following cost items:

8.2.1 Subject to prior written approval by the Owner, wages paid for labor in the direct employ of the Construction Manager at the construction site other than those provided under Paragraph 7.2, herein, as a part of the CMAR, and those provided for in **Exhibit “C,”** in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the Owner and Construction Manager, and including benefits, if any, as may be payable with respect thereto.

8.2.2 As and only to the extent not expressly or impliedly included in **Exhibits “A” “B” and “C,”** the cost of all materials, supplies and equipment incorporated into the Work or stored on site, including cost of transportation and storage thereof. At the Owner’s sole discretion, the Owner may make payment for materials, supplies and/or equipment stored off-site and insured.

8.2.3 Payments made by the Construction Manager to Trade Contractors for their Work performed pursuant to Sub-Contracts with the Construction Manager.

8.2.4 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** sales, use, gross receipt, or similar taxes related to the Work imposed by any governmental authority and for which the Construction Manager is liable.

8.2.5 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** building and operating permit fees, inspection and filing fees, sewer and water fees.

8.2.6 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** cost of removal and disposal of all debris including clean-up and trash removal.

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

8.2.8 Subject to prior written approval by Owner, legal costs reasonably, and properly, resulting from prosecution of the Work for the Owner provided, however, that they are not the result of the Construction Manager’s own negligence or malfeasance. Legal costs incurred in connection with

disputes solely between the Construction Manager and the Owner or incurred in connection with disputes solely between the Construction Manager and Sub-Contractors are the responsibility of the Construction Manager and shall not be included in the Cost of the Work.

8.2.9 As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,” cost to the Construction Manager of temporary electric power, lighting, water, sanitary facilities, and heat required for the performance of the Work, or required to protect the Work from weather damage.

8.2.10 As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,” cost to the Construction Manager of temporary safety-related protection including barricades and safety equipment, temporary roads and parking, dust control, pest control, installation and operation of temporary hoists, scaffolds, ladders and runways, and temporary Project signs and costs of permits and fees pursuant to the General Conditions of the Contract.

8.2.11 As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,” cost of watchmen or similar security services, if approved in writing by Owner.

8.2.12 As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,” cost of surveys, measurements and layout work reasonably required for the execution of the Work or the requirements of the Contract.

8.2.13 As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,” cost of preparation of shop drawings, coordination plans, photographs, or as-built documents not included in Sub-Contracts.

8.2.14 As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,” all costs for reproduction of documents to directly benefit the work.

8.2.15 As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,” testing laboratory costs, except relating to defective or non-conforming work for which reimbursement is otherwise excluded by the Contract Documents.

8.2.16 Deposits lost for causes other than Construction Manager’s or any Sub-Contractor’s negligence or failure to fulfill a specific responsibility to the Owner under the Contract Documents.

8.2.17 As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,” cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen that are consumed in the performance of the Work.

8.2.18 As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,” rental charges of all necessary machinery and equipment, including hand tools used in the performance of the Work, whether rented from the Construction Manager (upon prior written approval of the Owner, at the standard rate paid at the place of the Project) or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof.

8.2.19 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** costs associated with setting up and demobilizing tool sheds, Project field offices, temporary fences, temporary roads, and temporary fire protection.

8.2.20 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** Cost of the premiums for all insurance or bonds which the Construction Manager is required to procure by this contract, or other insurance or bonds subsequently deemed necessary by the Construction Manager, and agreed upon by the owner, in writing..

8.3 Costs not to be reimbursed include:

8.3.1 Those costs enumerated in Article 7.2.1 through 7.2.9 above.

8.3.2 Except as provided in Article 8.2.8 above, costs due to the negligence or failure of the Construction Manager, Sub-Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract.

8.3.3 Any cost not specifically and expressly described in Article 8.2 and its subparts, above.

8.3.4 Costs, other than costs included in Change Orders approved by the Owner, in writing, that would cause the GMP to be exceeded.

ARTICLE 9

Changes in the Work

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

ARTICLE 10

Discounts

10.1 All quantity and early payment discounts shall accrue to the Owner if (i) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (ii) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 11

Insurance

11.1 The Construction Manager shall provide insurance as required in section GC 31 of the general conditions.

ARTICLE 12

Other Provisions

12.1 In the event that the terms and provisions of **Exhibit “D”** conflict with or are omitted from the terms and provisions of this Contract and the General Conditions, the terms and provisions of **Exhibit “D”** shall govern with respect to the performance of the Work.

12.2 Included in the GMP is the cost of purchasing all materials and equipment necessary for the Project including, without limitation, federal, state, and local taxes, shipping, handling, loading, unloading, storage, insurance, suretyship, risk of loss, and related product warranties and guaranties. At the Owner’s exclusive option, Owner may elect to implement its Direct Purchase Program, which at the time of executing this Contract is set forth in **Attachment “8”**; provided however, following execution of this Contract, the **Attachment “8”** provisions may be revised by the Owner in order to be compliant with regulations promulgated by the State of Florida regarding tax-exempt purchases by a public entity. In the event that the Owner exercises this direct purchase option, in either the **Attachment “8”** format, or a revised format for compliance reasons, Construction Manager will prepare a deductive Change Order reflecting, at a minimum, the adjustments noted in Part 1.04, **Attachment “8.”** In such event, the provisions of GC 39.2 shall thereafter govern.

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IN WITNESS WHEREOF, the Town Manager of The Town Surfside, Florida, has made and executed this Contract on behalf of the said Town and caused the seal of the said Town to be affixed hereto, and the Construction Manager has hereunto set its hand and seal the day and year first written. The Construction Manager represents that it is authorized to execute this Contract on behalf of itself and its Surety.

WITNESS and ATTEST:

**CONSTRUCTION MANAGER
XXXXXXX, INC.**

By: _____

(Corporate Seal)

Printed Name: _____

Title: _____

ATTEST:

**OWNER
THE TOWN OF SURFSIDE, FLORIDA**

By: _____

Town Clerk

By: _____

Sandra McCready
(Town Clerk printed Name)

Printed Name: _____

Title: Town Manager _____

Approved as to form:

Recommended by:

Mark Blumstein, Town Attorney

