

AGREEMENT

THIS AGREEMENT is hereby made and entered into this 21st day of December, 2017 (the "effective date") by and between the City of Delray Beach, a Florida municipal corporation ("City"), whose address is 100 N.W. 1st Avenue, Delray Beach, Florida 33444, and Hartzell Construction, Inc., a Florida corporation (hereafter referred to as "Contractor"), whose address is 2301 N.W. 33 Ct., Suite 113, Pompano Beach, Florida 33069.

WHEREAS, the City desires to retain the services of the Contractor to provide the goods and services in accordance with the City's Invitation to Bid Construction No. 2018-002, and the Contractor's response thereto, all of which are incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth, the Contractor and the City agree as follows:

ARTICLE 1. INCORPORATION OF INVITATION TO BID CONSTRUCTION

The terms and conditions of this Agreement shall include and incorporate the terms, conditions, and specifications set forth in the City's Invitation to Bid Construction No. 2018-002, and the Contractor's response to the Invitation to Bid Construction, including all documentation required thereunder.

ARTICLE 2. DESCRIPTION OF GOODS OR SCOPE OF SERVICES

The Contractor shall provide the goods and/or perform those services identified in the specifications accompanying the City's Invitation to Bid Construction, which are incorporated herein by reference.

ARTICLE 3. COMPENSATION

The City shall pay to the Contractor, in compliance with the Pricing Schedule attached hereto and incorporated herein, according to the terms and specifications of the referenced Invitation to Bid Construction.

ARTICLE 4. LIQUIDATED DAMAGES

Notwithstanding the amount of liquidated damages as stated in Section 2.11 of Solicitation 2018-002 dated October 10, 2017, the amount of liquidated damages to be assessed if the work is not completed to the satisfaction of the City by the time stipulated by the parties shall be in the amount of .05% of the Total Contract Price. This Article 4 supersedes the Invitation to Bid related to this Agreement and any addenda thereto. All other terms of Section 2.11 of Solicitation No. 2018-002 remain in full force and effect.

ARTICLE 5. MISCELLANEOUS PROVISIONS

a. Notice Format. All notices or other written communications required, contemplated, or permitted under this Agreement shall be in writing and shall be hand delivered, telecommunicated, or mailed by registered or certified mail (postage prepaid), return receipt requested, to the following addresses:

- i. As to the City: City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Manager
- ii. with a copy to: City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Attorney
- iii. As to the Contractor: Hartzell Construction, Inc.
2301 N.W. 33 Ct.
Suite 113
Pompano Beach, Florida 33069
Attn.: President

b. Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

c. Effective Date. The effective date of this Agreement shall be as of the date it has been executed by both the parties hereto.

ARTICLE 6. CONTRACT TERM


This term of this Agreement shall commence upon the date of the duly executed Agreement, and shall remain in effect until such time as the construction services acquired in conjunction with this Invitation to Bid Construction have been completed and accepted by the City's authorized representative and upon completion of the expressed and/or implied warranty periods, unless terminated earlier in accordance with terms set forth in the ITBC.

(Remainder of this page is intentionally left blank.)


IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereinafter written.

[SEAL]

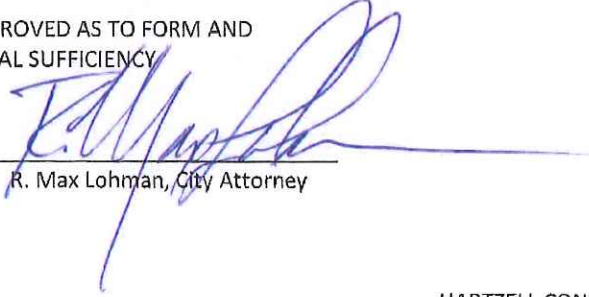
CITY OF DELRAY BEACH, FLORIDA

By: 
Cary D. Glickstein, City Mayor

ATTEST:

By: 
Katerri Johnson, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: 
R. Max Lohman, City Attorney

HARTZELL CONSTRUCTION, INC.

By: 

Print Name: Anderson Pinto

Title: COO

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 15 day of Dec, 2017
by Anderson Pinto (name of officer or agent, title of officer or agent) of
Hartzell Construction (name of corporation acknowledging), a Florida Corp.
(state or place of incorporation) corporation, on behalf of the corporation. He/She is personally
known to me or has produced Personally know as identification.

Carly Bittlingmeyer
Signature of Notary Public – State of Florida



Pricing Schedule

City of Delray Beach
ITB No. 2018-002, City Lifeguard Towers, Project No. 17-093

Bidder will complete the work for the following prices:

SCHEDULE OF BID PRICES

ITEM NO.	DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE (in words)	UNIT PRICE	EXTENDED TOTAL PRICE
1	MOBILIZATION	LS	1	Twenty one thousand seven hundred eighty four Up to 2% of base bid Dollars No Cents	\$ 21,784.00	\$ 21,784.00
2	AUDIO VIDEO & PHOTOS BASE BID ITEM	Allowance	1	Two thousand Dollars Zero Cents	\$ 2,000.00	\$ 2,000.00
3	NEW CONSTRUCTION 8 Towers complete & in place BASE BID ITEM	EACH	8	One hundred twenty five thousand nine hundred forty Dollars Zero Cents	\$ 125,940.00	\$ 1,007,520.00
4	CONTINGENCY	LS	1	One hundred ten thousand four hundred sixty four Up to 10% of base bid Dollars Zero Cents	\$ 60,464.00	\$ 60,464.00
5	DEMOLITION Existing towers demo & removal BASE BID ITEM	EACH	8	Seven thousand Dollars Zero Cents	\$ 7,000.00	\$ 56,000.00
6	INDEMNIFICATION BASE BID ITEM	LS	1	Ten Dollars Zero Cents	\$ 10.00	\$ 10.00
7	BONDS & INSURANCE BASE BID ITEM	LS	1	Seventeen thousand two hundred Dollars Zero Cents	\$ 17,200.00	\$ 17,200.00
TOTAL EVALUATED BASE BID BID ITEMS 1 through 7 (in numbers)				One million one hundred sixty four thousand nine hundred seventy eight Dollars Zero Cents	\$ 1,164,978.00	



CREATED ON
01/10/2018

PAGE 1 OF 1

PURCHASE ORDER NO.
2018-00001225

100 N.W. 1st Avenue
Delray Beach, FL 33444

VENDOR:
13437 - Hartzell Construction
2301 NW 33rd Ct Ste 112
POMPANO BEACH, FL 33069
(954) 957-9762
stella@myhartzell.com

BILL TO:
Finance Department
100 NW 1st Ave
DELRAY BEACH, FL 33444

SHIP TO:
ESD Administration
434 South Swinton Ave
DELRAY BEACH, FL 33444

REQUESTED BY Ryan Lingholm
DELIVER BY
SHIP VIA

PAYMENT TERMS

RESOLUTION NO. CC Approved 12/11/2017 Agenda. File #17-933

FREIGHT TERMS

NOTE TO VENDOR:
PN 17-093, Lifeguard Tower Renovate

FLORIDA STATE SALES TAX EXEMPTION CERTIFICATE NO. 85-8012621559C-4

ITEM NO.	QUANTITY	UOM	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
1	1.0000	Each	BUILDING CONSTRUCTION SERVICES NEW PN 17-093, Lifeguard Tower Renovate	\$1,164,978.0 000	\$1,164,978.00

APPROVED:

Mark Lanyon

AUTHORIZED SIGNATURE

PURCHASE ORDER TOTAL \$1,164,978.00

ORDER SUBJECT TO TERMS AND CONDITIONS ON THE FINAL PAGE



ALTER
SURETY GROUP

www.altersurety.com

December 20th, 2017

CITY OF DELRAY BEACH
100 N.W. 1st Avenue
Delray Beach, FL 33444

RE: Hartzell Construction, Inc.

Project: City Lifeguard Towers Agreement; Project No.: 17-093

Contract No.: ITBC No.: 2018-002

Bond No. 602-116920-9

To Whom It May Concern:

We have executed the enclosed bonds on behalf of the above captioned contractor in favor of City of Delray Beach. Please note that we have not dated the bonds or the Power of Attorney. The copy of the contract we received was not dated and as the bonds follow the contract they should not be dated prior to the contract.

Please accept this letter as authorization to date the enclosed Performance bond(s), Payment bond(s), and the attached Power of Attorney for the captioned project. Please date these items concurrently with the contract date and fax a copy to our office at 305-328-4838 or email to dawn@altersurety.com **so that we can activate the bond coverage.**

Please do not hesitate to contact our office should you have any questions in this regard. Thank you.

Yours truly,
United States Fire Insurance Company

Warren M. Alter,
Attorney-in-Fact

ALTER SURETY GROUP, INC.

Bond Department - Public Works Bond

In compliance with Florida Statute Chapter 255.05, the provisions and limitations of section 255.05 Florida Statutes, including but not limited to, the notice and time limitations in Sections 255.05(2) and 255.05(10) are incorporated in this bond by reference.

Bond Number 602-116920-9

Contractor Hartzell Construction, Inc.
Address & 2301 NW 33rd Court, Suite 112
Phone No. Pompano Beach, FL 33069
(954) 957-9761

Surety United States Fire Insurance Company
Address & 305 Madison Avenue, Morristown, NJ 07962
Phone No. (973) 490-6600

Owner Name City of Delray Beach
Address & 100 N.W. 1st Avenue
Delray Beach, FL 33444
Phone No. 561-243-7129

Contracting Public Entity
(if different from the owner)
Address &
Phone No.

Contract/Project Number ITBC No.: 2018-002

Project Name City Lifeguard Towers Agreement; Project No.: 17-093

Project Location Extends east from the Coastal Construction Line between
Casuarina Road and George Bush Boulevard

Legal Description Extends east from the Coastal Construction Line between
And Street Address Casuarina Road and George Bush Boulevard

Description of Improvement: City Lifeguard Towers Agreement; Project No.: 17-093

This bond is given to comply with section 255.05 Florida Statutes and any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2) and (10), Florida Statutes. Any provision of this bond which conflict with or purports to grant broader or more expanded coverage in excess of the minimum requirements of the applicable statute shall be deemed deleted herefrom. This bond is a statutory bond, not a common law bond.

This is the front page of the bond.

All other page(s) are deemed subsequent to this page regardless of any page number(s) that may be pre-printed thereon.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that - Hartzell Construction, Inc.,
2301 N.W. 23rd Court, Suite #112, Pompano Beach, FL 33069

(Insert full name and address or legal title of successful Bidder)

as Principal, hereinafter called Contractor, and United States Fire insurance Company
(Name of Insurer)

as Surety, hereinafter called Surety, are held and firmly bound unto the City of Delray Beach, Palm Beach County, Florida.

As Oblgee, hereinafter called the City, in the amount of One Million One Hundred Sixty Four Thousand
Nine Hundred Seventy Eight & 00/100

(\$ 1,164,978.00), for the payment whereof, Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severably, firmly by the presents.

WHEREAS, Contractor has by written agreement dated December 15, 2017, entered into Contract No. ITBC No. 2018-002 with the City in accordance with the Solicitation specifications prepared by the City, which Contract is by reference made a part hereof and is hereinafter referred as the Contract, for the performance of the following Work:

City Lifeguard Towers Agreement, Project No. 17-093

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the City.

Whenever Contractor shall be and declared by the City to be in default under the Contract, the City having performed City's obligations thereunder, the Surety may promptly remedy the default or shall promptly:

- a. Complete the Contract in accordance with its terms and conditions; or
- b. Obtain a Bid or Bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the most responsible Bidder, or if the City elects, upon determination by the City and the Surety jointly of the most responsible Bidder, arrange for a Contract between such Bidder and the City, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof:

The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by the City to Contractor under the contract and any amendments thereto, less the amount properly paid by the City to the Contractor.

Any suit under this bond must be instituted before the expiration of twenty-five (25) months from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the City named herein or the heirs, executors, administrators, or successors of the City.

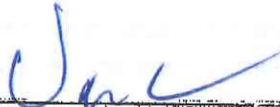
Signed and sealed this 20th day of December, 2017.


(Witness)

Hartzell Construction, Inc.
(Principal)  (Seal)
(Title)


(Witness)

United States Fire Insurance Company
(Name of Insurer) Surety (Seal)

By: 
Warren M. Alter, (Attorney-in-Fact)

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that Hartzell Construction, Inc.,

2301 N.W. 23rd Court, Suite #112, Pompano Beach, FL 33069

(Insert full name and address or legal title of successful Bidder)

as Principal, hereinafter called Contractor, and United States Fire Insurance Company,
(Name of Insurer)

as Surety, hereinafter called Surety, are held and firmly bound unto the City of Delray Beach, Palm Beach County, Florida.

As Oblige, hereinafter called the City, in the amount of One Million One Hundred Sixty Four Thousand Nine Hundred Seventy Eight & 00/100

(\$ 1,164,978.00), for the payment whereof, Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by the presents.

WHEREAS, Contractor has by written agreement dated December 15, 2017, entered into Contract No. ITBC No. 2018-002 with the City in accordance with the Solicitation specifications prepared by the City, which Contract is by reference made a part hereof and is hereinafter referred as the Contract, for the performance of the following Work:

City Lifeguard Towers Agreement, Project No. 17-093

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, If said Contractor and all subcontractors to whom any portion of the work provided for in said Contract is sublet and all assignees of said Contract and of such subcontractors shall promptly make payments to all persons supplying him or them with labor, products, services, or supplies for or in the prosecution of the work provided for in such Contract, or in any amendment or extension of or addition to said Contract, and for the payment of reasonable attorney's fees, incurred by the claimants in suits on this bond, then the above obligation shall be void; otherwise, it shall remain in full force and effect.

HOWEVER, this bond is subject to the following conditions and limitations:

a) Any person, firm or corporation that has furnished labor, products, or supplies for or in the prosecution of the work provided for in said Contract shall have a direct right of action against the Contractor and Surety on this bond, which right of action shall be asserted in a proceeding, instituted in the county in which the work provided for in said Contract is to be performed or in any county in which Contractor or Surety does business. Such right of action shall be asserted in proceedings instituted in the name of the claimant or claimants for his or their use and benefit against said Contractor and Surety or either of them (but not later than one year after the final settlement of said Contract) in which action such claim or claims shall be adjudicated and judgment rendered thereon.

b) The Principal and Surety hereby designate and appoint Warren M. Alter, Agent/Attorney-in-Fact

as the agent of each of them to
receive and accept service of process or other pleading issued or filed in any proceeding instituted on

this bond and hereby consent that such service shall be the same as personal service on the Contractor and/or Surety.

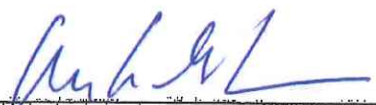
c) In no event shall the Surety be liable for a greater sum than the penalty of this bond, or subject to any suit, action or proceeding thereon that is instituted later than one year after the final settlement of said Contract.

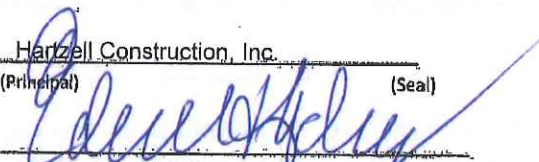
d) This bond is given pursuant to and in accordance with the provisions of Florida Statutes, and all the provisions of the law referring to this character of bond as set forth in any sections or as may be hereinafter enacted, and these are hereby made a part hereof to the same extent as if set out herein in full.

Any suit under this bond must be instituted before the expiration of twenty-five (25) months from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the City named herein or the heirs, executors, administrators, or successors of the City.


Signed and sealed this 20th day of December, 2017.


(Witness)

Hartzell Construction, Inc.
(Principal)  (Seal)
(Title)


(Witness)

United States Fire Insurance Company
(Name of Insurer) Surety (Seal)

By: 
Warren M. Alter, (Attorney-in-Fact)

The provisions and limitations of section 285.05 Florida Statutes, including but not limited to the notice and time limitations in Sections 285.05(1) and 285.05(10), are incorporated in this bond by reference.

**POWER OF ATTORNEY
UNITED STATES FIRE INSURANCE COMPANY
PRINCIPAL OFFICE - MORRISTOWN, NEW JERSEY**

00952429518

KNOW ALL MEN BY THESE PRESENTS: That United States Fire Insurance Company, a corporation duly organized and existing under the laws of the state of Delaware, has made, constituted and appointed, and does hereby make, constitute and appoint:

Warren M. Alter, David T. Satine, Jonathan A. Bursevich

each, its true and lawful Attorney(s)-In-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver: Any and all bonds and undertakings of surety and other documents that the ordinary course of surety business may require, and to bind United States Fire Insurance Company thereby as fully and to the same extent as if such bonds or undertakings had been duly executed and acknowledged by the regularly elected officers of United States Fire Insurance Company at its principal office, in amounts or penalties not exceeding: **Seven Million, Five Hundred Thousand Dollars (\$7,500,000).**

This Power of Attorney limits the act of those named therein to the bonds and undertakings specifically named therein, and they have no authority to bind United States Fire Insurance Company except in the manner and to the extent therein stated.

This Power of Attorney revokes all previous Powers of Attorney issued on behalf of the Attorneys-In-Fact named above and expires on January 31, 2019.

This Power of Attorney is granted pursuant to Article IV of the By-Laws of United States Fire Insurance Company as now in full force and effect, and consistent with Article III thereof, which Articles provide, in pertinent part:

Article IV, Execution of Instruments - Except as the Board of Directors may authorize by resolution, the Chairman of the Board, President, any Vice-President, any Assistant Vice President, the Secretary, or any Assistant Secretary shall have power on behalf of the Corporation:

(a) to execute, affix the corporate seal manually or by facsimile to, acknowledge, verify and deliver any contracts, obligations, instruments and documents whatsoever in connection with its business including, without limiting the foregoing, any bonds, guarantees, undertakings, recognizances, powers of attorney or revocations of any powers of attorney, stipulations, policies of insurance, deeds, leases, mortgages, releases, satisfactions and agency agreements;

(b) to appoint, in writing, one or more persons for any or all of the purposes mentioned in the preceding paragraph (a), including affixing the seal of the Corporation.

Article III, Officers, Section 3.11, Facsimile Signatures. The signature of any officer authorized by the Corporation to sign any bonds, guarantees, undertakings, recognizances, stipulations, powers of attorney or revocations of any powers of attorney and policies of insurance issued by the Corporation may be printed, facsimile, lithographed or otherwise produced. In addition, if and as authorized by the Board of Directors, dividend warrants or checks, or other numerous instruments similar to one another in form, may be signed by the facsimile signature or signatures, lithographed or otherwise produced, of such officer or officers of the Corporation as from time to time may be authorized to sign such instruments on behalf of the Corporation. The Corporation may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Corporation, notwithstanding the fact that he may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, United States Fire Insurance Company has caused these presents to be signed and attested by its appropriate officer and its corporate seal hereunto affixed this 10th day of March, 2016.

UNITED STATES FIRE INSURANCE COMPANY



A.R.S.

Anthony R. Slimowicz, Senior Vice President

State of New Jersey }
County of Morris }

On this 10th day of March 2016, before me, a Notary public of the State of New Jersey, came the above named officer of United States Fire Insurance Company, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of United States Fire Insurance Company thereto by the authority of his office.

**SONIA SCALA
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES 3/25/2019**

Sonia Scala

(Notary Public)

I, the undersigned officer of United States Fire Insurance Company, a Delaware corporation, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy is still in force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of United States Fire Insurance Company on the 20th day of December 2017

UNITED STATES FIRE INSURANCE COMPANY



Al Wright

Al Wright, Senior Vice President



www.altersurety.com

IMPORTANT NOTICE

You are required to record your bonds in the County records prior to commencement.

Florida Statutes requires that YOU, the Prime Contractor, RECORD YOUR BONDS with the Clerk of the County where the project is located, PRIOR TO COMMENCEMENT.

For public projects, please see Florida Statutes 255.05 (1)(a)

For Privately owned projects, please see the Florida Statutes 713.13 (1) (a)

FAILURE TO PROPERLY RECORD A BOND may convert it from a Statutory Bond to a Common Law Bond, which INCREASES the time in which a CLAIMANT OR OBLIGEE can make a demand AGAINST your bond AND potentially INVITING claims that would otherwise be invalid.

Attached is an EXTRA ORIGINAL FOR RECORDING of your Performance and Payment Bond. In most cases, the Clerk will stamp the bond with the filing location and return the original to you. If the Clerk does not return the original, please ask for a copy with the filing location stamped on it. This is your proof that the bond was filed. It is IMPORTANT THAT YOU KEEP THIS IN YOUR JOB RECORDS.

We hope your project is a profitable and successful venture.

Please contact us if you have any questions in the regard.

Thank you for allowing Alter Surety Group, Inc to be of service.

Lingholm, Ryan

From: Dawn Auspitz <dawn@altersurety.com>
Sent: Wednesday, January 03, 2018 9:06 AM
To: Lingholm, Ryan
Cc: Karol Kelly
Subject: RE: Bonds for 2018-002

Yes, the bond coverage is activated.

From: Lingholm, Ryan <lingholm@mydelraybeach.com>
Sent: Wednesday, January 3, 2018 8:43 AM
To: Dawn Auspitz
Subject: Bonds for 2018-002

Good morning Dawn,

The cover letter attached to the bonds for ITBC No. 2018-002 for the City lifeguard towers states that the bond coverage will be activated once we fill in the date field and send you a copy. However, the date field is already completed. Please confirm that the bond coverage is activated.

Thanks,

Ryan Lingholm
Buyer - Purchasing Department
Office: (561) 243-7129 Ext. 1811
Fax: (561) 243-7811
Email: lingholm@mydelraybeach.com
www.mydelraybeach.com



PUBLIC RECORDS NOTE: Florida has a very broad public records law. Most written communications to or from local officials, employees, or the general public regarding city business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure.