

## AGREEMENT FOR CONSTRUCTION MANAGEMENT FOR MINOR PROJECTS

This Agreement for Construction Management Services for Minor Projects (the "Agreement") is made and entered into this 12<sup>th</sup> day of March, 2018, by and between The City of Gainesville (CITY), Gainesville Community Redevelopment Agency (CRA) and Gainesville Regional Utilities (GRU), going forward identified as ("Owner") and, BBI Construction Management, Inc. ("**Construction Manager**"), which is authorized to do business in Florida.

### WITNESSETH:

**WHEREAS**, Owner solicited statements of qualifications from interested construction managers for the provision of continuing construction management services on certain of the Owner's construction projects as determined by the Owner; and

**WHEREAS**, based on Construction Manager's interview, qualifications statement, and related submissions, Owner has selected Construction Manager for such purpose; and

**WHEREAS**, Owner and Construction Manager desire to enter into this Agreement; and

**WHEREAS**, Owner intends to engage or has engaged, one or more entities, including but not limited to a licensed architect or engineer, engaged directly by the Owner to provide design or engineering services ("Professional"); and

**WHEREAS**, the projects to be performed under this Agreement may include new construction, renovation, remodeling, building maintenance, equipment installation, and other miscellaneous projects. Properties may be owned by the City of Gainesville, or others and Construction Costs for each project (hereinafter defined) do not exceed \$2,000,000.

**NOW THEREFORE**, for and in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and the Construction Manager agree as follows:

### ARTICLE 1. GENERAL DESCRIPTION OF AGREEMENT

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**1.1 Definition of Services.** The Construction Manager agrees to furnish its best skill and judgment and to cooperate with the Professional, where applicable, in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and to use its best efforts to complete each project in an expeditious and economical manner consistent with the interests of the Owner. The Construction Manager agrees to furnish construction services as set forth herein and required for completion of each Project on a Guaranteed Maximum Price (hereinafter defined) basis. Construction Manager represents that it is thoroughly familiar with and understands the requirements of the referenced project types and that it is experienced in the administration and construction of building projects of the types and scopes referenced above. Construction Manager represents to Owner that it has all necessary construction education, skill, knowledge, and experience required for these Projects and will maintain, at all times during the term of this Agreement, such personnel on its staff to provide the services contemplated hereby within the time periods required for each Project. In addition, Construction Manager represents that it has, and all of the subcontractors performing services under this Agreement will have, all applicable licenses required by the State of Florida, and any other regulatory entity, to perform such services.

**1.2 Project Team.** The Construction Manager, the Owner and the Professional (the "Project Team") will work as a team through construction completion of each project. The Construction Manager shall provide leadership to the Project Team on all matters relating to construction. The Professional will provide leadership to the Project Team on all matters relating to design. When performing any services under this Agreement, the Construction Manager shall utilize the key personnel described in Exhibit A, attached hereto and incorporated herein by reference. In the event any such personnel discontinue employment with Construction Manager, Construction Manager shall promptly replace such personnel with individuals approved by Owner, in writing, which approval will not be unreasonably withheld.

- 1.3 Project Schedule / Time of the Essence.** This is a contract for continuing services. Services will be provided upon request of Owner on a per Project basis. When the Owner identifies a project, the Owner will provide the Construction Manager with a detailed description of the Project Scope and request for the Construction Manager to provide a Guaranteed Maximum Price cost proposal for completing the Project. If the Owner and the Construction Manager agree on a Project Proposal, certain Project specific contract documents (the form of which are attached to the Agreement as Exhibits C, D, E, F, G and H) shall be completed and executed as further described in this Agreement. Construction Manager will provide Owner with a preliminary schedule covering the construction of Project in the form attached as **Exhibit D**. This preliminary schedule shall serve as the framework for the subsequent development of all detailed construction schedules described herein and in the General Terms and Conditions. The Construction Manager shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Project schedule, subject to delays in the schedule not the fault of Construction Manager or its subcontractors. Time is of the essence in the performance of this Agreement.
- 1.4 Preparation/Sufficiency of Site.** The Construction Manager shall, among other things, (i) visit and thoroughly inspect the Project Site and any structure(s) or other manmade features to be modified and become familiar with local conditions under which the Project will be constructed and operated; (ii) if applicable, familiarize itself with the survey, including the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on the Project; (iii) familiarize itself with the Owner's layout and design requirements, conceptual design objectives, and budget for the Project; (iv) familiarize itself with pertinent Project dates, including the Project schedule, (v) review and analyze all Project geotechnical, Hazardous Substances, structural, chemical, electrical, mechanical, and construction materials tests, investigations and recommendations; and (vi) gather any other information necessary for a thorough understanding of the Project. If the Project involves modifications to any existing structure(s) or other man-made feature(s) on the Project site, the Construction Manager shall also review all as-built and record drawings, plans and specifications of which Construction Manager has been informed by Owner about and thoroughly inspect the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components. Claims by Construction Manager resulting from Construction Manager's failure to familiarize itself with the Site or pertinent documents shall be deemed waived.
- 1.5 Contract for Construction.** The "Agreement" or "Contract for Construction," which constitutes the entire agreement between Owner and Construction Manager for each project consists of:
1. Project Specific Documents, which may include: Exhibits C, D, E, F, G, and H, Change Orders and Field Orders;
  2. Written Amendments to this Agreement;
  3. This Agreement and its Exhibit A (Construction Managers Personnel) and Exhibit B (General Terms and Conditions);
  4. Project Specific Purchase Order;
  5. The Request for Qualifications (RFQ-FPUR-180009-GD issued September 18, 2017 and addenda issued, Addendum 1, 2, and 3.)

Documents not included or expressly contemplated in this section do not, and shall not, form any part of the Contract for Construction. Without limiting the generality of the foregoing, shop drawings and other submittals from the Construction Manager or its subcontractors and suppliers do not constitute a part of the Contract for Construction. In the event of conflict or inconsistency among or between the documents that comprise the "Contract for Construction" the order of precedence is the order in which the documents are listed above.

## **ARTICLE 2. OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES**

- 2.1 Project Information.** Construction Manager acknowledges that Owner has provided Construction Manager with information regarding Owner's requirements for the Project as set forth in the Project Scope.
- 2.2 Owner's Budget.** The Owner shall establish and update a budget for the Project, including the amount allocated for construction, the Owner's other costs, and reasonable contingencies related to these costs as appropriate.

- 2.3 Owner's Representative.** The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project.
- 2.4 Time for Performance.** The Owner shall review and approve or take other appropriate action on all design submittals within the timeframes set forth in the Project Schedule form (Exhibit D).
- 2.5 Purpose of Owner's Review.** Owner's review, inspection, or approval of any Work, Applications for Payment, or other submittals shall be solely for the purpose of determining whether the same are generally consistent with Owner's Project Scope and requirements. No review, inspection, or approval by Owner of such Work or documents shall relieve Construction Manager of its responsibility for the performance of its obligations under the Contract for Construction or the accuracy, adequacy, fitness, suitability, or coordination of the Work. Approval by any governmental or other regulatory agency or other governing body of any Work, Design Document, or Construction Documents shall not relieve Construction Manager of responsibility for the performance of its obligations under the Contract for Construction. Payment by Owner pursuant to the Contract for Construction shall not constitute a waiver of any of Owner's rights under the Contract for Construction or at law, and Construction Manager expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner. Notwithstanding the foregoing, prompt written notice shall be given by the Owner or Professional to the Construction Manager if the Owner becomes aware of any fault or defect in the Project or non-conformance with the Contract for Construction.
- 2.6 Status of Owner.** The Owner shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Construction Manager, for any of the foregoing purposes, be deemed the agent of the Owner.
- 2.7 Owner's Utilities.** The Construction Manager shall be responsible to provide and pay for consumption of, and connections to, utilities required for temporary service and construction unless otherwise directed by the Owner.

### **ARTICLE 3. CONSTRUCTION MANAGER'S SERVICES**

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- 3.1** The Construction Manager's services under the Contract for Construction may include pre-construction and/or construction services and will be initiated by Owner when Owner desires to procure such services from Construction Manager under the Contract for Construction. The scope of such services will be described in the Purchase Order for each project and in the Individual Project Description (**form Exhibit C**). The Construction Manager shall perform or cause to be performed all services and Work described in the Purchase Order upon Owner's request.
- 3.2** For each project, Construction Manager shall commence performance of Construction Services within ten (10) days after receipt from the Owner of the executed Purchase Order for such project and Notice to Proceed accompanied by completed and executed **Exhibits C, D, E, F, and G**. The parties acknowledge that (i) the Owner may determine not to proceed with Construction Services, (ii) performance of Pre-Construction Services, if required, may overlap performance of Construction Services, and (iii) categories of Work performed during Construction Services may be performed in separate phases.
- 3.3 General Project Services.** The Construction Manager agrees to:
- 3.3.1** Provide all services required to professionally complete the Work in an expeditious and economical manner consistent with this Contract for Construction and the best interests of the Owner.
- 3.3.2** Endeavor to develop, implement and maintain, in consultation with the Owner, Professional, and the Subcontractors, a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.

- 3.3.3 Perform its services in accordance with schedule requirements.
- 3.3.4 Work with Owner and Professional to pursue Owner's goal of obtaining Leadership in Energy and Environmental Design (LEED) certification for the Project, at the level set forth on Project Specific Requirements form **Exhibit F**.
- 3.3.5 Participate in, and cooperate with, design phase, construction phase, and post-occupancy commissioning, validation, and other quality assurance and quality control processes.
- 3.3.6 Complete the Work by the required date of Substantial Completion. The Construction Manager shall submit an initial Construction Schedule by the date set forth on Project Specific Requirements form **Exhibit F**; a final Construction Schedule with each Guaranteed Maximum Price proposal; and revised Construction Schedules in accordance with the General Terms and Conditions. The Construction Schedule shall complement, and shall not conflict with, the design schedule.
- 3.3.7 Comply with Owner's policies, project management guides, and General Terms and Conditions applicable to this Agreement as referenced herein.

**3.4 Pre-Construction Services.** If required by the Project and initiated by the Owner, the Construction Manager shall provide the following Pre-Construction Services:

- 3.4.1 The Construction Manager shall familiarize itself with the approved Scope for the Project and actively and jointly participate with the Owner and the Professional in formation of the final Project design. The phasing of, and schedule for, design for each Project shall be set forth on the Project Schedule form **Exhibit D**.
- 3.4.2 Submit for Owner review within thirty (30) calendar days of the Owner's execution of this Agreement:
  - (i) Project reporting procedures;
  - (ii) Quality Control and Testing Program; and
  - (iii) Safety Program.
- 3.4.3 The Professional is required, in accordance with schedule requirements, to provide design concepts, narratives, and drawings. At each phase of design, in keeping with the Owner's goals for the Project, the Construction Manager shall familiarize itself with these design documents and, in accordance with the Project Schedule (**form Exhibit D**), provide the Owner and Professional with a report detailing construction issues and concerns relating to the design, with detail appropriate to the phase of design. Without limitation of the foregoing, each construction report shall:
  - (i) include a Construction Manager's estimate of overall construction cost, with Construction Manager's contingency associated with the Cost of the Work at no greater percentages than the percentages set forth in the Project Specific Requirements (**Exhibit F**), including a comparison of the estimate to Owner's budget for construction;
  - (ii) identify conceptual decisions necessary to prepare accurate cost reports with the fewest assumptions, qualifications and exclusions;
  - (iii) include an analysis and evaluation of jobsite management, site logistics, and schedule considerations;
  - (iv) include an analysis and evaluation of the constructability of the design concepts, narratives, or drawings;
  - (v) include an analysis and evaluation of the design concepts, narratives, or drawings in regard to the completeness of intended bid categories, conflicts or overlaps in the divisions of the Work, design details affecting construction including, without limitation, unusual or custom materials, value analysis, identification of long-lead materials affecting the Construction



Schedule, availability of labor, and other factors affecting construction and, in the report provided during the Construction Documents Phase, suggestions for alternatives for matters which may delay the construction schedule;

- (vi) address problems, conflicts, defects or deficiencies in the design concepts and offer resolutions of same; and
  - (vii) identify any other issues which Construction Manager reasonably believes may have a negative impact on the Project schedule, budget or performance.
- 3.4.4 The Construction Manager and the Professional shall jointly schedule and attend regular meetings with the Owner and evaluate the preliminary design drawings. The Professional shall prepare and distribute minutes of these meetings, and the Construction Manager shall verify the accuracy and completeness of the minutes.
- 3.4.5 The Construction Manager shall develop a comprehensive jobsite management and logistics plan for the Owner's review. This plan shall be submitted no later than the date set forth the Project Specific Requirements (**Exhibit F**).
- 3.4.6 The Construction Manager shall, in accordance with schedule requirements, assist the Professional with the resolution of all problems, conflicts, defects or deficiencies identified during the review and evaluation of the Construction Documents.
- 3.4.7 At each phase of design, the Construction Manager shall work with the Professional and/or the Owner's cost consultant to reconcile, and make recommendations on, the differences between the estimates each has prepared at that phase of design. If the final estimates of the Construction Cost by the Construction Manager and the Professional and/or the Owner's cost consultant differ materially, the Construction Manager and Professional and/or the Owner's cost consultant shall meet promptly to reconcile the discrepancies between their estimates so as to permit submission to the Owner of a final estimate of Construction Cost on which both the Professional and the Construction Manager agree.
- 3.4.8 If the Owner elects to phase and/or "fast track" portions of the construction (such portions being described in the Project Specific Requirements (**Exhibit F**), multiple Guaranteed Maximum Price proposals will be required.
- 3.4.9 The Construction Manager understands and acknowledges the Owner's intent that the Project will be completed within the budget set by Owner for the Project. Accordingly, throughout the Pre-Construction Services phase, the Construction Manager shall keep Owner informed if it believes that the Project may not be completed within Owner's budget, the reasons why it cannot be, and the Construction Manager's proposed solutions therefor.

### 3.5 **Guaranteed Maximum Price Proposal**

- 3.5.1 At the time set forth in the Project Specific Requirements (**form Exhibit F**), which shall be prior to performance of Construction Services, the Construction Manager shall prepare and deliver to the Owner, with a copy to the Professional, a Guaranteed Maximum Price ("GMP") proposal. The Construction Manager shall, at a minimum, include in the GMP proposal:
- (i) a recital of the specific Construction Documents, including drawings, specifications, and all addenda thereto, used in preparation of the GMP proposal;
  - (ii) the five (5) elements of the GMP:
    - a. the Cost of the Work (hereinafter defined), detailed by each subcontract, trade, or bid division;
    - b. the Construction Manager's Contingency for the Work;
    - c. the Construction Manager's Staffing Cost (hereinafter defined), detailed by expense category;

- d. the General Conditions Cost (hereinafter defined), including bond & insurance costs, detailed by expense category; and
    - e. the Construction Manager's Overhead and Profit.
  - (iii) a draft schedule of values;
  - (iv) a description of all other inclusions to, or exclusions from, the GMP;
  - (v) all assumptions and clarifications; and
  - (vi) Construction Schedule.
- 3.5.2 The Construction Manager acknowledges that the Construction Documents may be incomplete at the time the Construction Manager delivers the GMP proposal, and that the Construction Documents may not be completed until after commencement of the Work. Nevertheless, the GMP proposal shall include all costs for the Work required by the completed Construction Documents, and if the GMP proposal is accepted by the Owner, the Construction Manager shall be entitled to no increase in the GMP if the Work required by the completed Construction Documents (i) is required by the Contract For Construction, (ii) is reasonably inferable from the incomplete documents, (iii) is consistent with the Owner's programmatic goals and objectives, (iv) is consistent with the Owner's Design and Construction Standards and the general industry standards for completion of the Work, (v) is not a substantial enlargement of the scope of Work or (vi) substantially conforms to the nature, type, kind or quality of Work depicted in the incomplete documents.
- 3.5.3 If the GMP proposal is unacceptable to the Owner, the Owner shall promptly notify the Construction Manager. Within fourteen (14) calendar days of such notification, the Owner, Professional and Construction Manager shall meet to discuss and resolve any differences, inconsistencies, or misunderstandings and to negotiate recommended adjustments to the Work and/or to the GMP.
- 3.5.4 The Owner may, at its sole discretion and based upon its sole judgment, (i) indicate its acceptance of a GMP proposal; (ii) reject a GMP proposal; (iii) terminate the Project; or (iv) proceed to construct the Project using a party or parties other than the Construction Manager.
- 3.5.5 If the Owner rejects a GMP proposal, neither party shall have any further obligation under the Contract for Construction.
- 3.5.6 If the Owner accepts a GMP proposal, the parties shall complete and execute a GMP Agreement (**Exhibit E**), and the Owner shall cause a Purchase Order to be initiated and issue a written Notice to Proceed to the Construction Manager, completion of the latter of which will establish the date construction is to commence (the "Commencement Date"). The Construction Manager shall not expend any monies for construction prior to receipt of such Authorization and Purchase Order without the written approval of the Owner.
- 3.5.7 Price Guarantees
- (i) Upon execution of a GMP Agreement (form **Exhibit E**), the Construction Manager guarantees that the sum of (i) the actual Cost of the Work, (ii) Construction Manager's Contingency, (iii) Construction Manager's Staffing Costs, (iv) General Conditions Cost, and (v) Construction Manager's Overhead and Profit, shall not exceed the amount set forth in the agreed upon GMP. All costs or expenses that would cause this sum to exceed the GMP shall be borne by the Construction Manager unless adjusted by Owner approved change order.
  - (ii) Upon execution of a GMP Agreement (form **Exhibit E**), the Construction Manager guarantees that the actual Cost of the Work, Construction Manager's Staffing Costs, General Conditions Cost and Construction Manager's Overhead and Profit shall not exceed the guaranteed maximum for each such category and that all costs or expenses that would cause any of these individual categories to exceed the guaranteed maximum for each such category in the agreed upon GMP shall be borne by the Construction Manager unless

adjusted by Owner approved change order.

- (iii) Upon execution of a GMP Agreement (form **Exhibit E**), the Construction Manager certifies that all factual unit costs supporting the GMP proposal are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished to the Owner in the future to support any additional amounts that may be authorized will also be accurate and complete. Payments to the Construction Manager shall be reduced if the Owner determines such amounts were originally included due to materially inaccurate, incomplete, or non-current factual unit costs.
- (iv) Upon execution of a GMP Agreement (form **Exhibit E**), the Construction Manager guarantees that to the extent the accepted GMP includes contingency, use of contingency shall be approved by the Owner's project manager by Contingency Use Authorization Form prior to expenditure by the Construction Manager.

### 3.6

#### **Construction Services**

##### 3.6.1 Trade Contractor Selection Bidding and Negotiation

- 3.6.1.1 In accordance with Owner's policies on the subject in effect at the time Construction Manager commences construction, the Construction Manager shall prepare and assemble document packets for use in bidding subcontracts. Such packaging of the Work shall be broken down to maximize both competition and the involvement of local, small and diverse businesses.
- 3.6.1.2 The Construction Manager shall develop subcontractor and supplier interest, including local, small and diverse businesses, for each division of the Work. The Construction Manager shall pre-qualify proposed subcontractors using a pre-qualification form approved by the Owner, which shall include, at a minimum, proof of licensure where applicable.
- 3.6.1.3 For trade packages with a value of less than \$5,000, the Construction Manager, may negotiate with trade contractors to perform such Work by whatever means it deems appropriate, in its reasonable discretion. For trade packages with a value between \$5,000 and \$24,999, the Construction Manager shall, where competition is available and feasible, obtain two (2) verbal quotes. The amounts of the quotes and names of the trade contractor providing the same shall be documented in writing. For trade packages with a value between \$25,000 and \$49,999, the Construction Manager shall, where competition is available and feasible, obtain three (3) written quotes. For trade packages with a value between \$50,000 and \$199,999, the Construction Manager shall advertise the trade package at least once in the newspaper in general circulation in the applicable project area (e.g. the Gainesville Sun for the Gainesville, Florida area) at least seven (7) calendar days prior to the published due date, and accept written bids/proposals. For trade packages with a value of \$200,000 or more, the Construction Manager shall advertise the trade package at least once in the newspaper in general circulation in the applicable project area (e.g. the Gainesville Sun for the Gainesville, Florida area) at least twenty one (21) calendar days prior to the published due date, and accept written bids/proposals. All trade packages in excess of \$50,000 shall be procured in accordance herewith under a competitive process approved by the Owner's Representative for the project. While a sealed bid or proposal process is generally desired and anticipated for such trade packages to ensure the Construction Manager is receiving the lowest price for such trade packages, there may be situations in which such process is not appropriate. Therefore, the Construction Manager may, with the approval of the Owner's Representative, utilize an alternative competitive process to procure trade contractors. In all instances, Construction Manager shall select the lowest, responsive proposal, quote or bid, as applicable, it obtains.

- 3.6.1.4 The Construction Manager shall use its best efforts to obtain bids which are less than the final GMP estimates.
- 3.6.1.5 The Construction Manager shall conduct bid openings in the presence of the Owner's representative. The Construction Manager shall provide the Owner with a copy of its preliminary bid tabulation and copies of all bids.
- 3.6.1.6 The Construction Manager shall, for each subcontract, trade or bid division:
  - (i) determine the final bid amounts, having reviewed and clarified the scope of Work in detail with bidders to determine which bids are the lowest bids and are complete but do not include duplicate scope items;
  - (ii) prepare and furnish to the Owner a final bid tabulation summary which includes by subcontract, trade and/or bid division, the applicable final GMP estimate and the related final bid amount and the details of all scope clarifications for Owner's review and approval;
  - (iii) if requested by Owner, provide a list of all potential Direct Purchase Materials (hereinafter defined);
  - (iv) identify to the Owner in writing the subcontractors to which the Construction Manager recommends award of subcontracts; and
  - (v) award and enter into a subcontract between itself and each subcontractor which it has recommended in accordance with this Agreement unless otherwise notified by the Owner.
- 3.6.1.7 No portion of the Work may be performed by the Construction Manager or its affiliates except with Owner's written approval in accordance with Owner's policies on the subject in effect at the time the Construction Manager commences construction.
- 3.6.1.8 The Construction Manager shall award Trade Contracts representing ninety percent (90%) of the Cost of the Work or more, within the timeframe outlined in the GMP Agreement (form **Exhibit E**).
- 3.6.1.9 The Construction Manager shall promptly, but no later than ten (10) calendar days, inform the Owner in writing of any proposed replacements to the list of subcontractors and suppliers in the final bid tabulation sheet provided to Owner, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right, in its reasonable discretion, to reject any proposed replacement if such proposed replacement fails to meet any criteria or requirements established for subcontractors performing such portion of, or for, the Work.

### 3.6.2 Construction Supervision

- 3.6.2.1 Commencing with the award of the first subcontract and terminating on the date of Final Completion, the Construction Manager shall provide the services described herein.
- 3.6.2.2 The Construction Manager shall, as the Owner's construction representative during construction, advise and consult with the Owner and the Professional, and provide administration of the Construction Documents.
- 3.6.2.3 The Construction Manager shall supervise and direct the Work at the Site. The Construction Manager shall, at a minimum, staff the Project Site with personnel who shall:
  - (i) supervise and coordinate the Construction Manager's personnel and act as its primary liaison with the Owner and the Professional;

- (ii) coordinate trade contractors and suppliers, and supervise Site construction management services;
- (iii) be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes and standards, and the Contract for Construction;
- (iv) check, review, coordinate and distribute shop drawings and check and review materials delivered to the Site, regularly review the Work to determine its compliance with the Construction Documents and the Contract for Construction, confer with the appropriate Owner's consultant(s) as necessary to assure acceptable levels of quality;
- (v) prepare and maintain Project records, including process documents and daily logs;
- (vi) schedule and conduct weekly progress meetings with subcontractors to review such matters as jobsite safety, job procedures, construction progress, schedule, shop drawing status and other information as necessary and provide notification of, and minutes from, such meetings to Owner and Professional;
- (vii) schedule and conduct weekly (or at an interval agreed upon) progress meetings with the Owner and Professional to review such matters as construction progress, schedule, shop drawing status, and other information as necessary;
- (viii) make provision for Project security to protect the Project site and materials stored off-site against theft, vandalism, fire and accidents as required by the General Terms and Conditions.
- (ix) promptly reject any Work which does not conform to the Construction Documents or which does not comply with any applicable law, statute, building code, rule or regulation of any public authority or agency of which it is aware, immediately notifying the Professional and the Owner in writing when it has rejected any Work;
- (x) comply with, and cause its subcontractors and suppliers to comply with, the Project Construction Schedule and applicable sub-schedules. The Construction Manager shall obtain and review schedules from subcontractors and suppliers, coordinate sub-schedules with the Construction Schedule, and enforce compliance with the all applicable schedules to insure timely completion of the Work. If at any time the Project is delayed, the Construction Manager shall immediately notify the Owner and the Professional of the probable cause(s) and possible alternatives and make recommendations to minimize expense and delay to the Owner; and
- (xi) provide documentation necessary to the Professional for, and otherwise assist the Professional with, the preparation of the final "as-built" or record drawings unless provided by the owner.

3.6.2.4 In accordance with Owner's agreement with the design professional working on the Project, the design professional will visit the Project Site at intervals appropriate to the stage of construction to familiarize itself with the progress and quality of the Work and to inspect the Work. The Construction Manager shall request that the Professional visit the Site at additional times as the Construction Manager deems necessary to attend meetings, inspect the Work, and render interpretations regarding the Work necessary for the proper execution of the Work. The Owner's interpretations and decisions shall be final regarding the Construction Documents and the Work.

3.6.3 Direct Purchase Program. The Owner may elect to implement a direct purchase program whereby it may purchase materials and equipment included in any Subcontractor's bid for a portion of the Work directly from the supplier of such materials or equipment in order to achieve sales tax savings. Such materials and equipment are referred to as "Direct Purchase Materials." If Owner elects to implement a direct purchase program, it shall so notify Construction Manager, and the terms of this paragraph shall govern, along with Owner's policies on the subject in effect at the time Construction Manager commences construction of the Project. Construction Manager shall obtain Construction Manager's Risk insurance on the Direct Purchase Materials naming Owner as



the insured or an additional insured, provided Owner shall reimburse Construction Manager for the cost of such insurance as provided by this Agreement. Construction Manager shall be responsible for safeguarding all Direct Purchase Materials on the Project site on Owner's behalf.

- 3.6.4 Reporting. The Construction Manager shall provide a monthly report in searchable PDF format summarizing the progress of the Project to the Owner, Professional, and Owner's user group representatives, including information on the subcontractors' Work, percentage of completion of the Work, current estimating, subcontract buyouts, updated monthly Critical Path Method scheduling and Project accounting reports, including projected time to completion and estimated cost to complete the Work, LEED status, digital progress photographs, project directory, logs for Requests for Information, submittals and shop drawings, Change Orders, cost change proposals, field directives, safety meetings, deficiencies, weather conditions and meeting minutes. Critical path method schedules and changes thereto must be approved by the Owner.
- 3.6.5 Energy Rebate Program. Construction Manager shall gather product data and other information as needed to assist Owner with its application for energy rebates based on the materials and products installed in the facility.

#### ARTICLE 4. COMPENSATION OF CONSTRUCTION MANAGER

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- 4.1 **Payment for Pre-Construction Services.** Should the need for Pre-Construction services be desired, the Owner agrees to pay the Construction Manager, and the Construction Manager shall accept as complete payment for performance of Pre-Construction Services, the fee set forth in the Project Specific Requirements (**form Exhibit F**), payable pursuant to the schedule set forth thereon.
- 4.2 **Payment for Construction Services.**
  - 4.2.1 The Owner shall pay, and the Construction Manager shall accept, as full and complete payment for the Construction Services, only the sum of the following items, which sum shall not exceed the GMP as described in Section 3.5 of this Agreement:
    - (i) the aggregate net cost directly paid by the Construction Manager to subcontractors pursuant to written subcontracts to perform the Work (the "Cost of the Work"), not to exceed the guaranteed maximum set forth on the GMP Agreement (form Exhibit E);
    - (ii) the compensation for the Construction Manager's provision of management services (the "Construction Manager's Staffing Costs"), not to exceed the guaranteed maximum set forth on the GMP Agreement (**form Exhibit E**);
    - (iii) the aggregate net cost of the Construction Manager's General Conditions (the "General Conditions Cost"), not to exceed the guaranteed maximum set forth on the Project Schedule (**form Exhibit D**); and
    - (iv) Construction Manager's Overhead and Profit, not to exceed the guaranteed maximum set forth on the Project Schedule (**form Exhibit D**).
  - 4.2.2 Staffing Costs. Construction Manager's Staffing Costs include and are limited to actual expenditures or negotiated amounts for the following items as authorized in the GMP Proposal approved by Owner:
    - (i) The cost of its supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work on the Project Site;
    - (ii) the cost of periodic site visits for supervisory, inspection, oversight, or management of the Project by specific "home office" personnel as agreed upon and identified in the GMP proposal;
    - (iii) direct costs incurred in the Work with the exception of those specifically enumerated compensable as a General Conditions Cost or a Cost of the Work;

- (iv) expenses for transportation, meals, and lodging of principals and employees, when traveling in connection with services and duties specifically related to this Project and when authorized in writing by the Owner. Rates for transportation, meals and lodging are as set forth by the Owner, in accordance with state law;
- (v) expenses incurred for relocation and temporary living allowances of personnel required for the Work, if required by the Project; and
- (vi) any costs or expenses incurred by the Construction Manager, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with the Contract for Construction and the best interests of Owner.
- (vii) provided that the above-referenced staffing costs shall not include overhead and profit.

4.2.3 General Conditions Costs. General Conditions costs include and are limited to actual expenditures or negotiated amounts for the following items as authorized in the GMP Proposal approved by Owner:

- (i) costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value;
- (ii) costs incurred to provide site safety;
- (iii) costs of removal of debris from the site;
- (iv) costs of document reproduction including bid sets, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office;
- (v) that portion of insurance and bond premiums directly attributable to this Contract for Construction. Premiums shall be net of trade discounts, volume discounts, dividends and other adjustments;
- (vi) sales, use, or similar taxes imposed by a governmental authority and paid by the Construction Manager, and directly related to the Work;
- (vii) fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract for Construction to pay, including deposits lost for causes other than Construction Manager's fault;
- (viii) data processing costs directly related to the Work and as approved by Owner, in writing;
- (ix) the cost of obtaining and using all utility services required for the Work;
- (x) the cost of crossing or protecting any public utility, if required, and as directed by the Owner;
- (xi) all reasonable costs and expenditures necessary for the operation of the Site office, such as stationary, supplies, furniture, fixtures, office equipment and field computer services provided that quantity and rates are subject to Owner's prior written approval;
- (xii) the cost of secure off-site storage space or facilities approved in advance by Owner;
- (xiii) printing and reproduction of the Construction Documents;
- (xiv) rental charges for temporary facilities, and for machinery, equipment, and tools not customarily owned by construction workers; however any rental charge shall not exceed the purchase price of such facilities, machinery, equipment or tools;
- (xv) cost of surveys, measurements and layout work reasonably required for the execution of the Work or by the Construction Documents; and

(xvi) other expenses or charges properly incurred and paid in the prosecution of the Work, with the prior written approval of the Owner, but specifically excluding legal costs and expenses, including, without limitation, attorneys' fees and court costs associated with the Project.

4.2.4 Construction Manager's Overhead and Profit. The Construction Manager's Overhead and Profit is a fixed percentage of the (i) Guaranteed Maximum Cost of the Work, (ii) Construction Manager's Contingency, (iii) Guaranteed Maximum Construction Manager Staffing Costs, and (iv) Guaranteed Maximum General Conditions Cost (excluding bond and insurance costs), as agreed upon in the GMP Agreement (form **Exhibit E**). Overhead and Profit covers the costs of all of Construction Manager's overhead and expenses related to the Work, including home or branch office employees or consultants not at the Project Site (except those staffing costs paid pursuant to Section 4.2.2(ii)) and general operating expenses of the Construction Manager's principal and branch offices related to the Work (non-field offices), such as telephone service and long-distance and zone telephone charges, postage, office supplies, expressage, and other similar expenses.

4.2.5 Construction Manager's Contingency.

4.2.5.1 The Construction Manager's Contingency, established in the GMP, may be utilized, with the Owner's concurrence, for the following reasons:

- (i) reasonable schedule recovery;
- (ii) means, methods, and materials reasonably inferred from the Construction Documents;
- (iii) subcontractor non-performance or default;
- (iv) Work not included in the Construction Documents which is necessary to cause the Project to conform to applicable building codes but was not identified as missing during the review of Construction Documents (through no fault of the Construction Manager), but expressly excluding any legal costs and expenses, including, without limitation, attorney's fees and costs, associated with the Project;
- (v) other costs incurred by the Construction Manager that are not Cost of the Work, General Conditions Cost or Construction Manager Staffing Costs, but expressly excluding any legal costs, attorney's fees, and expenses, associated with the Project; and
- (vi) costs and expenses incurred by the Construction Manager, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with this Agreement and the best interests of Owner, but expressly excluding any legal costs, attorney's fees and expenses, associated with the Project.

4.2.5.2 If upon completion of 75% of the Work, the remaining amount of contingency exceeds one-half of the amount of the initial post-buyout contingency, such excess shall be returned via change order to the Owner. At the conclusion of the contract all unused contingency shall be returned to owner by change order.

4.2.6 Buyout Savings and Owner's Contingency.

- (i) If Construction Manager receives bids for portions of the Work which are less than the amounts budgeted in the GMP proposal approved by Owner for such portions of the Work, such buyout savings shall first be utilized to offset shortfalls on other bid packages.
- (ii) If, after offsetting any shortfalls, buyout savings remain, at the time provided on the GMP Agreement (form **Exhibit E**) for the award of subcontracts, all buyout savings shall be returned to the Owner via "no cost" change order.
- (iii) Owner's contingency may be included in the agreement and used at the owner's discretion.

4.2.7 Use of Buyout Savings/Sales Tax Savings. The net amount of buyout savings and savings from Owner's purchase of Direct Purchase Materials may be utilized by the Owner for the following or other reasons:

- (i) Customer or designer-requested changes;
- (ii) additive bid alternates and deductive credits;
- (iii) design errors or omissions in the Construction Documents which were not detected by the Construction Manager through no fault of Construction Manager, including Work necessary to cause the Project to conform to applicable building codes;
- (iv) differing/unforeseen existing conditions, as permitted in the General Terms and Conditions.

4.2.8 Compensation for Change Orders. Amounts owed by the Owner to the Construction Manager shall be adjusted by duly authorized change order in accordance herewith and the General Terms and Conditions.

4.2.8.1 Increase In Cost of Work. If the Cost of the Work is increased by change order, the Owner shall pay the Construction Manager the aggregate net cost directly paid by the Construction Manager to subcontractors or suppliers for the performance of the Work and the Construction Manager shall receive Overhead and Profit on such amount, as a percentage as set forth in the Project Specific Requirements (**form Exhibit F**), and an amount for any increased bond and insurance costs associated therewith.

4.2.8.2 Decrease in Cost of Work. If the Cost of the Work is decreased by change order, payment due from the Owner to the Construction Manager shall be reduced by the amount the Construction Manager is no longer obligated to pay subcontractors or suppliers for performance of the Work. Decreases in the Cost of the Work shall inure to the benefit of the Owner and shall not become part of the Construction Manager's Contingency.

4.2.8.3 Change Order Disputed. If the Construction Manager disputes a change order decision pursuant to the General Terms and Conditions, it must give the Owner its written notice of dispute, including the reasons therefore, within seven (7) calendar days of the disputed decision.

4.2.9 Applications for Payment for the Work. Applications for payment shall be submitted in detail sufficient for an audit thereof in accordance with Owner's policies on the subject in effect at the time Construction Manager commences construction. Within thirty (30) days of receipt of the Construction Manager's application for payment, properly prepared pursuant to Owner's policies on the subject, the Owner shall pay the Construction Manager the amount approved by Professional, less retainage, unless there is a dispute about the amount of compensation due to the Construction Manager.

4.3 **Labor Burden.** For purposes of calculating amounts due to Construction Manager under this Agreement for staffing, the parties agree that Construction Manager's labor burden for each employee staffing the Project shall be the labor burden approved by the Owner prior to, or upon execution of, this Agreement. For purposes hereof, labor burden means the actual cost of benefits and taxes that Construction Manager must pay or chooses to pay its employees and shall not include any profit, markup or expense unrelated to employee compensation. With respect to benefits Construction Manager chooses to pay, such benefits must be authorized by Owner under Owner's policy pertaining to labor burden in order to receive reimbursement from Owner.

## ARTICLE 5. LIQUIDATED DAMAGES FOR DELAY

5.1 Inasmuch as failure to Substantially Complete the Work within the time fixed on the Guaranteed Maximum Price Agreement (**form Exhibit E**) will result in injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, it is agreed that if the Work is not Substantially

Completed within the time provided on the GMP Agreement (form **Exhibit E**), or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the General Terms and Conditions, the Construction Manager shall pay to the Owner as liquidated damages for such delay, and not as a penalty, the amount set forth in the Project Specific Requirements (**form Exhibit F**) for each calendar day elapsing between the date fixed for Substantial Completion and the date such Substantial Completion is fully accomplished. The parties agree that said liquidated damages are reasonable given existing circumstances, including, without limitation, the range of harm that is foreseeable and the anticipation that proof of damages would be costly and impractical.

- 5.2 The liquidated damages shall be payable in addition to any excess expenses or costs payable by the Construction Manager to the Owner under the General Terms and Conditions, and shall not preclude the recovery of damages by the Owner under other provisions of this Agreement, the General Terms and Conditions, and the GMP Agreement, except claims related to Construction Manager's delays in Substantial Completion. Owner's right to receive liquidated damages shall in no manner affect the Owner's right to terminate the GMP Agreement, as provided in the General Terms and Conditions or elsewhere in the this Agreement or the GMP Agreement. The Owner's exercise of the right to terminate shall not release the Construction Manager from the obligation to pay said liquidated damages.
- 5.3 When the Owner reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the Construction Manager will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager the daily amount specified for liquidated damages in this Article for each calendar day of the unexcused delay. Upon Final Completion, Owner shall release Final Payment, less any liquidated damages.

#### **ARTICLE 6. INSURANCE AND BONDS**

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- 6.1 The Construction Manager shall carry the insurance and obtain the payment and performance bonds described in the General Terms and Conditions.

#### **ARTICLE 7. AUDIT RIGHTS**

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- 7.1 Owner may, upon reasonable notice, audit the records of the Construction Manager and its subcontractors and suppliers during regular business hours, during the term of this Agreement and for a period of three (3) years after final payment is made by Owner to Construction Manager under this Agreement or longer, if required by law. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner.
- 7.2 For purposes hereof, Construction Manager's "records" means any and all information, materials and data of every kind and character, whether hard copy or in electronic form, which may, in Owner's judgment have any bearing on or pertain to this Contract for Construction, including, without limitation, books, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, written policies and procedures, time sheets, payroll registers, payroll records, cancelled payroll checks, subcontract files (e.g., including proposals of successful and unsuccessful bidders, bid recap), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), back-charge logs and supporting documentation, invoices and related payment documentation, general ledgers, records detailing cash and trade discounts earned, insurance rebates and dividends, superintendent reports, drawings, receipts, vouchers and memoranda.
- 7.3 Owner's authorized representative shall have reasonable access to the Construction Manager's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the Contract for Construction, shall be provided adequate and appropriate work space at Construction Manager's facilities, may count employees at the Site, may be present for the distribution of payroll and shall have such other rights of access as may be reasonably necessary to carry out an audit.
- 7.4 If an audit discloses overpricing or overcharges, Construction Manager shall refund the overpayment. If an audit discloses overpricing or overcharges of one percent (1%) of the total amount paid hereunder, but in



any event more than \$200,000, whichever is less, in addition to making adjustments for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Construction Manager. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Construction Manager's invoices and/or records shall be made within ninety (90) calendar days from presentation of Owner's findings to Construction Manager.

- 7.5 Construction Manager shall ensure notice of Owner's audit rights is provided to its subcontractors, suppliers and any other vendor providing services or materials for the Project and shall ensure that each agreement it enters into pursuant hereto includes the provisions of this Article 7.

## **ARTICLE 8. PERIOD OF SERVICE**

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- 8.1 This Agreement shall remain in force for an initial period of three (3) years.
- 8.2 This Agreement may be renewed at the Owner's option for two (2) additional one (1) year periods, based upon satisfactory performance of the Construction Manager as determined by Owner in its sole and absolute discretion. To renew this Agreement Owner shall so notify Construction Manager at least thirty (30) days prior to the date the original term or renewal term terminates, as applicable.

## **ARTICLE 9. TERMINATION OR SUSPENSION OF CONTRACT FOR CONSTRUCTION**

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### **9.1 Termination For Cause By Owner.**

- 9.1.1 The Owner may terminate the Contract for Construction for cause if the Construction Manager materially breaches the Contract for Construction by:
- (i) refusing, failing or being unable to properly manage or perform on any Project;
  - (ii) refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials to maintain applicable schedules;
  - (iii) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;
  - (iv) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Project;
  - (v) refusing, failing or being unable to substantially perform in accordance with the terms of the Contract For Construction as determined by the Owner, or as otherwise defined elsewhere herein; or
  - (vi) refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between the Owner and Construction Manager.
- 9.1.2 Upon the occurrence of any of the events described in Paragraph 9.1.1, the Owner may give written notice to the Construction Manager setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. At any time thereafter, if the Construction Manager fails to initiate the cure or if the Construction Manager fails to expeditiously continue such cure until complete, the Owner may give written notice to the Construction Manager of immediate termination, and the Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:
- (i) complete all or any part of the Work, including supplying workers, material equipment which the Owner deems expedient to complete the Work;

- (ii) contract with others to complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
- (iii) take such other action as is necessary to correct such failure;
- (vi) take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Construction Manager;
- (v) directly pay the Construction Manager's subcontractors and suppliers compensation due to them from the Construction Manager;
- (vi) finish the Work by whatever method the Owner may deem expedient; and
- (vii) require the Construction Manager to assign the Construction Manager's right, title and interest in any or all of Construction Manager's subcontracts or orders to the Owner.

9.1.3 If the Owner terminates the Contract For Construction for cause, and the Owner takes possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Construction Manager, the Construction Manager's compensation shall be increased by fair payment, either by purchase or rental at the election of the Owner, for any materials, tools, construction equipment and machinery items retained, subject to the Owner's right to recover from the Construction Manager the Owner's damages resulting from the termination.

9.1.4 If the Owner terminates the Contract for Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Paragraph 9.3.

## 9.2 Termination For Cause By Construction Manager.

9.2.1 The Construction Manager may terminate the Contract for Construction for cause if the Owner materially breaches the Contract for Construction by:

- (i) refusing, failing or being unable to make prompt payment to the Construction Manager without just cause;
- (ii) disregarding laws, ordinances, rules, regulations or orders of any public authority of quasi-public authority having jurisdiction over any Project; or refusing, failing or being unable to substantially perform in accordance with the terms of the Contract for Construction.

9.2.2 Upon the occurrence of any of the events described in Paragraph 9.2.1, the Construction Manager may give written notice to the Owner setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. If the Owner fails to cure the default within thirty calendar days, the Construction Manager, without prejudice to any rights or remedies, may give written notice to the Owner of immediate termination.

Provided, however, that if the nature of the Event of Default is such that it cannot reasonably be cured within such 30 day period, then Owner's cure period shall be extended, so long as Owner has commenced to cure such default with said 30-day period and Owner diligently undertakes and pursues such cure to completion, and further provided that the Owner provides the Construction Manager with documentation evidencing that the Owner is diligently undertaking and pursuing such cure to the Construction Manager's reasonable satisfaction then the Owner may cure said default, precluding termination by the Construction Manager.

9.3 **Termination Or Suspension For Convenience.** The Owner may at any time give written notice to the Construction Manager terminating the Contract for Construction or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner suspends the Project for convenience, the Construction Manager shall immediately reduce its staff, services and outstanding commitments in

order to minimize the cost of suspension.

- 9.4 **Construction Manager's Compensation When Construction Manager Terminates For Cause Or Owner Terminates For Convenience.** If the Contract for Construction is (i) terminated by the Construction Manager pursuant to Paragraph 9.2; (ii) terminated by the Owner pursuant to Paragraph 9.3; or (iii) suspended more than three months by the Owner pursuant to Paragraph 9.3, the Owner shall pay the Construction Manager specified amounts due for Work actually performed prior to the effective termination date and reasonable costs associated with termination. The Owner may agree to additional compensation, if any, due to the Construction Manager. Absent agreement on the additional amount due the Construction Manager, the Owner shall pay the Construction Manager:

(i) reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the Construction Manager's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Construction Manager would not have profited or would have sustained a loss if the Work had been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rates of loss, if any; and

(ii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or supplier orders. These costs shall not include amounts paid in accordance with other provisions hereof.

- 9.5 **Construction Manager's Compensation When Owner Terminates For Cause.** If the Contract for Construction is terminated by the Owner for cause pursuant to Paragraph 9.1, no further payment shall be made to the Construction Manager until Final Completion of the Project. At such time, the Construction Manager shall be paid the remainder of the Construction Price less all costs and damages incurred by the Owner as a result of the default of the Construction Manager, including liquidated damages applicable thereto. The Construction Manager shall additionally reimburse the Owner for any additional costs or expenses incurred.

- 9.6 **Limitation On Termination Compensation.** Irrespective of the reason for termination or the party terminating, the total sum paid to the Construction Manager shall not exceed Construction Price, as properly adjusted, reduced by the amount of payments previously made and penalties or deductions incurred pursuant to any other provision of the Contract for Construction, and shall in no event include duplication of payment.

- 9.7 **Construction Manager's Responsibility Upon Termination.** Irrespective of the reason for termination or the party terminating, if the Contract for Construction is terminated, the Construction Manager shall, unless notified otherwise by the Owner,

- (i) immediately stop work;
- (ii) terminate outstanding orders and subcontracts;
- (iii) settle the liabilities and claims arising out of the termination of subcontracts and orders; and
- (iv) transfer title and deliver to the Owner such completed or partially completed Work, and, if paid for by the Owner, materials, equipment, parts, fixtures, information and such contract rights as the Construction Manager has.

- 9.8 **Lack Of Duty To Terminate.** The right to terminate or suspend the Work shall not give rise to a duty on the part of either the Owner or the Construction Manager to exercise that right for the benefit of the Owner, the Construction Manager or any other persons or entities.

- 9.9 **Limitation On Termination Claim.** If the Construction Manager fails to file a claim within one year from the effective date of termination, the Owner shall pay the Construction Manager only for services actually performed and expenses actually incurred prior to the effective termination date.

## ARTICLE 10. DISPUTE RESOLUTION

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- 10.1 **Mutual Discussion.** In case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of the Contract for Construction or the breach thereof, the parties shall first attempt resolution through mutual discussion.
- 10.2 **Facilitative Mediation.** If the parties cannot resolve any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of the Contract for Construction or the breach thereof through mutual discussion, as a condition precedent to any litigation or administrative action, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable solution satisfactory to all parties.
  - 10.2.1 All parties to a mediation shall promptly provide all other parties to the mediation with copies of essential documentation relevant to the support or defense of the matter being mediated.
  - 10.2.2 The parties shall not be required to mediate for a period greater than ninety-one calendar days unless otherwise agreed to in writing by the parties. The parties shall share equally any administrative costs and fees of such proceedings, but shall each be responsible for their own expenses otherwise incurred.
  - 10.2.3 In the event that the statute of limitations would run during the required mediation period, either party may institute litigation so as to avoid the running of such statute upon the condition that such party immediately seek a stay of such litigation pending the conclusion of the mediation period.
  - 10.2.4 During the course of mediation, any party to the mediation may apply for injunctive relief from any court of competent jurisdiction until the mediation period expires or the dispute is otherwise resolved.
  - 10.2.5 The Owner, the Professional, the Construction Manager, and any other parties involved in any way in the design or construction of the Project are bound, each to each other, by this requirement to mediate prior to commencement of any litigation or administrative action, provided that they have signed the Contract For Construction Management Services or an agreement that incorporates the Contract For Construction by reference or signed any other agreement which binds them to mediate. Each such party agrees that it may be joined as an additional party to a mediation involving other parties under any such agreement. In the case where more than one mediation is begun under any such agreement and any party contends that the mediations are substantially related, the mediations may be conducted by the mediator selected in the first mediation which was commenced.
  - 10.2.6 The mediation shall be conducted in Alachua County, Florida.
- 10.3 **Conflicting Dispute Resolution Provisions.** Neither party to the Contract for Construction shall enter into any contract with regard to the Project which directly or indirectly gives the right to resolve any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution procedures required by this Article.
- 10.4 **Arbitration Preclusion.** In case of a dispute relating to the Project, or arising out of the Contract for Construction, no party to the Contract for Construction shall be required to participate in or be bound by, any arbitration proceedings.
- 10.4.1 **Performance During Dispute Resolution.** The Owner and the Construction Manager agree that pending the resolution of any dispute, controversy, or question, the Owner and the Construction Manager shall each continue to perform their respective obligations without interruption or delay, and the Construction Manager shall not stop or delay the performance of the Work.

## ARTICLE 11. DAMAGES AND REMEDIES

- 11.1 **Construction Manager's Repair.** The Construction Manager shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in the Contract for Construction, or any other applicable warranty or guarantee.
- 11.2 **Construction Manager's Reimbursement.** The Construction Manager shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of (i) the Construction Manager's failure to substantially perform in accordance with the terms of the Contract for Construction; (ii) deficiencies or conflicts in the Construction Documents attributable to the Construction Manager or of which the Construction Manager was or should have been aware; (iii) breach of the warranties and guarantees set forth in the Contract for Construction or any other applicable warranty or guarantee; or (iv) other acts or omissions of the Construction Manager.
- 11.3 **General Indemnity.** Construction Manager agrees to indemnify and hold harmless the OWNER, its officers and employees from liabilities, damages, losses and other costs, including but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Construction Manager and persons employed or utilized by the Construction Manager in the performance of the contract.
- 11.4 **Intellectual Property** Construction Manager asserts that it owns or has rights to use all intellectual property used for the scope of each project, including patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner or Professional(s) in writing, if the Construction Manager has reason to believe the use of a required design, process or product is an infringement or a patent, the Construction Manager shall promptly give Owner and Professional written notice of the infringement.
- 11.5 **Non-Exclusivity Of Owner's Remedies.** The Owner's selection of one or more remedies for breach of the Contract for Construction contained herein shall not limit the Owner's right to invoke any other remedy available to the Owner under the Contract for Construction or by law.
- 11.6 **Waiver Of Damages.** The Construction Manager shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

## ARTICLE 12. MISCELLANEOUS PROVISIONS

- 12.1 The Owner and Construction Manager respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Construction Manager shall assign this Agreement without the written consent of the other.
- 12.2 The Contract for Construction shall be governed by, and construed under, the laws of the State of Florida, without regard to its choice of law provisions and venue shall lie in the courts in Alachua County, Florida.
- 12.3 The Construction Manager represents and warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Construction Manager) to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation individual or firm (other than a bona fide employee working solely for the Construction Manager) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.
- 12.4 This Agreement may be unilaterally terminated by the Owner for refusal by the Construction Manager to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Construction Manager in conjunction herewith.



- 12.5 The obligations of the Owner as to any funding required pursuant to this Agreement shall be limited to an obligation in any given year to budget and appropriate from legally available funds, after monies for essential Owner services have been budgeted and appropriated, sufficient monies for that funding that is required during that year. Notwithstanding the foregoing, the Owner shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the Owner pursuant to this Agreement.
- 12.6 The Construction Manager warrants that it is not on the convicted vendor list for a public entity crime committed within the past thirty six (36) months. The Construction Manager further warrants that it will neither utilize the services of, nor contract with, any supplier, subcontractor, or consultant for an amount in excess of \$15,000.00 in connection with this Project if the supplier, subcontractor or consultant has been placed on the convicted vendor list within the past thirty six (36) months.
- 12.7 All capitalized terms used herein but not defined herein shall have the meaning ascribed thereto in the General Terms and Conditions.
- 12.8 Owner is an equal opportunity institution and, as such, encourages the use of small businesses, including women and minority-owned small businesses in the provision of construction related services. Small businesses should have a fair and equal opportunity to compete for dollars spent by the The City of Gainesville to procure construction-related services. Competition ensures that prices are competitive and a broad vendor base is available. Construction Manager shall use good faith efforts to ensure opportunities are available to small businesses including women and minority-owned businesses on the Project.
- 12.9 The Contract for Construction represents the entire and integrated agreement between the Owner and the Construction Manager, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. The Agreement for Construction Management Services may be amended only by written instruments signed by both the Owner and the Construction Manager.
- 12.10 Construction Manager is an independent contractor to Owner.
- 12.11 All exhibits referenced herein are attached hereto and incorporated herein by reference.
- 12.12 If any provision of the Contract for Construction, or application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.
- 12.13 No provision of the Contract for Construction may be waived except by written agreement of the parties. A waiver of any provision on once occasions shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of the Contract for Construction.
- 12.14 No failure of the Owner to insist upon strict compliance by the Construction Manager with any provision of the Contract for Construction shall operate to release, discharge, modify, change or affect any of the Construction Manager's obligations.
- 12.15 The Contract for Construction shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in the Contract for Construction, nothing contained in the Contract for Construction is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the Construction Manager.
- 12.16 In consideration for the Contract for Construction the Construction Manager conveys, sells, assigns and transfers to the Owner all of its right, title and interest in and to any and all causes of action it may now have or may hereafter acquire under the antitrust laws of the United States and the State of Florida for price fixing, relating to the goods and services purchased or acquired by the Owner under the Contract for Construction.
- 12.17 If required pursuant to 440.102(15), Florida Statutes, Construction Manager shall implement, and cause its applicable subcontractors to implement, a drug-free workplace program.

- 12.18** All provisions of the Contract for Construction which contain continuing obligations shall survive its expiration or termination.
- 12.19** Construction Manager shall maintain records sufficient to document completion of the scope of work established by the Contract for Construction. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by the Owner. These records shall be kept for a minimum of three (3) years after completion of the scope of work or termination of the Contract for Construction, whichever first occurs. Records which relate to any litigation, appeals or settlements of claims arising from performance under the Agreement shall be made available until a final disposition has been made of such litigation, appeals or claims.
- 12.20** Nothing in the Contract for Construction shall be interpreted as a waiver of the Owner's sovereign immunity as set forth in Section 768.28, Florida Statutes.

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IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date first written above.

FOR THE **CONSTRUCTION MANAGER:**

ATTEST:  **BBI Construction Management, Inc.**

**Chris Trowell, Vice President**

(NAME, TITLE AND CORPORATE SEAL)

**BY:** 

NAME

TITLE

**Joe Burns, President**

AS WITNESSED BY:

DATE: **2/22/2018**



FOR THE **CITY OF GAINESVILLE:**

**THE CITY OF GAINESVILLE**

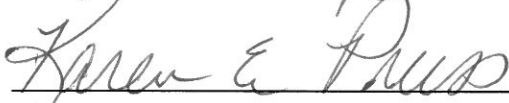
AS WITNESSED BY:

**BY:** 

**ANTHONY LYONS, CITY MANAGER**



DATE: **3-12-18**



APPROVED AS TO FORM AND LEGALITY

**BY:** 

**CITY ATTORNEY**

DATE: **2/26/18**

FOR THE GAINESVILLE REGIONAL UTILITIES:

GAINESVILLE REGIONAL UTILITIES

AS WITNESSED BY:

BY:

ED BIELLARSKI, GENERAL MANAGER

DATE:

APPROVED AS TO FORM AND LEGALITY

BY:

Lisa C Bennett  
CITY ATTORNEY

DATE:

2/26/18

FOR THE GAINESVILLE COMMUNITY REDEVELOPMENT AGENCY:

THE GAINESVILLE COMMUNITY REDEVELOPMENT  
AGENCY

AS WITNESSED BY:

BY:

ANTHONY LYONS, EXECUTIVE DIRECTOR

DATE:

3-12-18

APPROVED AS TO FORM AND LEGALITY

BY:

Lisa C Bennett  
CRA ATTORNEY

DATE:

2/26/18

**EXHIBIT A**  
**CONSTRUCTION MANAGER'S PERSONNEL**

---

**1.2 Project Team**



**EXHIBIT B**

**COVER SHEET FOR GENERAL TERMS AND CONDITIONS**

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The "General Terms and Conditions for Agreement for Construction Management Services" revised September 2017, is incorporated by reference and made a part hereof as if set forth in full.

**EXHIBIT C  
INDIVIDUAL PROJECT DESCRIPTION  
AND APPLICABLE DOCUMENTS AND GUIDELINES**

---

**Description of Project**

Owner Project No: \_\_\_\_\_  
Owner Project Name: \_\_\_\_\_  
Location/Address: \_\_\_\_\_  
Description: \_\_\_\_\_ Project Scope, dated: \_\_\_\_\_

**1.5/3.3 Documents and Guidelines**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

**EXHIBIT D**  
**PROJECT DESIGN AND CONSTRUCTION SCHEDULE**

**1.2/3.4 Project Design and Construction Schedule\***

PHASE	START DATE	END DATE
Pre-Design Phase	00 00 0000	00 00 0000
Pre-Design Program Development	00 00 0000	00 00 0000
Pre-Design Budget & Program Verification	00 00 0000	00 00 0000
Concept Schematic Design (CSD)	00 00 0000	00 00 0000
CSD Construction Cost Estimate	00 00 0000	00 00 0000
Advanced Schematic Design (ASD)	00 00 0000	00 00 0000
ASD Construction Cost Estimate Report	00 00 0000	00 00 0000
Design Development (DD)	00 00 0000	00 00 0000
DD Construction Cost Estimate Report	00 00 0000	00 00 0000
60% Construction Documents (CDs)	00 00 0000	00 00 0000
60% CDs Construction Cost Estimate Report	00 00 0000	00 00 0000
Early bid packages (Site Utilities/Foundation)	00 00 0000	00 00 0000
Early bid packages ( )	00 00 0000	00 00 0000
Early bid packages ( )	00 00 0000	00 00 0000
100% Construction Documents (CDs)	00 00 0000	00 00 0000
Guaranteed Maximum Price (GMP) Proposal	00 00 0000	00 00 0000
Conformed Bid Documents	00 00 0000	00 00 0000
Purchase Order	00 00 0000	00 00 0000
Notice to Proceed	00 00 0000	00 00 0000
Perform Construction	00 00 0000	00 00 0000
Substantial Completion	00 00 0000	00 00 0000
Final Completion	00 00 0000	00 00 0000

\*REFERENCE ARTICLE 16. SCHEDULE REQUIREMENTS IN THE GENERAL TERMS AND CONDITIONS

**EXHIBIT E**  
**Guaranteed Maximum Price Agreement**

Pursuant to the Agreement between the The City of Gainesville ("Owner") and **Name of CM Firm** ("Construction Manager"), for the construction of **[name of project]**, the Owner and the Construction Manager hereby execute this **GUARNATEED MAXIMUM PRICE ("GMP") AGREEMENT** and further agree as set forth below.

[Optional: Whereas, the Project is being performed in phases as permitted by the Contract for Construction; and

Whereas, Owner desires to authorize Constructions Manager to commence the [ ] phase of the Project.]

**1** Construction Manager shall commence [Optional: the \_\_\_\_ phase] of the Work within ten (10) calendar days after the date indicated on the Notice to Proceed. The date of Substantial Completion for the Project shall be: **Month Date, Year.**

**2** The date of Final Completion for the Project shall be \_\_\_\_\_ days after the date of Substantial Completion.

**3** The Construction Manager's Guaranteed Maximum Price ("GMP") proposal dated **Month date, Year** [Optional: for \_\_\_\_ phase] attached hereto and incorporated herein, is accepted by the Owner.

**4** In accordance with Section 3.6.1.8 of the Agreement for Construction Management Services, the Construction Manager shall award Trade Contracts representing ninety percent (90%) or more of the Cost of the Work within **ninety (90)** days of issuance of the GMP Agreement for Construction Services.

**5** The Guaranteed Maximum Price is \$

**6 Construction Services GMP**

SUMMARY OF COSTS	GMP
General Conditions	\$
Staffing	\$
Trade Contracts (cost of work)	\$
Contingency	\$
CM Fee % (does not include Bonds and Insurance)	9%
CM Fee / OH&P	\$
<b>GMP Total:</b>	<b>\$</b>

**FOR THE OWNER:**  
[FILL IN CITY OR GRU OR CRA]

**FOR THE CONSTRUCTION MANAGER:**  
THE CM FIRM

BY: [FILL IN CITY MANAGER OR GENERAL MANAGER OR EXECUTIVE DIRECTOR OF CRA]

BY: NAME, TITLE

DATE:

DATE:

## EXHIBIT F

### PROJECT SPECIFIC REQUIREMENTS AND PRE-CONSTRUCTION SERVICES FEE

- 3.3.4 **LEED Certification.** The LEED Certification level is established at GOLD level.
- 3.3.6 **Initial Construction Schedule Deadline**  
☐ With Advanced Schematic Design submittal or  
☐ With GMP submittal
- 3.4.3 **Construction Manager's Contingency** shall be no greater, as a percentage of the estimated Cost of the Work, than the following at each of the following phases:  
ten percent (10 %) at Conceptual Schematic Design  
eight percent (8 %) at Advanced Schematic Design  
six percent (6 %) at Design Development  
five percent (5 %) at (60 %) Construction Documents  
three percent (3 %) at the time the GMP proposal is submitted  
two percent (2 %) at the time that Construction Manager has bought out Trade Contracts representing ninety percent (90%) of the Cost of Work or more.
- 3.4.5 **Jobsite Management and Logistics Plan**  
☐ with **Design Development** phase submittal or  
☐ no later than month dd, yyy
- 3.4.8 **Phased or "Fast-Track" Construction**  
describe or state "none"
- 3.5.1 **GMP Proposal Submittal Deadline**  
☐ upon completion of sixty percent (60 %) of the Construction Documents.  
☐ thirty (30) days after completion of the Construction Documents.  
☐ no later than Month , 0000.  
☐ Describe or delete this line
- 4.1 **Pre-Construction Services Fee (if required)**
- | PHASE                       | FEE |
|-----------------------------|-----|
| Pre-Design Phase            | \$  |
| Conceptual Schematic Design | \$  |
| Advanced Schematic Design   | \$  |
| Design Development          | \$  |
| 60% Construction Documents  | \$  |
| 100% Construction Documents | \$  |
| <b>Total:</b>               | \$  |
- 4.2 **Overhead & Profit.** The Construction Manager's Overhead & Profit percentage shall not exceed 0 % for the base GMP and \_ % for any Change Orders.
- 4.2.2 **Mileage Rate.** The mileage rate for authorized travel shall be set by Owner in accordance with state law, as same may be amended or revised from time to time.  
**Lodging Rate.** The maximum reimbursable rate for lodging shall be set by Owner in accordance with state law, as same may be amended or revised from time to time.  
**Meals.** The maximum reimbursable rates for meals shall be set by Owner in accordance with state law, as same may be amended or revised from time to time.
- 5.1 **Liquidated Damages:** \$X,XXX per day

**EXHIBIT G**  
**PROJECT-SPECIFIC MODIFICATIONS**

---

**8.12    Modifications to the Contract for Construction**

[Insert modifications or Write "None"]

**EXHIBIT H**



**NOTICE TO PROCEED**

Pursuant to the Agreement between the The City of Gainesville ("Owner") and Name of CM Firm ("Construction Manager"), for the construction of [name of project], the Owner and the Construction Manager hereby execute this **NOTICE TO PROCEED** and further agree as set forth below.

[Optional: Whereas, the Project is being performed in phases as permitted by the Contract for Construction; and

Whereas, Owner desires to authorize Constructions Manager to commence the [ ] phase of the Project.]

**1** Construction Manager shall commence [Optional: the \_\_\_ phase] of the Work within ten (10) calendar days after the date indicated on the Notice to Proceed. The date of Substantial Completion for the Project shall be: **Month Date, Year.**

**2** The date of Final Completion for the Project shall be **forty-five (45)** days after the date of Substantial Completion.

**3** The Construction Manager's Guaranteed Maximum Price ("GMP") proposal dated **Month date, Year** [Optional: for \_\_\_ phase] attached hereto and incorporated herein, is accepted by the Owner.

\_\_\_\_\_  
**FOR THE OWNER:**  
THE CITY OF GAINESVILLE

\_\_\_\_\_  
**FOR THE CONSTRUCTION MANAGER:**  
THE CM FIRM

\_\_\_\_\_  
BY: PW PROJECT MANAGER

\_\_\_\_\_  
BY: NAME, TITLE

\_\_\_\_\_  
DATE:

\_\_\_\_\_  
DATE:

**GENERAL TERMS AND CONDITIONS  
FOR  
AGREEMENT FOR  
CONSTRUCTION MANAGEMENT SERVICES**

## **GENERAL TERMS AND CONDITIONS**

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## **ARTICLE 1 DEFINITIONS**

When one of the following capitalized words, terms or phrases is used in the Agreement for Construction Management Services, it shall be interpreted or construed first as defined below, second according to its generally accepted meaning in the construction industry, and third according to its common and customary usage.

**Construction Manager:** An entity, including but not limited to a general contractor, a trade contractor or a construction manager, engaged directly by the Owner pursuant to an Agreement for Construction Management Services for Minor Projects.

**Construction Documents:** Plans, specifications, change orders, revisions, addenda, and other information which set forth in detail the Work.

**Construction Price:** The dollar amount for which a Construction Manager agrees to perform the Work set forth in the Agreement for Construction Management Services for Minor Projects.

**Construction Schedule:** The timetable which sets forth pertinent dates for timely completion of the Work.

**Agreement for Construction Management Services for Minor Projects:** A written agreement between the Owner and a Construction Manager for provision of goods, products, materials, equipment, systems, management, supervision, labor and services required to construct all or part of a Project, as more particularly defined in the Agreement for Construction Management Services for Minor Projects, Agreement for Design-Build Services or Owner-Contractor Agreement, as applicable.

**Agreement for Professional Services:** A written agreement between the Owner and a Professional for provision of services and related items required to design or engineer all or part of a Project.

**Certificate of Substantial Completion:** Document declaring the Work substantially complete and suitable for occupancy or beneficial use by the Owner.

**Change Order:** Document executed by both Construction Manager and Owner authorizing an increase in the Guaranteed Maximum Price or Project Completion time.

**Contingency Use Directive:** Document executed by both the Construction Manager and Owner authorizing the Construction Manager to use the Construction Manager's contingency.

**Final Completion:** The stage of construction when the Work has been completed in accordance with the Agreement for Construction Management Services and the Owner has received all documents and items necessary for closeout of the Work.

**Hazardous Substances:** The term "Hazardous Substances" means all hazardous or toxic substances, materials, wastes, pollutants and contaminants which are listed, defined, or regulated under applicable laws, rules, regulations, codes, ordinances, orders and directives pertaining or regulated to health, safety or the environment, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act as amended, (42 U.S.C. § 9601 et seq), the Resource Conservation and Recovery Act as amended, (42 U.S.C. § 6901 et seq), the Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251 to 1387), the Clean Air Act (42 U.S.C.A. §§ 7401 to 7671 q), the Emergency Planning and Community Right to Know Act (42 U.S.C.A. §§ 11001 to 11050), the Toxic Substances Control Act (15 U.S.C.A. §§ 2601 to 2692), the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901 to 6992k), the Oil Pollution Act (33 U.S.C.A. §§ 2701 to 2761) and all rules and regulations promulgated pursuant thereto. Without limiting the generality of the foregoing, "Hazardous Substances" shall specifically include polychlorinated biphenyl, asbestos (friable and non-friable), radon, urea formaldehyde, gasoline, diesel, oil, hydrocarbons, petroleum derived constituents, biomedical waste, or hazardous or toxic residue.

**Owner:** Party identified in the Agreement as Owner.

**Professional:** An entity, including but not limited to a licensed architect or engineer, engaged directly by the Owner to provide design or engineering services.

**Project:** Each discrete Scope of Work.

**Project Design Schedule:** The timetable which sets forth the required relationships between, and pertinent dates for, required completion of design architectural and engineering services, documents and related activities.

**Site:** The geographical location of a Project, usually defined by legal boundary lines, and the location characteristics including, but not limited to, grades and lines of streets, alleys, pavements and adjoining structures, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, existing buildings and improvements, and service and utility lines.

**Substantial Completion:** The stage of construction when the Owner can occupy or beneficially use satisfactorily completed Work for its intended purpose and a certificate of occupancy has been issued.

**Work:** Any and all computers, construction machinery, documents, equipment, facilities, fixtures, furnishings, goods, heat, items, labor, licenses, management, materials, permits, products, services, supervision, supplies, systems, taxes, testing, tools, utilities, transportation, vehicles, and water, required to be performed or supplied and/or necessary for proper execution and completion of the Project, or some portion thereof, whether or not incorporated or to be incorporated into the Project; provided, however, that Work does not include performance of pre-construction services by a construction manager.

## **ARTICLE 2**

### **AGREEMENT DOCUMENTS**

- 2.1 **Sets of Construction Documents.** The Owner shall provide the Construction Manager with one printed set of Construction Documents, with additional copies available for purchase at a local reproduction firm designated by the Professional. Unless otherwise specified in the Agreement, the Construction Manager may request that the Construction Documents required by the Construction Manager for the Work also be furnished to it on electronic media. To the extent that such documents are available on electronic media, the Construction Manager will be furnished one set of the requested information on electronic media. Any additional electronic copies of Construction Documents required by the Construction Manager for execution of the Work shall be made by the Construction Manager at the Construction Manager's cost and expense.
- 2.2 **Minimum Requirements.** In every case, requirements established by the Construction Documents shall be considered as the minimum which will be accepted.
- 2.3 **Owner Disclaimer of Warranty.** The Owner has requested that its Professional(s) prepare documents for the Project, including the plans and specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the Owner makes no representation or warranty of any nature whatsoever to the Construction Manager concerning such documents. The Construction Manager hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.
- 2.4 **Conflicts in Documents.** In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up the Agreement for Construction Management Services, the following shall control:
- 2.4.1 As between figures given on plans and scaled measurements, the figures shall govern;
- 2.4.2 As between large-scale plans and small-scale plans, the large-scale shall govern; and
- 2.4.3 As between plans and specifications, the requirements of the specifications shall govern.
- 2.5 **Shop Drawings and Submittals.** Shop drawings and other submittals from the Construction Manager or its subcontractors and suppliers do not constitute a part of the Agreement for Construction Management Services.
- 2.6 **Agreement Changes.** The Construction Manager understands and agrees that the Agreement for Construction Management Services cannot be changed except as provided

herein. No act, omission or course of dealing by the parties shall alter the requirement that modifications of the Agreement for Construction Management Services can be accomplished only by written documents signed by the parties.

### **ARTICLE 3**

#### **CONSTRUCTION MANAGER'S REVIEWS AND EVALUATIONS**

- 3.1 **Sufficiency of Construction Documents and Drawings.** The Construction Manager acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the Owner and the Professional(s) about any (i) problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and (ii) variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.
- 3.1.1 If the Construction Manager performs any Work which it knows or should have known involves (i) a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or (ii) a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Owner and Professional(s) and prior to receiving written authorization from the Owner or Professional(s) to proceed, the Construction Manager shall be responsible for the consequences of such performance.
- 3.1.2 Drawings are generally drawn to scale; however, the figured dimensions or notes thereon shall govern. Before ordering any materials or doing any Work, the Construction Manager and subcontractors shall verify all measurements at the Site and shall be responsible for the correctness of same. Discrepancies shall be reported in writing to the Owner and Professional prior to proceeding with the Work. No extra charge or compensation will be entertained due to differences between actual measurements and dimensions indicated on drawings, if such differences do not result in a change in the scope of Work or if the Owner and Professional failed to receive written notice before the Work was performed.
- 3.2 **Sufficiency of Site.** Prior to signing Project specific Exhibits as set forth in the Agreement for Construction Management Services, the Construction Manager has:
- (i) visited the Site and become familiar with local conditions under which the Project is to be constructed and operated; and
  - (ii) reviewed and familiarized itself with the Site survey and any existing structures on the Site, and gathered all other information necessary for a full understanding of the Work.

In addition, if the Work involves modifications to or remodeling of an existing structure(s) or other man-made feature(s) on the Site, the Construction Manager has also:

- (iii) reviewed all as-built and record drawings, plans and specifications of which Owner has informed Construction Manager; and
- (iv) thoroughly inspected the structure(s) and man-made feature(s) to be modified or remodeled prior to submission of bid, if any, but in all events prior to signing the Project specific Exhibits set forth in the Agreement for Construction Management Services.

Claims resulting from the Construction Manager's failure to familiarize itself with the Site or pertinent documents shall be deemed waived.

#### **ARTICLE 4**

### **CONSTRUCTION MANAGER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES**

- 4.1 **Performance of Work.** The Construction Manager shall perform and complete its obligations under the Agreement for Construction Management Services using its best skill and attention, and covenants with the Owner to furnish management, supervision, coordination, labor and services (i) which expeditiously, economically and properly completes the Work in the manner most consistent with the Owner's interests and objectives; (ii) which comply with the Agreement for Construction Management Services; and (iii) which are in accordance with the highest standards currently practiced by persons and entities performing or providing management, supervision, coordination, labor and services on projects similar in size, complexity and cost to the Project.
- 4.1.1 The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, unless provided in the Construction Documents and relating to those divisions of the Work for which it is appropriate for Construction Manager's subcontractors to engage or employ licensed engineers for design associated with the Work, such as trusses.
  - 4.1.2 All services rendered by the Construction Manager for the Project shall be performed by or under the immediate supervision of persons possessing expertise in the service being rendered.
  - 4.1.3 The Construction Manager shall, in the course of providing the Work, cooperate and communicate with the Owner and all other persons or entities as required for satisfactory completion of the Project.
  - 4.1.4 The Construction Manager understands and acknowledges that the Work referred to in the Agreement for Construction Management Services may be only part of the Project and that the Project may include the construction of other structures or

other construction activities on the same Site. The Construction Manager shall conduct all its activities so as not to interfere with the construction of, or operations within or from, other structures on the Site.

- 4.1.5 The Construction Manager shall not damage, endanger, compromise or destroy any part of the Project or the Site, including by way of example and not limitation, work being performed by others on the Site, monuments, stakes, benchmarks and other survey points, utility services, and existing features or structures on the Site. Should the Construction Manager damage, compromise or destroy any part of the Project or the Site, the Construction Manager shall be fully and exclusively responsible for and bear all costs associated therewith.

4.2 **Compliance with Governmental Requirements.** The Construction Manager shall:

- (i) comply with all applicable laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project;
- (ii) prepare and file documents required to obtain, and shall obtain, all necessary approvals and permits, including building permit(s), of all governmental authorities having jurisdiction over the Work, provided Owner shall pay all building permit and state fire marshal inspection fees directly; and
- (iii) give all notices required of it by governmental authorities relating to the Project.

4.3 **Safety.** Safety shall be a prime concern of the Construction Manager at all times. The Construction Manager shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures for coordinating and constructing the Work, including Site safety and safety precautions and programs.

4.4 **On Site Records.** The Construction Manager shall maintain at the Site one copy of all drawings, specifications, addenda, approved shop drawings, daily logs, change orders, submittals, other modifications and all other documents generated throughout the course of the project in good order and accurately marked depicting all changes as they occur during construction. The as-built drawings shall be available at all times to the Owner, the Professional(s), the Owner's consultants, and quality control and testing agency personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction, and the Construction Manager shall include such supplementary notes and details necessary to clearly and accurately represent as-built construction. The daily logs shall contain detailed information regarding weather conditions, materials delivered, work performed, operating hours, subcontractors working on the Project and staffing of each subcontractor.



- 4.5 **Bribes and Kick-Backs.** The Construction Manager shall not by any means:
- (i) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;
  - (ii) offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or
  - (iii) without the express written permission of the Owner, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the Construction Manager has a direct or indirect proprietary or other pecuniary interest.
- 4.6 **Quality Control and Testing.** The Construction Manager shall develop and implement a quality management program to ensure quality construction. Unless otherwise specified in the Agreement for Construction Management Services, the Construction Manager shall select the quality control and testing agencies, subject to Owner's written approval. The Construction Manager shall coordinate all tests and inspections required by the Construction Documents, and the Construction Manager shall arrange for tests and inspections to be conducted as necessary to avoid any interference with the progress of Work. No claims for extension of time or extra costs will be allowed on account of any testing, retesting, inspection, re-inspection, or rejection of Work when defective or deficient Work is found. Cost of specified measures and tests required by the Construction Documents and performed by Owner-approved quality control and testing agencies shall be included in the Cost of the Work.
- 4.7 **Incident Reporting.** The Construction Manager shall immediately notify the Owner and Professional(s), both orally and in writing, of the nature and details of all incidents which may adversely affect the quality or progress of the Work including, but not limited to, union jurisdictional disputes, accidents, delays, damages to Work and other significant occurrences.
- 4.8 **Hazardous Substances.** The Construction Manager shall immediately notify the Owner and the Professional(s), both orally and in writing, of the presence and location of any physical evidence of, or information regarding, environmental contamination on the Site (including but not limited to Hazardous Substances) of which it becomes aware. If the Construction Manager encounters environmental contamination (including but not limited to Hazardous Substances), the Construction Manager shall (i) immediately stop performance of Work or that portion of the Work affected by or affecting such contamination; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the contamination; (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such contamination until directed to do so by the Owner; and (v) take any other steps necessary to protect life and health.

- 4.9 **Owner's Use Of And Access To The Site.** The Construction Manager shall perform the Work so as not to interrupt any operations of the Owner on the Site.
- 4.9.1 The Construction Manager understands and acknowledges that the Owner may need access to or use of certain areas of the Site or Work prior to the Construction Manager's achievement of Substantial Completion, and that such occupancy, access or cause shall not constitute the Owner's acceptance of any Work.
- 4.9.2 The Construction Manager shall not enter any Owner-occupied area of the Site or Project unless first approved and scheduled by the Owner. The Construction Manager understands and acknowledges that the Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work.
- 4.9.3 The Construction Manager shall afford the Owner's own forces, and other consultants, trade contractors, subcontractors and suppliers, access to the Site for performance of their activities, and shall coordinate its construction and operations with Owner's as required by the Construction Documents.
- 4.10 **Commissioning.** If the Work is to be commissioned through the use of a commissioning consultant, the Construction Manager shall, through the Owner or the Owner's commissioning consultant, as the case may be, schedule and coordinate all equipment and systems start-ups and Project commissioning within its scope of the Work.
- 4.10.1 The Construction Manager shall perform functional performance testing of items being commissioned under the supervision of the Owner's commissioning consultant, as directed by the Owner or Professional.
- 4.10.2 Owner training and all commissioning activities, including functional performance tests, shall be satisfactorily completed prior to Substantial Completion.

## **ARTICLE 5**

### **CONSTRUCTION MANAGER'S PERSONNEL, SUBCONTRACTORS, SUPPLIERS AND SITE FACILITIES**

- 5.1 **Project Staffing.** The Construction Manager shall staff the Project with qualified and designated individuals and entities responsible for its obligations and performance.
- 5.1.1 The Construction Manager shall name a representative (the "Construction Manager's Representative") to serve as its primary communication contact with the Owner and the Professional(s).
- 5.1.2 The Construction Manager's Representative, or another authorized representative of the Construction Manager, shall be present at all times when Work is being performed.

- 5.1.3 The Construction Manager shall employ persons skilled in the tasks assigned to them and shall contract with subcontractors and suppliers skilled in the tasks assigned to them and capable of working harmoniously with all trades, crafts and other individuals on the Project. The Construction Manager shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.
- 5.1.4 The Construction Manager shall immediately remove from the Site, for the duration of the Project, any person making an inappropriate comment, statement, or gesture involving religion, race, age, national origin, marital status, disability, gender, sexual orientation, or gender identity toward any other individual.
- 5.1.5 The Construction Manager shall immediately remove from the Site, for the duration of the Project, any person who is incompetent, careless, unsafe or disrupting the work environment.
- 5.1.6 The Construction Manager shall be responsible to the Owner for the acts and omissions of its agents and employees, consultants, subcontractors and suppliers.

## **5.2 Subcontractor/Supplier Agreements.**

The Construction Manager shall enter into written agreements with its subcontractors and suppliers, and those written agreements shall be consistent with the Agreement for Construction Management Services. It is the intent of the Owner and the Construction Manager that the obligations of the Construction Manager's subcontractors and suppliers inure to the benefit of the Owner and the Construction Manager, and that the Owner be a third-party beneficiary of the Construction Manager's agreements with its subcontractors and suppliers.

- 5.2.1 The Construction Manager shall make available to each subcontractor and supplier, prior to the execution of written agreements with any of them, a copy of the pertinent portions of the Agreement for Construction Management Services, including those portions of the Construction Documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractors and suppliers.
- 5.2.2 The Construction Manager shall include in its written agreements with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of the Agreement for Construction Management Services that are included by reference in its written agreement with the Construction Manager, and that it will abide by those terms, conditions and requirements.

- 5.2.3 The Construction Manager's written agreements with its subcontractors and suppliers shall preserve and protect the rights of the Owner and include the acknowledgment and agreement of each subcontractor or supplier that the Owner is a third-party beneficiary of the agreement. The Construction Manager's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, the Agreement for Construction Management Services, and upon request of the Owner, the Construction Manager's subcontractors and suppliers will perform the services for the Owner under the same terms and conditions.
- 5.2.4 Without limitation of the foregoing subsections, the Construction Manager's written agreements with its subcontractors and suppliers shall include the following provision: "When the Construction Manager receives payment from the Owner for labor, services or materials furnished by subcontractors and suppliers hired by the Construction Manager for the Project, the Construction Manager shall remit payment due to those subcontractors and suppliers, less the value of any item contested in accordance with the Agreement for Construction Management Services, within ten (10) days after the Construction Manager's receipt of payment from the Owner. When the payment due the subcontractor is for final payment, including retainage, the subcontractor must include with the invoice for final payment, a conditional release of lien and all required warranties and closeout documentation. When the subcontractor receives payment from the Construction Manager for labor, services, or materials furnished by the subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers, less the value of any item contested in accordance with the Agreement for Construction Management Services, within seven (7) days after the subcontractor's receipt of payment".
- 5.3 **Resolution of Trade Disputes.** The Construction Manager shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.

## **ARTICLE 6**

### **GOODS, PRODUCTS AND MATERIALS**

- 6.1 **Quality of Materials.** The Construction Manager shall furnish goods, products, materials, equipment and systems which:
- (i) comply with the Agreement for Construction Management Services;
  - (ii) conform to applicable specifications, descriptions, instructions, drawings, data and samples;
  - (iii) are new (unless otherwise specified or permitted) and without apparent damage;

- (iv) are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;
- (v) are merchantable;
- (vi) are free from defects; and
- (vii) are beyond and in addition to those required by manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.

- 6.2 **Installation and Use of Materials.** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case the Construction Manager shall so inform the Owner and Professional and shall proceed as directed by the Owner or Professional.. Accordingly, there shall be no substitutions of materials and equipment except as otherwise expressly permitted herein. The Construction Manager shall coordinate and interrelate all trade agreements, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all warranties and guarantees, required by the Construction Documents for the Work.
- 6.3 **Unsuitable Materials.** The Construction Manager shall inform the Owner of goods, products, materials and equipment or systems which the Construction Manager knows are unsuitable or unavailable at the time of bid submission, and claims relating to or arising out of claims that goods, products, materials, equipment or systems are unsuitable or unavailable shall not be entertained by the Owner unless the Construction Manager, subcontractor, or supplier notified the Owner in writing at the time of bid submission, along with proposed alternatives. Approval by the Owner and a Professional does not mean or imply final acceptance by the Owner and Professional if such items should be defective or not as previously represented. Should the Construction Manager furnish any approved goods, products, materials, equipment or systems different from or in addition to those required by the Construction Documents which require supplemental materials or installation procedures different from or in addition to those required for specified items, the Construction Manager shall provide such at no increased cost to the Owner.
- 6.4 **Consistency with Overall Project.** Construction Manager shall also inform the Owner and Professional during the various stages of development of the design if proposed materials or equipment do not conform to the Project design concept and the Owner's construction budget.
- 6.5 **Security for the Project.** The Construction Manager shall provide security for the Project, including but not limited to security for its Work in progress and for the goods,

products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work.

## **ARTICLE 7 DOCUMENTS AND INFORMATION**

- 7.1 **Information from Owner.** Without diminishing the Construction Manager's obligations under Section 3.2, The Owner shall provide the Construction Manager with information, which it is aware and in its possession, reasonably necessary to assist the Construction Manager in performing its services including, if applicable and available:
- (i) the Site legal description and any required survey;
  - (ii) all written and tangible material concerning conditions below ground at the Site;
  - (iii) if the Project involves an existing structure, all as-built drawings, record drawings, plans, specifications and structure system information with respect to such structure; and
  - (iv) the Owner's pertinent Project dates and key milestone dates.
- 7.2 **Resolution of Questions.** The Construction Manager shall resolve all questions concerning the Construction Documents with the Owner and Professional who has prepared the documents.
- 7.3 **Processing Of Documents.** When requested to do so by the Owner, the Construction Manager shall process documents, and provide other reasonably required drawings, services and certifications, necessary to enable the Owner to (i) obtain permits or other approvals not otherwise required to be obtained by Construction Manager; and (ii) represent that the Work complies with requirements of governmental agencies having jurisdiction over the Project.
- 7.4 **Sufficiency of Owner Information.** The furnishing of information by the Owner to the Construction Manager shall not relieve the Construction Manager of responsibilities contained elsewhere in the Agreement for Construction Management Services to evaluate information and documents provided by the Owner and the Construction Manager shall timely notify the Owner in writing of any additional information needed or services required from the Owner in order for the Construction Manager to perform the Work.

## **ARTICLE 8 SUBMITTALS**

- 8.1 **Submittal Schedule.** The Construction Manager shall timely prepare and transmit to the Owner and Professional a schedule for provision of all anticipated submittals. The schedule shall (i) include submittals required by the specifications; (ii) be in a format



acceptable to the Owner and Professional; (iii) be coordinated with the construction schedule; and (iv) set forth specific dates for submission of the listed submittals.

8.2 **Processing Of Submittals.** The Construction Manager shall in timely fashion review, approve or reject as necessary, and forward approved submittals to the Owner and Professional for review and approval along with such detail and information as the Owner and Professional require. No part of the Work dealt with by a submittal shall be fabricated or performed until such approval has been given.

8.2.1 A Professional is responsible to the Owner, but not to the Construction Manager, to verify that the submittals conform to the design concept and functional requirements of the plans and specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in submittals are of the quality specified and will function properly, and that the submittals comply with the Agreement for Construction Management Services.

8.2.2 All Work shall be performed in accordance with approved submittals. Approval of submittals by the Owner or Professional shall not relieve the Construction Manager from complying with the Agreement for Construction Management Services, including all plans and specifications, addenda thereto and approved Change Orders.

8.2.3 Re-submittals required to correct errors, omissions, or invalid substitutions by the Construction Manager or its subcontractors shall not constitute an excusable or compensable delay.

## **ARTICLE 9 CONSTRUCTION MANAGER'S INSPECTION AND CORRECTION OF DEFECTIVE OR INCOMPLETE WORK**

9.1 **Rejection and Correction of Work In Progress.** During the course of Project, the Construction Manager shall inspect and promptly reject any Work (i) which does not conform to the Construction Documents; or (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

9.1.1 The Construction Manager shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Construction Manager shall bear all costs of correcting such Work, including additional testing and inspections and compensation for all services and expenses necessitated by such correction.

9.1.2 The Construction Manager shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the Owner or other trade

contractors or subcontractors caused by the Construction Manager's correction or removal of rejected Work.

- 9.2 **Covered or Concealed Work.** If a portion of the Work has been covered, the Construction Manager shall, if notified to do so by the Owner or a Professional, uncover the designated portion for observation and then replace it.

9.2.1 If the designated portion of the Work was covered contrary to the request of the Owner or the Professional, or to requirements specifically expressed in the Construction Documents, the Construction Manager shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule.

9.2.2 If the designated portion of the Work was covered prior to a specific request by the Owner or the Professional that it remain uncovered, the Construction Manager shall receive additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule(s) only if the designated portion of the Work was in conformance with the Construction Documents.

## **ARTICLE 10 CHANGE ORDERS AND CHANGES TO THE WORK**

- 10.1 **Change Order Requests.** Any party to the construction process may request changes to the Work, compensation or applicable schedules.

10.1.1 With respect to such requests for changes by the Construction Manager, the Construction Manager shall prepare and submit change order requests to the Professional, together with appropriate back-up documentation.

10.1.2 With respect to requests for changes by parties other than the Construction Manager, the Construction Manager shall promptly review and respond to change order requests submitted by a Professional.

10.1.3 When requested to do so, the Construction Manager shall prepare and submit to a Professional drawings, specifications or other data in support of a change order request.

10.1.4 Each change order request submitted by Construction Manager shall include any and all time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project, together with substantiating back-up documentation.

- 10.2 **Owner-Directed Changes.** The Owner may unilaterally direct the Construction Manager to implement changes in the Work so long as the Work the Owner is requiring is not outside of the general scope of the Agreement for Construction Management Services,

and the Construction Manager, upon written direction from the Owner, shall proceed with such change.

- 10.3 **Professional-Directed Changes.** A Professional, without the Owner's prior approval, may authorize or direct the Construction Manager to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, scope, or approved design elements, and the Construction Manager shall promptly carry out such changes. Any such minor changes shall be implemented by written field order and executed by the Construction Manager.
- 10.4 **Administration of Changes.** The Professional will administer and manage all change order requests and will prepare required drawings, specifications and other supporting data as necessary in a timely fashion, in recognition of the Project schedule, in connection with minor changes, change order requests, including claims for additional compensation, time or both, and change orders. Change Order requests must be approved by the Owner.
- 10.5 **Compensation for Changes.** With respect to all change order requests involving credit to the Owner or additional compensation to the Construction Manager, the Construction Manager shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare an itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the proposed change; and (iv) provide a reasonable price quotation to the Owner and Professional.
- 10.5.1 If price quotations for change order requests are determined by the Owner and Professional to be unreasonable, the Construction Manager shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the Professional determines the quotation is unreasonable, the Owner may require the subject Work be performed on a time and material basis.
- 10.5.2 The Construction Manager and its subcontractors and suppliers shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by the Agreement for Construction Management Services, and shall not be entitled to additional reimbursement for home-office, other non-job-site or indirect overhead expenses, or tools necessary for construction.
- 10.5.3 It is the responsibility of the Construction Manager to review and approve all pricing of additional work required of its subcontractors and suppliers.
- 10.6 **Performance of Changes.** Upon receipt of an executed change order or approved change order request, changes in the Work shall be promptly performed. All

changes in the Work shall be performed under applicable conditions of the Construction Documents.

#### **10.7 Disputes Regarding Changes.**

10.7.1 Regardless if there is a dispute (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the change shall be carried out if the Owner so directs. No claim shall be prejudiced by performance of the Work so long as the Owner is notified of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the Owner recites the reasons for its dispute in the written notice. Failure to notify the Owner in writing seven (7) days after completion of work shall constitute a waiver of any claim resulting from the change.

10.7.2 In the event a change order request is approved by the Owner in the absence of an agreement as to cost, time, or both, the Professional will (i) receive and maintain all documentation pertaining thereto; (ii) examine such documentation on the Owner's behalf; (iii) take such other action as may be reasonably necessary or as the Owner may request; and (iv) make a written recommendation to the Owner concerning any appropriate adjustment in the Construction Price and/or time.

10.8 **Necessity for Signature Approval.** No act, omission or course of dealing shall alter the requirement that change orders shall be in writing and signed by the Owner, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. The Construction Manager understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order.

### **ARTICLE 11 OWNER'S CONSULTANT(S), PROFESSIONAL(S) AND CONSTRUCTION ADMINISTRATION**

11.1 **Owner's Designated Professional Representative.** Unless otherwise directed by the Owner, the Professional shall act as the Owner's representative.

11.1.1 The Professional will be the Owner's design representative during performance of the Work and will consult with and advise the Owner on all design and technical matters.

11.1.2 The Professional will act as an interpreter of the requirements of the Agreement for Construction Management Services and as the Owner's advisor on claims.

11.2 **Site Visits.** The Professional will visit the Site with sufficient frequency for familiarization with the progress and quality of the Work and to inspect the Work to

determine compliance of the Work with (i) the Agreement for Construction Management Services, including approved shop drawings and other submittals; (ii) the Construction Schedule; and (iii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

- 11.3 **Rejection of Work.** The Owner or Professional may disapprove or reject the work which does not comply with (i) the Agreement for Construction Management Services including approved shop drawings and other submittals; or (ii) applicable laws, statutes, building codes, rules or regulations of any governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

11.4 **Evaluations.**

11.4.1 The Owner or Professional will review and evaluate the results of all inspections, tests and written reports required by the Agreement for Construction Management Services and by any governmental entity having or asserting jurisdiction over the Project. The Owner or Professional will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Owner or Professional. The Owner or Professional will promptly reject Work which does not conform to and comply with testing requirements.

11.4.2 The Owner or Professional may require inspection or testing of any Work in addition to that required by the Agreement for Construction Management Services or governmental entities having or asserting jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The Owner or Professional will take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Owner or Professional.

- 11.5 **Submittal Activities.** The Owner or Professional will review and approve, reject or take other appropriate action on submittals such as shop drawings, product data, samples and proposed equal materials or equipment and requested substitutions not more than fourteen (14) calendar days after receipt, and will not approve any submittals unless such submittals conform to the Construction Documents. An Owner or Professional's review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should be defective or not as represented by approved submittals or as otherwise required by the Construction Documents. The Construction Manager remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for selecting fabrication processes, for techniques of assembly, and for performance of the Work.

- 11.6 **Interpretations.** An Owner or Professional will, when requested to do so in writing by the Construction Manager, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the

Work. An Owner or Professional's interpretations and decisions relating to artistic effect shall be final if not inconsistent with the Agreement for Construction Management Services.

- 11.7 **Change Order Activities.** The Professional will consult with and advise the Owner concerning, regarding all change order requests and change orders on behalf of the Owner, or the Owner will administer and manage, all change order requests and change orders.
- 11.8 **Pay Application Activities.** The Professional or Owner will review applications for payment, including such accompanying data, information and schedules as the Professional or Owner requires, to determine the amounts due to the Construction Manager and shall authorize payment by the Owner to the Construction Manager in writing. After the Work is determined to be finally complete by the Professional or Owner, the Professional will certify to the Owner in writing that the Construction Manager is entitled to final payment and submit the pay application to the Owner for final approval or the Owner will certify in writing that the that the Construction Manager is entitled to final payment and submit the pay application for final approval.
- 11.9 **Relationship to Construction Manager.** The duties, obligations and responsibilities of the Construction Manager under the Agreement for Construction Management Services shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation or responsibility of any Professional. The Construction Manager shall not be a third-party beneficiary of any agreement by and between the Owner and any Professional. The duties of the Construction Manager to the Owner shall be independent of, and shall not be diminished by, any duties or obligations of any Professional to the Owner.

## **ARTICLE 12**

### **INSPECTION, CORRECTION OF WORK, AND PROJECT CLOSE OUT**

- 12.1 **Substantial Completion.** Substantial Completion of the Work shall be deemed to have occurred on the later of: (i) the dates that the Work passes a Substantial Completion inspection, (ii) the date the required Substantial Completion documentation and items have been produced, or (iii) the date a certificate of occupancy is issued for the Work.
- 12.1.1 When the Construction Manager believes that the Work is substantially complete, it shall notify the Owner and the Professional that it's Work is ready for a Substantial Completion inspection. The Construction Manager shall endeavor to give the Owner and Professional notice two (2) weeks prior to the predicted Substantial Completion inspection date.
- 12.1.2 The Construction Manager will coordinate with the Owner and the Professional on an inspection date to determine whether the work is substantially complete.

- 12.1.3 At inspection(s) to determine whether the Work is substantially complete, the Owner or Professional will:
- (i) inspect the Work;
  - (ii) list additional items to be completed or corrected; and
  - (iii) determine, in consultation with the Owner, whether Substantial Completion of the Work has occurred.
- 12.1.4 If the Work is determined not to be substantially complete, the Work shall be prosecuted until the Work is substantially complete and the inspection process shall be repeated at no additional cost to the Owner until the Work is determined to be substantially complete. Construction Manager will be responsible for costs of the Professional associated with premature inspections.
- 12.1.5 On or prior to the required date of Substantial Completion, the Construction Manager shall deliver keys, permits, and other necessary and customary documents and items pre-requisite for the Owner's occupancy and use of the Work for its intended purpose. The Owner or Professional will obtain and review Substantial Completion documentation and items, and will inform the Construction Manager of any deficiencies.
- 12.1.6 When the Owner, the Construction Manager and the Professional agree that the Work has passed the Substantial Completion inspection and the Construction Manager has produced the required Substantial Completion documentation and items, they shall each sign the Owner's standard form Certificate of Substantial Completion declaring the Work substantially complete and establishing the actual date of Substantial Completion. The Certificate of Substantial Completion shall also include a list of and timeline for the completion of Work needing completion and correction developed by the Owner or Professional based upon the review and communications described in 12.1.5, within thirty (30) days thereof.
- 12.1.7 If the Work is commissioned through the services of a commissioning consultant, such commissioning shall be completed as a pre-requisite to the Work being declared Substantially Complete, provided Construction Manager shall not be responsible for delays in commissioning not the fault of Construction Manager.
- 12.1.8 The Construction Manager shall provide the Owner with operation and maintenance manuals and other operational documentation not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to allow adequate time for training prior to commissioning and the Owner's occupancy of the Project.
- 12.1.9 The Construction Manager shall meet with the Owner's personnel not less than twenty-eight (28) calendar days prior to the required date of Substantial

Completion to familiarize and train them with respect to maintenance and use of the Project. All training sessions shall be videotaped, with copies provided to the Owner.

12.1.10 The date of Substantial Completion shall fix the commencement date of warranties and guaranties and allocate between the Owner and the Construction Manager responsibility for security, utilities, damage to the Work and insurance.

12.2 **Final Completion.** Final Completion of the Work shall be deemed to have occurred on the later of: (i) the date that the Work passes a Final Completion inspection or (ii) the date that the Construction Manager has produced all required Final Completion close-out documentation and items. Final Completion shall not be deemed to have occurred and no final payment shall be due the Construction Manager or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and all required Final Completion close-out documentation and items have been produced to the Owner by the Construction Manager.

12.2.1 When the Construction Manager believes the Work is finally complete, the Construction Manager shall notify the Owner and the Professional that the Work is ready for Final Completion inspection.

12.2.2 The Construction Manager will coordinate with the Owner and the Professional on an inspection date to determine whether the work is finally complete.

12.2.3 At the Final Completion inspection to determine whether the Work is finally complete, the Owner or Professional will:

- (i) inspect the Work;
- (ii) determine whether all items on the list included with the Certificate of Substantial Completion have been satisfactorily completed and corrected;
- (iii) determine whether the Work complies with (a) the Agreement for Construction Management Services; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and (c) applicable installation and workmanship standards;
- (iv) determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and
- (v) determine, in consultation with the Owner, whether the Work is finally complete.



- 12.2.4 If the Work is not finally complete, the Construction Manager shall continue to prosecute the Work, and the inspection process shall be repeated at no additional cost to the Owner, until the Work is finally complete.
- 12.2.5 On or prior to the date of Final Completion, the Construction Manager shall deliver to the Professional the following Final Completion close-out documentation and items:
- (i) Certificate of Final Completion - executed on Owner's standard form;
  - (ii) all operation and maintenance manuals not previously produced;
  - (iii) Owner maintenance or "attic" stock as prescribed in the technical specifications;
  - (iii) one (1) set of as-built plans and specifications;
  - (iv) certification and affidavit that all insurance required of the Construction Manager beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to the Owner;
  - (v) written consent of the surety(ies), if any, to final payment;
  - (vi) full, final and unconditional waivers of mechanics or construction liens, from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim;
  - (vii) full, final and unconditional certification and affidavit that all of the Construction Manager's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;
  - (viii) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary;
  - (ix) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;
  - (x) a list of any item(s) due but unable to be delivered and the reason for non-delivery;
  - (xi) when requested, signed and sealed as built shall be submitted electronically to the owner in CADD as per the City's Engineering, Design and Construction Manual; and

- (xii) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.

12.2.6 The Professional will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Completion which are submitted by the Construction Manager, and will immediately inform the Construction Manager about any deficiencies and omissions.

### **ARTICLE 13**

#### **CONSTRUCTION MANAGER'S WARRANTIES AND GUARANTEES**

13.1 **One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in the Agreement for Construction Management Services, the Construction Manager, upon request by the Owner or the Professional, shall promptly correct all failures or defects in the Work for a period of one year after the actual date of Substantial Completion, or the date of acceptance by the Owner, whichever is later.

13.1.1 The Construction Manager shall schedule, coordinate and participate in a walk-through inspection of the Work one month prior to the expiration of the one-year correction period, and shall notify the Owner, the Professional, and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.

13.2.1 Should the Construction Manager fail to promptly correct any failure or defect, the Owner may take whatever actions it deems necessary to remedy the failure or defect and the Construction Manager shall promptly reimburse the Owner for any expenses or damages it incurs as a result of the Construction Manager's failure to correct the failure or defect.

13.2 **Express Warranties and Guarantees - Construction Manager.** In addition to the warranties and guarantees set forth elsewhere herein, the Construction Manager expressly warrants and guarantees to the Owner:

- (i) that the Work complies with (a) the Construction Documents; and (b) all applicable laws, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- (ii) that all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of quality equal to or higher than that required by the Construction Documents; and (c) merchantable; and

- (iii) that all management, supervision, labor and services required for the Work shall comply with the Agreement for Construction Management Services and shall be and are performed in a workmanlike manner.
- 13.3 **Express Warranties And Guarantees - Subcontractors And Suppliers.** The Construction Manager shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the Owner and the Construction Manager in a form identical to the warranties, guarantees and other undertakings set forth in the Agreement for Construction Management Services, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of the Owner as well as the Construction Manager.
- 13.4 **Non-Exclusivity and Survival.** The warranties and guarantees set forth in this Article shall be in addition to all other warranties, express, implied or statutory, and shall survive the Owner's payment, acceptance, inspection of or failure to inspect the Work, and review of the Construction Documents.
- 13.5 **Non-Limitation.** Nothing contained in Paragraph 13.1, shall be construed to establish a period of limitation with respect to the Construction Manager's obligations under the Agreement for Construction Management Services. Paragraph 13.1 relates only to the Construction Manager's specific obligations with respect to the Work, and has no relationship to the time within which the Construction Manager's contractual obligations under the Agreement for Construction Management Services may be enforced, nor to the time within which proceedings may be commenced to establish the Construction Manager's liability with respect to any contractual obligations pursuant to Paragraph 13.1 or contained elsewhere herein.
- 13.6 **Commencement of Obligations.** Unless otherwise specified, all of the Construction Manager's warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by the Construction Documents, shall begin on the actual date of Substantial Completion or the date of acceptance by the Owner, whichever is later.

## **ARTICLE 14**

### **OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES**

- 14.1 **Timely Compensation of Construction Manager.** The Owner shall timely compensate the Construction Manager in accordance with the Agreement for Construction Management Services.
- 14.2 **Owner Review of Documents.** The Owner shall review documents prepared by the Construction Manager in a timely manner and in accordance with schedule requirements. Review by the Owner shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's intent. No review of such documents shall relieve the Construction Manager of any of its responsibilities. In addition, the

Owner's review of documents for purposes of issuing a building permit shall not relieve the Construction Manager of any of its responsibilities.

## **ARTICLE 15 CONSTRUCTION MANAGER'S COMPENSATION**

- 15.1 **Unit Prices.** If any portion of the Construction Price is determined by the application of unit prices, the number of units contained in the Construction Manager's Compensation Schedule is an estimate only, and the compensation to the Construction Manager shall be determined by the actual number of units incorporated in, or required by, the Work provided that in any event the GMP shall not be exceeded.
- 15.2 **Schedule of Values.** The Construction Manager shall prepare and present to the Owner and the Professional the Construction Manager's schedule of values, apportioning the different elements of the Work for purposes of periodic and final payment. The Construction Manager's schedule of values shall be presented in the format, and with such detail and supporting information, requested by the Professional or Owner. The Construction Manager shall not imbalance or artificially inflate any element of its schedule of values. Upon the Professional and Owner's acceptance, the schedule of values shall be used to process and pay the Construction Manager's payment requests. The schedule of values shall not be changed without written approval authorized by the Owner.
- 15.3 **Trench Safety Act.** The Construction Manager shall comply with the Trench Safety Act (Chapter 553, Part VI, Florida Statutes) which requires that Construction Managers delineate in their Schedules of Values the cost of compliance with applicable trench safety standards.
- 15.4 **Invoicing.** The Construction Manager shall submit invoices to the Professional or Owner requesting payment for labor and services rendered during the preceding thirty calendar days. Each invoice shall contain such detail and be backed up with whatever supporting information the Owner or a Professional requests and shall at a minimum state:
- (i) the total original Construction Price and total current Construction Price;
  - (ii) the amount due for properly provided labor, materials and equipment properly incorporated into the Project; and with respect to amounts invoiced for materials or equipment necessary for the Project and properly stored at the Site (or elsewhere if offsite storage is approved in writing by the Owner), be accompanied by written proof that the Owner has title to such materials or equipment and that such material and equipment is fully insured against loss or damage;

- (iii) a breakdown of the various phases, bid packages, or parts of the Work as related to the Construction Price in accordance with standard Construction Specifications Institute (CSI) format;
- (iv) the value of the various phases, bid packages, or parts of the Work actually performed;
- (v) previously invoiced amounts and credit payments made;
- (vi) the total amount due, less any agreed retainage; and
- (vii) a summary of change orders to date;

and shall also have attached such lien waiver and other documentation verifying the Construction Manager's payment to subcontractors and suppliers as the Owner or Professional may request.

## **15.5 Payment Procedures.**

15.5.1 Within fourteen (14) days of receipt, the Professional and/or Owner will review the Construction Manager's applications for payment, including such accompanying data, information and schedules as the Professional or Owner requires, to determine the amounts due to Work, shall authorize payment by the Owner to the Construction Manager in writing. Such authorization will constitute the Professional's certification to the Owner that:

- (i) the Work described in the Construction Manager's invoice has progressed to the level indicated and has been performed in accordance with the Agreement for Construction Management Services;
- (ii) all necessary and appropriate lien waivers have been submitted;
- (iii) the "as-built" record documents are current and up-to-date; and
- (iv) the amount requested is currently due and owing to the Construction Manager.

15.5.2 In the case of unit price work, the Owner or Professional will make final determination of quantities and classifications of such work.

**15.6 Owner's Right to Refuse Payment.** A Professional's approval of the Construction Manager's invoice shall not preclude the Owner from exercising any of its remedies under the Agreement for Construction Management Services. In the event of a dispute, payment shall be made on or before the date provided in Section 15.7 for amounts not in dispute, subject to any setoffs claimed by the Owner. The Owner shall have the right to

refuse to make payment and, if necessary, may demand the return of a portion or the entire amount previously paid to the Construction Manager due to:

- (i) the Construction Manager's failure to perform the Work in compliance with the requirements of the Agreement for Construction Management Services or any other agreement between the parties;
- (ii) the Construction Manager's failure to correctly and accurately represent the Work performed in a payment request, or otherwise;
- (iii) the Construction Manager's performance of the Work at a rate or in a manner that, in the Owner's opinion, is likely to result in the Project or any portion of the Project being inexcusably delayed;
- (iv) the Construction Manager's failure to use funds previously paid the Construction Manager by the Owner, to pay the Construction Manager's Project-related obligations including, but not limited to, the Construction Manager's subcontractors, materialmen, and suppliers;
- (v) claims made, or likely to be made, against the Owner;
- (vi) loss caused by the Construction Manager or the Construction Manager's subcontractors, or suppliers; or
- (vii) the Construction Manager's failure or refusal to perform any of its obligations to the Owner.

**15.7 Construction Manager's Right to Refuse Performance for Non-Payment.** If, within thirty (30) calendar days from the receipt of the Construction Manager's application for payment properly prepared and approved by the Professional or Owner, the Owner, without cause or basis hereunder, fails to pay the Construction Manager any amounts then due and payable to the Construction Manager, the Construction Manager shall have the right, in addition to all other rights and remedies contained herein, to cease performance of the Work until receipt of proper payment after first providing fourteen (14) calendar days written notice to the Owner of its intent to cease work.

**15.8 Correction of Past Payments.** All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any subsequent payment and shall be corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent payment by the date due, the Owner shall notify the Construction Manager in writing of such defect or impropriety. Any disputed amounts determined by the Owner to be payable to the Construction Manager shall be due ten (10) calendar days from the date the dispute is resolved.

**15.9 Invoice Warranties and Guarantees.** The Construction Manager expressly warrants and guarantees to the Owner that:

- (i) title to all goods, products, materials, equipment and systems covered by an invoice will pass to the Owner either by incorporation into the Work, or upon receipt of payment by the Construction Manager, whichever occurs first;
- (ii) all goods, products, materials, equipment and systems covered by an invoice are free and clear of liens, claims, security interests or encumbrances; and
- (iii) no goods, products, materials, equipment or systems covered by an invoice have been acquired by the Construction Manager, or its subcontractors or suppliers, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Construction Manager, or its subcontractors or suppliers.

15.10 **Construction Manager's Signature.** The signature of the Construction Manager on any invoice constitutes the Construction Manager's certification to the Owner that (i) the Construction Manager's services listed in the invoice have progressed to the level indicated and have been performed as required by the Agreement for Construction Management Services; (ii) the Construction Manager has paid its subcontractors and suppliers their proportional share of all previous payments received from the Owner; (iii) the amount requested is currently due and owing; and (iv) all subcontractors performing the Work for which payment is made hold all necessary State of Florida licenses.

15.11 **Taxes.** The Construction Manager shall incorporate into the Construction Price, and pay, all sales, consumer, use and similar taxes for goods, products, materials, equipment and systems incorporated into the Work which were legally required at the time of execution of the Agreement for Construction Management Services, whether or not yet effective or merely scheduled to go into effect. The Construction Manager shall cooperate with and assist the Owner in securing qualified refunds of any sales or use tax paid by the Owner or Construction Manager on goods, products, materials, equipment or systems. Any refund secured shall be paid to the Owner.

15.12 **Compensation of Construction Manager's Subcontractors and Suppliers.** Forty five (45) days after satisfactory completion of their portion of the Work, subcontractors may invoice Construction Manager for remaining unpaid Work, including the full value of the retainage related to such Work less the value of any contested item(s), and provided each such subcontractor has provided Construction Manager with all required close-out documentation. Construction Manager shall include subcontractor pay requests in the Construction Manager's application for payment. No later than ten (10) days after receipt of payment from the Owner, the Construction Manager shall pay each of its subcontractors and suppliers out of the amount received by the Construction Manager on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to the Construction Manager on account of such entity's portion of the Work, if any. The Owner shall have no obligation to pay, and shall not be responsible for payments to, the Construction Manager's subcontractors or suppliers. However, the Owner reserves the

right, but has no duty, to make payment jointly to the Construction Manager and to any of its subcontractors or suppliers in the event that the Owner becomes aware that the Construction Manager fails to pay or unreasonably withholds payment from one or more of those entities. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

15.13 **Retainage.** Subject to Section 15.6, retainage shall be withheld from each payment, in an amount not to exceed five percent (5%) of the approved payment amount.

15.14 **Final Payment.** Prior to being entitled to receive final payment and as a condition precedent thereto, the Construction Manager must achieve Final Completion. The Owner shall, subject to its rights set forth above in this Article, make final payment of all sums due the Construction Manager within fourteen (14) calendar days of Owner's execution of a final approval for payment.

## **ARTICLE 16 SCHEDULE REQUIREMENTS**

16.1 **Construction Schedule.** The Construction Schedule shall include all pertinent dates and periods for timely completion of the Work.

16.1.1 Unless otherwise directed and approved by the Owner, the Construction Manager shall, within fourteen (14) calendar days of the Notice to Proceed, prepare a Critical Path Method schedule updated monthly with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion. When preparing the schedule Construction Manager shall consider and account for Owner's operational needs on the site and adjacent thereto, particularly with regard to utility interruptions and access restrictions.

16.1.2 The Construction Schedule shall depict all activities necessary for, or incidental to, performance of the Work, showing the logic (sequence, dependency), duration, and "float" of each activity, with the critical path highlighted and shall include (i) the required Commencement Date, the required dates of Substantial Completion and Final Completion; (ii) any guideline and milestone dates required by the Owner; (iii) any applicable subcontractor and supplier schedules; (iv) coordination with the submittal schedule which allows sufficient time for review of documents and submittals; (v) allowances for procurement, fabrication, and delivery of materials, especially "long lead" items; (vi) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; (vii) the time required for testing, inspections, and



commissioning, if applicable; (viii) time for schedule constraints, such as holidays and events on Owner's property and adverse weather conditions which are normal and may be reasonably anticipated; and (ix) required decision dates.

- 16.1.3 By reviewing the Construction Schedule, the Owner and Professional do not assume any of the Construction Manager's responsibility (i) that the Construction Schedule be coordinated or complete; or (ii) for timely and orderly completion by the required dates of Substantial Completion, Final Completion and any milestone dates required by the Owner.
- 16.1.4 The Construction Manager shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. The Construction Manager shall discuss the status of the Work biweekly with the Professional and/or Owner, so that proper overall management may be provided.
- 16.1.5 The Construction Manager shall periodically and in all instances when the Construction Manager anticipates that performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare a revised Construction Schedule and show actual progress of the Work through the revision date, projected completion of each remaining activity, activities modified since previous submittal, major changes in scope, and other identifiable changes. The updated Construction Schedule shall be accompanied by a narrative report which (i) states and explains any modifications of the critical path schedule, including any changes in logic; (ii) defines problem areas and lists areas of anticipated delays; (iii) explains the anticipated impact the problems and delays will have on the schedule and scheduled activities; (iv) reports corrective action taken or proposed; and (v) states how problems anticipated by projections shown on the schedule will be resolved to avoid delay in delivering the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.
- 16.2 **Delay in Performance.** If at any time the Construction Manager anticipates that performance of the Work will be delayed or in fact has been delayed, the Construction Manager shall (i) immediately notify the Owner and Professional of the probable cause of and effect from the delay, and possible alternatives to minimize the delay; and (ii) take all corrective actions reasonably necessary to deliver the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.
- 16.3 **Modifications of Time for Performance.** The Construction Manager may submit delay claims or otherwise propose modifications of the required dates of Substantial Completion or Final Completion, or other milestone dates required by the Owner, if any. However, such claims shall be submitted in writing and supported by evidence that the delay was excusable, critical, and compensable by modification of required dates. The Construction Manager shall determine and promptly notify the Owner and the

Professional in writing when it believes such adjustments are necessary, but no such adjustments shall be effective unless approved in writing by the Owner and Professional.

16.3.1 Modification(s) of the required dates of Substantial Completion or Final Completion shall be accomplished only by duly authorized and accepted change order(s) stating the new dates(s) with specificity and reciting that all references in the Agreement for Construction Management Services to the required dates of Substantial Completion or Final Completion shall thereafter refer to the date(s) as modified, and all rights and obligations, including the Construction Manager's liability for actual damages, delay damages and liquidated damages, shall be determined in relation to the date(s) as modified.

- 16.4 **Early Completion.** The Construction Manager may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the Construction Manager's sole convenience and shall not create any additional Construction Manager rights or Owner obligations under the Agreement for Construction Management Services, nor shall it change the required dates of Substantial Completion or Final Completion. The Owner shall not pay the Construction Manager any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates nor will the Owner owe the Construction Manager any compensation should the Owner cause the Construction Manager not to achieve Substantial Completion earlier than the required date of Substantial Completion or Final Completion earlier than the required date of Final Completion.
- 16.5 **Document Review.** The Construction Manager shall provide documents to the Owner and Professional(s) for review in accordance with schedule requirements and with sufficient lead time to allow the Owner and Professional reasonable time for review.

## **ARTICLE 17 TIME OF PERFORMANCE**

- 17.1 **Time of the Essence.** The parties hereto mutually understand and agree that time is of the essence in the performance of the Agreement for Construction Management Services and that the Owner will incur damages if the Work is not completed on time. The Construction Manager shall at all times carry out its duties and responsibilities as expeditiously as possible and shall begin, perform and complete its services so that (i) the Work progresses in accordance with the Construction Schedule; (ii) the Work is substantially completed by the required date of Substantial Completion; and (iii) the Work is finally complete by the date of Final Completion.
- 17.2 **Delay Claims.** The Construction Manager may submit delay claims or otherwise propose modifications of the required dates of Substantial Completion or Final Completion, or other milestone dates required by the Owner, if any. However, such claims shall be submitted in writing and supported by evidence that the delay was excusable, critical, and, if applicable, compensable. Extensions of time will be granted only to the extent that

equitable time adjustments for the effected activity or activities exceed the total float along the network paths involved. Such claims shall include an estimate of cost, if any, and substantiate the projected impact on the overall critical path schedule of the Project. In the case of a continuing delay, only one claim is necessary.

17.2.1 If adverse weather conditions are the basis for a delay claim, the claim shall be documented by data substantiating that: the weather conditions were abnormal for the given location and period of time; the weather conditions could not have been reasonably anticipated; and that the weather conditions had an adverse effect on the overall critical path of the schedule. Delays caused by adverse weather conditions are not compensable by other than extensions of time.

17.3 **Compensable Delay.** If the Construction Manager is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or Professional, constituting active interference with the Construction Manager's performance of the Work, and only to the extent such acts continue after the Construction Manager furnishes the Owner or Professional with notice of such interference; or (iii) any other cause which the Owner determines may justify the compensation of the Construction Manager for the delay, the Construction Manager's compensation shall be equitably adjusted to cover the Construction Manager's actual and direct increased costs as described in Paragraph 4.2 of the Agreement for Construction Management Services. In no event shall the Construction Manager be entitled to collect consequential damages, lost opportunity costs, impact damages or other similar remuneration.

17.3.1 Construction Manager's compensation for changes in the work ordered by the Owner shall be calculated pursuant to Paragraph 4.2 of the Agreement for Construction Management Services and agreed to by written change order. Construction Manager shall not be entitled to compensable delay damages. In no event shall the Construction Manager be entitled to collect consequential damages, lost opportunity costs, impact damages or other similar remuneration.

17.4 **Excusable Delay.** If the Construction Manager is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or Professional; (ii) major changes ordered by the Owner in the scope of Work; (iii) fire; (iv) unusual delays in transportation; (v) adverse abnormal weather conditions not reasonably anticipated by the Construction Manager; (vi) unavoidable casualties; (vii) causes beyond the Construction Manager's control which the Owner agrees in writing are justifiable; or (viii) any other cause which the Owner determines may justify the delay, the time for performance may be extended to allow for a demonstrated increase in overall construction duration, which may or may not be equal to the length of such delay, but only if (a) such delay is not concurrent with other, inexcusable delay(s); (b) such delay impacts the critical path; (c) such delay is not in any way caused by default or collusion on the part of the Construction Manager or by any cause which the Construction Manager could reasonably control or circumvent; (d) the Construction Manager would have otherwise been able to timely perform all of its obligations under the Agreement for Construction Management Services but for such delay; and (e) immediately but not later than fourteen (14) calendar

days after the beginning of any such delay the Construction Manager gives notice of its delay claim to the Owner. Such delay claims may be submitted by change order request. All such claims will be reviewed by the Professional or Owner within seven (7) days of submission. Delay caused by labor disputes, picketing, employee boycotts, or the like which directly or indirectly involves employees of the Construction Manager or its subcontractors and suppliers is not the responsibility of the Owner and will result in time extensions only if agreed to in writing by the Owner at the time such events arise.

## **ARTICLE 18 CONCEALED AND UNFORESEEN CONDITIONS**

18.1 **Notification Regarding Unusual Conditions.** If, notwithstanding Construction Manager's full compliance with Section 3.2, (i) the Construction Manager encounters concealed and unforeseen conditions of an unusual nature which affect the performance of the Work; or (ii) the conditions vary from those indicated by the Construction Documents; and (iii) such conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided by the Construction Manager, the Construction Manager shall promptly, but in no event later than three calendar days after first observance of the conditions, notify the Professional and the Owner before conditions are disturbed and give the Professional or the Owner opportunity to observe the condition in its undisturbed state.

18.1.1 The conditions will be promptly investigated and, if they differ substantially and cause a material increase or decrease in the Construction Manager's cost of, or time required for, performance of the Work, compensation or time for performance or both will be equitably adjusted.

18.1.2 All adjustments in compensation or extensions of time shall be by change order. Change order requests must be made within fourteen (14) calendar days from the date of observation of the changed conditions.

18.1.3 The Construction Manager's failure to notify the Professional and Owner as provided in this Article shall constitute a waiver of any claim arising out of or relating to such concealed or unknown condition.

## **ARTICLE 19 PROPRIETARY DOCUMENTS**

19.1 **Nature and Use of Information.** Even as otherwise provided by law, all information, documents, and electronic media furnished by the Owner to the Construction Manager (i) belong to the Owner; (ii) are proprietary; (iii) are furnished solely for use on the Owner's Project; and (iv) shall not be used by the Construction Manager on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance or is required by law. The Owner hereby

grants to the Construction Manager a limited license to use and reproduce applicable portions of the Construction Documents necessary for execution of the Work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the documents.

- 19.2 **Ownership of Information.** All information, documents, and electronic media prepared by or on behalf of the Construction Manager for the Project are the sole property of the Owner free of any retention rights of the Construction Manager. The Construction Manager hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, any information, documents or electronic media prepared by or on behalf of the Construction Manager for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.
- 19.3 **Non-Publication.** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

## **ARTICLE 20**

### **INSURANCE REQUIREMENTS**

- 20.1 **Basic Insurance Requirements.** The Construction Manager shall maintain the following insurances with a company or companies lawfully authorized to do business in Florida, and with an A.M. Best Rating of no less than A, VI. All insurance policies shall be issued and countersigned by duly authorized representatives of such companies and shall be written on ISO standard forms or their equivalents. The insurance policies shall require that the insurer shall provide at least thirty (30) days written notice to Owner if a policy is to be canceled or the coverage there under reduced before the expiration date thereof and Construction Manager shall provide Owner with a copy of an endorsement to the policy evidencing the same. The insurance required hereunder shall be carried by Construction Manager at least until the Project is finally completed and accepted by Owner. Owner may require the Construction Manager and its Subcontractor to carry additional types and amounts of insurance it deems appropriate given the nature and size of a particular Project. In such case, Owner shall notify Construction Manager within a reasonable period of time prior to the commencement of the Work of such additional requirements.
- 20.1.1 **Liability Insurance.**

20.1.1.1. **Commercial General Liability Insurance.**

The Construction Manager shall provide a commercial general liability insurance policy which has liability limits of at least \$1,000,000.00 per occurrence for bodily injury, death and property damage. The Owner shall be named as additional insureds on such policy and the policy shall provide cross liability coverage. Such insurance policy shall protect Construction Manager from claims which may arise whether such claims may arise out of the operations of the Construction Manager or by anyone

directly or indirectly employed by the Construction Manager. In addition, the policy shall contain the following endorsements (i) "XCU" (explosion, collapse, underground damage) for those classifications excluded under the policy and (ii) agreemental liability. If Construction Manager is performing asbestos-related work, the policy shall also contain a pollution liability endorsement.

**20.1.1.2. Automobile Liability Insurance.**

Construction Manager shall carry an automobile liability insurance which has liability limits of at least \$500,000.00. The Owner shall be named as additional insureds on such policy and the policy shall provide cross liability coverage.

**20.1.1.3. Deductibles**

Deductibles under these liability policies shall not exceed \$5,000.00. Owner shall not be liable for amounts that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Construction Manager and/or Subcontractor providing such insurance.

**20.1.2 Worker's Compensation.**

Construction Manager shall maintain worker's compensation insurance which complies with the requirements of Chapter 440, Florida Statutes.

**20.1.3 Builder's Risk Insurance.**

The Construction Manager shall maintain Construction Manager's risk insurance, at replacement cost, covering the full value of the construction being performed, including where applicable, the existing structure. Such policy shall be written on a cause of loss special form policy, and shall include coverage for reasonable compensation for the Architect/Engineer's services and expenses required as a result of such insured loss. This insurance shall insure the interests of the Construction Manager and Subcontractor in the Work. Property covered by the insurance shall include temporary building(s) or structure(s) at the Project site, other than any of Construction Manager's office trailer(s). In addition, such insurance shall cover portions of the Work stored off the site, after written approval of the Owner, at the value established in the approval, and portions of the Work in transit. The Owner shall be named as additional insureds on such policy. The policy shall include a waiver of subrogation endorsement and a severability of interests endorsement.

The deductible under the policy shall not exceed \$5,000.00. Owner shall not be liable for amounts that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Construction Manager.

When the Work includes the repair, removal, installation and/or testing of live steam boilers, valves, pipes or lines, then such insurance shall include boiler and machine coverage, written on an ISO form or its equivalent.

A loss or losses insured under this insurance policy shall be adjusted by the Construction Manager and its insurance company. The Construction Manager shall repair or replace the damaged property with the proceeds from the Construction Manager's risk policy. The Construction Manager shall be responsible for all damages and necessary repairs whether or not the loss is covered by the Construction Manager's risk policy.

- 20.2 **Certificates of Insurance.** Certificates of Insurance and/or evidence of insurance for all insurance required to be carried under this Article, together with certified copies of the insurance policies (including required endorsements), shall be filed with, and approved by, the Owner prior to commencement of the Work. The Certificates of Insurance shall be dated and show the name of the insurer, the number of the policy, its effective date, and its termination date. Owner will not issue a Notice to Proceed for the Work until Construction Manager has complied with this Article. Construction Manager shall not be entitled to an extension of time or to compensation which may result from delays in the issuance of a Notice to Proceed caused by its failure to provide the foregoing certificates and policies in a timely manner. Certificates of Insurance evidencing the renewal of all insurance required to be carried under this Article shall be provided to Owner at least thirty (30) days prior to the date each applicable insurance policy is scheduled to expire. Owner's review, inspection, or approval of Construction Manager's insurance shall not relieve Construction Manager of its responsibility for providing the insurance required hereby nor constitute a waiver of any such requirements.
- 20.3 **Effect of Insurance.** Compliance with insurance requirements shall not relieve the Construction Manager of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of the Agreement for Construction Management Services, and the Owner shall be entitled to pursue any remedy in law or equity if the Construction Manager fails to comply with the provisions of the Agreement for Construction Management Services. Indemnity obligations specified elsewhere in the Agreement for Construction Management Services shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.
- 20.4 **Waiver of Subrogation.** The Construction Manager hereby releases and discharges the Owner and the Owner's Related Parties of and from all liability to the Construction Manager, and to anyone claiming by, through or under the Construction Manager, by subrogation or otherwise, on account of any loss or damage to tools, machinery, and equipment or other property, however caused. The Construction Manager shall cause its Construction Manager's risk property insurance company to issue a waiver of subrogation consistent with this provision.

## **ARTICLE 21 GENERAL BOND REQUIREMENTS**

- 21.1 **General Bond Requirements.** Recognizing the Project is a public project with a Construction Price which exceeds \$200,000.00, and as such is required to be bonded pursuant to 255.05, Florida Statutes, the Construction Manager shall furnish Payment and Performance bonds on Owner's standard form covering the full and faithful performance of the Agreement for Construction Management Services and the payment of obligations arising hereunder.
- 21.2 **Requests for Copies of Bonds.** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement for Construction Management Services, the Construction Manager shall promptly furnish a copy of the bonds or shall permit a copy to be made.
- 21.3 **Delivery of Bonds.** The Construction Manager shall deliver required bonds and powers of attorney to the Owner prior to commencement of the Work.

## **ARTICLE 22 OWNER'S RIGHT TO STOP WORK**

- 22.1 **Cease And Desist Order.** If the Construction Manager fails or refuses to perform or fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with the Agreement for Construction Management Services, the Owner may, by written notice, order the Construction Manager to cease and desist in performing the Work or any portion of the Work until the cause for the order has been eliminated to the satisfaction of the Owner. Upon receipt of such instruction, the Construction Manager shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's order has been corrected, no longer exists, or the Owner instructs that the Work may resume.
- 22.1.1 The Construction Manager shall not be entitled to an adjustment in the time for performance or the Construction Price under this clause since such stoppages are considered to be the fault of the Construction Manager.
- 22.1.2 The right of the Owner to stop Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Construction Manager or others.
- 22.1.3 In the event the Owner issues instructions to cease and desist, and in the further event that the Construction Manager fails and refuses with seven calendar days to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another Construction Manager, and the Construction Manager shall be responsible for the cost of performing such Work by the Owner.



22.1.4 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Construction Manager.