

RESOLUTION NO. 39-04-19

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT WITH SPECIALIZED PROPERTY SERVICES TO PROVIDE THE RESTORATION OF THE HISTORIC MIRROR BALLROOM FRENCH DOORS, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida (“Town”) is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town is empowered to enter into contractual arrangements with public agencies, private corporations or other persons; and

WHEREAS, the Town previously determined that there was a need to restore the French Doors and windows of the nationally designated Historic Town Hall Mirror Ballroom (the “Improvements”); and

WHEREAS, the Town solicited via Request for Proposal (RFP) 101-2019 for responsible and responsive contractors to provide for such Improvements; and

WHEREAS, on February 14, 2019, one proposal was received from Specialized Property Services (the “Contractor”); and

WHEREAS, the cost of the Improvements is in the amount of \$108,644.00, which includes the base proposal cost plus three alternates; and

WHEREAS, the Contractor has represented that it is qualified, able, and willing to complete the Improvements; and

WHEREAS, the Town Manager has recommended to the Town Commission, that it is in the best interest of the Town to execute an agreement with Specialized Property Services to complete the Improvements.

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

Section 1. The foregoing recitals are incorporated herein.

Section 2. The agreement with Specialized Property Services is hereby approved by the Town Commission of the Town of Lake Park to provide the Improvements. The Mayor is hereby authorized and directed to execute the agreement between the Town and Specialized Property Services which is attached hereto and incorporated herein as Exhibit A.

Section 3. This Resolution shall take effect upon execution.

The foregoing Resolution was offered by Commissioner Michewel, who moved its adoption. The motion was seconded by Commissioner Linden, and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
MAYOR MICHAEL O'ROURKE	<u>ABSENT</u>	___
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>✓</u>	___
COMMISSIONER ERIN FLAHERTY	<u>ABSENT</u>	___
COMMISSIONER JOHN LINDEN	<u>✓</u>	___
COMMISSIONER ROGER MICHAUD	<u>✓</u>	___

The Town Commission thereupon declared the foregoing Resolution 39-04-19 duly passed and adopted this 17th day of April, 2019.

TOWN OF LAKE PARK, FLORIDA

BY: Kybal Castro
MICHAEL O'ROURKE
MAYOR

ATTEST:

Shayente Echeverri
VIVIAN MENDEZ
TOWN CLERK

Approved as to form and legal sufficiency:

BY: Thomas J. Baird
THOMAS J. BAIRD
TOWN ATTORNEY



**CONSTRUCTION SERVICES AGREEMENT
FOR
RESTORATION OF HISTORIC MIRROR BALLROOM FRENCH DOORS AND
WINDOWS**

This Construction Services Agreement (Agreement) is made by and between the **TOWN OF LAKE PARK**, with an address of 535 Park Avenue, Lake Park, Florida, 33403 (the "Town") and **SPECIALIZED PROPERTY SERVICES** with a principal address of 9605 US Highway 92 East, Tampa, Florida 33610 (the "Contractor").

SECTION 1 - LIST OF EXHIBITS

The following items are included in this agreement as if fully set forth herein.

- Exhibit A – Entire Town Request for Proposal 101-2019 ("RFP") – Restoration of Historic Mirror Ballroom French Doors and Windows
- Exhibit B – Contractor's Proposal in response to RFP

SECTION 2 –SCOPE OF SERVICES FOR THE RESTORATION OF HISTORIC MIRROR BALLROOM FRENCH DOORS AND WINDOWS

The Town has selected the Contractor to perform the restoration of the six (6) sets of historic Mirror Ballroom French Doors and Windows, located within the historic Town Hall, 535 Park Avenue, Lake Park, Florida 33403 (the "Project"). As fully described within Exhibit A, the Town contracted the architectural firm of REG Architects to prepare plans and a detailed project manual as it pertains to the historical restoration. The Contractor shall perform all work in compliance with the instructions, directions, guidance, standards, briefs, procedures, and all other specifications detailed within Exhibit A, including but not limited to the Project Manual prepared by REG Architects.

SECTION 3 - COMPLETION SCHEDULE AND TERM

3.1 Schedule and Deliverables

The Contractor shall complete the restoration and provide the indicated deliverables in accordance with the following schedule:

- Deliverable 1: 30 percent of the project completed. Submit 1st application and certificate for payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703) showing at least 30 percent of the project completed. Deliverable 1 must be delivered by Contractor to Town within four (4) weeks of Contractor's receipt of a Notice-to-Proceed, which shall take the form of an officially executed Purchase Order from the Town and the building permit.
- Deliverable 2: 60 percent of the project completed. Submit 2nd application and certificate for payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703) showing at least 60 percent of the project completed. Deliverable 2 must be delivered by Contractor to Town within six (6) weeks of Contractor's receipt of a Notice-to-Proceed, which shall take the form of an officially executed Purchase Order from the Town and the building permit.
- Deliverable 3: 100 percent of the project completed. Submit 3rd and final application and certificate for payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703) showing 100 percent of the project completed. Also, a Certificate of Substantial Completion (AIA Document G704) shall be submitted, including a waiver of

release of lien. Deliverable 3 must be delivered by Contractor to Town within eight weeks (8) weeks of Contractor's receipt of a Notice-to-Proceed, which shall take the form of an officially executed Purchase Order from the Town and the building permit.

All construction must be completed within eight (8) weeks after issuance of a Notice-to-Proceed, which shall take the form of an official Purchase Order from the Town.

3.2 Delay

3.2.1 The Contractor shall timely perform the services in compliance with the Project schedule or as amended in writing and executed by both parties. If Contractor is delayed by any act, failure to act or neglect of the Town, or any separate Contractor or contractor hired directly by the Town, or by occurrences beyond the control and without any fault or negligence of Contractor, the Contractor shall provide a written notice of the reasons for the delay to the Town, within five (5) working days of the date the delay began. Provided the Contractor has timely notified the Town of such delay, and the Town determines the delay was reasonable, the Parties shall execute a written amendment to the schedule. This extension of time shall be Contractor's sole and exclusive remedy which the Contractor shall have against the Town attributed to such delay.

3.2.2 The Contractor acknowledges responsibility for any delay damages suffered by the Town as a result of Contractor's negligent, reckless or intentional wrongful actions or inactions. In the event that the Town suffers or reasonably believes that it will suffer any delay damages due to the foregoing, the Town, in its sole reasonable discretion, shall have the right to terminate this Agreement upon five (5) day's written notice. Such termination shall not be construed to constitute a breach of this Agreement by the Town

SECTION 4 - FEES

4.1 Fee Schedule.

The Fee for all services (Fee) provided by the Contractor is set forth in the schedule of values below:

(Remainder of page intentionally left blank)

SCHEDULE OF VALUES					
Item Number	Description of Work	Quantity	Unit	Unit Price	Item Total
DIVISION 0 - ADDITIONAL INFORMATION					
None					
DIVISION 1 - GENERAL CONDITIONS					
	Pre-Construction				-
	Permits	1	EA	2,530.00	2,530.00
	Allowance Forms				-
	Performance & Payment Bonds	1	EA	3,036.00	3,036.00
	Insurance - Builder's Risk				-
	Insurance - General Liability				-
	Fee				-
	Contingency				-
	General Conditions	1	LS	8,398.00	8,398.00
	Alternate #1 Fabric Windstorm Shutters	1	LS	7,165.00	7,165.00
	Alternate #2 Replacement of existing gutter system of high roof over ballroom	1	LS	8,785.00	8,785.00
	Alternate #3 Removal of paint from french doors	12	EA	235.167	2,822.00
	Project Management & Coordination				-
	Protection, Salvage & Treatment Procedure for Historic Building materials				-
	Regulatory Requirements				-
	Quality Assurance				-
	Quality Control				-
	Temporary Facilities and Controls				-
	Common Product Requirements				-
	Closeout Procedures	1	EA	200.00	200.00
					-
DIVISION 2 - EXISTING CONDITIONS					
	Existing Conditions				-
	Assessment and Remediation				-
	Selective Demolition	1	LS	4,225.00	4,225.00
					-
DIVISION 3 - CONCRETE					
	Not used				-
DIVISION 4 - MASONRY					
	Not used				-
DIVISION 5 - METALS					
	Not used				-

SCHEDULE OF VALUES					
Item Number	Description of Work	Quantity	Unit	Unit Price	Item Total
DIVISION 6 - WOOD, PLASTICS					
	Wood restoration	1	LS	14,355.00	14,355.00
	Rough carpentry				-
	Ext Finish Carpentry				-
	Int Finish Carpentry	1	LS	8,687.00	8,687.00
DIVISION 7 - THERMAL & MOISTURE					
	Joint sealants				-
DIVISION 8 OPENINGS					
	Stile and Rail Wood Doors	1	LS	7,323.00	7,323.00
	Door Hardware	1	LS	38,976.00	38,976.00
	Door bottoms/Rain drips				-
	Thresholds				-
	Glazing				-
DIVISION 9 - FINISHES					
	Repair of Stucco				-
	Exterior Painting				-
	Interior Painting	1	LS	2,142.00	2,142.00
DIVISION 10 - SPECIALTIES					
	Fabric shutters				-

TOTAL \$108,644.00

4.2 Adjustment to the Service Fee.

The Fee schedule may be adjusted, if necessary, by a written amendment to this Agreement, duly approved and executed by Contractor and Town.

4.3 Invoices.

4.3.1. All invoices must identify the Town PO number. Invoices shall be submitted directly to:

Town of Lake Park
Accounts Payable
535 Park Avenue
Lake Park, FL 33403

4.3.2 Invoices shall take the form of an application and certificate of payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703). There shall be three invoices for the project, with the first showing at least 30% of the project completed, the second showing at least 60% of the project completed, and the third and final showing 100% of the project completed. The final application for payment shall also include a Certificate of Substantial Completion (AIA Document G704) and a waiver of release of lien.

4.3.3 Invoices received from the Contractor pursuant to this Agreement shall be subject to the prior approval of the Town to confirm that the services were rendered in conformity with the Agreement.

The Town shall utilize the architectural firm of REG Architects, or another similarly qualified professional firm, to assist in confirming that the services were rendered in conformity with the Agreement.

4.4 Payment.

4.4.1 The Fee shall be paid in accordance with Section 3.1 and 4.1 and upon acceptance of deliverables satisfactory to the Town and the receipt of a proper application for payment from Contractor as described in Section 3.3.2.

4.4.2 Payment of Fees shall be made in accordance with the Prompt Payment Act, Section 218.70, Florida Statutes, as amended.

SECTION 5 - REPRESENTATIONS OF THE CONTRACTOR

5.1 Authority.

The Contractor hereby represents and warrants to the Town that it has full power and authority to enter into and fully perform its obligations under this Agreement without the need for any further corporate or governmental consents or approvals, and that the persons executing this Agreement are authorized to execute and deliver it.

5.2 Duly Licensed.

The Contractor represents that it is duly licensed to perform the Services under this Agreement and that it will continue to maintain all licenses and approvals required to conduct its business.

5.3 No Solicitation.

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach or violation of this provision by Contractor, the Town shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the Fee, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

5.4 Public Entity Crimes Act.

The Contractor represents that by its execution of this Agreement it has not violated the Public Entity Crimes Act (Section 287.133, Florida Statutes), and certifies that neither the Contractor nor any of its parent corporations, affiliates, subsidiaries, members, shareholders, partners, officers, directors or executives, or sub-Contractors have been, or are presently debarred, proposed for debarment or declared ineligible to bid or participate in any federal, state or local government agency projects and are not listed on the Florida convicted Contractor list. Violation of this section may result in termination of this Agreement and recovery of all monies paid by the Town to the Contractor, and may result in debarment from Town's competitive procurement activities.

5.5 Standard of Care.

The standard of care for all Services performed or furnished by Contractor under this Agreement shall be the care and skill ordinarily used by members of Contractor's profession practicing under similar circumstances.

5.6 Warranty

Contractor hereby represents to Town that all materials and labor provided under this agreement shall be warranted from defect or poor workmanship for a period of twelve (12) months following completion of the project.

5.7 Ethics Provisions; No Conflicts of Interest.

- Contractor represents that it has not given or accepted a kickback in relation to this Agreement and has not solicited this Agreement by payment or acceptance of a gratuity or offer of employment.
- Contractor represents that it has not solicited this Agreement by payment of a gift or gratuity or offer of employment to any official, employee of the Town or any Town agency or selection committee.
- Contractor represents that it does not employ, directly or indirectly, the Mayor, members of the Town commission or any appointed Town official, department director, or member of any board, committee or redevelopment agency of the Town.
- Contractor represents that it does not employ, directly or indirectly, any employee or member of any board, committee or redevelopment agency of the Town who, alone or together with his household members, own at least five percent (5%) of the total assets and/or common stock of Contractor.
- Contractor represents that it has not knowingly given, directly or indirectly, any gift with a value greater than \$100 in the aggregate in any calendar year to the Mayor, members of the Town commission, any department director or head of the Town, any employee of the Town or any official of the Town's redevelopment agency, or any member of a board that provides regulation, oversight, management or policy-setting recommendations regarding the Contractor or its business.
- Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance under this Agreement. The Contractor further represents that no person having any such interest shall be employed or engaged by it to provide the Services.
- Contractor, its officers, personnel, subsidiaries and subcontractors shall not have or hold any continuing or frequently recurring employment, contractual relationship, business association or other circumstance which may influence or appear to influence Contractor's exercise of judgment or quality of the Services being provided under this Agreement. Contractor, its officers, personnel, subsidiaries and subcontractors shall not perform work for any third party that would in any way be in conflict with the Services to be provided to the Town under this Agreement.
- Contractor shall promptly notify the Town in writing by certified mail of all potential conflicts of interest or any event described in this Section. Said notification shall identify the prospective business interest or circumstance and the nature of work that the Contractor intends to undertake and shall request the opinion of the Town as to whether such association, interest or circumstance would, in the opinion of the Town, constitute a conflict of interest if entered into by the Contractor. The Town agrees to notify the Contractor by certified mail of

its opinion within thirty (30) calendar days of receipt of the said notification and request for opinion. If, in the opinion of the Town, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the Town shall so state in its opinion and the Contractor may, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the Town by the Contractor under this Agreement.

- In the event the Contractor is permitted to utilize subcontractors to perform any services required by this Agreement, the Contractor agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this section.

5.8 Lobbying Certification.

The Contractor certifies to the best of its knowledge and belief that no federal or state grant funds or other resources received in connection with this Agreement will be used directly or indirectly to influence legislation or any other official action by a member of Congress, a member of the Florida Legislature or any state agency.

5.9 Truth in Negotiation Statement

Signature of this Agreement by the Contractor serves as the execution of a truth-in-negotiation certificate certifying that the compensation and hourly rates and other expenses or costs to be compensated under this Agreement are accurate, complete and current at the time of contracting. The fees and expenses payable under the agreement shall be adjusted to exclude any significant sums should the Town determine that the fees and costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate representations of fees paid to sub-Contractors or sub-contractors. Any such agreement adjustments must be made within one year following the expiration or termination of this Agreement.

5.10 Financial Capability

The Contractor certifies that it has not filed for bankruptcy in the past five (5) years and is financially able to provide Services under this Agreement. The Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to meet the completion dates or schedules to be established by the Project Schedule and this Agreement.

5.11 No Felony or Fraud

The Contractor certifies that neither it, nor any of its principals have been convicted of a felony or fraud.

SECTION 6 - RESPONSIBILITIES OF THE TOWN

6.1 Designation of Representative

The Town agrees to designate an individual to act as the Town's representative with respect to the Services to be rendered under this Agreement), provided that such representative shall not have the authority to amend or modify this Agreement. Such person shall have complete authority to transmit instructions, receive information and interpret and define the policies and decisions of the Town with respect to the Contractor's Services.

6.2 Specification of Town Requirements

The Town agrees to provide information as to the Town's requirements for the project, including code requirements, Town and performance requirements, flexibility and expendability and budgetary limitations.

6.3 Items to be furnished upon the Contractor's Request

The designated representative of the Town shall use reasonable efforts to provide to the Contractor, upon the Contractor's request, the following information, along with previous reports or studies and any other data relative to construction of the Project. The Town makes no representation that any such data or documents provided by the Town are accurate or reliable.

1. Data prepared by others relevant to the Project;
2. Appropriate professional interpretations of data prepared by others relevant to the Project;
3. Environmental assessment and impact statements, if applicable;
4. Property, boundary, easement, right-of-way, topographic and utility surveys;
5. Property descriptions; and
6. Zoning, deed and other land use restrictions

6.4 Access to Property

The Town agrees to arrange for access to and make all provisions for Contractor to enter Town property as required for Contractor to perform the Services of this Agreement. Access shall be restricted to normal business hours, Monday through Friday, 7:30am to 5:00pm local time, unless otherwise mutually agreed upon by Town and Contractor.

6.5 Attendance at Meetings

Upon request, a Town representative shall attend regularly scheduled Project progress meetings at the Town or Contractor's local office, as well as substantial completion inspections and final inspections. Contractor's Project Manager, shall attend all regularly scheduled Project progress meetings at the dates and times established.

SECTION 7 - DOCUMENTS

7.1 Ownership of Documents.

All plans, drawings, construction documents, technical specifications, sketches, photographs, videos, illustrations, tracings, presentations of any kind, specifications, maps, computer files and/or studies or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, regardless of form or format, will be considered works made for hire and will become the exclusive property of the Town without restriction or limitation on their use and will be made available, upon request, to the Town at any time during the performance of the Services and/or upon completion or termination of this Agreement. Upon delivery to the Town of said document(s), the Town shall be the custodian thereof in accordance with Chapter 119, Florida Statutes. The Contractor shall not copyright any material and products or patent any invention developed under this Agreement. Contractor specifically waives and releases all rights which the Contractor may have in the materials, products or invention pursuant to 17 U.S.C. §§106A and 113(d). The Contractor acknowledges and affirms that pursuant to 17 U.S.C. §106A(e) such waiver and release shall be effective as to any and all uses foreseeable and unforeseeable for which such materials, products or invention might be subject. The Contractor waives and assigns to Town all copyrights under 17 U.S.C. §101, et seq., and all other rights in the materials, products, invention and any work produced. Any reuse of the Contractor's prepared documents by the Town, except for the specific purpose intended under this Agreement, shall be at Town's sole risk and without liability or legal exposure to Contractor or its sub-Contractors.

7.2 Obligation to Furnish Documents to the Town

The Contractor shall deliver to the Town for approval and acceptance, and before being eligible for final payment of any amounts due under this Agreement, all documents and materials prepared for the Town in connection with this Agreement.

SECTION 8 - STANDARD TERMS AND CONDITIONS

8.1 Personnel; Staffing; Sub-Contractors

- Independent Contractor Relationship. All persons employed by the Contractor and engaged in any of the work or Services performed by the Contractor pursuant to this Agreement shall at all times be subject to the Contractor's sole direction, supervision, and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the Town shall be that of an independent contractor and not as employees or agents of the Town. The Contractor does not have the power or authority to bind the Town in any promise, agreement or representation other than as may be specifically provided for in this Agreement. The Contractor shall be responsible to the Town for all Services or work performed by the Contractor or any person or firm engaged as a sub-Contractor or subcontractor to perform work in fulfillment of this Agreement.

- Personnel. The Contractor represents that its project manager and all staff identified in the Contractor's Proposal shall remain assigned to the Project, unless otherwise specifically released by the Town. All personnel engaged in performing the Services shall be fully qualified and, if required, licensed or permitted under all applicable federal, state and local laws and regulations to perform such services. The Contractor specifically acknowledges that its employees are not be covered by the Town's workers' compensation insurance and the Contractor shall be solely and exclusively responsible for payment of all federal and state income, social security, unemployment and disability taxes due in respect of all compensation and/or other consideration paid by the Town to the Contractor under this Agreement.

- Non-Discrimination by Contractor. The Contractor warrants and represents that all of its employees and applicants for employment are treated equally without regard to race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status or sexual orientation, and that in providing services, The Contractor does not discriminate with regard to any of the aforementioned factors.

- Unauthorized Aliens/Patriot's Act. The knowing employment by the Contractor or its sub- Contractors of any alien not authorized to work by the immigration laws or the Attorney General of the United States is prohibited and shall be a default of this Agreement which results in unilateral termination. In the event that the Contractor is notified or becomes aware of such default, the Contractor shall take steps as are necessary to terminate said employment with 24 hours of notification or actual knowledge that an alien is being employed. T h e Contractor's failure to take such steps as are necessary to terminate the employment of any said alien within 24 hours of notification or actual knowledge that an alien is being employed shall be grounds for immediate termination of this Agreement and unilateral termination. T h e Contractor shall take all commercially reasonable precautions to ensure that it and its sub-Contractors do not employ persons who are not authorized to work by the immigration laws or the Attorney General of the United States. Contractor further represents that it is not in violation of any laws relating to terrorism or money laundering, including the Executive Order No. 13224 on Terrorist Financing and/or the Uniting and Strengthening America by Providing

Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56., the "Patriot Act").

- Selection of Sub-Contractors. The Contractor shall obtain the prior written approval of the Town as to each proposed sub-Contractor and the Town reserves the right to reject the selection of a particular sub- Contractor and to inspect all facilities of any sub-Contractor in order to make a determination as to the capability of the sub-Contractor to perform properly under this Agreement. If it becomes necessary to replace a particular sub-Contractor to complete its part of the services, the Contractor shall promptly do so, subject to the prior written approval and acceptance of the new sub-Contractor by the Town, which approval shall not be unreasonably withheld.

8.2 Compliance with Laws.

In the conduct of providing the Services under this Agreement, the Contractor shall comply in all material respects with all applicable federal and state laws and regulations and all applicable County and Town ordinances and regulations.

8.3 State Taxes.

The Contractor understands that in performing the Services for the Town, Contractor is not exempt from paying sales tax to the Contractor's suppliers for materials required for the Contractor to perform under this Agreement. The Contractor shall not be authorized to use the Town's tax exemption number for purchasing supplies or materials.

8.4 Right to Audit.

The Contractor shall maintain adequate records for the Services performed under this Agreement, including adequate records to justify all charges, expenses and costs in performing the Services; and copies of communications regarding the performance of its obligations under this Agreement, for five (5) years following completion of the Services, or conclusion of any litigation regarding this Agreement. The Town shall have the right to audit the Contractor's books and records, at the Town's expense, upon prior notice, with regard to the Services provided to the Town under this Agreement. The Contractor shall allow the Town or its representative to interview all current or former employees to discuss matters pertinent to this Agreement. If an audit inspection in accordance with this section discloses overpricing or overcharges (of any nature) by the Contractor to the Town in excess of one-half of one percent (.5%) of the total contract billings, (1) the reasonable costs of the Town's Internal Audit department shall be reimbursed to the Town by the Contractor and (2) a 15% penalty of the overpricing or overcharges shall be assessed. Any adjustments and/or payments which must be made as a result of the audit inspection, including any interest, audit costs and penalties shall be made by the Contractor within 45 days from presentation of Town's findings to the Contractor. Failure by the Contractor to permit such audit shall be grounds for termination of this Agreement by the Town.

8.5 Public Records Law

With respect to public records, the Contractor is required to:

- Keep and maintain public records required by the Town to perform the service.
- Upon the request of the Town's custodian of public records, provide the Town with such public records within a reasonable time at a cost that does not exceed the costs provided for in Chapter 119, Florida Statutes.
- Ensure that any public records that are exempt or confidential from public records disclosure are not disclosed except as authorized by law for the duration of the term of this Agreement, and following completion of this Agreement if the Contractor does not transfer the records which are part of this Agreement to the

Town.

- Upon the completion of the term of the Agreement, transfer, at no cost, to the Town all public records in possession of the Contractor; or keep and maintain the public records associated with the services provided for in the Agreement. If the Contractor transfers all public records to the Town upon completion of the term of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential from public records disclosure. If the Contractor keeps and maintains public records upon completion of the term of the Agreement, the Contractor shall meet all applicable requirements pertaining to the retention of public records. All records stored electronically shall be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

8.6 Confidentiality

The Contractor agrees that it will make no statements, press releases or Town releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Town and securing its written consent.

8.9 No Pledge

The Contractor shall not pledge the Town's credit or attempt to make the Town a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any other form of indebtedness.

8.10 Insurance.

- The Contractor shall purchase from and maintain, in a company or companies lawfully authorized to do business in Florida, such insurance as will protect the Town from claims set forth below which may arise out of or result from performance under this Agreement by the Contractor, or by a subcontractor of the Contractor, or by anyone directly or indirectly employed by the Contractor, or by anyone for whose acts the Contractor may be liable.
- Coverage shall be maintained without interruption from the effective date of this Agreement until date of final payment and termination of any coverage required to be maintained after final payment. Any liability coverage on claims made basis shall remain effective for five (5) years after final payment. If any of the required 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.
- The Town shall be provided a minimum of thirty (30) days prior written notice of any adverse material change, including any reduction, non-renewal or cancellation of Contractor's required insurance coverage, or any increase in the Contractor's self-insurance retention.
- Evidence of insurance, being a current ACORD certificate of insurance or its equivalent, executed by the insurer, or its agent or broker, evidencing that a policy of insurance and any required endorsements have been issued by the agent/broker shall be delivered to Town prior to execution of this Agreement. The Certificate of Insurance shall be dated and show the name of the insured, the specific Project or work authorization by name, the name of the insurer, the number of the policy, its effective date, and its termination date.

- Additional Insureds. All required insurance (except Worker's Compensation and Liability) shall include an Additional Insured endorsement identifying the Town, its elected commissioners, appointed officers, employees and agents, as Additional Insureds. No costs shall be paid by the Town for an additional insured endorsement.
- Required Coverage: The Contractor shall maintain following liability coverage, in the limits specified:

Comprehensive General Liability: Not less than \$1,000,000.00 Combined Single Limit per each occurrence and \$2,000,000 aggregate. May not be subject to a self-insured retention or deductible exceeding \$25,000.

Automobile Liability: Not less than \$1,000,000.00 Combined Single Limit per occurrence for bodily injury and property damage. May not be subject to a self-insured retention or deductible exceeding \$10,000.

Worker's Compensation: Worker's Compensation and Employer's Liability Insurance with limits of Employer's Liability Insurance not less than \$500,000 "each accident," \$500,000 "disease policy limit," and \$500,000 "disease each employee."

- Insurance of Subcontractors. The Contractor shall contractually require and verify that its sub- Contractors will maintain during the term of their agreement, the above types of insurance, in coverage amounts acceptable to the Town.
- Anything to the contrary notwithstanding, the liabilities of the Contractor and any sub-Contractors under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages.

8.11 Indemnification.

The Contractor agrees to indemnify and hold harmless the Town, its elected and appointed officials, its officers, agents and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Contractor and any other persons employed or utilized by the Contractor in provision of the Services under this Agreement. To the extent considered necessary by the Town, any sums due to the Contractor under this Agreement may be retained by Town until all of Town's claims for indemnification have been resolved, and any amount withheld shall not be subject to the payment of interest by Town. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This paragraph shall not be construed to require Contractor to indemnify the Town for its own negligence, or intentional acts of the Town, their agents or employees. PURSUANT TO F.S. SEC. 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD LIABLE FOR NEGLIGENCE. Nothing in this Agreement shall be deemed to be a waiver of the Town's sovereign immunity under Section 768.28, Florida Statutes. This clause shall survive the expiration or termination of this Agreement.

8.12 Force Majeure

Any deadline provided for in this Agreement may be extended, as provided in

this paragraph, if the deadline is not met because of one of the following conditions occurring with respect to that particular project or parcel: fire, strike, explosion, power blackout, earthquake, volcanic action, flood, war, civil disturbances, terrorist acts, hurricanes and acts of God. When one of the foregoing conditions interferes with agreement performance, then the party affected may be excused from performance on a day-for-day basis to the extent such party's obligations relate to the performance so interfered with; provided, the party so affected shall use reasonable efforts to remedy or remove such causes of non-performance. The party so affected shall not be entitled to any additional compensation by reason of any day-for-day extension hereunder.

8.13 Termination

- Either party may terminate this Agreement for cause in the event that: (1) the other party violates any material provisions of this Agreement or performs same in bad faith or (2) unreasonably delays the performance of its obligations hereunder, upon advance written notice to said defaulting party five (5) calendar days prior to termination. As a condition precedent to termination for cause, the defaulting party shall have the right to cure within 30 days unless another time frame is otherwise agreed to by the parties.
- In the event this Agreement is terminated by the Town for cause, the Town may take over the Services and complete them by contracting with another Contractor (s) or otherwise, and in such event, the Contractor shall be liable to the Town for any additional cost incurred by the Town due to such termination. "Additional Cost" is defined as the difference between the actual cost of completion of such incomplete Services and the cost of completion of such Services which would have resulted from payments to the Contractor had this Agreement not been terminated.
- The Town shall have the right to terminate this Agreement, in whole or in part, without cause, and for its convenience, upon five (5) days written notice to the Contractor. The Contractor shall have no right to terminate this Agreement for convenience.
- Upon termination, the Contractor shall immediately assemble and deliver all documents, drawings, signed and sealed drawings, Construction Documents, Technical Specifications, GADD files, calculations, specifications, correspondence, testing and materials information, warranties, manuals, written information, electronic data and all other materials in its possession concerning the Services under this Agreement to the Town.
 - In the event of termination, the Contractor, upon receipt of the notice of such termination, shall:
 - (1) stop the performance of the Services on the date and to the extent specified in the notice of termination;
 - (2) place no further orders or subcontracts except as may be necessary for completion of any portion(s) of the Services not terminated and as authorized by the written notice;
 - (3) terminate all orders and subcontracts to the extent that they relate to the performance of the Services terminated by the notice of termination;
 - (4) transfer title to the Town (to the extent that title has not already been transferred) and deliver according to the manner, at the times, and to the extent directed by the Town, all property purchased under this Agreement and reimbursed as direct items of cost and not required for completion of the services not terminated;
 - (5) promptly assemble and deliver as provided above all documents related to this Agreement;
 - (6) promptly complete performance of any Services not terminated by the notice of termination and/or cooperate in transition of its duties to appropriate parties at the direction of the Town.

- In the event of termination, the Town shall compensate the Contractor for all authorized Services satisfactorily performed through the termination date, under the payment terms contained in this Agreement. In the event of Termination for Cause, no payments to the Contractor shall be made (1) for Services not satisfactorily performed and (2) for assembly of and submittal of documents as required under this Agreement. In no event shall Town be obligated to compensate the Contractor for lost profits, or any resulting or consequential damages.
- Upon termination, this Agreement shall have no further force or effect and the parties shall be relieved of all further liability under this Agreement, except that the provisions of this section and the provisions regarding termination, the right to audit, property rights, insurance, indemnification, governing law and litigation shall survive termination of this Agreement and remain in full force and effect.

8.14 Communications and Notice

All written notices, demands and other communications required or provided for under this Agreement shall be sent by certified mail, return receipt requested, postage prepaid, in the case of mailing, or by overnight or same day courier, or by electronic transmission producing a written record.

8.15 Litigation; Governing Law; Venue; Waiver of Jury Trial; Attorney Fees

This Agreement shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with the laws of Florida without regard to conflicts of law provisions. The Town and the Contractor agree that proper venue for any suit concerning this Agreement shall be Palm Beach County, Florida, or, if a federal court claim in the United States District Court, Southern District of Florida. The Contractor agrees to waive all defenses to any suit filed in Florida based upon improper venue or *forum nonconveniens*. In the event of litigation regarding the Agreement, the prevailing party shall be entitled to its reasonable costs and attorney fees.

8.16 Remedies

No remedy conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy granted by this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy shall preclude any other or further exercise thereof.

8.17 Inspector General.

The Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Agreement, and may demand and obtain records and testimony from the Contractor and its subcontractors and lower tier subcontractors. The Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the Contractor or its subcontractor or lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the Town to be a material breach of this Agreement justifying its termination.

8.18 Waiver.

- Any waiver by either party of any one or more of the covenants, conditions, or provisions of this Agreement, shall not be construed to be a waiver of any subsequent or other breach of the same or any covenant, condition or provision of this Agreement.

8.19 Headings.

The headings contained in this Agreement are provided for convenience only and shall not be considered in construing, interpreting or enforcing this Agreement.

8.20 Counterparts; Digital Signatures.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and such counterparts will constitute one and the same instrument. The parties to this Agreement may agree to execute this Agreement, and all subsequent amendment or modifications to it, by electronic means.

8.21 Severability of Provisions and Assignment

In the event that any term or provision of this Agreement shall to any extent be held invalid or unenforceable, it is agreed that the remainder of this Agreement, or the application of such terms or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and every other term and provision of this Agreement shall be deemed valid and enforceable to the maximum extent permitted by law.

This Agreement may not be assigned by the Contractor without the written authorization of the Town after Town's determination of the ability of the assignee to perform the Services. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

8.22 Entire Agreement; Controlling Provisions; Amendment

- The Contractor submitted its Proposal dated February 14, 2019 (the "Proposal") in response to the Request for Proposal No. 101-2019 issued by the Town (the "RFP").
- This Agreement, including the RFP, and the Contractor's response ("Proposal"), which are incorporated into this Agreement in their entirety, embody the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersede all prior and contemporaneous agreements and understandings, oral or written, relating to said subject matter.
- Except as otherwise specifically provided in this Agreement, in the event of any conflict between the specific provisions of this Agreement and the requirements or provisions of the RFP and/or Proposal, the provisions shall be given precedence in the following order: (1) this Agreement, (2) the RFP; and (3) the Proposal. Wherever possible, the provisions of the documents shall be construed in such manner as to avoid conflicts between provisions of the various documents.
- This Agreement may only be modified by written amendment executed by the Town and the Contractor. Any amendments to this Agreement: (1) shall be subject to the mutual written agreement of the parties; (2) shall be in the form of numbered amendments; (3) shall be executed by both parties; and, (4) shall become part of the public records of the Town. It is expressly understood, moreover, that no oral discussions, assents or representations shall constitute an enforceable amendment to this Agreement unless it is

reduced to writing in accordance with this paragraph.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have made and execute this Agreement as of the day and year last execute below.

ATTEST:

TOWN OF LAKE PARK

By: [Signature]
Vivian Mendez, Town Clerk

By: [Signature]
Michael O'Rourke, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: [Signature]
Thomas J. Baird, Town Attorney

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument has been acknowledged before me this 17th day of April 2019 by Michael O'Rourke, Mayor of the Town of Lake Park, and who is personally known to me.

(NOTARY SEAL)



[Signature]
Notary Public, State of Florida

WITNESSES:

Specialized Property Services, 9605 US Hwy 92 East, Tampa, Florida 33610

By: [Signature]
Daine Colon
Printed Name

By: [Signature]
DANIEL G. MARTUCCI
Printed Name AS PRESIDENT

By: [Signature]
Dawn Parents
Printed Name