



8.c

Agreement for Construction of Grassy Point Habitat Restoration Boardwalk – Phase II

This Agreement is entered into this ____ day of _____, 2023, between the City of Holmes Beach, 5801 Marina Drive, Holmes Beach, Florida, 34217, a municipal corporation organized and existing under the laws of the State of Florida, (“City”), and Khors Construction, Inc., (“Contractor”), whose mailing address is 6251 44th St., N, Ste. 1909, Pinellas Park, FL 33781.

WHEREAS, the City Commission of the City of Holmes Beach desires to retain the services of a qualified contractor to construct a new boardwalk for the Grassy Point Habitat Restoration project (Phase II) (“Services” or “Project”); and

WHEREAS, this Agreement is being entered into by the City and the Contractor to perform the Services in accordance with this Agreement; and

WHEREAS, the City and Contractor, having agreed on final contractual terms, have agreed to enter this Agreement.

NOW, THEREFORE, in consideration of the consideration of the mutual covenants set forth herein, the Parties agree as follows:

SECTION 1.0 –SERVICES TO BE PERFORMED BY THE CONTRACTOR

1.1 The City retains the Contractor to perform the Services and complete the Project in accordance with the City’s Invitation to Bid and the Contractor’s Proposal attached hereto and incorporated herein as **Exhibit A**.

1.2 The Contractor is not authorized to undertake the Project without a written Notice to Proceed as provided in this Agreement.

SECTION 2.0 –COMPENSATION

2.1 General

2.1.1 The City shall pay the Contractor in accordance with the Contractor’s Proposal (**Exhibit A**) in an amount not to exceed **\$67,420.89**.

2.1.2 Pursuant to Florida Statutes §§ 218.73 and 218.74, Contractor shall be paid the fees calculated as set forth in its Proposal not more than forty-five (45) days after it has submitted to the City a proper invoice, which invoice shall be submitted only after completion and acceptance of the work performed by the Contractor. The invoice must reference the applicable Project Name.

2.1.3 All the Contractor's invoices shall be accompanied by date and time of work performed and other information that may be requested by the City's representative. Additional supporting documents may be requested by the City and, if so requested, shall be furnished by the Contractor to the City Treasurer's satisfaction.

2.1.4 The Contractor's Project Manager or any authorized officer shall attest to the correctness and accuracy of all invoices. Improper payment requests shall be addressed by the City as provided for in § 218.76, Florida Statutes, and any disputes with respect to payment of an invoice shall be determined as provided for in that statute and any associated City procurement codes or procedures addressing resolution of payment disputes.

2.1.5 Each invoice shall be due and payable in accordance with the State of Florida Prompt Payment Act, Chapter 218, Florida Statutes. All invoices shall be delivered to:

City of Holmes Beach
Attention: Accounts Payable
5801 Marina Drive
Holmes Beach, FL 34217

2.1.6 For both parties to close their books and records, the Contractor will clearly state "Final Invoice" on the Contractor's final billing for the Services rendered to the City for the project. The Contractor's submission of a Final Invoice for a project is its certification that all its Services for that project have been properly performed and all charges and costs have been invoiced to the City. Upon receipt of the Final Invoice, the account for such project will be closed, and the Contractor shall be deemed to have waived any further charges not properly included on the Final Invoice.

2.2 Reimbursable Expenses

2.2.1 Any of the Contractor's out-of-pocket" expenses shall not be reimbursable unless the City has approved the expenses in advance of incurring the expenses, and the pre-approved expenses are incurred directly in connection with the Project. Reimbursable Expenses will be reimbursed by the City at cost, but not to exceed the agreed upon amounts. The Contractor's request for payment shall include copies of paid receipts or invoices to establish that the expense was actually incurred and necessary in the performance of the Services performed in accordance with this Agreement and the applicable project.

SECTION 3.0 – CONTRACTOR'S REPRESENTATIONS

To induce City to enter into this Agreement, the Contractor makes the following representations, upon which the City has actually and justifiably relied:

3.1 The Contractor has examined and carefully studied all applicable documents, and that Contractor has the experience, expertise, and resources to perform all required Services.

3.2 The Contractor is familiar with and can and shall comply with all state and federal regulations that may affect cost, progress, performance, and furnishing of the Services to be performed pursuant to this Agreement.

3.3 The Contractor is a Florida corporation or company duly organized and existing in good standing under the laws of the State of Florida with full right and authority to do business within the State of Florida.

3.4 The Contractor has the full right and authority to enter into this Agreement and perform its obligation in accordance with its term.

3.5 The Contractor now has and will continue to maintain all licenses and approvals required to conduct business, and that it will at all times conduct its business activities in a reputable manner.

3.6 The Contractor shall, at no additional cost to the City, re-perform those Services which fail to satisfy the foregoing standard of care, the requirements and standards of this Agreement or which otherwise fail to meet the requirements of this Agreement.

SECTION 4.0 - ENTIRETY OF AGREEMENT

4.1 The City and the Contractor agree that this Agreement sets forth the entire Agreement between the parties with respect to its subject matter, and there are no promises or understandings other than those stated in this Agreement. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications between the City and the Contractor pertaining to the Services, whether written or oral.

SECTION 5.0 - CONTRACTOR'S RESPONSIBILITY FOR PROJECT SAFETY

5.1 The Contractor acknowledges the importance of performing the work on the Project in a safe manner so as to prevent damage, injury or loss to all individuals at the work site and the area near the work site. The Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the work site. The Contractor shall make routine daily inspections of the work site and shall hold safety meetings with personnel and subcontractors.

5.2 The Contractor shall immediately report in writing any safety-related injury, loss, damage, or accident arising from the work to the City's representative and, to the extent mandated by law, to all government or quasi-government authorities having jurisdiction over safety related matters involving the Project or the work site.

5.3 The Contractor's responsibility for safety under this Section is not intended in any way to relieve its suppliers and subcontractors of their own contractual and legal obligations and responsibility for complying with all laws and regulations related to health and safety matters and taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages, or accidents resulting from their performance at the work site.

SECTION 6.0 – DEADLINE FOR COMPLETION OF PROJECT

6.1 The Contractor shall complete the project within one hundred twenty (120) days of receiving a Notice to Proceed from the City.

SECTION 7.0 – LIQUIDATED DAMAGES

7.1 The City and the Contractor acknowledge that time is of the essence in the performance of the Project. The Contractor agrees that the Project will be completed by the date set forth in Section 6.1. If the Project is not completed in a timely manner, the City and the Contractor agree that as liquidated damages, and not as a penalty, for delay in performance, the Contractor shall pay \$100.00 per day to the City for each business day following the deadline set forth in Section 6.1 until the Project is completed by the Contractor and accepted by the City. The City shall have the right to deduct liquidated damages from any amount due or that may become due to the Contractor, or to use other legal remedies to collect the liquidated damages amount from the Contractor.

7.2 The liquidated damages provision shall only apply to the Contractor's delay in performance and shall exclude any *force majeure* event. Liquidated damages are intended to compensate the City for additional personnel efforts in administering the Agreement after the agreed upon completion date, additional safety measures the City will need to take to protect residents, visitors, and businesses, and lost confidence in government when work is not completed on time. A *force majeure* event is an event that is beyond the control of both the Contractor and the City, including the events of war, floods, labor disputes, earthquakes, epidemics and pandemics for which a federal or state order has been issued that prohibits construction work from being done, adverse weather conditions not reasonably anticipated, and other acts of God.

7.3 Liquidated damages are not intended to include litigation costs or attorney's fees incurred by the City, or other incidental or consequential damages suffered by the City due to the Contractor's failure to meet the completion deadline. To recover liquidated damages, the City is under no obligation to prove the actual damages sustained by the City due to the Contractor's delay in performance. This liquidated damages provision is not intended to replace any other remedy at law or equity available to the City for any breach of the Agreement by the **Contractor** involving provisions other than the delay in performance obligation imposed by this Agreement.

SECTION 8.0 – INSURANCE

8.1 The Contractor shall, at its sole cost and expense, procure and maintain throughout the term of this Agreement, insurance coverage in such amounts as required and authorized by Florida law, and will provide endorsed certificates of insurance generated and executed by a licensed insurance broker, brokerage or similar licensed insurance professional evidencing such coverage, and naming the City as a named, additional insured, as well as furnishing the City with certificates of insurance. The insurance coverages procured by the Contractor as required by this Agreement shall be considered, and the Contractor agrees that the insurance coverages it procures as required by this Agreement shall be considered, as primary insurance over and above any other insurance, or self-insurance, available to the City, and that any other insurance, or self-insurance available to the City shall be considered secondary to, or in excess of, the insurance coverage(s) procured by the Contractor as required in this Agreement. Nothing herein shall be construed to extend the City’s liability beyond that provided in Section 768.28, Florida Statutes.

8.2 The Contractor shall secure, pay for, and file with the City, prior to commencing any Services under this Agreement, all certificates for workers’ compensation, public liability, and property damage liability insurance, and such other insurance coverages as may be required by specifications and addenda thereto, in at least the following minimum amounts with specification amounts to prevail if greater than minimum amounts indicated. Notwithstanding any other provision of the Agreement, the Contractor shall provide the minimum limits of liability insurance coverage as follows:

Auto Liability	\$1,000,000	Combined Single Limit
General Liability	\$2,000,000	Aggregate
	\$2,000,000	Products Aggregate
	\$1,000,000	Any One Occurrence
	\$1,000,000	Personal Injury
Additional Umbrella	\$1,000,000	Occurrence / Aggregate
Professional Liability	\$1,000,000	Per Claim / Aggregate

The Contractor shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, the City of Holmes Beach named as an additional insured on its General Liability and Automobile Liability policies on a PRIMARY and NON-CONTRIBUTORY basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its equivalent, (combination of CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations, is acceptable) including a waiver of subrogation clause in favor of the City on all policies. The Contractor shall maintain the General Liability and Professional Liability insurance coverages summarized above with coverage continuing in full force, including the additional insured endorsement on the General Liability policy until at least three (3) years beyond completion and delivery of the Services agreed upon herein.

8.3 Notwithstanding any other provision of the Agreement, the Contractor shall maintain complete workers’ compensation coverage for each and every employee, principal, officer, representative, or agent of the Contractor who is performing any labor, services, or

material under the Agreement. Further, with respect to Employers' Liability, Contractor shall additionally maintain the following minimum limits of coverage:

Bodily Injury Each Accident	\$1,000,000
Bodily Injury by Disease Each Employee	\$1,000,000
Bodily Injury by Disease Policy Limit	\$1,000,000

8.4 The Contractor's insurance policies shall be endorsed to give thirty (30) days written notice to the City in the event of cancellation or material change. The Contractor will comply with all safety regulations required by any agency or regulatory body including but not limited to OSHA. The Contractor will notify the City immediately by telephone at (941) 779-3332 of any accident or injury to anyone that occurs on the Services site and is related to any of the Services being performed by the Contractor.

8.5 Nothing herein shall be construed to extend the City's liability beyond that provided in Section 768.28, Florida Statutes.

SECTION 9.0 – TERM OF AGREEMENT

9.1 The term of this Agreement shall be for the period it takes to complete all authorized Services, subject to the provisions of Section 6.1 unless sooner otherwise terminated according to the terms of this Agreement, or unless otherwise extended according to the terms of this Agreement.

SECTION 10.0 – TERMINATION OF AGREEMENT

10.1 *Termination for Cause:* In the event the Contractor shall default or otherwise violate any of the terms, obligations, restrictions or conditions of this Agreement, the City shall give the Contractor written notice of the default and that such default shall be corrected within five (5) business days of the date of the written notice. In the event the Contractor fails to correct the condition(s) of the default within the aforementioned timeframe, the City shall have all legal remedies available to it, including but not limited to, termination of this Agreement for cause. Unless the default is corrected within five (5) business days, or within a timeframe agreed to by the City, in such instance, the City may terminate the Agreement for cause by giving notice of termination to the Contractor, and the Contractor shall immediately cease working for the City and only be paid for all Services properly performed to the date of termination.

10.2 *Termination for Convenience of City:* The City for any reason may terminate this Agreement at any time and without cause by giving at least thirty (30) days written notice to the Contractor. In addition to termination for convenience, the City may terminate this Agreement immediately upon any lapse in the insurance coverage to be retained by the Contractor, or failure to fulfill any of the insurance requirements as provided in this Agreement. In this event, the Contractor shall be entitled to compensation for any satisfactory Services completed prior to termination in accordance with this Agreement.

10.3 *Effect of Termination:* In the event this Agreement is terminated for any reason, finished or unfinished documents, data, studies, correspondence, reports, and other products prepared by or for Contractor under this Agreement shall be made available to and for

the exclusive use of the City at no additional cost to the City. The Contractor shall immediately discontinue all affected Services unless a notice directs otherwise. Unless in dispute or subject to the City's remedy, the Contractor shall be paid for Services actually rendered through the date of termination.

SECTION 11.0 – INDEMNIFICATION AND LIABILITY

11.1 To the fullest extent permitted by law, the Contractor expressly agrees to indemnify, defend, and hold harmless the City, its officers, directors, agents, and employees (herein called the "indemnitees") from any claims, liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Section, to persons or property, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor, its subcontractors, or persons employed or utilized by them in the performance of the Agreement.

11.1 The City's review, comment and observation of the Contractor's service and performance of the Agreement shall in no manner constitute a waiver of the indemnification provisions of this Agreement.

11.2 The indemnification obligations under the Agreement shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor under workers' compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the Contractor or of any third party to whom Contractor may subcontract a part or all of the Services. This indemnification shall continue beyond the date of completion of the Services.

11.3 Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of the termination of this Agreement for any reason, the terms and conditions of this Agreement will survive as if this Agreement were in full force effect.

SECTION 12.0 – NOTICE

12.1 All notices required under this Agreement shall be sent by email or certified mail, return receipt requested, and if sent to the City, shall be mailed to or hand delivered to:

Sage Kamiya, Public Works Superintendent
City of Holmes Beach
5801 Marina Drive
Holmes Beach, FL 34217
Email: skamiya@holmesbeachfl.org

Mayor Judy Titsworth
City of Holmes Beach
5801 Marina Drive

Holmes Beach, FL 34217
E-mail: hbmayer@holmesbeachfl.org

As to the Contractor:

Kori Khorsandian
Khors Construction, Inc.
6251 44th St., N, Ste. 1909
Pinellas Park, FL 33781
(813) 728-3689
Email: khorsconst@gmail.com

SECTION 13.0 – MISCELLANEOUS

13.1 No assignment by either party to this Agreement of any rights under or interests in this Agreement will be binding on the party without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to any assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

13.2 The Contractor binds itself, its partners, successors, assigns, and legal representatives to the City in respect of all covenants, contracts, and obligations contained in this Agreement. No employees, agents, or representatives of the City are personally or individually bound by this Agreement.

13.3 The laws of the State of Florida shall govern all provisions of this Agreement. In the event the parties to this Agreement cannot resolve a difference with regard to any matter arising under this Agreement, the disputed matter will be referred to court-ordered mediation pursuant to Section 44.102, Florida Statutes. If no agreement is reached, any party may file a civil action and pursue all available remedies whether at law or equity. Venue for any dispute shall be in the Circuit Court of Manatee County, Florida.

13.4 If any civil action or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provision of this Agreement, the successful prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all expenses even if not taxable as court costs (including without limitation, all such fees, costs and expenses incident to mediation, arbitration, appellate, bankruptcy, and post-judgment proceedings), incurred in that civil action or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorney's fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, and all other charges billed by the attorney to the prevailing party.

13.5 This Agreement shall not be modified or amended except in writing with the same degree of formality with which this Agreement is executed.

13.6 A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provisions.

13.7 Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

13.8 Contractor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986, U.S.C. § 1324, et seq., and regulations relating thereto. Failure to comply with the above statutory provisions shall be considered a material breach and shall be grounds for immediate termination of this Agreement. The Contractor's employment of unauthorized aliens is a violation of § 274(e) of the Federal Immigration and Employment Act. The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of this Agreement and shall require the same verification procedure of any Subcontractors authorized by the Owner. Pursuant to Florida Statutes § 448.095(2), beginning January 1st 2021, Contractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. Contractor's contract with the Owner cannot be renewed unless, at the time of renewal, Contractor certifies in writing to the Owner that it has registered with and uses the E-Verify system. If Contractor enters into a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien and Contractor shall maintain a copy of such affidavit for the duration of the contract. If Contractor develops a good faith belief that any subcontractor with which it is contracting has knowingly violated Florida Statutes § 448.09(1) (making it unlawful for any person knowingly to employ, hire, recruit, or refer, either for herself or himself or on behalf of another, for private or public employment within the state, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States) Contractor shall terminate the contract with the subcontractor. If the Owner develops a good faith belief that Contractor has knowingly violated Florida Statutes § 448.09(1) (making it unlawful for any person knowingly to employ, hire, recruit, or refer, either for herself or himself or on behalf of another, for private or public employment within the state, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States) Owner shall terminate this contract. Pursuant to Florida Statutes § 448.095(2)(c)(3), termination under the above circumstances is not a breach of contract and may not be considered as such.

13.9 By executing this Agreement, the Contractor acknowledges compliance with the Public Contracting and Environmental Crimes provisions of Section 287.133(2)(a), Florida Statutes compliance with the Scrutinized Companies provisions of Section 287.135, Florida Statutes.

13.10 The Contractor shall comply with City's Drug Free Workplace policy and acknowledges by execution of this Agreement compliance regarding the policy prior to initiating any work on the Project.

SECTION 14.0 – PUBLIC RECORDS

14.1 Pursuant to applicable Florida law, the Contractor's records associated with the Agreement hereunder may be subject to Florida's public records laws, Section 119.01, Florida Statutes, et seq., as amended from time to time. The Contractor agrees to comply with Florida's public records law by keeping and maintaining public records required by the City in order to perform the Services. Upon request from the City's Custodian of Public Records, the Contractor shall provide the City with copies of or allow access to the requested public records at a cost that does not exceed the cost provided for under Chapter 119, Florida Statutes, or as otherwise provided for by Florida law. The Contractor shall 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 the term of the Agreement and following completion of the Agreement if the Contractor does not transfer the records to the City. Upon completion of the Agreement the Contractor shall transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain all public records required by the City to perform the Services. If the Contractor transfers all public records to the City upon completion of the Agreement, 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 Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

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 AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS, STACEY JOHNSTON, CITY CLERK, AT 5801 MARINA DRIVE, HOLMES BEACH, FLORIDA 34217 (941) 708-5800, EXT. 226, CITYCLERK@HOLMESBEACHFL.ORG.

SECTION 15.0 – STANDARD OF CARE

15.1 The Contractor represents to the City that it has the personnel and experience necessary to perform all Services in a professional and workmanlike manner.

15.2 The Contractor shall exercise the same degree of care, skill, and diligence in the performance of the Services as provided by a professional of like experience, knowledge, and resources, under similar circumstances.

15.3 The Contractor shall, at no additional cost to the City, re-perform all those Services which fails to satisfy the foregoing standard of care or which otherwise fail to meet the

requirements of this Agreement.

SECTION 16.0 - INDEPENDENT CONTRACTOR

16.1 The Contractor undertakes performance of the Services as an independent contractor and will be wholly responsible for the methods of performance.

16.2 The Contractor shall not pledge the City's credit or make the City guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Contractor shall have no right to speak for or bind the City in any manner.

SECTION 17.0 - SUBCONTRACTORS

17.1 The City reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor.

17.2 If a subcontractor fails to perform or make progress in providing any of the Services, as required by this Agreement, and the Contractor determines it is necessary to replace the subcontractor to complete any services in a timely fashion, then the Contractor shall promptly do so, subject to the City's right to approve the new subcontractor. The failure of a subcontractor to timely or properly perform any of its obligations to the Contractor shall not relieve the Contractor of its obligations to the City under this Agreement.

SECTION 18.0 - FORCE MAJEURE

18.1 The Contractor shall be temporarily excused from performance if an Event of Force Majeure directly or indirectly causes its nonperformance. An "Event of Force Majeure" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquake, storm, lightning, war, riot, civil disturbance, sabotage, epidemics and pandemics for which a federal or state order has been issued that prohibits construction work from being done, and governmental actions. Within five (5) days after the occurrence of an Event of Force Majeure, the Contractor shall deliver written notice to the City describing the event in reasonably sufficient detail and how the event has precluded the Contractor from performing its obligations hereunder. The Contractor's obligations, so far as those obligations are affected by the Event of Force Majeure, shall be temporarily suspended during, but no longer than, the continuance of the Event of Force Majeure and for a reasonable time thereafter as may be required for the Contractor to return to normal business operations. If excused from performing any obligations under this Agreement due to the occurrence of an Event of Force Majeure, the Contractor shall promptly, diligently, and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations under this Agreement. During any such time period the Contractor shall keep the City duly notified of all such actions required for it to be able to commence or resume performance of its obligations under this Agreement.

SECTION 19.0 – FEDERAL AND STATE TAXES

19.1 The City is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the City will provide an exemption certificate to the Contractor. The Contractor shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor shall the Contractor be authorized to use the City's Tax Exemption Number in securing such materials.

SECTION 20.0 - NON-DISCRIMINATION

20.1 The Contractor warrants and represents that all its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin, as set forth in 41 C.F.R. Part 60 – 1.4(b).

SECTION 21.0 - ACCESS AND AUDITS

21.1 The Contractor shall maintain adequate records to justify all charges and costs incurred in performing the Services for at least three (3) years after completion of this Agreement. The City shall have access to all books, records, and documents that the Contractor must maintain in accordance with this Agreement for the purpose of inspection or audit during the Contractor's normal business hours at its usual place of business. If the City determines that the City has overpaid the Contractor because the Contractor has misrepresented its billable time or reimbursable expenses, the Contractor shall deliver the full amount of any overpayment to the City. If the City incurs any fees, costs, or expenses to recover the overpayment amount including, but not limited to, administrative accounting and attorneys' fees, costs, and expenses, then the Contractor must pay the City the full amount of the same as such fees, costs and expenses come due.

21.2 If the City determines that the Contractor has under billed the City because the Contractor has miscalculated any reimbursable items or rates after submitting the invoice in accordance with Section 2 of this Agreement, then the Contractor waives any claim for additional payment for those services or reimbursable items.

21.3 All invoices submitted to the City pursuant to this Agreement are subject to audit and demand for refund of overpayment for a time period extending three (3) years beyond the expiration or earlier termination of this Agreement.

SECTION 22.0 – OWNERSHIP OF DOCUMENTS

22.1 The Contractor shall be required to cooperate with other City contractors and shall timely provide those contractors any information requested in the specified format. All documents, records, disks, original drawings, or other information shall become property of the City for its use and distribution as the City may determine in its sole discretion. The Contractor is not liable for any damages, injury or costs associated with the City's use or distribution of these documents for purposes other than those originally intended by the Contractor.

SECTION 23.0 - KEY PERSONNEL

23.1 The Contractor shall notify the City in the event of any key personnel changes, which may affect this Agreement. To the extent possible, notification shall be made at least ten (10) days prior to any proposed changes. The Contractor shall at the City’s request, remove without consequence to the City any subcontractor or employee of the Contractor and replace the same with an appropriate substitute having the required skill and experience necessary to perform the Services in accordance with this Agreement requirements. The City has the right and discretion to reject proposed changes in key personnel.

The following personnel of Contractor shall be considered key personnel:

Name: _____

Name: _____

Name: _____

SECTION 24.0 - ANNUAL APPROPRIATIONS

24.1 The Contractor acknowledges that during any fiscal year the City shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any agreement, verbal or written, the City may make in violation of this fiscal limitation is null and void, and no money may be paid on such agreement. The City may enter into agreements whose duration exceeds one (1) year; however, any such agreement shall be executory only for the value of the services to be rendered which the City agrees to pay as allocated in its annual budget for each succeeding fiscal year. Accordingly, the City’s performance and obligation to pay the Contractor under this Agreement is contingent upon an annual appropriation being made for that purpose.

SECTION 25.0 - DEFAULT AND REMEDY

25.1 If the Contractor materially defaults in its obligations under this Agreement and fails to cure the same within five (5) days after the date the Contractor receives written notice of the default from the City, then the City shall have the right to (i) immediately terminate this Agreement by delivering written notice to the Contractor, and (ii) pursue any and all remedies available in law, equity, and under this Agreement.

SECTION 26.0 – CONFLICTS OF INTEREST

26.1 The Contractor shall be required to disclose prior to signing this Agreement the name of any officer, director, employee, or agent who may be employed by the City or otherwise affiliated with the City. The Contractor shall disclose the name of any City official or employee who owns, directly or indirectly, any interest in the Contractor’s company or any affiliated

business entity. Any additional conflicts of interest that may occur during the term of the Agreement must be disclosed to the City immediately upon discovery of the conflict or potential conflict.

IN WITNESS WHEREOF, the Parties have signed this Agreement:

CITY OF HOLMES BEACH:

By: _____
Judy Titsworth, Mayor

Date: _____

ATTEST:

Stacey Johnston, City Clerk

KHORS CONSTRUCTION, INC.

By: _____
Kori Khorsandian

Title: _____

Date: _____