

GMP AMENDMENT**AMENDMENT NO. 2 TO AGREEMENT BETWEEN
CITY OF MIAMI BEACH AND CONSTRUCTION MANAGER FOR THE
FIRE STATION NO.1 PROJECT**

Pursuant to the agreement dated April 30, 2020 between the City of Miami Beach, a Florida municipal corporation (the "City") and Kaufman Lynn Construction, Inc., a Florida corporation (the "Construction Manager") for the FIRE STATION NO. 1 Project ("Project"), , as amended by that certain Amendment No. 1 dated April 10, 2023 to include pre-construction services related to construction of a temporary facility for the Rainbow Intergenerational Learning Center (Daycare) at Flamingo Park and the structural and electrical infrastructure for future installation of the Apollo Mural on the façade of Fire Station No.1 (the "Agreement"), the City and Construction Manager hereby agree to amend and modify the Agreement by this GMP Amendment (Amendment No. 2), dated and effective as of _____, 2023, to establish a Guaranteed Maximum Price for the Project and time for completion of the Construction Phase of the Project as set forth below:

**ARTICLE 1
SCOPE OF WORK**

Construction Manager shall be responsible for and shall perform all Work delineated in and reasonably inferable from the Contract Documents, including Attachments 1 through 5 below, which are hereby incorporated into and made a part of the Amendment by this reference:

Attachment No.	Description
1.	List of Construction Documents
2.	Project Schedule
3.	Schedules of Values
4.	List of Itemized General Conditions
5.	List of Subcontractors and Major Suppliers

**ARTICLE 2
GUARANTEED MAXIMUM PRICE**

Construction Manager's Guaranteed Maximum Price for the Work contemplated in the Contract Documents or reasonably inferable therefrom, including the Cost of the Project as defined in Section 8 of the Agreement, the Construction Manager's Construction Overhead and Profit Fee and General Conditions Fee as defined in Section 7 of the Agreement, and the Construction Manager's Contingency as defined in Article 6 and set forth below; is Twenty-Four Million Nine Hundred Ninety-One Thousand Eight Hundred Forty-Five dollars, (\$ 24,991,845) (the "GMP" or "Guaranteed Maximum Price"), which includes the following:

- 2.1 The Subcontract Costs for Work of Subcontractors and Suppliers selected pursuant to Article 4 of the Agreement, for the entire Work contemplated in the Contract Documents or reasonably inferable therefrom, will be based on actual Subcontractor invoices to the Construction Manager up to the established amount of Nineteen Million Seven Hundred One Thousand Five Hundred Forty-Two dollars (\$ 19,701,542), and said amount stated in this Section 2.1 is included within the GMP.

- 2.2 The General Conditions Fee for all general conditions items and expenses as defined in Section 7.1.2 of the Agreement, for the entire Work anticipated on this Project are hereby established as a lump sum amount of Two Million Six Hundred Twenty-Five Thousand Three Hundred Thirty-Five dollars (\$ 2,625,335), and said lump sum amount stated in this Section 2.2 is included within the GMP. The items included as General Condition expenses are listed in the List of Itemized General Conditions attached hereto and incorporated herein as Attachment No. 5. Construction Manager acknowledges and agrees that the City shall have no liability for any General Condition costs or expenses, either listed herein or specified in Section 7.1.2 of the Agreement, beyond payment of the lump sum stated in this Section 2.2 and Construction Manager agrees that it shall not be entitled to receive any additional compensation from the City for the General Conditions beyond the lump sum amount unless expressly adjusted by a Change Order in accordance with the Contract Documents.
- 2.3. The Construction Overhead and Profit Fee as defined in Section 7.1.3 of the Agreement, for the entire Work anticipated on this Project, shall be 4.72 % of the Cost of the Fire Station No. 1, 5.5 % of the Cost of the Daycare Relocation and 5.5 % of the Cost of the Apollo Mural (as identified in Section 2.1 above) plus the Construction Manager's General Conditions Fees (as identified in Section 2.2 above), and is included in the GMP. The Construction Overhead and Profit Fee for Change Orders shall be 5.5 % of the net change in the GMP, associated with the Work that is the subject of the Change Order, except for Change Orders for an extension of the Contract Time due to Excusable Delays, for which Construction Manager expressly acknowledges and agrees that it shall not receive any Construction Overhead and Profit Fee and its sole and exclusive remedy is as provided for in the Agreement. For Subcontractors and Suppliers, the overhead and profit markups or fees for Change Orders shall not exceed 10% of the Cost of the Project associated with the Work that is the subject of the Change Order.
- 2.4. A Construction Manager's Contingency, which shall only be used for the limited purposes specified in Subsection 6.4.1 of the Agreement, is hereby established in the amount of Five Hundred Sixty-Nine Five Hundred Nineteen dollars and Seventy cents (\$ 569,519.70), and said amount stated in this Section 2.4 is included within the GMP. In no event shall the use of the Construction Manager's Contingency cause the GMP to be exceeded. The Construction Manager shall be solely responsible for all costs that exceed the GMP (as adjusted by Change Order or Construction Change Directive), without any reimbursement from the City. Construction Manager shall use all diligent, good-faith efforts to maximize cost savings and minimize use of the Construction Manager's Contingency. Draws made against the Construction Manager's Contingency shall be made as specified in and to the limited extent permitted by the Contract Documents.
- 2.5. The City retains exclusive use and control of the City's Contingency \$1,249,592 , and all expenditures must be approved in writing by the City Manager or Project Coordinator by Change Order or Construction Change Directive in accordance with the Contract Documents. Construction Manager shall not proceed with any portion of the Work, which it intends to charge against the City Contingency without first obtaining City's express written authorization to proceed. Any unused City Contingency remaining at the completion of the Project shall accrue solely to the City and shall not be used for purposes of calculating any Project Cost Savings.

- 2.6. Applications for Payment of the Cost of the Project, General Conditions Fee, the Construction Overhead and Profit Fee shall be made monthly based upon the percent completion of the Work for each particular month and in accordance with the Contract Documents. The percent completion shall be based on the updated and City-approved Construction Schedule as required by the Contract Documents. The Construction Manager will be required to furnish documentation evidencing all expenditures for which it seeks payment or reimbursement and demonstrating that the costs incurred were necessary for the Work, in accordance with the Contract Documents, including Article 11 of the Agreement.
- 2.7. Construction Manager recognizes that this Contract includes work for trench excavation in excess of five feet deep. Construction Manager acknowledges the requirements set forth in Section 553.63 of the Florida Statutes entitled Trench Safety Act. Construction Manager certifies that the required trench safety standards will be in effect during the period of construction of the Project and Construction Manager agrees to comply with all such required trench safety standards. The amount of Twenty-Five dollars (\$25.00) has been separately identified for the cost of compliance with the required trench safety standards; said amount is included within the GMP.
- 2.8. The GMP may be adjusted pursuant to the terms herein for Change Order in accordance with the Contract Documents.

ARTICLE 3 **CONTRACT TIME**

- 3.1. The Construction Phase Commencement Date for the Work shall be the date stipulated in the Notice to Proceed. The total period of time beginning with the Construction Phase Commencement Date through the date required for Substantial Completion of the Work is Seven Hundred-Twenty (720) calendar days ("Contract Time").
- 3.2. Pursuant to this Agreement, the parties have established the limitations of liability and liquidated damages rates set forth in Section 5.1.3.1, which the parties acknowledge and agree apply to this GMP Amendment and Construction Manager's responsibility to complete the Work within the Contract Time and achieve the Milestones as stated therein.

ARTICLE 4 **ADDITIONAL PROVISIONS**

- 4.1. Pursuant to Subsection 2.5.2.3 of the Agreement, the Construction Manager (a) hereby represents and warrants that it has taken all steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which may affect the Project (as may be reasonably inferred), the performance of the Work and/or the Project Site and (b) hereby acknowledges and agrees that it shall not be entitled to an adjustment in the Project Schedule or the Guaranteed Maximum Price based on general or local conditions affecting the Project, the Project Site and/or the performance of the Work, unless otherwise provided for in this Agreement, and the Construction Manager waives and releases City from any and all Claims associated therewith.
- 4.2. Pursuant to Subsection 5.2.3 of the Agreement, except to the limited extent of reasonable acceleration costs funded from the City's Contingency pursuant to Subsection 5.2.3.b. to regain lost schedule progress directly resulting from Excusable Delays, the Construction Manager hereby acknowledges and agrees that its pricing of the Work and the determination of the Guaranteed Maximum Price is expressly based upon the Construction Manager's assuming the cost risks of taking all steps that may be necessary, including implementation of a Recovery Schedule, acceleration of the Work, or extraordinary measures, in order to achieve a Milestone or Substantial Completion. In no event shall Construction Manager be entitled to any other compensation or

recovery of any damages in connection with acceleration or constructive acceleration, including consequential damages, lost efficiency, opportunity costs or similar remuneration.

- 4.3. Pursuant to Section 9.2 of the Agreement and based on the information reasonably identified or inferable from the tests or studies conducted by the City and made available to Construction Manager, Construction Manager acknowledges and agrees that it has satisfied itself as to what the Construction Manager anticipates will be the character, quality and quantity of soil, surface and subsurface materials or obstacles that may be encountered by the Construction Manager at the Project Site, and the condition of the existing foundations and building structure, including the environmental conditions identified in the Phase I and Phase II environmental reports provided by the City, and that the entire cost risk of such matters, as well as any concealed, latent, known, unknown or other conditions, shall be borne by the Construction Manager as part of the Guaranteed Maximum Price unless such conditions could not have reasonably been identified upon reasonable investigation during the Pre-Construction Phase by the Construction Manager. The Construction Manager expressly acknowledges and agrees that it has had ample opportunity to investigate the Project Site, has had access to the Project Site since the Effective Date of this Agreement, and agrees that its pricing of the Work and the determination of the Guaranteed Maximum Price were expressly based upon the Construction Manager's assuming the foregoing cost risks of Project Site conditions.

- 4.4. **Stored Materials.** Notwithstanding anything to the contrary, the City shall not be required to pay for materials, machinery or other personal property stored off the Project Site, or stored on the Project Site but not yet incorporated into the Work (the "Stored Materials"), unless the following conditions are satisfied by Contractor, at the City's sole discretion (the cost of which shall be included in the Guaranteed Maximum Price):

- (a) Contractor shall deliver to the City bills of sale and/or other evidence reasonably satisfactory to the City of the cost of, and, subject to the payment therefor, the City's title in and to such Stored Materials;
- (b) The Stored Materials are identified to the Project and the City, are segregated so as to adequately give notice to all third parties of the City's title in and to such materials, and are components in substantially final form ready for incorporation into the Work;
- (c) The Stored Materials are stored at the Project or other property owned by the City in the area or at such other third-party owned and operated site as the City shall reasonably approve, in writing, and are protected against theft and damage in a manner reasonably satisfactory to the City, including, if requested by the City, storage in a bonded warehouse in the county in which the Project is located;
- (d) The Stored Materials will be paid for in full (minus the required retainage) with the funds to be disbursed by the City to Contractor, and all lien rights or claims of the supplier will be released upon full payment;
- (e) The City has or will have upon payment with disbursed funds a perfected, first priority security interest
- (f) The Stored Materials are insured, in the name of the City, for an amount equal to their replacement costs in accordance with this Contract;
- (g) The City or City's representative shall at all times have the right of access to Stored Materials in the possession of the Contractor or a third-party that has been approved by Owner in writing, including prior to the approval of the request;
- (h) The Contractor shall assume total responsibility for the Stored Materials to the extent not covered by insurance.
- (i) Contractor shall certify that it has inspected such Stored Materials and they are in good condition and suitable for use in connection with the Project;
- (j) Contractor shall provide explanation for the circumstances giving rise to the request. The explanation shall include anticipated installation date of the Stored Materials, in accordance with the approved baseline schedule;

The Contractor must update the inventory of any and all Stored Materials on a monthly basis and must reflect changes to all Subcontractors' and Sub-subcontractors' inventory.

- 4.5. **Escalation Allowance.** The Guaranteed Maximum Price includes a cost escalation allowance in an amount equal to \$100,000 (the "Cost Escalation Allowance"). The Cost Escalation Allowance shall be documented in a separate line item on the Schedule of Values. The Cost Escalation Allowance may only be utilized for unanticipated costs incurred by Contractor directly as a result of escalations in materials costs due to market conditions that the Contractor could not have avoided through its compliance with other sections of the Agreement and specifically as stipulated below:

Contractor shall use its (and shall cause its Subcontractors to use their) best efforts to limit the City's exposure to increases in the cost of materials for the Work by locking in prices for same with applicable suppliers and vendors in a timely and prudent manner and to avoid increased and unnecessary costs to the City. However, to the extent that a price has been locked in with a supplier for materials and the market for such materials later decreases prior to the time such materials are delivered and installed at the Project Site, Contractor shall use its (and shall cause its Subcontractors to use their) best efforts to reduce the price of such materials. To the extent that the Contractor fails to satisfy its obligations pursuant to this Section, Contractor shall be solely responsible to pay for any increased costs of such labor, equipment or materials resulting from such failure.

Any unused portion of the Cost Escalation Allowance remaining at the completion of the project shall accrue solely to the City and shall not constitute or be used to calculate project cost savings.

- 4.6. **Allowance for Design Modifications exclusively for the Daycare Relocation project.** The Guaranteed Maximum Price includes a construction allowance exclusively for the Daycare Relocation design modifications in an amount equal to \$100,000 (the "Daycare Relocation Allowance"). The Daycare Relocation Allowance shall be documented in a separate line item on the Schedule of Values. The GMP is based on design drawings and criteria developed by the Architect of Record and assumptions made by the Construction Manager. The Allowance may only be utilized for any additional cost of work associated with further development of the design plans not previously included in the GMP and subject to the Owner's approval.

Any unused portion of the Daycare Relocation Allowance remaining at the completion of the project shall accrue solely to the City and shall not constitute or be used to calculate project cost savings.

- 4.7. All defined terms herein shall have the same meaning ascribed to them in the Agreement or other Contract Documents. Except as expressly modified herein, the terms and conditions of the Agreement remain unchanged. In the event of a conflict between the terms of this Amendment and those of the Agreement, City and Construction Manager agree that the terms of this GMP Amendment shall prevail and control.

IN WITNESS WHEREOF, the Parties hereto have executed this GMP Amendment the day and year first written above.

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: _____
City Clerk

By: _____
MAYOR

ATTEST:

KAUFMAN LYNN CONSTRUCTION, INC.

Print Name:

By:_____

Print Name: