

INTERIM DEVELOPMENT AGREEMENT
Between
City of Riviera Beach, Florida and Kaufman Lynn Construction

THIS INTERIM DEVELOPMENT AGREEMENT, dated this 28 day of June, 2021 (the "Effective Date"), by and between the City of Riviera Beach, Florida, a public body corporate and politic under the laws of the State of Florida ("City") and Kaufman Lynn Construction, Inc., a Florida corporation ("Developer").

RECITALS:

WHEREAS, at its December 10, 2020 Meeting, the City Council discussed pursuing a competitive solicitation for the design-build-finance of its aging fire rescue services facilities, in accordance with Section 255.065, Florida Statutes; and

WHEREAS, the City issued a competitive solicitation on January 3, 2021, Invitation to Negotiate (ITN) No. 1015-21-1 for the design-build finance of fire rescue services facilities, to address its aging fire rescue services facilities (the "Project"); and

WHEREAS, two proposals were received for the above solicitation on March 18, 2021; and

WHEREAS, an evaluation committee consisting of City staff reviewed and evaluated the two proposals on March 31, 2021; and

WHEREAS, a report of the solicitation process and the evaluation committee's review of the proposals were presented at the April 28, 2021 City Council Special Meeting; and

WHEREAS, during the above meeting, the City Council received a presentation from Kaufman Lynn Construction, and its partners, MCO Construction, Currie Sowards Aguila Architects and Brown Electric Solutions; and

WHEREAS, the City Council approved Kaufman Lynn Construction for the construction of Fire Station No. 88 at Congress Avenue and Blue Heron Boulevard, Riviera Beach ("Project Site"); and

WHEREAS, the City Council approved Resolution No. 43-21, awarding the solicitation to Kaufman Lynn Construction and directing staff to negotiate an Interim Development Agreement as authorized in Section 255.065(6), Florida Statutes, and authorizing the City Manager to execute such Interim Agreement, to address pre-development planning, designing, and other activities related to the Project; and

WHEREAS, the City and Developer agree to conduct pre-development activities upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and obligations set forth herein, and for valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

- 1.1 "City" means the City of Riviera Beach, Florida.
- 1.2 "Comprehensive Development Agreement" means the agreement as provided for in Section 255.065(7), Florida Statutes.
- 1.3 "Developer" means Kaufman Lynn Construction, Inc.
- 1.4 "Exclusive Period" means the period of exclusive negotiations between the City and Developer as described in Section 3.
- 1.5 "Financing Agreement" means an agreement to be entered into by and between the Developer (or its designee) and the City and any other necessary third parties governing all or a portion of the financing of the Project.
- 1.6 "ITN" means the City's Invitation to Negotiate No. 1015-21-1 for the design-build finance of fire rescue services facilities.
- 1.7 "Project" means the design, construction and finance of the City's Fire Station No. 88, and other improvements, as more generally set forth in in Exhibits A-E.
- 1.8 "Project Site" means the City's real property located at the corner of North Congress Avenue and Blue Heron Boulevard, Riviera Beach, Florida, as depicted in Exhibit A.
- 1.9 "Property" means the City's land where the Project will be constructed and operated.
- 1.10 "Proposal" means the Developer's response to the City's ITN.
- 1.11 "Transaction Documents" refers to those documents to be executed by the parties necessary to set forth the agreements of such parties to develop, finance and construct the Project, including, without limitation, any financing or funding agreement, and the Comprehensive Development Agreement.
- 1.12 "Unavoidable Delays" means delays due to any of the following (provided that such delay is beyond a party's reasonable control): strikes, slowdowns, lockouts, acts of God, inability to obtain labor or materials, war, enemy action, civil commotion, fire, casualty, abnormal weather conditions, a court order which causes a delay (unless resulting from disputes between or among the party alleging an Unavoidable Delay, present or former employees, officers, members, or partners) of such alleging party), the application of any requirement, or other such cause beyond such party's reasonable control. Such party shall use reasonable good faith efforts to notify the other party not later than ten (10) days after such party knows of the occurrence of an Unavoidable Delay.

2. RECITALS.

The Recitals set forth in the preamble to this Interim Development Agreement and the Exhibits attached hereto are incorporated into this Interim Agreement as if fully set forth herein.

3. EXCLUSIVITY; PRESENT/FUTURE NEGOTIATIONS

3.1 The City and the Developer agree City will negotiate exclusively with Developer in good faith and will not engage, negotiate with, solicit or accept proposals from any other party other than Developer for the construction of the City's fire rescue facilities, Fire Station No. 88, until and unless the parties in good faith fail to negotiate a Comprehensive Development Agreement and/or Transaction Document. The term of this Exclusive Period shall commence as of the Effective Date of this Agreement and continue, unless extended by written agreement of the parties or earlier terminated, until December 31, 2021.

3.2 The City and the Developer agree that this Agreement is intended to be preliminary in nature. During the term of, and while undertaking the work provided for in, this Interim Development Agreement, the parties agree to continue negotiations to formulate a mutually satisfactory Comprehensive Development Agreement as contemplated by Section 255.065(7), Florida Statutes.

4. STATEMENT OF INTENT

It is the intention of the parties that this Agreement: (a) provides for all work contemplated in Section 255.065(6), Florida Statutes; (b) documents the present understanding and commitments of the parties; (c) will lead to the negotiation and execution of a mutually satisfactory Comprehensive Development Agreement, as contemplated in Section 255.065(7), Florida Statutes, prior to the termination date of this Interim Development Agreement; and (d) the subsequently entered Comprehensive Development Agreement (together with any other agreements entered into between the parties hereto) contemporaneously therewith will supersede all obligations of the parties hereunder.

In the event any of the foregoing stated intentions are not achieved, or if the City makes the determination to proceed with the Project in a manner other than as contemplated in Section 255.065, Florida Statutes, then it is the City's intent to proceed with the Project on a design-build basis and use Developer as the design-builder, subject to the execution of an agreed upon design-build contract.

5. EFFECTIVENESS AND TERMINATION

5.1 Effective Date and Termination upon Execution of Comprehensive Development Agreement. This Agreement shall be effective as of the Effective Date and terminate on the date of execution of the Comprehensive Development Agreement, unless sooner terminated pursuant to the terms of this Agreement, and subject to all provisions of this Agreement which specifically survive any such termination of the Agreement.

5.2 Termination by City. The City shall have the right to terminate this Agreement no sooner than ten (10) days after giving written notice of such termination, with no

further rights or obligations owing Developer, if: (i) the Developer has failed to engage in good faith efforts to negotiate the Comprehensive Development Agreement and Transaction Documents during the Exclusive Period; (ii) any aspect of the Developer's Proposal is determined to have been intentionally false, fraudulent or misleading; or (iii) for City's convenience. In the event of such termination under subsections (i) or (ii), the Developer will have no right, and will expressly waive the right, to seek other monetary damages of any kind, including but not limited to: actual damages, economic damages, consequential damages, lost profits or any other damages from City under this Agreement or any other action related to the Agreement, except as otherwise stated herein. The Developer will have no other right or remedy against City, including any action for specific performance, the filing of a *lis pendens* or otherwise. In the event the City terminates this Agreement for its convenience pursuant to subsection (iii) above, the Developer shall be entitled to, and the City shall pay Developer through the end of the month in which the City terminates the Agreement as provided in the Billing Schedule attached **Exhibit B**.

5.3 Termination by Developer. Developer may not terminate this Agreement except (i) if City has failed to engage in good faith efforts to negotiate the Comprehensive Development Agreement and Transaction Documents during the Exclusive Period, or (ii) if City has materially breached any of the terms and conditions of this Agreement. In the event of (i) or (ii) above, the Developer may, at its option, terminate this Agreement upon ten (10) days' written notice to City and City shall pay to Developer (a) the amount of fees due Developer through the end of the month in which the Agreement is terminated as provided in the Billing Schedule attached **Exhibit B**.

5.4 Termination by Execution of Comprehensive Development Agreement. Upon execution of the Comprehensive Development Agreement, this Agreement shall automatically terminate, shall be of no further force or effect, and the parties shall have no further obligation under this Agreement except as to provisions specifically set forth in the Comprehensive Development Agreement or provided to survive this Agreement.

6. PARTIES' OBLIGATIONS DURING PRE-DEVELOPMENT PERIOD

Developer and the City shall each use all reasonable efforts to satisfy their respective duties and obligations, and any conditions precedent prior to the parties' execution of the above-mentioned Comprehensive Development Agreement.

6.1 Developer shall be at risk and responsible for the delivery of the Project, as such Developer shall furnish or procure the following services and deliverables necessary for the Project within the budget and schedule set forth on attached **Exhibits B, C, and E** (collectively, the Services):

6.1.1 Design and develop the Project through the creation of a set of drawings that are ready for submission to the Authority Having Jurisdiction over the Project for permitting, such plans being substantially in accordance

with the ITN and the Developer's Proposal, with the Project's pre-development work and activities being conducted and completed consistent with the Timeline provided in Exhibit C, attached and incorporated hereto.

6.1.2 Developer will turn over to the City any documents received or retrieved in the Preliminary Phase related to the Project and the Project Site.

6.1.3 Engage and coordinate professionals to perform or cause to be performed all the design work, engineering, planning, including the technical studies, flooding, and investigations, right of way mapping, surveying, hazardous materials investigations, environmental and historical assessments and design and construction surveys, for pre-construction activities related to the Project.

6.1.4 Work collaboratively with the City to finalize the Project design for the Project.

6.1.5 Obtain the necessary governmental and environmental approvals and permits for the Project, including but not limited to: (a) Building Permit from the City for the drawings to be delivered by the Developer in accordance with Section 6.1.1; (b) South Florida Water Management District Permit for drainage and de-watering; (c) Permit from Florida Department of Transportation for driveways; and (d) Health Department Permit for water and sewer lines.

6.1.6 Use all reasonable efforts to cause the schematic plans, design development plans and construction plans for the Project be prepared and submitted to the City in accordance with the Timelines, attached and incorporated hereto as Exhibit C. Failure to satisfy the timeline dates shall not, in and of itself, be deemed a breach by Developer of its obligations set forth under this subsection.

6.1.8 Assume responsibility for costs and delays associated with obtaining permits and closing transaction costs, if the delays increase construction costs.

6.1.9 During the term of this Agreement, Developer shall create and start the implementation of a Public Outreach and Community Engagement Program that includes specific initiatives consistent with the related details outlined in Developer's Proposal, specifically pages 67 through 78, attached and incorporated hereto as Exhibit E, as public outreach, engagement of small, minority and women businesses, community engagement and public outreach. The student based components of the Community Engagement Program (electrical and fire based educational sponsorship and program creation) will be planned during the Interim Agreement and executed after the commencement of the Comprehensive Development Agreement.

6.1.10 Diligently negotiate the Comprehensive Development Agreement and any other financing or funding Transaction Document required for the Project.

6.1.11 Exercise professional skill and judgment in the performance of the Services related to the Project.

6.2 During the term of this Interim Agreement, the City agrees to:

6.2.1 Make its representatives, including owner's representative, reasonably available to the Developer on a regular basis for meetings at the construction site, virtual calls or conference calls, or other described city locations to discuss the progress and problems in order that the pre-construction or construction services proceed in an efficient and expeditious manner.

6.2.2 Furnish, or has furnished, without representation or warranty, a site survey, draft site plan, Phase 1, or Phase 2 if needed, of environmental assessment, reports, and other relevant materials in the City's possession as of the date of this Interim Development Agreement at the City's expense. As of today, the City has provided to the Developer, all items outlined in **Exhibit A**, attached and incorporated hereto.

6.2.3 Reasonably cooperate and assist the Developer and its selected consultants as necessary for the Developer to perform pre-development services related to the Project, provided the City shall have no obligation to incur third party costs in connection therewith.

6.2.4 Review and approve, conditionally approve, or disapprove in a timely manner design plans and specifications to be submitted by the Developer in accordance with this Agreement.

6.2.5 Proceed to seek all necessary information with regard to the anticipated public costs, if any, associated with the Project.

6.2.6 Diligently negotiate the Comprehensive Development Agreement and any other financing or funding Transaction Document required for the Project.

6.2.7 Should negotiations be successful, enter into a Comprehensive Development Agreement with the Developer, as authorized by Section 255.065(7), Florida Statutes, for the design-build-finance of the Project.

6.3 ***Budget and Fees.*** In exchange for Developer's Services under this Agreement, the City shall pay the Developer the fixed amounts set forth in the Interim Development Agreement Budget Fee & Billing Schedule set forth in **Exhibit B**, attached and incorporated hereto.

6.3.1 Upon receipt of documentattion of payment requisition from the Developer, the City will provide approval or written comments to the Developer within ten (10) business days of receipt of Developer's payment requisition.

6.3.2 Any amounts due to Developer by City under this Agreement shall be paid by City within thirty (30) days of Developer's submission of a payment requisition to the City, unless the City disputes some or all of the amounts requested in a payment requisition.

6.4 ***Exclusions from Pre-Development Costs.*** Costs and expenses not provided for in **Exhibit B** are explicitly excluded, unless the City provides express written consent.

6.5 License to Developer. City hereby grants to Developer, a license, for Developer, its partners, and its employees, architects, engineers, consultants, sub-consultants, contractors and sub-contractors(collectively the Consultants) to enter upon the Site for purposes of performing the foregoing Services. Such license shall automatically terminate upon any termination of the subsequently approved Comprehensive Development Agreement, unless the parties failed to enter such agreement. Developer shall not damage the Project Site in the exercise of this license. To the extent that Developer or its Consultants cause any damage to any adjoining property, Developer shall promptly restore and repair the same, to the condition existing before such damage, at its sole cost and expense. Developer's obligation to restore and repair any adjoining property shall survive the termination of this Interim Development Agreement.

7. PROJECT REPRESENTATIVES; KEY PERSONNEL; PROJECT ADMINISTRATION

7.1 Project Representatives

7.1.1 Developer hereby designates Derek Wolfhope(or his successor for such purpose) as the "Developer's Project Representative" to represent Developer in all of its dealings with the City and the City's Project Representative relating to the implementation and enforcement of this Agreement. The City shall direct all communications regarding this Agreement to Developer's Project Representative.

7.1.2 The City hereby designates Terrence Bailey, City Engineer, and PSA Management Representative, Chris Hassall (or their successors for such purpose), as its project representatives to represent the City in all of its dealings with Developer and Developer Project Representative relating to this Agreement.

7.2 Project Management Committee

7.2.1 The Developer and the City agree to have a Project Management Committee consisting of the Developer's Representative, the City Engineer and the City's Owner Representative, PSA Management. The Project Representatives will meet regularly with each other and with other representatives of the parties through the predevelopment and construction of the project, with the frequency and scope of such meetings to be determined mutually by the Project Representatives, in their reasonable judgment, based on the then-current status of the project implementation. Developer shall provide the City with periodic written reports and briefings concerning the status of its performance of obligations under this Agreement, including, without limitation, information concerning the financial commitments, site plan approval and permitting, design and construction activity. The frequency and scope of such written reports and briefings shall be determined mutually by the Project Representatives, in their reasonable judgment.

Every two weeks during the term of this Agreement, the parties shall meet and provide to the City Manager a written status report on its activities under the Agreement, and will attend, on a monthly basis or as otherwise requested, meetings of the City Council to discuss the development and construction of the project.

8. INDEMNIFICATION

8.1 Developer shall indemnify and hold harmless the City, its agents, officers, and employees from and against any and all claims, liability, losses, and/or causes of action which may arise from any negligent act, recklessness, or intentional wrongful conduct or omission of the Developer, its agents, officers, or employees in the performance of Services under this Agreement, including, but not limited to, to all attorneys' fees and costs incurred by City.

Developer further agrees to indemnify and hold harmless the City, its agents, officers and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the Developer not included in the paragraph above and for which the City, its agents, officers, or employees are alleged to be liable, including, but not limited to, to all attorneys' fees and costs incurred by City.

Developer shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, all costs, expert witness fees, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Agreement or any renewal thereof.

8.2 No waiver by City. Nothing contained in this section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Fla. Stat., or any other constitutional, statutory, common law or other protections afforded to public bodies or governments.

8.3 Contractual liability. The obligations of Developer under this section shall not be affected in any way by the absence or presence of insurance coverage (or any limitation thereon, including any statutory limitations with respect to workers' compensation insurance), or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Project Site; provided, however, that if the City actually receives any proceeds of Developer's insurance with respect to an obligation of Developer under this section, the amount thereof shall be credited against, and applied to reduce, any amounts paid and/or payable hereunder by Developer with respect to such obligation.

8.4 Defense of Claim, Etc. If any claim, action, or proceeding is made or brought against any City Indemnitee which is or may be subject to indemnification by Developer hereunder, then, upon demand by City or such City Indemnitee, Developer shall either resist, defend or satisfy such claim, action or proceeding in such City Indemnitee, by the attorneys for, or approved by, Developer's insurance carrier (if such claim, action or proceeding is covered by insurance) or such other attorneys as the City shall reasonably approve.

- 8.5 Subcontractor's Indemnity. Developer will require all subcontractors for services under this Agreement to an indemnification clause requiring the subcontractor to indemnify City Indemnitee as indicated in this section.
- 8.6 No Waiver of Liability. Nothing in this Agreement, including the provisions of this Section 8, shall constitute a waiver or limitation of any rights which either party may have under applicable law.
- 8.7 Survival. The provisions of this section shall survive the termination of this Agreement.

9. INSURANCE

9.1 All of the insurance policies required by this section shall be procured from companies licensed or authorized to do business in the State of Florida that have a rating in the latest edition of "Best's Key Rating Guide" of "A-VII" or better or another comparable rating reasonably acceptable by the City, considering market conditions.

All references to forms and coverages in this section shall be those used by the Insurance Services Organization (ISO) or equivalent forms reasonably satisfactory to the City in all material aspects.

Developer, at its sole cost and expense, shall insure its activities in connection with this Agreement, and/or cause the Consultants to insure such activity, as appropriate. If any Consultant is hired by Developer to perform any part of this Agreement, the Developer is responsible for ensuring that these insurance provisions shall apply to each contracting entity. Developer and each of its Consultants of any tier shall obtain, keep in force and maintain insurances as follows:

9.1.1 Comprehensive or Commercial Form General Liability Insurance, protecting against liability for bodily injury, death, property damage and personal injury, as follows:

9.1.1.1	Each Occurrence	\$1,000,000
9.1.1.2	Products/Completed Operations Aggregate	\$2,000,000
9.1.1.3	Personal and Advertising Injury	\$1,000,000
9.1.1.4	General Aggregate	\$2,000,000

The insurance shall have a retroactive date of placement prior to or coinciding with the commencement of the Term of this Agreement. If Developer contracts for or performs any digging, excavation or any work below grade, the Developer shall require such contractor to provide coverage for explosion, collapse, and underground property damage liability in addition to insurance required herein.

9.1.2 Professional (Errors & Omissions) Liability Insurance with minimum limits of \$1,000,000 for each claim and \$1,000,000 in the aggregate. The insurance shall have a retroactive date of placement prior to or coinciding with the commencement of any professional services performed for this Agreement. Such coverage shall be required of each Consultant hired directly or indirectly to perform professional services for this Agreement and shall include the City as an indemnified party for

vicarious liability caused by professional services performed for this Agreement.

9.1.3 Workers' Compensation and Employer's Liability insurance providing workers' compensation benefits as required by Florida law. Employer's liability limits shall not be less than \$1,000,000 for bodily injury for each accident, \$1,000,000 bodily injury by disease each employee, and \$1,000,000 policy limit for bodily injury by disease.

9.1.4 Automobile Liability Insurance covering any automobile or other motor vehicle used in connection with work being performed on or for the construction of the Project in an amount not less than one million dollars (\$1,000,000) for each incident. Such insurance shall include coverage of all "owned", "hired", and "non-owned" vehicles, or coverage for "any auto".

Said policy shall also include, but not be limited to: coverage for any and all remediation costs, including, but not limited to, brownfield restoration and cleanup costs, and coverage for the removal, repair, handling, and disposal of asbestos and/or lead containing materials where applicable. The City shall be named as additional insureds on the pollution liability insurance policy.

9.1.5 In the event construction commences prior to the finalization of the Comprehensive Development Agreement, the Developer shall obtain and provide for Builder's risk insurance (standard "All Risk" or equivalent coverage) in an amount not less than the cost of reconstruction, written on a completed value basis or a reporting basis, with a waiver of completion and occupancy condition, for property damage protection the Developer, the City, and the general contractor, with a deductible determined by Developer of not more than \$100,000, subject to adjustment for inflation, from the date of projected completion and extending for at least twelve (12) months following such date of projected completion.

- 9.2 Insurance required under 9.1.1, 9.1.2., 9.1.3, 9.1.4, and 9.1.5 shall be issued by companies licensed to do business with a category rating of A or better and a financial classification of VIII or better (or an equivalent rating by Standard & Poor's or Moody's), or as otherwise reasonably acceptable to the City.
- 9.3 The insurance coverage referred to under 9.1.1, 9.1.4, and 9.1.5 shall be endorsed to include the City of Riviera Beach, its officers, agents, employees, consultants, representatives and representative's consultants as additional insured by endorsement.
- 9.4 All insurance evidenced shall be primary insurance as respects to the City of Riviera Beach, its officers, agents, and employees, any insurance or self-insurance maintained by the City of Riviera Beach shall be excess of and non-contributory with this insurance.
- 9.5 In the event that Developer, or a Consultant, receives notice from an insurer of any modification, change or cancellation of any of the above insurance coverage, it will provide a copy to the City within three (3) business days thereof.

If insurance policies are canceled for non-payment, the City reserves the right to maintain policies in effect by continuing to make the policy payments and assessing the cost of so maintaining the policy(ies) against the Developer or its Consultant.

9.6 *Blanket or Umbrella Policies.* The insurance required to be carried by Developer may, at Developer's election, be effected by blanket, wrap-up and/or umbrella policies issued to Developer covering the Project and Project Site and other properties owned or leased by Developer; provided that such policies otherwise comply with the provisions of this Agreement and allocate to the Project and Project Site the specified coverage, including, without limitation, the specified coverage for the City to be named as additional insured hereunder, without possibility of reduction or coinsurance by reason of, or because of damage to, any other properties named therein. If the insurance required by this Agreement shall be effected by any such blanket or umbrella policies, Developer shall furnish to City, upon the City's request, certificates of insurance and copies (certified by Developer to be true, complete and correct) of such policies as provided herein.

9.7 Developer, upon the execution and continuously during the Term of this Agreement, shall furnish the City with Certificates of Insurance acceptable in form to the City evidencing compliance with all requirements noted in the above Sections 9.1, 9.2, 9.3, 9.4 and 9.5.

9.8 Insurance policies shall support but are not intended to limit the liability of the Developer, its officers, agents, partners, or employees.

10. NONDISCRIMINATION

In connection with the performance of its obligations under this Agreement, Developer shall not discriminate on the basis of race, national origin, religion, ancestry, sex, age, marital status, familiar status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers in connection with a city contract or contract solicitation process, nor shall the company retaliate against any person or entity for reporting instances of such discrimination. The Developer shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

11. NOTICES

11.1 *Service of Notices and Other Communications.* Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other, or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Project Site, each such notice, demand, request, consent, approval or other communication (i.e., Notice) shall be in writing and shall be effective for any purpose only if given or served by *email and* (i) certified or registered United States

Mail, postage prepaid, return receipt requested; (ii) personal delivery, or a recognized courier service, addressed as follows:

If to the Developer: Derek Wolhope
3185 S. Congress Avenue
Delray Beach, FL 33445
Dwolhope@kaufmanlynn.com

with a copy to: Joshua M. Atlas
Chief Legal Officer
3185 S. Congress Avenue
Delray Beach, FL 33445
jatlas@kaufmanlynn.com

If to the City: Jonathan Evans, City Manager
City of Riviera Beach
1481 W. 15th Street, Suite 238
Riviera Beach, Florida 33404
jevans@rivierabeach.org

with a copy to: Dawn Wynn, Esq.,
City Attorney
City of Riviera Beach
1481 W.15th Street
Riviera Beach, Florida 3340
Dwynn@rivierabeach.org

11.1.1. Any Notice may be given, in the manner provided herein on either party's behalf by its attorney designated by such party by Notice hereunder. Every Notice shall be effective on the date actually received, as indicated on the receipt therefor or on the date delivery thereof is refused by the recipient thereof.

11.2 Consents and Approvals. All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing. The granting by a party of any consent to or approval of any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any other act.

11.2.1 All consents and approvals which may be given by a party under this Agreement shall not be unreasonably withheld or conditioned by such party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. Upon disapproval of any request for a consent or approval, the disapproving party shall, together with notice of such

disapproval, submit to the requesting party a written statement setting forth with specificity its reasons for such disapproval.

12. REPRESENTATIONS

- 12.1 Authority to Execute. City and Developer each represents to the other that each person executing this Agreement on behalf of the City or Developer (or in any representative capacity), as applicable, has full right and lawful authority to execute this Agreement. Developer, or the City, agrees to furnish to the other party true and correct copies of such instruments or documents evidencing, to the other party's reasonable satisfaction, the authority of the person executing this Agreement on behalf of the Developer or the City, if so requested.
- 12.2 No Other Representation. Developer confirms that, except for the representations contained in this section (and any other representation expressly set forth in this Agreement, (i) no representations, statements or warranties, express or implied, have been made by, or on behalf of, the City with respect to the Project Site or the transactions contemplated by this Agreement, the physical condition thereof (including but not limited to subsurface conditions), or the presence or absence of hazardous materials on or under the Project Site, (ii) Developer has relied on no such representations, statements or warranties, (iii) City shall not be liable to Developer, in any event whatsoever, to correct any latent or patent defects in the Project Site, and (iv) any and all copies of the environmental reports provided by the City to the Developer have been delivered without representation or warranty. Without limiting the generality of the foregoing, Developer shall be obligated to perform its duties and obligations under this Agreement regardless of any condition of or defect in the Project Site,

13. ACCESS AND REVIEW OF DEVELOPER'S BOOKS AND RECORDS; AUDITS

- 13.1 Maintenance and Inspection of Records. Developer shall at all times keep and maintain at a location within the City (separate from any of Developer's other books, records and accounts) accurate and complete books, records and documents pertaining to the Project and the work (collectively, Project Records) including, without limitation, such matters required to demonstrate Developer's compliance with its obligations under this Agreement; provided that such records shall not include proprietary and financial information relating to the allocation of profits and losses of the Developer. The City and its representatives shall have, during normal business hours and upon reasonable advance notice, access to inspect, audit, review and photocopy any and all such books and records of Developer relating to the Project Records. For purposes of this section, Project Records shall include all books, records and documents, regardless of physical or digital medium, including but not limited to accounting records; contracts; payroll records; subcontractor agreements or consultant agreements; vendor agreements; purchase orders; correspondences; original estimates; estimating work sheets; receipts; and any other supporting evidence deemed necessary to substantiate charges under this Agreement.

The Developer shall comply with Florida's Public Records Act, Chapter 119, Florida

Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the Developer does not transfer the records to the City.
- (d) Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of the Developer or keep and maintain public records required by the City to perform the service. If the Developer transfers all public records to the City upon completion of the Agreement, the Developer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Developer keeps and maintains public records upon completion of the Agreement, the Developer 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 or designee, 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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: 600 WEST BLUE HERON BLVD., RIVIERA BEACH, FL, 33404, Tel. (561)845-4090, crobinson@rivierabeach.org.

13.2 *County's Inspector General.* Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Sections 2-421-2-440, as may be amended. The Inspector General's authority includes but it is not limited to the power to review past, present and proposed City contracts, transactions, accounts and records, to require the production of records, and to audit, investigate and monitor, and inspect the activities of the City, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of the Palm Beach County Code, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

14. **ADDITIONAL TERMS AND CONDITIONS**

14.1 *Performance.* TIME IS OF THE ESSENCE OF THIS AGREEMENT AND OF EACH PROVISION HEREOF.

- 14.2 Public Records. Developer acknowledges that all project-related records and documents in City possession are subject to the Florida's Public Records Law, subject only to certain exceptions for proprietary information protected from public disclosure by law. Each page of each document containing such proprietary information shall be marked prominently with the words "Proprietary Information". Developer also acknowledges that all Project-related records and documents in its possession are subject to audit and may also be subject to the Florida's Public Records Law.
- 14.3 Relationship. Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create a relationship or principal and agent or a partnership, joint venture, joint tenancy, tenancy in common, co-ownership for any purpose whatsoever between the City and Developer or between either or both of them and any third party. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Agreement shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this section shall survive termination of this Agreement
- 14.4 Amendments. This Agreement is not subject to modification or amendment except by a writing of the same formality as this Agreement and executed by the signatories hereto, both the City and the Developer.
- 14.5 Applicable Law and Venue. This Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of Florida, without regard to principles of conflict of laws. Venue of all proceedings in connection herewith shall be exclusively in Palm Beach County, Florida.
- 14.6 Conflict of Interest. Developer represents and warrants that, to the best of its actual knowledge, no member, official or employee of the City has any direct or indirect financial interest in this Agreement, nor has participated in any decision relating to this Agreement that is prohibited by law. Developer represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of the City has received any payment or other consideration for the making of this Agreement, directly or indirectly from Developer. Developer represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys.
- 14.7 No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any person, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

14.8 Severability. If any portion of this Agreement is held invalid by a court of competent jurisdiction, such decision shall not affect the validity of any remaining portion of the Agreement.

14.9 Breach; Waiver. In the event any covenant contained in this Agreement should be breached by one party and subsequently waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach.

14.10 Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, DEVELOPER WAIVES KNOWINGLY AND VOLUNTARILY FOR ITSELF AND ALL PERSONS, ALL RIGHT TO TRIAL BY JURY IN ANY OTHER JUDICIAL PROCEEDINGS HEREAFTER INSTITUTED BY THE CITY AGAINST DEVELOPER IN RESPECT TO THIS AGREEMENT.

IN WITNESS WHEREOF, the parties unto this Contract have set their hand and seal on the day and year above written.

CITY OF RIVIERA BEACH,
a Florida municipal corporation

DocuSigned by:
Ronnie Felder
By: 6523CD4358DD451...
Ronnie L. Felder,
Mayor

By: [Signature]
Jonathan Evans,
City Manager

Attest: [Signature]
Claudene L. Anthony, CMC
City Clerk

Approved as to Form and Legal Sufficiency
[Signature] 6/28/21
Dawn S. Wynn, City Attorney Date

Terms and Conditions
[Signature]

KAUFMAN LYNN CONSTRUCTION, INC.,
a Florida corporation

Witnesses:
[Signature]
Sign Name
MICHAEL MAKO
Print Name

BY: [Signature]
PRINT NAME Chris L. Long
Its LOO

[Signature]
Sign Name
Jerry Zalkin
Print Name

Attachments:

Exhibit A - Documents Submitted by City to Developer

Exhibit B - Pre-Development Costs

Exhibit C - Pre-Development Timeline

Exhibit D - Construction Timeline

Exhibit E - Public Outreach and Community Engagement Plan: Small Minority Women Owned Busi

EXHIBITS

EXHIBIT A

Documents Submitted by City to Developer

- Existing Topographic Survey dated 11/20/2020 by Engenuity Group
- Draft Site Plan and 1st and 2nd floor Dimension Plans by REG Architects.
- Draft Phase I Environmental Site Assessment Report dated August 10, 2020 by Brown and Caldwell.
- Phase II Environmental Site Assessment Screening Report dated September 21, 2020 by LandSience Environmental Consultants and Engineers.

EXHIBIT B

PRE-DEVELOPMENT COSTS

- See attached detailed cost and billing schedule

June 28, 2021

EXHIBIT B

**RIVIERA BEACH FIRE STATION 88
INTERIM AGREEMENT BUDGET FEE & BILLING SCHEDULE**

SCOPE OF WORK	BUDGET	BILLING SCHEDULE					
		June	July	August	September	October	
Kaufman Lynn Construction							
Preconstruction	\$174,045		\$ 43,500	\$ 52,000	\$ 52,000	\$ 26,545	
MCO - Precon/Outreach	\$18,000		\$ 5,000	\$ 5,000	\$ 8,000		
DESIGN TEAM							
Site Plan Approval/Schematic Design	\$144,000		\$ 50,400	\$ 36,000	\$ 36,000	\$ 21,600	
Design Development	\$80,000		\$ 28,000	\$ 20,000	\$ 20,000	\$ 12,000	
Construction Documents	\$435,000		\$ 152,250	\$ 108,750	\$ 108,750	\$ 65,250	
Permitting Support	\$16,000		\$ 5,600	\$ 4,000	\$ 4,000	\$ 2,400	
Other - To be billed as cost is occurred							
Permit Fee Allowance	\$150,000						
Legal Fees - MACQ (Allowance)	\$50,000						
Contingency Allowance	\$100,000						
Geotechnical Services / Report Allowance	\$15,000						
TOTALS	\$1,182,045	\$ 284,750	\$ 225,750	\$ 228,750	\$ 127,795		

EXHIBIT C

PRE-DEVELOPMENT TIMELINE

- See attached Detailed Schedule

Activity ID	Activity Name	Orig Dur	Rem Dur	Start	Finish	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
CRB-Fire Station 88																
Finance																
CFRN	Contract Terms Finalized-Interim Agreement	0	0	11-Jun-21	15-Oct-21											
GMPA	GMP Budget Approval (CD)	0	0	10-Sep-21												
FINCOST	Contract Price Locked In-Comprehensive Agreement	0	0	14-Sep-21												
CLOSEFIN	Closing on the deal (date interest starts to accrue - timed just before construction)	0	0	15-Oct-21												
Site-Approval Plan																
1000-S	CSA Update Plan from Survey	1	1	21-May-21	15-Sep-21											
CITR-RSP	Review/Confirm Site Plan, Floor Plans w/City	5	5	24-May-21	28-May-21											
CITR-X	Review Exterior Elevation Design w/City	5	5	24-May-21	28-May-21											
BP-R	Finalize Base Plans for Consultants	5	5	01-Jun-21	07-Jun-21											
BP-3C	Issue Bases to Consultants	0	0	07-Jun-21	07-Jun-21											
TR-SD	Team Work on Preliminary for Dept Review	14	14	08-Jun-21	25-Jun-21											
DR-SUB	Dept Review Submittal & Process	7	7	28-Jun-21	07-Jul-21											
SPA	Site Plan Approval	45	45	01-Jul-21	14-Aug-21											
SUB-CITY	Finalize Application & Submit to City	5	5	08-Jul-21	14-Jul-21											
SUB-FZ	Submit to Planning & Zoning	0	0	15-Jul-21	15-Jul-21											
PZ-MTG	Planning & Zoning-Board Meeting	0	0	12-Aug-21	12-Aug-21											
SUB-CC	Submit for City Council Review	0	0	07-Sep-21	07-Sep-21											
PZ-MTG10	Planning & Zoning-Board Meeting	0	0	15-Sep-21	15-Sep-21											
Design & Permitting																
Design Docs for Permitting																
SCH-D	Schematic Design	95	95	08-Jun-21	20-Oct-21											
DD	Design Development	10	10	08-Jun-21	21-Jun-21											
35-CD	35% Construction Documents	22	22	21-Jun-21	21-Jul-21											
65-CD	65% Construction Documents	17	17	22-Jul-21	13-Aug-21											
95-CD	95% Construction Documents	24	24	16-Aug-21	17-Sep-21											
CDs	Construction Documents	15	15	20-Sep-21	09-Oct-21											
CDs	Construction Documents	8	8	09-Oct-21	16-Oct-21											
CD-P	Final Permit Set	12	12	09-Oct-21	20-Oct-21											
Permitting																
C-FS	Site Permit Submittal	100	100	20-Sep-21	29-Dec-21											
CF-PERMIT	Civil Permit (CD)-Early Work	0	0	20-Sep-21	20-Sep-21											
BLDG-PS	Blg Permit Submittal	0	0	20-Oct-21	20-Oct-21											
PERMITS	Permitting	65	65	26-Oct-21	29-Dec-21											
BLDG-P	Building Permit (CD)	0	0	29-Dec-21	29-Dec-21											

Remaining Level of Effort
 Actual Level of Effort
 Actual Work
 Remaining Work
 Critical Remaining Work
 Milestone

CRB-Fire Station 88 - Preliminary
 Schedule-27MAY21
 Progress Thru: 20-May-21

Run Date: 07-Jun-21
 Page 1 of 1
 File Name: CRBF88-27MA Y21
 Layout Name: CRB-FS88-Interim Contract

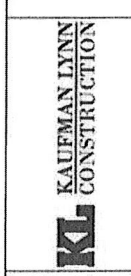


EXHIBIT D
CONSTRUCTION TIMELINE

- Notice to Proceed / Mobilization on Site for Early Civil Work – October 21, 2021
- Start of Foundations – January 3, 2022
- Final Completion of Fire Station 88 – December 30, 2022

EXHIBIT E

**PUBLIC OUTREACH AND COMMUNITY ENGAGEMENT PLAN:
SMALL MINORITY WOMEN OWNED BUSINESS
(Pp. 67-78 OF DEVELOPER'S PROPOSAL)**

- Trades (Minority Business) Wanted Event # 1 – Tentatively scheduled for August 5, 2021
- Prequalification Workshop # 1 – Tentatively scheduled for August 12, 2021
- Trades (Minority Business) Wanted Event # 2 – Tentatively scheduled for September 9, 2021
- Prequalification Workshop # 2 – Tentatively scheduled for September 16, 2021
- Job Fair connecting subcontractors with local labor – Tentatively scheduled for October 18, 2021