

CONSTRUCTION MANAGEMENT AGREEMENT

BETWEEN

DR. PHILLIPS CENTER FOR THE PERFORMING ARTS, INC.

AND

THE WHITING-TURNER CONTRACTING COMPANY

EFFECTIVE DATE:

May 9, 2016

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CONSTRUCTION MANAGEMENT AGREEMENT

THIS CONSTRUCTION MANAGEMENT AGREEMENT (this "Agreement") is made as of the 9th day of May, 2016 (the "Effective Date"), by and between DR. PHILLIPS CENTER FOR THE PERFORMING ARTS, INC., ("Owner"), and THE WHITING-TURNER CONTRACTING COMPANY ("Construction Manager" or "Contractor").

Owner: Dr. Phillips Center for the Performing Arts, Inc.
Attn: Katherine Ramsberger
155 E. Anderson Street
Orlando, FL 32801

Architect of Record: HKS, Inc.
Attn: Matt Clear
225 E. Robinson Street, Suite 405
Orlando, FL 32801

Project: Design and construction of a 1,700 seat multipurpose acoustic hall which is described in more detail in Exhibit A attached hereto.

Owner's Representative: The Projects Group
Attn: Matt Edwards
301 Commerce Street, Suite 1301
Fort Worth, TX 76102

Construction Manager: The Whiting-Turner Contracting Company
Attn: Zachary Crane
135 West Central Boulevard, Suite 840
Orlando, FL 32801

City: City of Orlando
Attn: Frank Usina
400 S. Orange Avenue
Orlando, Florida 32802

Owner and Construction Manager agree as follows:

ARTICLE 1 - DEFINITIONS; GENERAL CONDITIONS

1.1 DEFINED TERMS. In addition to other terms defined throughout this Agreement, as used in this Agreement, the following terms shall have the meanings indicated below:

"Bid Package" shall mean each of the bid packages described in the GMP Development Schedule.

"CCR" shall mean the City's Construction Representative who shall be a representative appointed by the City to oversee its interests with respect to the design and construction of the Project.

"City" shall mean the City of Orlando, the Fee Simple Owner, a municipal corporation organized and existing under the laws of the State of Florida, 400 S. Orange Ave., Orlando, Florida 32802.

"City-OPAC Agreement" shall mean that certain agreement between the Dr. Phillips Center for the Performing Arts, Inc. f/k/a Orlando Performing Arts Center Corporation, the City, and the City of Orlando, Florida Community Redevelopment Agency dated June 20, 2007, as amended.

City of Orlando, Florida Community Redevelopment Agency shall mean a public body corporate and politic organized and existing pursuant to Chapter 163, Part III, Florida Statutes ("CRA").

"Construction Contingency" shall mean the construction contingency, established in the GMP Amendment, which shall not exceed 3% of the estimated Cost of the Work set forth in the GMP.

"Construction Cost" shall mean the total cost of all elements of the Work designed or specified by Architect, and shall include the Cost of the Work, plus Construction Manager's Fee and Construction Contingency. Construction Cost does not include the following: Separate Contractors, the cost of the land, rights of way costs, financing costs, Architect's fees, Owner's Representative's fees, Owner's or Owner's other consultants and other "soft" costs. The term "soft costs" shall be an expense item that is not considered direct construction costs, including, but not limited to architectural, engineering, financing, legal fees, and other pre- and post-construction expenses.

"Construction Cost Limitation" shall mean One Hundred Fifty Two Million Dollars (\$152,000,000), which shall be available for Construction Costs as set forth in Section 4.6.1.

"Construction Drawings and Specifications" shall mean the most current working drawings and specifications describing the size, character, design, construction, materials, finishes, structure and mechanical, electrical, and other systems of the Project issued by Architect.

"Construction Manager" or "CM" shall be the firm identified on Page 1 of this Agreement, and shall be the primary construction management firm (or joint venture, as applicable) selected to manage and construct the Project, and its permitted successors and assigns. During the Construction Phase, CM shall be the general contractor and may be referred to in the General Conditions and other documents as the "Contractor".

"Construction Manager's Fee" shall mean the fee set forth in Section 8.3 of this Agreement.

"Contract Documents" shall mean, collectively: (a) this Agreement and all exhibits hereto; (b) the GMP Documents; (c) the Construction Drawings and Specifications; (d) the General Conditions; (e) the GMP Amendment and all exhibits thereto; (f) any executed Change Orders; (g) all Addenda; (h) all Modifications; and (i) the Construction Schedule.

"Cost of the Work" shall have the meaning set forth in Section 7.2 of this Agreement.

"General Conditions" shall mean the General Conditions of the Contract for Construction attached hereto as **Exhibit D**.

"General Conditions Work" shall mean the services and personnel to be provided by Construction Manager as identified in **Exhibit J** attached hereto.

"General Conditions Expenses" shall mean the Cost of the Work incurred in connection with the General Conditions Work and shall be included in the General Conditions Amount.

"GMP" shall mean the guaranteed maximum price established in the GMP Amendment. The GMP shall consist of the Pre-Construction Services Amount, Construction Manager's Fee, the General Conditions Amount, the Construction Contingency and the Cost of the Work as set forth in the GMP Amendment.

"GMP Amendment" shall mean the amendment to this Agreement executed by the Parties establishing the GMP, as contemplated by Section 4.8 hereof, a form of which is attached as **Exhibit I**.

"GMP Development Schedule" shall mean the schedule attached hereto as **Exhibit K**.

"GMP Documents" shall mean (a) the GMP Drawings and Specifications; (b) the GMP Qualifications and Assumptions; and (c) the other documents listed in the GMP Amendment.

"GMP Drawings and Specifications" shall mean the Construction Drawings and Specifications as identified in **Exhibit M**.

"GMP Qualifications and Assumptions" shall mean the written statement of qualifications and assumptions prepared by Construction Manager, based upon the GMP Drawings and Specifications and accepted by Owner and Architect pursuant to Section 4.8.

"Identified Claims" shall mean all claims that (a) have been asserted against the Construction Manager, (b) if valid, are payable from the Construction Contingency, and (c) have been identified by the claimant in writing (both in terms of the description of the claim and the amount asserted) and supported with reasonable documentation detailing the elements and amount of the underlying claim (or if the claimant has not asserted the claim in writing or backup documentation is not otherwise available, then Construction Manager must identify in writing, to the extent then known, the nature, basis and amount of the claim with such specificity as is reasonably satisfactory to Owner).

"Liquidated Damages" shall have the meaning set forth in Section 6.3 of this Agreement.

"Owner" shall be the entity identified on Page 1 of this Agreement.

"Owner's Representative" shall mean The Projects Group, or any successor to the foregoing designated by Owner.

"Owner's Team" shall mean the Owner's staff (or designated representative) assigned to this Project and Owner's consultants including, but not limited to, the Owner's Representative and any other specialty consultants collectively.

"Parties" shall mean Owner and Construction Manager.

"Pre-Construction Services" shall mean all services of Construction Manager to be provided pursuant to Articles 4 and 5 hereof.

"Pre-Construction Services Amount" shall mean the amount paid for Pre-Construction Services, up to a total cap of Four Million and Zero dollars (\$4,000,000.00), for preconstruction services thru GMP Submission, as said sum may be adjusted pursuant to the terms of the Contract Documents, and as more fully described in Exhibit Q (Pre-Construction Commitment Budget). The final "Pre-Construction Services Amount" is included in, and is part of, the overall **"Construction Cost Limitation"** for the Project.

"Project" shall mean the project described in **Exhibit A** hereto.

"Project Closeout Documents" shall mean the marked-up As-Built Drawings (three (3) original printed sets), two (2) sets of all maintenance and operating manuals, and all approved Shop Drawings, Submittals, warranties, guarantees, training manuals and records. An electronic copy shall also be provided for all Project Closeout Documents.

"Project Team" shall mean collectively Owner, Architect, Owner's Representative, CCR, Construction Manager and such other members as may be designated by Owner from time to time.

"Project Schedule" shall mean the project schedule attached hereto as **Exhibit B**.

"Recovery Plan" shall mean the written plan prepared by Construction Manager that addresses an anticipated or actual delay to an item on the critical path of the Project Schedule and describes in detail how the Work will be completed by the Substantial Completion Date (as may be adjusted pursuant to the Contract Documents) notwithstanding such anticipated or actual delay.

"Scheduled Substantial Completion Date" shall mean **(TBD with setting of GMP)** as such date may be adjusted pursuant to the terms of the Contract Documents.

"Self-Performed Work" shall mean such Work (other than General Conditions Work) in which a substantial portion thereof (i.e., more than 50% thereof) is performed directly by Construction Manager's own labor forces or the labor forces of any Affiliate of Construction Manager.

"Staffing Plan" shall have the meaning given to such term in Section 3.4 hereof.

"Staff Costs/Expenses" shall mean all personnel costs and related staff support expense items as set forth in **Exhibit J**.

"Staff Costs/Expenses Amount" shall mean the fixed lump sum amount of Twelve Million Ninety-Four Thousand Six Hundred Twenty-Eight Dollars (\$12,094,628), as said sum may be adjusted pursuant to the terms of the Contract Documents.

"Standard of Care" shall mean that standard of professional care, skill, diligence and quality that prevail in the construction (and construction management) industry for large scale projects, including, but not limited to, multipurpose performing arts centers of similar scope, function, size, quality, complexity and detail in comparable urban areas throughout the United States.

"Value Engineering" shall mean an analysis of the feasibility of alternative systems, equipment and Materials to identify alternative systems, equipment and Materials of equivalent quality to those specified in the Construction Documents, having equivalent characteristics to those specified in the Construction Documents which can be obtained at a lower price without diminishing the quality or architectural design concept reflected in the Construction Documents.

"Work Plan" shall mean the work plan to be developed pursuant to Section 3.5 hereof which will define the deliverables and tasks required for each Project phase and for all document packages throughout the design and construction process.

1.2 OTHER TERMS.

- 1.2.1 Unless otherwise defined herein, capitalized terms in this Agreement shall have the same meaning as those in the General Conditions. Words that have well known technical or construction industry meanings are used in this Agreement with such recognized meanings.

1.3 GENERAL CONDITIONS.

- 1.3.1 Construction Manager shall perform all obligations and responsibilities of the "Contractor" under the General Conditions, the terms and conditions of which are specifically incorporated herein.

ARTICLE 2 - RELATIONSHIP OF THE PARTIES

2.1 COOPERATION WITH PROJECT TEAM; FINANCING ASSISTANCE.

- 2.1.1 Throughout the term of this Agreement, Construction Manager shall communicate and cooperate with Owner, Owner's Representative, Architect and the other members of the Project Team. Owner may, from time to time, designate in writing other persons or entities as being part of the Project Team with the approval of Construction Manager, which approval shall not be unreasonably withheld, conditioned or delayed.
- 2.1.2 Construction Manager shall provide such assistance as Owner may reasonably request in connection with Owner's requirement of obtaining financing for the Project. Construction Manager agrees that it will make available to Owner and the City, and their respective Lenders (if applicable) and any bond trustees, information relating to the Project, including non-privileged information within its possession or control relating to the construction progress and expenditures, as any Lenders or bond trustees may reasonably request, including cooperation in connection with Site inspections and approval of pay applications. Construction Manager shall furnish such consents to assignments and certifications addressed to Owner and the City, their respective Lenders, and any bond trustees, as may be reasonably requested and as are consistent with consents and certificates as would be requested in projects of similar size and complexity and that are consistent with this Agreement and provided that no such requests materially expand Construction Manager's obligations or risk hereunder. Owner shall provide Construction Manager forms of such consents and certificates prior to the execution of any GMP

Amendment and shall use commercially reasonable efforts to incorporate such revisions that Construction Manager reasonably requests. Construction Manager shall cooperate with the independent engineers, if any, of any Lenders or bond trustees.

2.2 RELATIONSHIP WITH CITY.

2.2.1 The Parties hereby acknowledge and agree that the City is an intended third party beneficiary to this Agreement. The City shall have the right to enforce this Agreement (any such enforcement an “Enforcement Action”) in the event of a material default by Construction Manager or the Owner, or if Owner fails to take such actions as may be reasonably necessary to ensure the performance of the Work. If Owner fails to enforce this Agreement when there is a material default by Construction Manager, then the City shall be entitled to initiate an Enforcement Action, after written notice from the City to Owner and Construction Manager listing the default(s) with particularity that must be corrected within the curative periods provided herein (or a commercially reasonable period of time if no cure period is provided). The City, at its election, shall be deemed to have been assigned automatically hereby, Owner’s position under this Agreement to the extent necessary in order that the City may enforce all rights and seek whatever remedies against Construction Manager, as allowed to Owner herein and by Applicable Laws. In addition, the City shall have the right, upon written notice to Owner and Construction Manager, to remedy any default of Owner within the curative periods provided herein (or within a commercially reasonable period of time if no cure period is provided) and Construction Manager shall accept such performance as though performed by Owner. Notwithstanding anything to the contrary set forth herein, neither Owner or Construction Manager shall be deemed agent(s) of the City. No approval by the City shall impose, imply or be construed as an assumption by the City of any duties or responsibilities of others with respect to the design or construction of the Work, or for the construction means and methods employed by Owner, Construction Manager or any Person or Contractor retained by them. Construction Manager shall have no authority to act on behalf of the City or bind the City for payment of any costs or expenses. If the City elects to initiate an Enforcement Action pursuant to this Section 2.2.1 or to cure an Owner default, then Construction Manager shall be entitled to rely on all instructions or directions given by the City. Until such time as an Enforcement Action has been initiated, all formal communications to or by the City, to or from Construction Manager, shall be solely through Owner, and the City shall not, by this Agreement, direct the Work of Construction Manager.

2.2.2 The CCR is authorized to: (i) monitor the performance and progress of all aspects of the Project and report its findings to the City; and (ii) inspect and approve (to the extent approval is required) all documents delivered pursuant to the City-OPAC Agreement or this Agreement to ensure compliance with the provisions hereof.

2.3 RELATIONSHIP WITH OWNER.

- 2.3.1 Owner shall provide Construction Manager with a list of documents and information required by this Agreement or the Contract Documents to be provided by Construction Manager. Construction Manager shall promptly furnish to Owner copies of all such documents and information, and copies of all such documents and information shall be provided by Construction Manager to the Owner's Representative and the CCR at the same time as Construction Manager provides them to Owner.
- 2.3.2 Construction Manager shall send to Owner's Representative and CCR advance notice of all formal Project meetings and, on a regular basis, information regarding the progress of the Work through each design phase and the construction of the Work. During construction, Owner's Representative and CCR shall have the right to attend all formal Project meetings and inspect the Project at all reasonable times, subject to reasonable restrictions imposed by Construction Manager.
- 2.3.3 All instructions by Owner to Construction Manager relating to Work performed by Construction Manager will be issued or made through Owner (or to the extent Owner has confirmed such delegation in writing to Construction Manager or Owner's Representative) in writing, with copies to Architect and Owner's Representative and CCR. All communications and Submittals of Construction Manager to the Owner or the City shall be issued with copies to Owner's Representative, CCR and Architect. Owner's Representative has authority to establish procedures, consistent with this Agreement, to be followed by Construction Manager. Owner shall render approvals and decisions with reasonable promptness to prevent delay in the orderly progress of Construction Manager's services and the Work of Construction Manager. The Project Team shall work together to identify for Owner in a timely manner all the time requirements and restraints with respect to such approvals and decisions. It shall be the responsibility of Owner to secure, in a timely manner, approvals of the CCR required under the City-OPAC Agreement or this Agreement.

2.4 OWNER'S REPRESENTATIVE.

- 2.4.1 Owner has retained Owner's Representative to provide project management services pursuant to a separate agreement. Owner shall designate an authorized representative to render decisions in a timely manner pertaining to information, observations or requests submitted by Construction Manager in writing in order to avoid unreasonable delay in the orderly and sequential progress of the Work. The Project Team shall work together to identify for Owner in a timely manner all time requirements and restraints with respect to such approvals and decisions.
- 2.4.2 Owner may change Owner's Representative by written notice to Construction Manager within five (5) days of such change. Owner's Representative is not responsible for design or construction management, and none of the activities of Owner's Representative are intended to supplant or conflict with any services or responsibilities customarily furnished by Architect or required of Construction Manager.

- 2.4.3 All instructions by Owner to Construction Manager relating to services performed by Construction Manager will be issued or made through Owner in writing. Construction Manager shall be entitled to rely on the accuracy of information and instructions received from Owner. All communications and submittals of Construction Manager to Owner shall be issued or made through Owner. Owner's Representative is empowered to act on behalf of Owner as expressly set forth herein, except with authority to execute Change Orders or Construction Change Directives, which must be signed by Owner. Owner's Representative shall be copied on all correspondence between Owner and Construction Manager.

2.5 PROJECT PARTNERING

- 2.5.1 Construction Manager may be required to participate in a project facilitation process involving all members of the Project Team. The Project facilitation process shall be developed jointly among Owner, Architect and Construction Manager. The cost of the facilitator and any rental for the facility where the partnering session will be held shall be Costs of the Work. Each participant shall bear its own costs of attendance.

ARTICLE 3 - CONSTRUCTION MANAGER'S GENERAL RESPONSIBILITIES

3.1 STANDARD OF CARE.

- 3.1.1 Construction Manager and Owner accept the relationship of trust and confidence established under this Agreement. Construction Manager shall furnish efficient business administration and supervision so as to complete the Work in accordance with this Agreement. In addition to Construction Manager's other obligations under this Agreement with respect to performance of the Work, any services under this Agreement that are solely professional shall be performed by Construction Manager in accordance with the Standard of Care. Notwithstanding any other provision of the Agreement, nothing contained herein shall create a fiduciary relationship between the Owner and Construction Manager.

3.2 EXTENT OF RESPONSIBILITY.

- 3.2.1 Except as established in the GMP, evaluations of the Project Budget, schedules, preliminary estimates of Construction Cost, and detailed estimates of Construction Cost prepared by Construction Manager represent its judgment as a person or entity familiar with the construction industry pursuant to the Standard of Care, but are not guaranties or warranties. The recommendation, advice, suggestions, ideas, and Value Engineering of Construction Manager concerning design alternatives, including selection of Materials and systems and recommendations and analysis regarding long lead time items shall be subject to the review and approval of Owner and Architect and their other professional consultants. Construction Manager shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a discrete portion of the Work or unless Construction Manager needs to provide such services in order to carry out

Construction Manager's responsibilities for construction means, methods, techniques, sequences, and procedures.

3.3 CONSTRUCTION MANAGER'S PERSONNEL.

- 3.3.1 Construction Manager shall assign sufficient numbers of duly qualified personnel to the Work to the extent necessary to ensure that its obligations under this Agreement are timely carried out with respect to the performance of the Work. Such personnel shall include all of the personnel described in **Exhibit G** hereof (as long as they are employed by Construction Manager), all of whom have been approved by Owner based upon information as to each person's background, experience and qualifications submitted to Owner by Construction Manager. Construction Manager shall not employ any senior project personnel on the Work without Owner's prior written approval. The approval by Owner of any Project personnel shall not relieve Construction Manager of any responsibility for such personnel. The personnel identified in **Exhibit G** hereof shall, while employed by Construction Manager, devote such time to the Work as and to the extent set forth in **Exhibit G**, unless Owner gives prior written consent for such personnel to undertake other responsibilities, and such personnel will not be removed or replaced by Construction Manager without Owner's prior written consent so long as they are in the employ of Construction Manager.
- 3.3.2 Owner may require Construction Manager to remove from the Project any personnel and replace them with personnel satisfactory to Owner. In the event that any personnel are no longer employed by Construction Manager, Construction Manager shall notify Owner within two (2) days after learning of such event. Construction Manager shall use commercially reasonable efforts to provide a permanent replacement of any personnel, acceptable to Owner within fourteen (14) days after such event.
- 3.3.3 Construction Manager acknowledges and agrees that Owner selected the Construction Manager based on the reputation of the Construction Manager and its personnel. The Construction Manager further acknowledges that the assignment of its Key Personnel (as defined in **Exhibit G**) to the Project was a primary consideration in the selection of the Construction Manager by Owner, and the Construction Manager shall not change or reassign any member of the Key Personnel without the prior written approval of Owner. Notwithstanding the foregoing, the Construction Manager shall promptly remove and replace, at the Construction Manager's cost and expense, any personnel to which the Owner reasonably objects with a replacement personnel member acceptable to the Owner. Construction Manager acknowledges that its failure to comply with this Section 3.3.4 shall be deemed a material breach of this Agreement. If Construction Manager fails to comply with this Article and changes or reassigns any member of the Key Personnel without the prior written approval of Owner (such approval shall not be unreasonably withheld), Construction Manager shall be obligated to pay the Owner Fifty Thousand and Zero Dollars (\$50,000.00) if the conditions of this Article are not met except in the event a member of the Key Personnel becomes ill or resigns from Construction Manager. Nothing in this Article shall be

construed to limit the Owner's right to terminate this Agreement for cause if the Construction Manager breaches any provision in this Article regarding the Key Personnel.

3.4 STAFFING PLAN.

3.4.1 Construction Manager shall submit, for Owner's review, a detailed Staffing Plan with respect to services and the Work to be performed by Construction Manager and each of its consultants. Such Staffing Plan shall be similar to the format of Construction Manager's standard staffing plan, and shall provide (a) a listing of individuals assigned to each Project Phase; (b) a description of roles/responsibilities for such individuals; and (c) anticipated time to be expended by such individuals in performing services and the Work required for each such Phase pursuant to the Contract Documents. A Preliminary Staffing Plan is attached as **Exhibit G**, and updated versions of the Staffing Plan shall be submitted to Owner with the GMP proposal as set forth hereafter.

3.5 WORK PLAN.

3.5.1 Construction Manager shall submit, for Owner's review, a comprehensive Work Plan. Such Work Plan shall provide information relative to the management and construction of the Project. Construction Manager shall ensure that the Work Plan is implemented throughout each Project phase. The Work Plan is intended to serve as Construction Manager's overall management plan with respect to Construction Manager's practices, procedures, staffing plans, tasks, schedules, documentation reviews and quality control pertaining to the Project. A preliminary Work Plan shall be submitted to Owner by July 31, 2016 and the final Work Plan shall be submitted to Owner by August 31, 2016.

3.6 QUALITY CONTROL.

3.6.1 Construction Manager shall participate in coordination and quality review meetings with Owner at the end of the following stages of design: (a) completion of the Construction Drawings and Specification, and (b) immediately prior to the issuance of each of the Bid Packages.

3.7 CM'S LIMITATION OF AUTHORITY.

3.7.1 Construction Manager shall not have any authority to bind Owner for the payment of any costs or expenses not included in the Cost of the Work without the express prior written approval of Owner. Construction Manager shall have authority to act on behalf of Owner only to the extent provided herein or in the General Conditions. In the event of an emergency affecting the safety of persons, the Project or Adjacent Property, Construction Manager, without special instruction or authorization, shall act reasonably to prevent or minimize any threatened damage, injury or loss. Construction Manager's authority to act on behalf of Owner shall be modified only by an amendment in accordance with the terms hereof.

3.8 APPROVALS.

- 3.8.1 Construction Manager shall assist Owner in obtaining all consents and approvals required to be obtained from, but not limited to, any Governmental Authority relating to the Work.

3.9 BLUEPRINT INITIATIVE MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES UTILIZATION.

- 3.9.1 Pursuant to the City-OPAC Agreement, The Owner shall require Construction Manager to comply with the minority business enterprise and women-owned business enterprise requirements of Chapter 57 of the City of Orlando Code, make good faith efforts to meet the participation goals, and cooperate with the City and Owner in their local business economic development efforts and in the City's "Blueprint for Using Community Venues to Create a Sustainable Economic Impact" business economic development efforts. It is the responsibility of Construction Manager to read and become familiar with the requirements of the City of Orlando Code, Chapter 57 (www.cityoforlando.net/admin/mbe/chapter57.html). The City's minority and women business enterprise program establishes minimum participation goals of 18% minority business enterprises and 6% women business enterprises, respectively, for supplies, services and construction to be awarded to minority and women business enterprises.
- 3.9.2 The MBE and WBE Project participation goal for the Work is 24% of the dollar value of the GMP is to be performed by MBE and WBE firms. The Construction Manager agrees that to the extent the Project fails to achieve 24% participation by MBE and WBE firms, then Construction Manager's compensation under Section 7.3 hereof shall be reduced by an amount equal to Fifty-Thousand Dollars (\$50,000) for each percentage point that the actual MBE and WBE Project participation is less than 24% of the dollar value of the GMP. The reduction of compensation shall be considered liquidated damages and not a penalty.
- 3.9.3 Only City of Orlando certified/recognized MBE and WBE firms and Orange County Florida's certified/recognized firms granted reciprocity by City will count towards the achievement of the participation goals.
- 3.9.4 The Construction Manager shall also comply with the Community Impact Plan, attached hereto as Exhibit **H-1 to the General Conditions of the Contract for Construction**, submitted with its proposal for the Project. In the event of a conflict between the terms of the Community Impact Plan and this Section 3.9 and Exhibit **H to the General Conditions of the Contract for Construction**, the provision which applies the more stringent requirement upon the Construction Manager shall prevail. Construction Manager agrees not to prohibit the same MBE/WBE from participating on multiple contractor teams, which are pursuing the same bid package.
- 3.9.5 In addition to the requirements set forth in Section 3.9 above, Construction Manager shall comply with the requirements of the Blueprint/MBE/WBE Requirements set forth in **Exhibit H** of the General Conditions.

3.10 CONSTRUCTION MANAGER'S BOND.

- 3.10.1 Construction Manager shall provide a payment and performance bond in an amount equal to the GMP. The payment and performance bond shall be in compliance with the terms of Section 255.05, Florida Statutes and will utilize the A312 form for Payment and Performance Bonds in the form attached as Exhibits P. The Payment and Performance Bonds shall expressly reflect on their face that each is issued pursuant to Florida Statute, §255.05. Prior to execution of the GMP Amendment, the Parties shall cooperate with one another to coordinate the phased issuance of the payment and performance bond. Such bonds shall name Owner as obligee and the City and CRA as additional obligees thereunder. The bond shall be written through a surety company (a) authorized to do business in the State of Florida, (b) having a rating of not less than "A" in the latest version of Best's Insurance Guide, published by A.M. Best & Company, (c) a financial size category of "X" or higher, as rated by A.M. Best Company; and (d) is listed by the United States Treasury Department as acceptable for bonding Federal projects and that the bond amount is within the limit set by the Treasury Department as the net limit on any single risk. There shall be no affiliation between Construction Manager and the bonding company. Each bond shall be prepared in an amount equal to one hundred percent (100%) of the most current GMP Amendment. The penal sums of the bonds will be increased as the GMP is increased so that the penal sums of the bonds are at all times equal to the current GMP. The penal sum of the bonds shall not decrease with the deduction of any City Furnished Materials to the GMP. The performance bond shall cover all of Construction Manager's obligations under this Agreement, including but not limited to Liquidated Damages, defects, warranties and guarantees.
- 3.10.2 In the event the rights and obligations of the Owner are assigned to the City pursuant to an Enforcement Action brought by the City, then Construction Manager shall procure new or amended bond forms identical to the forms attached as Exhibit P excepting only that the identity of the Owner will be changed from Dr. Phillips Center for the Performing Arts, Inc. to City and Dr. Phillips Center for the Performing Arts, Inc. will replace the City as an additional obligee. The new or amended bond forms shall be attached to the Change Order required in paragraph 10.3.1 of the Construction Management Agreement.

ARTICLE 4 - CONSTRUCTION MANAGER'S PRECONSTRUCTION RESPONSIBILITIES/SERVICES

4.1 PROGRAMMING AND PLANNING.

- 4.1.1 Construction Manager shall review and comment upon Owner's program statement and schedule requirements, each in terms of the other.

4.2 PROJECT SCHEDULES.

- 4.2.1 The initial Project Schedule, attached hereto as **Exhibit B**, has been mutually developed and approved by the Parties. The Project Schedule will be updated from time to time by Owner's Representative as reasonably required pursuant to the terms of the Contract Documents. The construction and occupancy portions of the

Project Schedule shall be incorporated into the Construction Schedule by Construction Manager and updated and delivered to Owner, Owner's Representative, and CCR monthly throughout the duration of the Work.

4.2.2 Within twenty-one (21) days after Construction Manager's receipt of the Construction Documents, Construction Manager shall deliver to Owner a preliminary Construction Schedule. Construction Manager shall investigate and recommend a schedule for the purchase of Materials and equipment requiring long lead time procurement. The Construction Schedule shall be updated and distributed monthly to the Project Team throughout the duration of the Work to accurately reflect progress to date and any new or revised logic or activities. The Construction Manager shall perform the Work in general accordance with the most recent Construction Schedule submitted to and approved by the Owner, CCR and Architect. Construction Manager shall supply, on a monthly basis to the Project Team, graphic representation of the Construction Schedule, together with such reports as requested by Owner, using such software program as is mutually agreed to by the Parties.

- .1 The monthly updates of the Construction Schedule shall include a list of material changes made to the schedule from previous updates, including activity durations and activity logic or relationship changes.
- .2 The monthly updates of the Construction Schedule required under this Section 4.2 shall be included in the Construction Manager's monthly Progress Report (See General Conditions of the Construction Management Agreement for definition of Progress Report.).
- .3 Construction Manager shall deliver the electronic version of the Construction Schedule to Owner and the Project Team.

4.2.3 Construction Manager shall propose, review and evaluate various alternative schedules during the preconstruction phase as a part of Construction Manager's responsibilities. Construction Manager shall use reasonable efforts to estimate any schedule related impact on costs during the evaluation of any alternative schedules. Construction Manager shall also provide various conceptual master planning schedules that are to include not only the Work covered under this Agreement, but also "other components" of the Project mutually agreed to by the Parties (e.g., off site roadway, utility or parking improvements, if any) in order to allow Owner to plan the overall Project, including such other components or parts. Owner shall provide Construction Manager with information regarding these "other components," and Construction Manager shall be entitled to rely upon such information. Construction Manager shall, as requested by Owner, update the Construction Schedule to incorporate any such alternative schedules.

4.2.4 The Construction Manager shall prepare and keep current for the Architect and the Owner's and Team's approval, a schedule of submittals which is coordinated with the Project Schedule and Construction Schedule and allows the Owner and the Architect reasonable time to review submittals. If the Construction Manager fails to submit a submittal schedule, the Construction Manager shall not be entitled to

any increase in Contract Sum or extension of Contract Time based on the time required to review of submittals.

4.3 VALUE ENGINEERING.

4.3.1 Construction Manager will assist Architect in providing a life cycle analysis and shall provide a cost reduction and Value Engineering analysis on major construction components, such as, but not restricted to (1) structural system, (2) exterior envelope, (3) mechanical system, (4) lighting, (5) power service, (6) interior finishes, (7) heated water systems (e.g. gas boiler vs. electric), (8) HVAC systems, (9) waterproofing, (10) roofing systems, (11) vertical transportation systems and (12) generator. Construction Manager will conduct a series of Value Engineering analysis workshops during the GMP Development phase of the Project to develop cost saving ideas for the Work. A formal report analyzing the Value Engineering will be prepared by Construction Manager following these workshops and distributed to the Project Team. Construction Manager shall not be deemed to have guaranteed that any of the Value Engineering or other cost saving ideas will work and shall not be deemed to have taken on responsibility for design by Construction Manager's role in Value Engineering, offering cost savings ideas or in making other comments on the design.

4.4 COST ESTIMATES.

- 4.4.1 Construction Manager shall work with Architect and other members of the Project Team to provide cost estimating on a prompt and regular basis with respect to all major construction components, systems and elements of the Work so that the Project design and budget can evolve in a timely, consistent and collaborative fashion.
- 4.4.2 Construction Manager shall deliver to Owner, CCR, and Architect detailed estimates of the Construction Cost on the dates set forth in the Project Schedule, as said dates and Project Schedule may be updated and adjusted pursuant to the terms of the Contract Documents.
- 4.4.3 In preparing the Construction Cost estimates and any updates thereto, Construction Manager shall use recognized and accepted cost estimating techniques in the construction industry. Each updated estimate shall identify significant changes from the previous estimate and the reasons for such changes. After preparing the Construction Cost estimates and updates, Construction Manager, Owner's Representative, CCR and Architect will meet to review the estimates and updates to the estimates.

4.5 CONSTRUCTABILITY ANALYSIS.

- 4.5.1 Construction Manager shall cooperate with Architect and other members of the Project Team to provide constructability analysis within a reasonable time after issuance of Construction Documents with respect to all major construction components, systems and elements of the Work.

4.5.2 Construction Manager shall provide an analysis of the types and quantities of labor required for the Work and shall review the availability of appropriate categories of labor required for critical phases. Construction Manager shall make recommendations for and execute actions designed to minimize adverse effects of labor shortages.

.1 The labor analysis shall be updated periodically in order to provide information to the Blueprint Employment Office.

4.6 GMP DEVELOPMENT.

4.6.1 The Construction Cost Limitation of One Hundred Fifty-Two Million Dollars (\$152,000,000) constitutes the fixed limit of Construction Cost available for all Work. The GMP cannot exceed the Construction Cost Limitation, and, accordingly, the Project Team shall work in good faith to achieve a GMP that complies with the Construction Cost Limitation. To that end, Construction Manager and Architect shall use their best efforts to propose to Owner Value Engineering and other cost saving alternatives to cause the GMP to be within the Construction Cost Limitation, and Owner may, upon reasonable consultation with City select the items to be incorporated into the Construction Documents, but if Owner does not use the alternatives proposed by Construction Manager and Architect, or if Construction Manager and Architect cannot propose sufficient Value Engineering or other cost saving alternatives, then the GMP fixed by the Parties may exceed the Construction Cost Limitation.

4.6.2 Owner shall cause Architect to deliver the GMP Drawings and Specifications and other documents referenced in the GMP Development Schedule on or before the respective dates set forth in the GMP Development Schedule (as attached in **Exhibit K**). Construction Manager shall prepare and deliver to Owner the proposed GMP and the GMP Qualifications and Assumptions for Owner's review and approval on or before the respective dates set forth in the GMP Development Schedule.

4.6.3 The guaranteed maximum price shall be established based on an open book process. Owner shall be entitled to full access to all Subcontractor bids and underlying documentation establishing the GMP.

4.6.4 Construction Manager shall prepare the GMP in accordance with the Standard of Care.

4.6.5 Following the establishment of the GMP, as applicable, and during the development of the Construction Drawings and Specifications, if any member of the Project Team becomes aware of any facts that would cause the GMP to be exceeded then they shall give prompt written notice to all other Project Team members.

4.7 GMP.

4.7.1 The GMP shall be developed in accordance with the GMP Development Schedule which is attached hereto as **Exhibit K**.

- 4.7.2 Construction Manager shall deliver to Owner the GMP proposal and the Project Team shall meet to review such GMP proposal. If Owner or Architect discovers any inconsistencies or inaccuracies in the GMP proposal, then they shall promptly notify Construction Manager, who shall make appropriate adjustments to the GMP proposal. The reconciliation shall be documented by an addendum to the GMP Qualifications and Assumptions that shall be approved in writing by Owner, Architect and Construction Manager. The Project Team shall work cooperatively in a diligent manner to achieve the final GMP targeted submission date for the entire Work, as set forth on **Exhibit K**.
- 4.7.3 Contingent upon Owner's approval of the GMP proposal, Owner and Construction Manager will enter into a GMP Amendment in the form attached hereto as **Exhibit I**, based upon the approved GMP proposal, including the associated GMP Drawings and Specifications and GMP Qualifications and Assumptions. If Owner disapproves of the GMP proposal, then Owner may terminate this Agreement without cause as is set forth in the General Conditions.
- 4.7.4 The GMP, once established, shall be revised only upon the issuance of a properly authorized Change Order or Construction Change Directive. The GMP shall be based upon completion of the Work pursuant to the dates for Substantial Completion and Final Completion set forth in the Project Schedule attached to the GMP Amendment, or **Exhibit B** hereto if no Project Schedule is attached to the GMP Amendment.

4.8 CONSTRUCTION DOCUMENTS PHASE.

- 4.8.1 If, in connection with its review of the Construction Drawings and Specifications as a contractor, Construction Manager knows or discovers that portions of the Construction Drawings and Specifications are at variance with Applicable Laws, then Construction Manager shall promptly notify Architect and Owner in writing. Construction Manager shall promptly report to the Owner any conflicts it knows or discovers between the construction drawings and specifications.
- 4.8.2 Construction Manager shall (a) consult with Owner and Architect with respect to constructability, Site access and use, selection of Materials (as more fully set forth herein), building systems and equipment and means and methods of construction, (b) provide comments and recommendations on the relative feasibility of construction methods, availability of Materials, time requirements for procurement, installation and construction, and factors related to cost, including costs of alternative designs or Materials and possible economies, Value Engineering analysis, constructability analysis and (c) when requested to do so, submit reports to Owner and Owner's Representative regarding same.
- 4.8.3 Construction Manager shall advise Architect and Owner concerning Materials to be used in the Work. Construction Manager shall promptly review potential materials specified by Architect and, where appropriate, promptly prepare written cost analysis of such Materials. Where appropriate, Construction Manager shall promptly propose any alternative Materials of which Construction Manager is aware that may not have been considered by Architect. If requested by Owner or

Architect, Construction Manager shall promptly prepare written cost analysis of such alternative Materials.

- 4.8.4 Construction Manager shall verify that the Contract Documents include requirements and assignment of responsibilities for safety precautions and programs and temporary Work facilities for common use of Construction Manager and the Subcontractors.
- 4.8.5 Construction Manager shall, on a continuing basis, review the Construction Drawings and Specifications as they are being prepared, recommend alternative solutions whenever design details adversely affect construction feasibility, Construction Cost or the Construction Schedule without, however, assuming responsibilities for design.
- 4.8.6 Construction Manager shall review the Drawings and Specifications for each Bid Package to minimize areas of conflict, gaps and overlapping in the Work to be performed by the various Subcontractors. In conjunction with Architect, Construction Manager shall identify areas Construction Manager recognizes as having incomplete documentation and uncoordinated multi discipline Work.
- 4.8.7 Construction Manager and Owner recognize that, subsequent to the execution of this Agreement, the final Construction Drawings and Specifications shall be prepared by Architect in accordance with the Project Schedule. Construction Manager acknowledges that at the time it makes the GMP proposal to Owner, it will have had sufficient involvement with the Project to understand the program requirements and Project scope as expressed in the applicable GMP Documents associated with that proposal and, therefore, agrees that if the GMP proposal is accepted by Owner, it will make no claim against Owner for an increase in the GMP based upon the more fully developed plans, sections or details contained in the Construction Drawings and Specifications for the Work associated with the accepted GMP, provided that neither the program nor the scope, quantity, quality or sequencing of the Work associated with the accepted GMP changes materially or in any manner that is not reasonably inferable from the GMP Drawings and Specifications.

4.9 PERMITTING AND APPROVALS.

- 4.9.1 Construction Manager shall assist Owner in obtaining all consents and approvals required to be obtained from any Governmental Authority relating to the construction of the Work.
- 4.9.2 Construction Manager shall obtain, with assistance from Owner and Architect, the overall building permits for the Work, including Site development, shoring and excavation, substructure and superstructure, and finishing components as sequenced in negotiation with the City of Orlando Permitting Services officials and required for the Work.
- 4.9.3 Construction Manager shall arrange, coordinate and secure all other Permits, licenses or approvals that are necessary for proper execution and completion of the

Work and that are required by Governmental Authorities and customarily obtained by construction contractors in Orlando.

4.10 OTHER SERVICES.

Throughout the GMP Development and Construction Documents Phases, Construction Manager shall:

- 4.10.1 Investigate, in consultation with Architect, and recommend a schedule for City-Furnished Materials and equipment with particular emphasis on items requiring long lead time procurement. Construction Manager shall coordinate such schedule with the early preparation of portions of the Contract Documents by Architect, and if requested by Owner, assist Owner with expediting and coordinating delivery of these purchases. The foregoing are in addition to Construction Manager's obligations with respect to City-Furnished Materials as set forth in the General Conditions.
- 4.10.2 Make recommendations to Owner and Architect, regarding the phasing and prioritization of the Work and discuss Construction Manager's expected construction activities and the division of Work and the orderly bidding and awarding of Subcontracts. In doing so, allow for phased construction and take into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, and provisions for temporary facilities for the Work, including hoists and cranes.
- 4.10.3 Provide appropriate instructions clearly describing Site coordination and staging and storage areas for common use of Construction Manager and Subcontractors, including applicable rules relative to the operation of Project facilities.
- 4.10.4 Prepare and submit to Owner and Architect, for review and information, all necessary bidding information, instructions to bidders, bidding forms, special conditions, Subcontract agreement forms and other documents to be submitted to bidders, incorporating the Construction Drawings and Specifications as prepared by Architect and including a scope of Work defining what is included in each Subcontract Bid Package.
- 4.10.5 Develop and implement, in cooperation with Owner, a plan to mitigate the impacts of construction on surrounding neighborhoods.
- 4.10.6 Develop, with the cooperation of the Owner and the City, a transportation management plan for the construction period, including traffic control, street signage, street closures or diversions, public transportation issues, parking meters and truck routing for City (in its regulatory capacity) approval.

4.11 ESTABLISHMENT OF CAPITAL RESERVE.

- 4.11.1 Construction Manager shall advise Owner in establishing appropriate levels of funding an initial capital reserve budget for the Project based upon the useful life of the major operational systems.

4.12 GENERAL CONDITIONS WORK.

4.12.1 Construction Manager shall provide and supervise the General Conditions Work.

ARTICLE 5 - COMPETITIVE BIDDING; SUBCONTRACTS

5.1 COMPETITIVE BIDDING.

- 5.1.1 Construction Manager shall develop Subcontractor interest in the Project and shall competitively award the Work of the various Subcontractors in accordance with an open competitive procurement process set forth in **Exhibit H** attached hereto, except as Owner may otherwise approve in writing. Except where waived by Owner upon request by the Construction Manager, Construction Manager shall obtain a minimum of three independent written competitive bids. In the event less than three bids are received, the Construction Manager may seek Owner's approval to waive the minimum requirement. Construction Manager shall evaluate market conditions and schedule bids and proposals to obtain competitive prices commensurate with the overall Work scheduling. All bids and proposals shall seek fixed or stipulated sum pricing. Bids requesting pricing on a guaranteed maximum price basis shall not be solicited without Owner's prior written approval with notice to CCR.
- 5.1.2 Construction Manager shall develop for Owner's review and approval pre-qualification criteria to be used in evaluating bidder responsibility in each of the trade categories. Construction Manager shall assist Owner in preparing a "Request for Pre-Determination of Responsibility" based upon the approved pre-qualification criteria to be used to solicit bidder responses. Construction Manager shall assist Owner in evaluating all responses to the Request For Pre-Determination of Responsibility and shall make recommendations to Owner regarding the list of responsible bidders to be used for each trade or category of work. With respect to the Self-Performed Work, Owner shall develop both the pre-qualification criteria and shall approve, in its sole discretion, the list of responsible bidders.
- 5.1.3 Construction Manager shall assist Owner, Owner's Representative and Architect to unbundle potentially large Subcontracts with the goal of increasing the opportunity for small and historically disadvantaged businesses to obtain subcontracts.
- 5.1.4 Subject to Owner's reasonable review and approval, Construction Manager shall develop the bidding criteria, bidding schedules and bidding information.
 - .1 Construction Manager shall conduct publicly noticed pre-bid conferences with prospective bidders, except to the extent waived pursuant to Article 5.1.1 above, to familiarize bidders with the Contract Documents, and any special requirements of the Contract Documents.
 - .2 Construction Manager shall obtain responses from Architect to all questions received from potential Subcontractors during the bidding period and review Addenda prepared by Architect to incorporate those responses. Construction Manager shall prepare a record of the questions

and answers discussed at the pre bid conferences and received by other means that shall be used by Architect to prepare Addenda.

- .3 Construction Manager shall provide in writing to Owner three (3) days prior to receipt of bids a pre-bid budget, which is an allocation of the GMP estimate against the bid categories out for bids, including any request for a bid hold back or not awarded work from the estimated cost of the Work within the GMP.

5.1.5 All bids and responses shall be opened by Construction Manager in the presence of Owner, and be made available for review by CCR and Architect.

- .1 All bids and responses shall be treated as confidential by the Project Team. Construction Manager shall receive bids and responses, prepare bid and response analyses and consult with Owner and Architect regarding the award of Subcontracts or rejection of bids. Bid analysis shall include, without limitation, a budget comparison with budget assumptions for those aspects of the Work not included due to bidder qualifications, appropriate budget contingencies and evaluation of compliance with the participation goals set forth in Section 3.9 hereof.
- .2 After analyzing the bids and responses, Construction Manager shall submit copies of the bids or responses to Owner with recommendations as to whom each bid should be awarded.
- .3 Award shall be made based upon Construction Manager's reasonable determination of the bid that represents the best value to the Project.
- .4 If Owner requests the selection of a bid or response other than the one recommended by Construction Manager without reasonable cause for rejecting the recommended bid or response, and Construction Manager complies with such request, then the GMP shall be adjusted by the difference in the price between the recommended bid and the Owner-required bid.

5.2 SELF-PERFORMED WORK.

5.2.1 Neither Construction Manager nor any Affiliate of it shall bid on any Bid Package unless Owner has given its express prior written approval. If Owner does approve such bidding by Construction Manager or any of its Affiliates, Construction Manager, or its Affiliates, shall be permitted to submit a sealed bid for such Self-Performed Work pursuant to the competitive bidding procedures applicable to all bidders. In such instance, the opening, review and advice with respect to award and/or rejection of such bids shall be managed by Owner's Team. In such instances, the following requirements shall also apply: (a) if Construction Manager, or its Affiliates, desire to bid on a Bid Package, then Construction Manager, or its Affiliates, shall review such Work (including the bid packaging plan) with Owner and Architect prior to finalizing the Bid Package; (b) there shall be a strict separation of the personnel involved with bidding the Self-Performed Work and Construction Manager's other personnel involved in the Project, and

Construction Manager shall, by written policy distributed to all affected personnel (a copy of which shall be delivered to Owner), strictly prohibit any communication prior to bid award among personnel involved with the estimating, bidding, management or other services in connection with the Self-Performed Work and personnel working on other aspects of this Project pursuant to this Agreement (other than such communication as is permitted by all bidders); (c) if fewer than two other bids from responsible bidders are submitted for Self-Performed Work, Owner, at its option, may disqualify Construction Manager, or its Affiliates, from award of the bid for Self-Performed Work and, in Owner's discretion, may cause the Bid Package with respect to the Self-Performed Work to be re-bid; (d) Construction Manager shall not participate in the analysis and/or recommendations with respect to the award of the Subcontract for any Self-Performed Work, and all inquiries shall be forwarded to Owner and Owner's Representative; (e) Construction Manager, or its Affiliates, shall not, in its bid, use any of the General Conditions Work to support the Self-Performed Work or use the General Conditions Work for Self-Performed Work on any terms or conditions different from the terms or conditions on which such General Conditions Work are made available to all other bidders; and (f) the solicitation for bids on Self-Performed Work shall specifically state that Construction Manager, or its Affiliates, shall have the right to submit a sealed bid on Self-Performed Work.

- 5.2.2 If the foregoing procedures are not strictly followed, then Owner shall have the right to reject the bid of Construction Manager or its Affiliates for Self-Performed Work. Any rejection of a bid or required re-bid under this Section 5.2 shall not be the basis for an increase in the GMP or adjustment to the Project Schedule.

ARTICLE 6 - TIME

6.1 PROJECT SCHEDULE.

- 6.1.1 The Construction Manager will be given access to the Site so that construction activities can begin no later than the applicable date set forth in the Project Schedule. If the final Construction Drawings and Specifications are not delivered in accordance with the applicable Project Schedule, and the Parties have mutually agreed in writing that the delay actually affects the critical path of the Construction Manager's Construction Schedule then Construction Manager shall be entitled to its actual and substantiated costs to accelerate the Construction Schedule for the actual impact to the critical path of the Construction Schedule.
- 6.1.2 Time is of the essence of this Agreement. Construction Manager shall perform in general accordance with the Project Schedule to cause the Work to meet the major milestone dates identified as such in the Project Schedule. Construction Manager shall achieve Substantial Completion on or before the Scheduled Substantial Completion Date and shall achieve Final Completion by the date for Final Completion set forth in the Project Schedule, as adjusted pursuant to the Contract Documents. Dates established and shown in Project Schedule for Substantial

Completion and Final Completion shall not be altered except by a Change Order or Construction Change Directive.

6.2 CONSTRUCTION MANAGER'S RECOVERY PLAN.

6.2.1 Construction Manager shall submit a Recovery Plan to Owner, CCR and the Owner's Representative for review and comment whenever there is an anticipated or actual change to an item on the critical path of the Project Schedule resulting in a delay of seven (7) days or more.

6.3 LIQUIDATED DAMAGES.

6.3.1 Refer to Liquidated Damages attached hereto as **Exhibit L. All such liquidated damages shall be assessed in lieu of any and all other damages of any kind, direct or indirect, for damages due to delay of the Work.**

ARTICLE 7 - PAYMENT

7.1 CONTRACT SUM; CONSTRUCTION CONTINGENCY; ALLOWANCES.

7.1.1 Construction Manager shall perform the Pre-Construction Services for the Pre-Construction Services Amount. The Pre-Construction Services Amount includes all costs and expenses Construction Manager may incur in connection with performing the Pre-Construction Services, and there shall be no separate payment or reimbursement for such expenses. No retainage shall be withheld on Pre-Construction Services payments. The Pre-Construction Services Amount is a fixed lump sum amount, to be paid in equal monthly payments between the execution of this Agreement and the delivery of the GMP in accordance with the Project Schedule.

7.1.2 Construction Manager shall provide the personnel, materials, equipment and other items identified in **Exhibit G** for the Staff Costs/Reimbursable Expenses Amount. Commencing with the start of the Construction Phase, the Staff Costs/Reimbursable Expenses Amount shall be billed to Owner monthly as they are incurred and shall be paid monthly, without retainage, at the same time Owner pays Cost of the Work, as provided in Section 8.4 hereof. Notwithstanding anything herein to the contrary, the total amount to be paid to Construction Manager for Staff Costs/Reimbursable Expenses shall not exceed the Staff Costs/Reimbursable Expenses Amount and Construction Manager shall not be entitled to separate reimbursement or payment for any Cost of the Work related to Staff Costs/Reimbursable Expenses other than the Staff Costs/Reimbursable Expenses Amount. The Staff Costs/Reimbursable Expenses Amount is a fixed lump sum amount, to be paid in accordance with a billing schedule to be agreed upon by the Parties.

7.1.3 In addition to the Pre-Construction Services Amount and the Staff Costs/Reimbursable Expenses Amount, Owner shall pay at the times and in the manner provided for in this Article 8, the Cost of the Work plus Construction Manager's Fee. The total amount of the Pre-Construction Services Amount, the

Staff Costs/Reimbursable Expenses Amount, the Cost of the Work, and Construction Manager's Fee shall not exceed the GMP, after the GMP has been established.

- 7.1.4 The GMP shall include a Construction Contingency equal to 3% of the estimated total Cost of the Work. The Construction Contingency (but not the GMP) as set forth in the Schedule of Values shall be increased to reflect any net savings resulting from the award of Subcontracts. The amount of the adjustment to the Construction Contingency shall be determined by subtracting the face amount of each Subcontract at the time the Subcontract is entered into from the amount allocated in the initial Schedule of Values of the Work (attached to the GMP Amendment) applicable to the Work to be performed under such Subcontract.
- 7.1.5 Construction Manager may permit funds to be expended from the Construction Contingency for Cost of the Work not included in a Change Order, but the Construction Contingency may not be used to pay for any Staff Costs/Reimbursable Expenses or costs incurred by Construction Manager that are not Cost of the Work. Any proposed expenditures of the Construction Contingency shall be evidenced on the pay application requesting release of the Construction Contingency and subject to Owner's review and approval as being consistent with this Section 7.1.5 and any applicable Contract Documents. Any remaining Construction Contingency balance at Final Completion shall be released to the Owner. Any release of Construction Contingency shall be evidenced by a Change Order decreasing the GMP by the amount released.
- 7.1.6 The GMP Amendment may contain Allowances. For these Allowances, Construction Manager shall propose its estimates of the typical cost for the Allowance item and accounting for the unique features of this Project, its location, information available and local labor rates and Owner's directions. Unless otherwise noted in the Contract Documents, the Cost of the Work for any Allowance in the GMP shall include all labor, Material, equipment, taxes, transportation, ancillary costs, General Conditions Expenses and all Subcontractor overhead, profit, and any other applicable mark-ups. Construction Manager shall develop a final price for portions of the Work covered by Allowances promptly after Owner has finalized its selection of items and Architect has completed all related Contract Documents. Construction Manager shall give notice to Owner of the final amount.
- 7.1.7 If the Cost of the Work of any Allowance item is more or less than the Allowance for that item, Construction Manager shall promptly notify Owner in writing. The Owner will either elect to request the Construction Manager to prepare an appropriate Change Order modifying the GMP or Value Engineer the design to meet the Allowance Budget.

7.2 COST OF THE WORK.

- 7.2.1 Construction Manager shall be responsible for, and shall pay without reimbursement from Owner, all Cost of the Work in excess of the GMP, as the GMP is to be adjusted pursuant to the terms of the Contract Documents.

7.2.2 The following, to the extent incurred in connection with services rendered and Work performed pursuant to this Agreement, and only the items specifically and expressly described below, shall be "Cost of the Work:"

- .1 Subcontracts: All costs incurred in connection with Work performed and Materials provided pursuant to and in accordance with Subcontracts with Subcontractors, subconsultants, materialmen or suppliers and other contractors for portions of the Work.
- .2 Personnel Expenses: All personnel expenses not expressly included in the field office staffing to be covered by the Staffing Costs/Reimbursable Expenses Amount set forth in **Exhibit J** attached hereto, but only if identified in a signed Change Order, CCD or other express prior written authorization from Owner, including but not limited to:
 - .1 Labor in Construction Manager's direct employ at the rates set forth in the attached **Exhibit F** (subject to annual adjustment as requested by Construction Manager, as approved in advance by Owner).
 - .2 Personnel engaged on the Project, either on or off site, and performing services related to the Project to the extent of hours devoted to the Project at the rates set forth in the attached **Exhibit F**.
 - .3 With respect to Construction Manager's employees described in this Section 7.2.2.2, the scheduled rates include the pro rata portion of the cost of mandatory and customary contributions and benefits as required by law, any applicable collective bargaining agreement or Construction Manager's company-wide policy related to the direct salaries of such employees, including employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits pursuant to Construction Manager's company-wide policy.
- .3 Equipment and Materials: Equipment and Materials purchased directly by Construction Manager, including transportation and storage thereof, without any mark-up or fees other than any items included as part of the General Conditions Amount. Construction Manager shall furnish Owner with such documentation as shall be required to enable Owner to obtain the benefit of all warranties and guarantees made available with respect to such equipment and Materials. Payment for Materials while stored off site shall be subject to the requirements of the General Conditions and any other applicable requirements set forth in the Contract Documents.
- .4 Taxes: State, County and municipal taxes, fees or other charges incurred as a direct consequence of the performance of the Work (but not franchise taxes or taxes based on net income), including, to the extent not exempt,

sales and use taxes other than taxes on any items included as part of the Staffing Costs/Reimbursable Expenses Amount.

- .5 Rental Equipment and Tools: Rental charges of all machinery and equipment used at the Project Site, including installation, repair and replacement, dismantling, removal, cost of lubrication, transportation and delivery costs thereof other than any items included as part of the Staffing Costs/Reimbursable Expenses Amount. With respect to equipment owned by Construction Manager and rented to the Project, rental charges shall be consistent with the then current prevailing rental cost of such equipment in the Greater Orlando, Florida area.
- .6 Equipment Operation, Maintenance and Repair: All costs for the operation, maintenance and repair of Construction Manager's equipment or of equipment rented from third parties other than any items included as part of the Staffing Costs/Reimbursable Expenses Amount, including (i) the cost of all preventive maintenance, fuel, oil, grease and other service to such equipment, and (ii) minor repairs wherein the parts necessary to effect repairs to such equipment cost Five Thousand Dollars (\$5,000.00) or less.
- .7 Transportation: Except as hereinafter provided, all loading, unloading, freight, express, trucking and demurrage charges, including costs of assembling, erecting, moving and dismantling construction equipment.
- .8 Applicable Laws: All costs of compliance with all Applicable Laws, Permit fees, inspection and testing costs, licenses and tests, including citations or penalties that were not caused by Construction Manager's negligence or failure to fulfill a specific responsibility of Construction Manager, but only to the extent any such costs are not recoverable by Construction Manager from Subcontractors, suppliers, sureties or available insurance and provided Construction Manager has demonstrated to Owner's reasonable satisfaction that it has made good faith efforts to pursue such recovery.
- .9 General Requirements as set forth in the attached **Exhibit E**
- .10 Administrative Expenses: Only to the extent expressly included in the Staff Costs/Reimbursable Expenses Amount as set forth in the attached **Exhibit J**.
- .11 Insurance: Costs of the premiums allocable to the Project for all insurance that Construction Manager is required to furnish by this Agreement or which Construction Manager deems appropriate in connection with the Work with Owner's reasonable approval. All insurance shall be calculated and contracted in accordance with **Exhibit F** of the General Conditions to this Agreement.
- .12 Bonds: Premium costs of any bond or bonds required to be furnished by Construction Manager or its subcontractors.

- .13 Cleaning: Cost of removal of waste material or rubbish from the Site.
- .14 Emergencies: Costs reasonably incurred due to any emergency affecting the safety of persons and/or property.
- .15 Casualty Losses: Costs reasonably incurred in connection with any casualty loss, including personal injury or property damage, affecting the Project to the extent such costs are not compensated by property insurance, liability insurance, or other applicable insurance.
- .16 Corrective Work: Costs of repairing damaged or nonconforming Work that was not caused by Construction Manager's negligence or its failure to fulfill a specific responsibility of Construction Manager under this Agreement or law, but only to the extent the cost of the repair or replacement is not recoverable by Construction Manager from Subcontractors, suppliers, sureties or available insurance. The cost of Punchlist and corrective work is a Cost of the Work notwithstanding the frequency of required inspections prior to Final Completion.
- .17 Miscellaneous, Owner Approved Cost Items: Miscellaneous expenditures not otherwise covered in this Section 8.2.2 that are incurred or payable in connection with the rendering of services or the performance of the Work if in each instance Owner shall have approved in writing the cost thereof prior to Construction Manager incurring such expenses, such approval not to be unreasonably withheld or delayed.
- .18 Self-Performed Work: A markup on the Costs of the Work incurred for the scope included in Self-Performed Work (including Subcontracts, Materials, Labor, insurance, and other Costs of the Work) in an amount to be agreed to by the Parties at the time the GMP is established, or when such Work is authorized in writing by Owner, but in any event not to exceed 15%.
- .19 Fees of laboratories for tests required by the Contract Documents.
- .20 Royalties and license fees, damages and liabilities arising from (including attorneys' fees and other costs), suits or claims for infringement of patent or other intellectual property rights and payments made in accordance with legal judgments against Construction Manager resulting from such suits or claims and payments of settlements of such claims and suits.
- .21 Data processing costs related to the Work other than any items included as part of the Staffing Costs/Reimbursable Expenses Amount.
- .22 Deposits lost for causes other than Construction Manager's negligence or failure to fulfill a specific responsibility to Owner as set forth in the Contract Documents.
- .23 Maintenance of Traffic costs.
- .24 Any reasonable costs not contemplated above, but identified in the General Conditions Work, as set forth in the attached **Exhibit J**.

7.2.3 Costs incurred in connection with the following shall not be Cost of the Work and no payment shall be made by Owner in connection therewith other than as part of Construction Manager's Fee:

- .1 Except as provided in Section 7.2.2, the services and related expenses of any overhead and general expenses of Construction Manager, officers or corporate office supervisory personnel of Construction Manager, personnel in Construction Manager's human resources, accounting (other than Project accounting services), labor relations (other than as used specifically for this Project), insurance and tax departments and all other costs of doing business, services and related expenses required to maintain and operate Construction Manager's corporate offices and any established branch offices.
- .2 Expenses (including interest) of Construction Manager's capital employed for the Project (except as provided in Article 14 of the General Conditions).
- .3 Amounts required to be paid by Construction Manager for federal, state or local income or franchise taxes.
- .4 Except as provided in Section 7.2.2.8 above, penalties for Construction Manager's failure to comply with Applicable Laws and regulations, unless the penalties are the result of Construction Manager's compliance with the Contract Documents.
- .5 Losses and expenses sustained by Construction Manager or Subcontractors not compensated by insurance or otherwise, if such losses and expenses are due to infidelity or dishonesty on the part of any employee of Construction Manager.
- .6 Costs incurred to the extent that such costs result in the GMP (as it may be adjusted) being exceeded.
- .7 Costs incurred in connection with providing the Pre-Construction Services other than the Pre-Construction Services Amount.
- .8 Costs incurred for the Staff Costs/Reimbursable Expenses identified in **Exhibit J** other than the Staffing Costs/Reimbursable Expenses Amount except as may be identified in a signed Change Order, CCD or other express prior written authorization from Owner.
- .9 Bonuses paid to employees of the Construction Manager.
- .10 Sales, use, or similar taxes, which are related to Work to the extent covered and allowed by any sales tax exemption which may be obtained by the City for the Project, including any City-Furnished Materials.
- .11 Any delay damages or other costs, expenses or damages owed by Construction Manager to Owner under the Contract Documents.

- .12 Costs and expenses associated with Construction Manager's indemnity obligations under the Contract Documents to the extent not covered by applicable insurance.
 - .13 Other costs, expenses or damages specifically excluded in the Contract Documents.
- 7.2.4 Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 7 or elsewhere in the Contract Documents, there shall be no duplication of payment if any particular item for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.
- 7.2.5 Whenever overtime, extra shift work or similar premium Work is used on the Project, Construction Manager shall implement such Work in a cost efficient manner.
- 7.2.6 Whenever Construction Manager has been paid, as a Cost of the Work, amounts that are recovered from any other source (e.g., a Subcontractor, its insurer, surety or other third party), Construction Manager shall credit Owner with any amounts recovered (less Construction Manager's attorneys' fees and other costs of collection). Notwithstanding the foregoing, in no event shall Construction Manager be obligated to seek such recovery if, in Construction Manager's reasonable opinion, seeking such recovery is not in Owner's best interest.
- 7.2.7 The actual Cost of the Work shall be adjusted to reflect any and all discounts, including trade and cash discounts, rebates, refunds and other similar considerations, provided that Owner provides any funds when needed to obtain such considerations. Such considerations shall accrue exclusively to the benefit of Owner unless Owner does not provide funds, in which case it accrues to Construction Manager. Construction Manager agrees to use commercially reasonable efforts to secure such considerations on behalf of Owner.
- 7.2.8 Amounts received from sales of surplus Materials and equipment shall accrue to Owner, unless Materials were contained within a lump sum bid amount, and Construction Manager shall make provisions so that they can be secured. Amounts that accrue to Owner in accordance with the foregoing provisions shall be credited to Owner as a deduction from the Cost of the Work.
- 7.2.9 Upon Substantial Completion, Construction Manager shall submit a list of any tools, equipment, or office equipment purchased for the Project that have been paid by Owner as a Cost of the Work. If Owner so elects, any tools or extra Materials purchased for the Project that have been paid for by Owner as a Cost of the Work shall be returned to Owner at the end of the Project. If Owner elects not to take title to any such tools, equipment, or office equipment, then Owner shall be credited with the fair market value thereof as a deduction to the Cost of the Work.

7.3 CONSTRUCTION MANAGER'S FEE.

- 7.3.1 Construction Manager's Fee shall be a fee equal to 3.5% of the Cost of the Work, subject to the GMP, which fee shall be fixed in the GMP Amendment, but also

subject to revisions as provided in the Contract Documents. Notwithstanding anything in the Contract Documents to the contrary, the Construction Manager's Fee shall be subject to adjustment (up or down) at the contract percentage rate and in accordance with the Contract Documents for post GMP added scope, deductive scope or scope deferrals, alternates, value engineering, time saving measures, and Allowance reconciliation (as an illustrative only list).

- 7.3.2 Commencing with the start of the Construction Phase, Construction Manager's Fee shall be billed to Owner monthly in proportion to the percentage of completion of the Work and shall be paid monthly at the same time Owner pays Cost of the Work, as provided in Section 7.4 hereof.
- 7.3.3 If the Construction Manager implements a CCIP, all risks and costs of implementing and administering the CCIP shall be borne by the Construction Manager. Upon close-out of a CCIP program, any remaining funds in the CCIP deductible pool shall be returned to the Construction Manager.

7.4 PROGRESS PAYMENTS.

- 7.4.1 Construction Manager shall prepare Applications for Payments for Work completed and shall forward them to Owner's Representative and Architect. Owner shall make progress payments on account of the Contract Sum as provided below, in Article 9 of the General Conditions and elsewhere in the Contract Documents. Each Application once reviewed and approved by the Architect and Owner shall be certified as correct by Architect.
- 7.4.2 Applications for Payment shall show the percentage completion of each portion of the Work of each trade as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work that has actually been completed or (2) the percentage obtained by dividing: (a) the expense that has actually been incurred by Construction Manager on account of that portion of the Work for which Construction Manager has made or intends to make actual payment prior to the next Application for Payment by; (b) the share of the GMP allocated to that portion of the Work in the Schedule of Values. Applications for Payment shall also include a statement showing in detail the Cost of the Work completed less retainage withheld in accordance with the terms set forth in Section 7.4.6 hereof. In the event any Subcontractor asserts a claim related to the Work, a sworn statement of Construction Manager and the appropriate Subcontractor, as the case may be, attesting to the best of their knowledge to the satisfactory completion of the Work for which claim is made shall accompany the Application for Payment, with qualifications permitted to be identified.
- 7.4.3 Construction Manager shall include the following with each Application for Payment:
 - .1 a partial waiver of lien and claims for itself and an unconditional waiver of lien and claims in a form acceptable to Owner and its Lenders for each of the Subcontractors and their respective first-tier Sub-subcontractors listed in the prior application for which Construction Manager has received

payment at least ten (10) days prior to submitting the Application for Payment, in compliance with Applicable Laws;

- .2 a sworn statement listing: (i) the names, addresses, and federal taxpayer identification numbers of all parties furnishing Materials, labor or services in connection with the Work in excess of \$25,000; (ii) the Materials, labor or services to be furnished by each such party; (iii) the amounts actually paid to each party furnishing Materials, labor or services; (iv) the amounts due or to become due to each such party; and (v) a statement that said sworn statement is made in order to induce Owner to make the payment requested;
- .3 all affidavits and other documents (including certified payrolls) required to establish compliance with the Project's Blueprint/MBE/WBE goals for the Project;
- .4 payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence reasonably required by Owner to demonstrate that cash disbursements already made by Construction Manager on account of Cost of the Work equal or exceed: (i) progress payments already received by Construction Manager; less (ii) that portion of those payments attributable to Construction Manager's Fee; plus (iii) payrolls for the period covered by the present Application for Payment; plus (iv) retainage provided in Section 7.4.6 hereof, if any, applicable to prior progress payments, less back-charge or other credits or offsets for Construction Manager pursuant to Subcontracts or purchase orders;
- .5 a statement by Construction Manager certifying that, to the best of its information and belief there are no Change Orders outstanding, no person or entity has a claim for payment or has asserted a claim for payment arising from or in connection with the Work, other than any claim that has been fully paid and duly released or is included in the current Application for Payment, or, if Construction Manager knows or believes such a Change Order exists or that a claim has or may be asserted or made, the statement shall disclose the amount of the Change Order and/or disclose the claim to the extent known by stating the name of the claimant or potential claimant, a description of the Work for which payment is claimed and the amount of such claim if known;
- .6 the updated Schedule of Values showing all committed contracts and expenses to date;
- .7 the monthly Progress Report, and the updated Construction Schedule, all as required by Section 4.2 hereof;
- .8 a copy of the application for payment from each payee for whom payment is being sought; and
- .9 other documents reasonably required by the Owner, City or lenders.

- 7.4.4 No Application for Payment shall be processed, nor payment made thereon, to the extent the documentation set forth in Section 7.4.3 has not submitted to the reasonable satisfaction of Owner.
- 7.4.5 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. On or before the 25th of each month, Construction Manager shall submit to Owner's Representative and Architect a preliminary, draft version of Application for Payment, together with the required supporting data. On or before the last business day of each month, Construction Manager, Architect and Owner's Representative shall meet to review the draft Application for Payment, and, on or before the first business day of the next month, Construction Manager shall submit to Owner's Representative and Architect its Application for Payment, revised from the draft Application for Payment to reflect the Parties' changes and comments. Within twenty (20) business days of receipt, Owner shall accept or reject the Application for Payment. If rejected, the Owner shall notify the Construction Manager in writing of the deficiencies in the Application for Payment and the actions required to correct such deficiencies. If the rejected Payment Application is corrected and re-submitted, Owner shall deliver payment for the corrected and proper Application for Payment within ten (10) business days of its receipt. If the Application is accepted by the Owner in accordance with the Contract Documents, Owner shall, within twenty-five (25) business days of receipt, deliver payment to Construction Manager for such Application for Payment. After receipt of payment from Owner, Construction Manager, shall pay within ten (10) calendar days each Subcontractors payment owed for its respective application or invoice for payment. Construction Manager shall require its Subcontractors to make payment to sub-subcontractors and suppliers within ten (10) calendar days of payment by the Construction Manager.
- 7.4.6 Owner will retain the following amounts from the Construction Manager's Application for Payment:
- .1 10% from all payments for Subcontractors otherwise due and payable until 50% of the Subcontractor's Work is in place. After 50% of the Subcontractor's Work is in place, Owner shall refrain from withholding additional retainage on future payments unless Architect or Owner determines that Subcontractor is not making satisfactory progress or Subcontractor is in material default under any of the terms and provisions of the Contract Documents, in which case retainage shall be reinstated in the amount of 10% for such Subcontractor(s).
 - .2 No retainage for the Pre-Construction Services Amount, and the Staffing Costs/Reimbursable Expenses Amount and Insurance provided directly by Construction Manager.
 - .3 10% retainage on Construction Manager's Fee.

- .4 Upon the written recommendation of Construction Manager and Architect, Owner will consider requests for early release of retainage for Subcontractors whose Work is fully performed prior to overall Substantial Completion of the Work; provided, however, that the final decision shall rest with Owner in its sole discretion.
 - .5 If Architect or Owner determines that Construction Manager is not making satisfactory progress or that Construction Manager is otherwise in material default under the terms of the Contract Documents, then Owner may continue or reinstate retainage.
 - .6 Upon Substantial Completion of the Work, Owner will retain an amount not to exceed 1.25 times the amount reasonably determined by Owner, in consultation with Owner's Representative and Architect, for unsettled third party claims against Owner for which Construction Manager is liable (unless bonded off by Construction Manager or coverage for the amount of such claim has been accepted and approved in writing by an insurance carrier or surety), Punch List work, or other incomplete Work. Thereafter, Owner shall pay Construction Manager monthly the amount retained for such items as each item is completed.
- 7.4.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
- .1 Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the Schedule of Values. Pending final determination of cost to Owner of changes in the Work, amounts not in dispute may be included, even though the GMP has not yet been adjusted by Change Order.
 - .2 Add that portion of the GMP properly allocable to Materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work or, if approved in advance in writing by Owner, suitably stored off the Site at a location agreed upon in writing.
 - .3 Add Construction Manager's Fee, computed in accordance with Section 8.3.2 hereof, and the General Conditions Amount, computed in accordance with Section 8.1.2 hereof.
 - .4 Subtract the aggregate of previous payments made by Owner.
 - .5 Subtract the shortfall, if any, indicated in the documentation required by Section 8.4.3 hereof to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by Owner in such documentation.
 - .6 Subtract amounts, if any, for which Owner is entitled to withhold payment under the Contract Documents.
 - .7 Subtract retainage in accordance with Section 8.4.6 hereof.

- 7.4.8 Payment for Materials stored off the Site shall be conditioned upon compliance with procedures satisfactory to Owner, or City, as applicable, to establish title to such Materials and equipment or otherwise protect Owner's or City's interest, and shall include applicable insurance, storage and transportation to the Site for such Materials and equipment stored off the Site.
- 7.4.9 All subcontractor applications for payment that include billings for Change Order Work shall be broken down by each individual Change Order item and not by the Change Order as a whole.

7.5 INTEREST.

- 7.5.1 Payments due and unpaid under this Agreement, if any, shall bear interest at the pre-judgment interest rate as established by applicable Florida Statutes.

ARTICLE 8 - SUCCESSORS AND ASSIGNS

8.1 SUCCESSORS AND ASSIGNS.

- 8.1.1 Owner and Construction Manager, respectively, bind themselves, their successors and assigns to the other Party to this Agreement, and to the successors and assigns of such other Party with respect to all covenants and obligations of this Agreement.

8.2 ASSIGNMENT BY CONSTRUCTION MANAGER.

- 8.2.1 Construction Manager shall not assign or transfer any interest in this Agreement other than to its surety or lender without the prior written consent of Owner, which shall not be unreasonably withheld.

8.3 ASSIGNMENT BY OWNER.

- 8.3.1 Owner may assign this Agreement and the other Contract Documents at any time with the consent of Construction Manager, which consent shall not be unreasonably withheld, conditioned or delayed (provided that Construction Manager shall have no right of consent if Construction Manager is in default hereunder at the time consent to assignment is requested), subject to any applicable notice and cure periods (and subject to the rights of Construction Manager's sureties). Notwithstanding the foregoing, Owner shall be permitted to assign this Agreement, without the consent of Construction Manager, to the City or City's designee. If assigned to the City or the City's designee, then a condition precedent to such assignment shall be that such party, as applicable, shall provide to Construction Manager reasonable evidence that it can satisfy all of the obligations of Owner under the Contract Documents, including that it has the funding necessary to meet all of Owner's financial responsibilities under the Contract Documents.

ARTICLE 9 - OWNERSHIP OF DOCUMENTS

9.1 OWNERSHIP.

9.1.1 The Drawings, Specifications and other documents including reports, surveys, and electronic data prepared by or for Architect for the Project are the joint property of Owner and the City. With respect to reports, schedules, surveys and other documents prepared by Construction Manager for the Project, Construction Manager hereby unconditionally and irrevocably transfers and assigns to Owner a non-exclusive, royalty-free license to such documents for use in connection with the Project, including, as applicable, a license to any intellectual property rights of Construction Manager. Notwithstanding the foregoing, Construction Manager shall retain all proprietary rights and intellectual property rights in such documents for use in its business consistent with the confidentiality provisions of Section 7.3 of the General Conditions. The Drawings, Specifications and other documents prepared by Architect and copies thereof furnished to Architect and Construction Manager are for use solely with respect to this Project and are not to be used by Construction Manager or any Subcontractor on other projects or for additions to this Project after Final Completion without the specific written consent of the Owner and the City. Construction Manager and Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by Architect appropriate to and for use in the execution of their Work under the Contract Documents. If Drawings, Specifications and other documents prepared by Architect contain the statutory copyright notice, all copies made under this license shall also bear the statutory copyright notice. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the City's copyright or other reserved rights.

9.2 ACCESS.

9.2.1 Owner's Representative and CCR shall have access at all reasonable times to the Construction Drawings and Specifications and any other non-confidential documents produced by Construction Manager, Subcontractors, Materialmen or Architect for this Project, including all reports, surveys or electronic data relating to this Project; provided, however, access to financial information is restricted as set forth in Section 9.1.2 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS PROVISIONS

10.1 REPRESENTATIONS.

10.1.1 Construction Manager represents and warrants to the Owner that the qualifications, references and financial information submitted by Construction Manager during Construction Manager's selection process were and are true and correct in all material respects and that there have been no material changes to such documents since the date of submission.

10.2 GOVERNING LAW.

10.2.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to principles of conflicts of law.

10.3 ENTIRE AGREEMENT.

10.3.1 This Agreement represents the entire and integrated agreement between Owner and Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

10.4 HEADINGS.

10.4.1 The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

10.5 CONTEXT.

10.5.1 As the context of this Agreement may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word "including" or any variation thereof, is used herein, it shall mean "including, without limitation," and shall be construed as a term of illustration, not a term of limitation. Wherever the word "or" is used herein, it shall mean "and/or."

10.6 NOTICES.

10.6.1 Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be hand delivered or sent by overnight courier, messenger or registered letter, to the addresses set forth on page 1 of this Agreement.

10.6.2 Each Party shall have the right to change the place to which notice shall be sent or delivered by sending a similar notice to the others in like manner. The effective date of any notice issued pursuant to this Agreement shall be as of the addressee's receipt of such notice.

10.7 EXHIBITS.

10.7.1 All Exhibits (including all attachments to such Exhibits) referenced in this Agreement are hereby incorporated into this Agreement by such reference as though fully rewritten and are deemed to be an integral part of this Agreement

10.8 RELATIONSHIP OF THE PARTIES.

10.8.1 Construction Manager is an independent contractor and shall not be deemed an agent, employee or partner of Owner. Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between Construction Manager and Owner.

10.9 THIRD PARTIES.

10.9.1 Nothing contained herein shall be deemed to give any third party, other than the City, any claim or right of action against Owner or Construction Manager that does not otherwise exist without regard to this Agreement.

10.10 COUNTERPARTS.

10.10.1 This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

10.11 REMEDIES.

10.11.1 Except as otherwise expressly provided herein, all rights and remedies provided in this Agreement are in addition to all other rights and remedies available at law or in equity.

10.12 AUTHORITY.

10.12.1 Construction Manager and Owner each have full power and authority to enter into this Agreement and the persons signing on behalf of the respective Parties hereto are authorized to do so.

10.13 DISASTER PREPAREDNESS PROCEDURES. Construction Manager shall to the best of its ability secure the Project in the event of a natural disaster to prevent personal injury and property damage, including the prevention of water intrusion into the existing structures and to prevent flying debris and damage to the Work. This shall include complete compliance with Construction Manager's Disaster Preparedness Procedures attached hereto as **Exhibit N**.

10.14 CONSTRUCTION MANAGER'S RECORDS. The Owner and the Construction Manager are both private corporations. However, due to the nature of the Project (a public-private partnership Project whereby the City is an intended third party beneficiary of this Agreement), the Owner and Construction Manager acknowledge that portions of the Construction Manager's records may be subject to public records laws. To the extent that Construction Manager's Records are subject to public records laws, Construction Manager shall comply with Florida law governing access to public records as outlined in 10.17. Provided that, as contemplated by Florida law, certain construction drawings of the buildings within the Project are exempt from the public records law and shall not be produced by Construction Manager in response to a third-party request unless required by court order. To the extent permitted by law, any response to requests for public records on the Project must be coordinated through the Owner.

10.15 CONTACT BY MEDIA. In the case of contact by the media, the Construction Manager will follow the media protocol as set forth in Exhibit O.

10.16 Construction Manager represents that, (i) neither Construction Manager nor any person or entity that directly owns 10% or greater equity interest in it nor any of its officers, directors, or managing members, nor any of its affiliates is a person or entity (each, a "Prohibited Person") with whom U.S. person or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the

Department of the U.S. Treasury (including those named on OFAC's Specifically Designated and Blocked Person List) or under Executive Order 13224 (the "Executive Order") signed on September 24, 2001, and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit Threaten to Commit, or Support Terrorism", or other governmental action, and (ii) that throughout the term of this agreement, Construction Manager shall comply with the Executive Order. Construction Manager shall require any Subcontractors retained by Construction Manager to comply with the requirements of this Section.

A "Prohibited Person" means an entity, organization or individual that has been designated by U. S. Law or sanction regulations of OFAC as an entity, organization or individual with whom U. S. Persons may not transact business or must limit their interactions to those approved by OFAC. A "U. S. Person" is a citizen of the United States of America, an entity organized under the Laws of the United States of America, its territories or any of the several states, or any entity having its principal place of business within the United States of America or any of its territories. "List" means any list published by OFAC (including those executive orders and lists published by OFAC with respect to Prohibited Persons), including the Specially Designated Nationals and Blocked Persons list. "OFAC" is the Office of Foreign Assets Control, U. S. Department of the Treasury. "Anti-Money Laundering Laws" are laws and sanctions, state and federal, criminal and civil, that (1) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (2) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; or (3) are designed to disrupt the flow of funds to terrorist organizations. Such laws and sanctions are deemed to include the USA PATRIOT Act of 2001, Pub. L. No. 107-56 (the "Patriot Act"), the Bank Secrecy Act, 31 U.S.C. Section 5311 et. seq., the Trading with the Enemy Act, 50 U.S.C. App. Section I et. seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. seq., and the sanction regulations promulgated by OFAC pursuant thereto, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

10.17 PUBLIC RECORDS LAWS. To the extent that Construction Manager's Records are subject to public records laws, Construction Manager shall comply with all requirements of applicable public records laws, including but not limited to the following:

- 10.17.1 Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the Work;
- 10.17.2 Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in the applicable public records laws or as otherwise provided by law;
- 10.17.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- 10.17.4 Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the Construction Manager upon termination of the Agreement and destroy any duplicate public records that are exempt or

confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

[Signature pages follow.]

IN WITNESS WHEREOF, the Agreement has been fully-executed on behalf of both parties hereto by its duly authorized representatives, as of the date first written above.

**DR. PHILLIPS CENTER FOR THE
PERFORMING ARTS, INC.**

By: _____

Print Name: _____

Title: _____

STATE OF _____ }
COUNTY OF _____ }

PERSONALLY APPEARED before me, the undersigned authority,
_____, [] well known to me or [] who has produced his/her
_____ as identification, and known by me to be the
_____ of the corporation named above, and acknowledged
before me that he/she executed the foregoing instrument on behalf of said corporation as its true act
and deed, and that he/she was duly authorized to do so.

WITNESS my hand and official seal this _____ day of
_____, 20____.

NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

THE WHITING-TURNER
CONTRACTING COMPANY

By:_____

Print Name:_____

Title:_____

STATE OF _____ }
COUNTY OF _____ }

PERSONALLY APPEARED before me, the undersigned authority,
_____, [] well known to me or [] who has produced his/her
_____ as identification, and known by me to be the
_____ of the corporation named above, and acknowledged
before me that he/she executed the foregoing instrument on behalf of said corporation as its true act
and deed, and that he/she was duly authorized to do so.

WITNESS my hand and official seal this _____ day of
_____, 20____.

NOTARY PUBLIC

Print Name:_____

My Commission Expires:_____