

CONSTRUCTION MANAGEMENT SERVICES AGREEMENT

BETWEEN

CITY OF ORLANDO, FLORIDA

AND

GARNEY COMPANIES, INC.

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AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

THIS AGREEMENT made the _____ day of _____, 20____, by and between the **City of Orlando, Florida**, hereinafter referred to as "City," and Garney Companies, Inc. hereinafter referred to as "Construction Manager," for services in connection with the Construction Manager at Risk for Mark Street / Pasadena Place Utility Projects 6418 and 6390, RFP14-0227 Project, hereinafter referred to as "Project."

ARTICLE 1 - THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT

The Construction Manager accepts the relationship of trust and confidence established between him and the City by this Agreement. He covenants with the City to furnish his best skill and judgment and to cooperate with the Design-Engineer in furthering the interests of the City. He agrees to furnish efficient business administration and superintendence and use his best efforts to complete the Project in the best way and in an expeditious and economical manner consistent with the interests of the City.

Notwithstanding any language in this Agreement to the contrary, no obligations of the Construction Manager hereunder shall be fiduciary, the Construction Manager's obligations being merely contractual.

1.1 The Construction Team.

The Construction Manager, the City, the Engineer, and the Design-Engineer, called the "Construction Team", shall work jointly during design and through construction completion, including the warranty period. The Design-Engineer will provide leadership during the design phase with support from the Construction Manager and the Construction Manager shall provide leadership to the Construction Team on all matters relating to construction.

1.2 Extent of Agreement.

This Agreement between the City and the Construction Manager supersedes any prior negotiations, representations or agreements. When drawings, specifications and other descriptive documents defining the work to be included in the guaranteed maximum price (GMP) are

sufficiently complete, and the City and the Construction Manager have agreed upon the GMP, an Amendment to the Agreement shall be signed by the City and Construction Manager, acknowledging the GMP amount and the drawings, specifications and other descriptive documents upon which the GMP is based. To expedite the preparation of this GMP Amendment by the City, the Construction Manager shall obtain three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based from the Design-Engineer, shall acknowledge on the face of each document of each set that it is the set upon which he based his GMP and shall send one set of the documents to the City's Project Manager along with his GMP proposal, while keeping one set for himself and returning one set to the Design-Engineer.

The Contract Documents consist of the documents listed in the Table of Contents, Plans and Specifications, GMP Addendum(s), field orders, Change Orders and Amendments. Unless the City provides to the contrary, only those forms provided in the Contract Documents shall be used and no modifications or substitutions shall be allowed.

This Agreement may be amended only by written instrument signed by both City and Construction Manager.

1.3 Definitions.

Architect-Engineer - The entity that designed the Project and has the rights and authority as assigned in the Contract Documents. Also referred to as "Design Engineer."

City - The City of Orlando, Florida. Also referred to as "Owner."

Construction Manager - The entity that has entered into this Agreement for the performance of the work. Also referred to as "Contractor."

Contract Documents - The documents named in Article 1.2 of the Agreement which constitute the entire agreement between the City and Construction Manager.

Contract Time – The period of time allotted in the Contract Documents, subject to authorized adjustments, for completion of the Work, or specified part thereof.

Cost of the Work – The costs necessarily incurred by the Construction Manager for construction of the Project as set forth in Article 9, exclusive of the Design Phase Fee, General Conditions and Fee.

Day - A calendar day of 24 hours.

Design-Engineer - The entity that designed the Project and has the rights and authority as assigned in the Contract Documents. Also referred to as "Architect Engineer."

Engineer - The City's Director of Public Works or his designee, who will perform construction inspection and other duties on behalf of the City as set forth in the Contract Documents.

Estimate - The Construction Manager's latest estimate of probable Project construction cost.

"Fee" - The Construction Manager's fee for profit and overhead, including but not limited to home and branch office expenses as well as general expenses as set forth in Article 8.1.3.

Final Completion - The date when the Work is completed, the punch list has been performed, and all submittals including those listed in Article 2.3.12(9) have been transmitted.

General Conditions Fee - The Construction Manager's fee for General Conditions costs as set forth in Article 8.1.2.

Holidays - Days designated by the City as legal holidays.

Notice to Proceed - The written notice issued by the City to the Construction Manager authorizing it to proceed with construction of the work and establishing the date of commencement of the Contract time.

Orlando Utilities Commission - is a municipally-owned public utility providing water and electric service to the citizens of Orlando, Florida and portions of adjacent unincorporated areas of Orange County. Also referred to as "OUC."

Permitting Authority - Agency(ies) having jurisdiction over the Project which may conduct inspections and testing for compliance with applicable codes and permits.

Plans - The Plans or reproduction thereof, which show scope, character, location, dimensions, and other details of the Work to be performed and which are included in the Contract Documents. Also referred to as "Drawings."

Project - The Project is the total Work to be performed under this Agreement which may be comprised of multiple, individual bid packages.

Project Manager - The person designated by the City to provide direct interface with the Construction Manager with respect to the City's responsibilities.

Specifications - Those portions of the Contract Documents consisting of written or graphic technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Substantial Completion - That date when the Work (or a specified part thereof) is complete in accordance with the Contract Documents, with the exception of the minor items

identified during the inspection described in this Agreement, and the Work can be utilized for the purposes for which it is intended.

Work - Any and all obligations, duties, services, labor, materials, supplies, equipment, temporary facilities, utilities, incidentals and the furnishing thereof necessary to complete the services and construction required by the Contract Documents.

1.4 City's Construction Budget.

City's funds budgeted and requested for construction of the Project. The City's Construction Budget is ~~\$3,000,000~~ \$5,700,000 including all Construction Manager Fees, Cost of the Work and the City's and Construction Manager's construction and interface contingencies as defined in Articles 8 and 9. This acknowledgment of the City's budgeted funds is not to be construed as the Construction Manager's Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 7.

ARTICLE 2 - CONSTRUCTION MANAGER'S SERVICES

The services which the Construction Manager shall provide include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

2.1 Project Management

(1) Master Project Schedule. Upon award of this Contract, the Construction Manager with the assistance of the other members of the Construction Team, shall submit a Master Project Schedule covering the planning and design approvals, construction and City occupancy of the Project. This schedule will serve as the framework for the subsequent development of all detailed schedules. The master Project schedule shall be produced and updated monthly throughout the Project.

(2) Construction Schedule and Requirements for Overtime Work. Within fourteen (14) days after the date of the City's issuance of a Notice to Proceed, the Construction Manager shall prepare and submit to the Engineer a construction schedule in quadruplicate graphically depicting the activities contemplated to occur as a necessary incident to performance of the Work required to complete the Project, or the applicable bid package, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. Failure of the Construction Manager to develop and submit a construction schedule as aforesaid shall be sufficient grounds to find the Construction Manager in substantial default and to terminate the Agreement or to withhold any payment.

2.2 Design and Review and Recommendations.

2.2.1 *Review, Recommendations and Warranty.*

The Construction Manager shall familiarize himself thoroughly with the plans and specifications and shall follow the development of design from preliminary through final Plans and Specifications. He shall make recommendations with respect to the selection of systems and materials, and cost reducing alternatives including assistance to the Design-Engineer and City in evaluating alternative comparisons versus long term cost effects. The evaluation shall address the benefits of the speed of construction and early completion of the Project. He shall furnish pertinent information as to the availability of materials and labor that will be required. He shall submit to the City and Design-Engineer such comments as may be appropriate concerning construction feasibility and practicality. He shall call to the Project Manager's and the Design-Engineer's attention any apparent defects in the design, drawings and specifications or other documents. He shall prepare an estimate of the construction cost utilizing the unit quantity survey method.

2.2.2 *Reserved.*

2.2.3 *Long Lead Procurements.*

The Construction Manager shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies). When each item is identified, the Construction Manager shall notify the subcontractors, the Project Manager and the Design-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. As soon as the Design-Engineer has completed drawings and technical specifications and the Construction Manager has obtained permitting approval, the Construction Manager shall prepare invitations for bids. The Construction Manager shall keep himself informed of the progress of the respective subcontractors or suppliers, which are manufacturing or fabricating such items and advise the Project Manager, City and Design-Engineer of any problems or prospective delay in delivery.

2.2.4 *Separate Contracts Planning.*

The Construction Manager shall review the design with the Design-Engineer and make recommendations to the City and to the Design-Engineer with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. He shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the City.

2.2.5 *Interfacing.*

The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate subcontractors.

2.2.6 *Job-Site Facilities.*

The Construction Manager shall arrange for all job-site facilities necessary to enable the Construction Manager, the City's representatives, the Engineer, and the Design-Engineer to perform their respective duties in the management and inspection of construction.

Tangible personal property, otherwise referred to as Job-Site facilities, include but are not limited to such things as trailers, toilets, typewriters, computers and any other equipment necessary to carry on the Project. Owning versus leasing shall be considered by the Construction Manager obtaining at least three (3) proposals for leasing and at least three (3) proposals for purchasing and then analyzing which is least expensive over the usage life of the item. The Construction Manager shall present his evaluation with recommendation to the City for approval.

When the Construction Manager wishes to supply Job-Site Facilities from his own equipment pool, he shall first evaluate buy versus lease as discussed in the paragraph above. If leasing is found to be the least expensive approach, then he may lease such Job-Site Facilities from his own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained, subject to City approval.

2.2.7 *Weather Protection.*

The Construction Manager shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. He shall submit to the Engineer his recommendations as to needed requirements of this nature and as to the contract or contracts in which they should be included.

2.3 Construction Phase.

2.3.1 *Construction Manager's Staff.*

The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager to

coordinate, inspect and provide general direction of the Work and progress of the subcontractors and he shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit "A" attached hereto and incorporated herein by reference. He shall not change any of those persons named in Exhibit "A" unless mutually agreed to by the City and Construction Manager. In such case, the City shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.

2.3.2 Lines of Authority.

The Construction Manager shall establish and maintain lines of authority for his personnel, and shall provide this definition to the City and all other affected parties, including but not limited to, the subcontractors, the Design-Engineer, the Engineer and the City's representatives, to provide general direction of the Work and progress of the various phases and subcontractors. The City, the Engineer and Design-Engineer may attend meetings between the Construction Manager and his subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractors.

2.3.3 Schedule and Project Manual Provisions.

The Construction Manager shall provide subcontractors and the City, its representatives, the Engineer and the Design-Engineer with current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Construction Manager's work to the work of his subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. He shall advise the City, its representatives, the Engineer and the Design-Engineer of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond his control. He shall hold job-site meetings at least once each month with the construction team and at least once each week with the subcontractors and the Engineer's and/or Design-Engineer's Field Representatives, or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

2.3.4 *Solicitation of Bids.*

The Construction Manager will, except as otherwise set forth below, prepare and issue solicitations (*i.e.*, invitations for bids, requests for proposals, etc.) for all procurements of (i) long lead items, (ii) materials and services, (iii) subcontractor contracts and (iv) site utilities in connection with the construction phase of the Project. The contracts entered into between the Construction Manager and the providers of the items identified in (i) – (iv) of the previous sentence are referred to herein as “**Subcontracts**.” The procurement process for such Subcontracts shall be conducted by the Construction Manager in accordance with the following guidelines.

- 1) Subcontracts that do not exceed \$50,000. Unless waived by the City, subcontracts not exceeding \$50,000 may be entered into by the Construction Manager with any firm that is qualified to provide the work sought and submits the lowest responsive bid. The Construction Manager shall request at least three (3) firms to submit sealed written bids based on written drawings and/or specifications. A tabulation of the results shall be furnished to City and to each bidding firm. If approved in advance by City, the Construction Manager and/or any of the proposed subcontractors included in the Construction Manager’s Proposal (“Proposed Subcontractors”) may submit sealed written bids as well; *provided, that* the sealed written bids of the Construction Manager and/or its Proposed Subcontractors shall be opened by City.
- 2) Subcontracts exceeding \$50,000. Unless waived by the City, subcontracts exceeding \$50,000 may be entered into by the Construction Manager with the firm that is qualified to provide the work sought and submits the lowest bid. The Construction Manager shall advertise these Subcontracts at least once in the Orlando Sentinel with the last advertisement appearing at least fourteen (14) calendar days prior to the established bid opening time and date. If approved in advance by City, the Construction Manager and/or any of its Proposed Subcontractors may submit sealed written bids as well; *provided, that* the sealed written bids of the Construction Manager and/or its Proposed Subcontractors shall be opened by City.
- 3) Work performed by Construction Manager. If approved in advance by City, the Construction Manager and/or the Proposed Subcontractors may perform a portion of the Work for any item listed on the estimate or GMP breakdown where it is economically advantageous to City or advantageous to the Project schedule. City may require that the Construction Manager and/or the Proposed Subcontractors submit sealed bids for such Work and that the bids be opened by City.

2.3.5 *Bonds.*

In accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the City, on forms furnished by the City, a 100% Performance Bond

and a 100% Labor and Material Payment Bond each in an amount not less than the Guaranteed Maximum Price.

To be acceptable as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

(1) The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.

(2) The Surety Company shall be named in the most current listing of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 by the U.S. Department of the Treasury.

(3) The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.

(4) The Surety Company shall have at least an “A-” financial strength rating in accordance with the most current A.M. Best Company ratings.

(5) If the surety on any Bond furnished by the Construction Manager is declared bankrupt or becomes insolvent or if its assets are acquired by regulatory agencies or if liquidation proceedings begin or its license to do business in the state is terminated or it ceases to meet the requirements of the Contract Documents, the Construction Manager shall have seven (7) days to substitute an acceptable surety and provide Performance and Labor and Material Payment Bonds to the City.

2.3.6 *Supervision.*

The Construction Manager shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as is necessary to perform the Work in accordance with the Contract Documents. The Construction Manager shall be solely responsible for the means, methods, techniques, and sequences of construction, for providing adequate safety precautions and for coordination of the Work. The Construction Manager shall keep on the Work at all times a project superintendent, who shall be acceptable to the City. Normal working hours on the site shall be an eight-hour period occurring between the hours beginning at 7:00 a.m. and ending at 3:30 p.m., exclusive of Saturday, Sunday, and holidays.

2.3.7 *Safety.*

The Construction Manager shall be solely and completely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project. The Construction Manager shall take all necessary precautions for the safety of, and shall provide

the necessary protection to prevent damage, injury or loss, to all employees on the Project and other persons who may be affected thereby; all the work and all materials and equipment to be incorporated therein, whether in storage on or off site; and other property at the site, adjacent thereto, or utilized by the Construction Manager, including but not limited to, trees, shrubs, walks, lawns, pavements, roadways, structures, underground facilities and utilities not designated for removal, relocation or replacement in the course of construction. The Construction Manager shall comply with all applicable laws, regulations, ordinances and codes of governmental entities having jurisdiction for the safety of persons and property, and to protect them from damage, injury or loss, including but not limited to, OSHA and the Contract Work Hours and Safety Standards Act, and shall erect and maintain all necessary safeguards for such safety and protection. The Construction Manager shall designate a responsible member of his organization at the site whose duties shall be preventing accidents and complying with all applicable safety requirements. This person shall be the Construction Manager's superintendent unless otherwise designated in writing.

2.3.8 *Quality Control.*

The Construction Manager shall develop and maintain a program, acceptable to the City and the Engineer, to assure quality control of the construction. He shall supervise the work of all subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and he shall continue to exert his influence and control over each subcontractors to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. Should disagreement occur between the Construction Manager and the Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the City shall be the final judge of performance and acceptability.

2.3.9 *Subcontractors Interfacing.*

The Construction Manager shall be responsible for all acts and omissions of his subcontractors, suppliers and anyone for whose acts or omissions any of them may be liable. The Construction Manager shall be the single point of interface with all subcontractors and suppliers for the City and all of its agents and representatives including the Engineer and the Design-Engineer. He shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the City, Engineer and the Design-Engineer of their validity and reasonableness, acting in the City's best interest prior to requesting approval of each change order from the City. Before any work is begun on any change order, a written authorization from the City must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. He shall also carefully review all shop drawings and samples and then forward the same to the Design-Engineer for review and actions. The Design-Engineer will transmit them back to the Construction Manager who will then issue the shop drawings or samples to the affected subcontractor for fabrication or revision. The Design-Engineer's review of shop drawings or samples shall not relieve the Construction Manager from responsibility for

any variation from the requirements of the Contract Documents unless the Construction Manager has, in writing, called the Design-Engineer's attention to each such variation at the time of submission, and the Design-Engineer has given written approval of each variation by a specific written notation thereof incorporated therein. The Construction Manager shall maintain a suspense control system to promote expeditious handling. He shall request the Design-Engineer to make interpretations of the drawings or specifications requested of him by the subcontractors and shall maintain a suspense control system to promote timely response. He shall advise the Project Manager and Design-Engineer when timely response is not occurring on any of the above. Nothing in the Contract Documents shall create any contractual relationship between City or Engineer and any subcontractor, supplier, or other entity having a contractual relationship with Construction Manager, a subcontractor or a supplier, nor shall it create any obligation on the part of City or Engineer to pay or see to the payment due any subcontractor, supplier or other entity. No subcontractor, supplier, or other entity shall be a third party beneficiary of this Agreement.

2.3.10 *Permits.*

The Construction Manager shall secure all necessary permits and all necessary utility connection permits, the cost of which will be considered a direct cost item.

2.3.11 *Job Site Requirements.*

(1) The Construction Manager shall provide for each of the following activities as a part of his General Conditions Fee:

(a) Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.

(b) Maintain a roster of companies on the Project with names and telephone numbers of key personnel.

(c) Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.

(d) Provide a safety program for the Project to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.

(e) Provide a quality control program as developed under Article 2.3.8 herein above.

(f) Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.

(2) The Construction Manager shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as a direct cost item:

(a) Schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to Contract requirements.

(b) The printing and distribution of all required bidding documents and shop drawings.

2.3.12 *Job Site Administration.*

The Construction Manager shall provide, as part of his General Conditions Fee, job site administrative functions during construction to assure proper documentation, including but not limited to such things as the following:

(1) Job Meeting. Hold weekly progress and coordination meetings to provide for an easy flowing Project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements. In addition, a regular monthly Project status meeting will be held between the Engineer, Design-Engineer, City and Construction Manager. Use the job site meeting as a tool for preplanning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand. Identify party or parties responsible for follow up on any problems, delay items or questions and record course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.

(2) Shop Drawing Submittals/Approvals. Provide staff to check shop drawings and to implement procedures for submittal and transmittal to the Design-Engineer of such drawings for action, and closely monitor their submittal and approval process.

(3) Material and Equipment Expediting. Provide staff to closely monitor material and equipment deliveries and checking and follow-up procedures on supplier commitments of all subcontractors.

(4) Payments to Subcontractors. Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments.

(5) Document Interpretation. Refer all questions for interpretation of the documents prepared by the Design-Engineer to the Design-Engineer through the Engineer.

(6) Reports and Project Site Documents. Record the progress of the Project. Submit written progress reports to the City, the Engineer, and the Design-Engineer including information

on the subcontractor's work, and the percentage of completion. Keep a daily log available to the City, the Design-Engineer and the Engineer.

(7) Subcontractor's Progress. Prepare periodic punch lists for subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.

(8) Substantial Completion. Ascertain when the Work or designated portions thereof are ready for the Engineer's Substantial Completion inspection. Within three (3) days after the Construction Manager gives notice, the City and Engineer shall conduct a Substantial Completion inspection and the Engineer will issue a punch list of incomplete or unsatisfactory items. From the Engineer's list of incomplete or unsatisfactory items, prepare a schedule for their completion indicating completion dates for the City's review. If the Construction Manager wishes the Engineer to conduct a pre-Substantial Completion inspection in conjunction with his own forces, the Engineer will prepare the pre-substantial punch list from which the Construction Manager will develop a completion schedule. The Engineer will issue a certificate of Substantial Completion when the work on his pre-substantial punch list has been accomplished.

(9) Final Completion. Monitor the subcontractor's performance on the completion of the Project and provide notice to the City and Engineer that the work is ready for final inspection. Secure and transmit to the City, through the Engineer, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, as-built survey certified by a professional land surveyor and maintenance books including the Final Release of Lien and Consent of Surety.

(10) Start-Up. With the City's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.

(11) Record Drawings. The Construction Manager shall monitor the progress of his own forces and his subcontractors on marked up field prints which are kept on-site, and the Construction Manager shall provide signed and sealed as-built surveys by a professional land surveyor as required by Section 01050 of the Contract Documents.

2.3.13 *Administrative Records*.

The Construction Manager will maintain at the job site on a current basis, files and records such as, but not limited to, the following:

- Contracts or Purchase Orders
- Shop Drawing Submittal/Approval Logs
- Equipment Purchase/Delivery Logs
- Drawings and Specifications with Addenda
- Warranties and Guarantees
- Labor Costs
- Material Costs
- Equipment Costs

- Cost Proposal Requests
- Payment Request Records
- Meeting Minutes
- Cost Estimates
- Lab Test Reports
- Insurance Certificates and Bonds
- Contract Changes
- Material Purchase Delivery Logs
- Technical Standards
- Design Handbooks
- "As-Built" Marked Prints
- Operating & Maintenance Instructions
- Monthly Progress Reports
- Correspondence Files
- Transmittal Records
- Inspection Reports
- Bid/Award Information
- Bid Analysis and Negotiations
- Punch Lists

The Project records shall be available at all times to the City, Engineer and Design-Engineer for reference or review.

2.3.14 *Reserved.*

2.3.15 *Warranty.*

The Construction Manager shall warrant that all materials and equipment included in the Work will be new, except where indicated otherwise in the Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Plans and Specifications. The Construction Manager further agrees to correct all Work found by the City to be defective in material and workmanship or not in conformance with the drawings and specifications for a period of one year from the date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the Plans and Specifications. The Construction Manager shall collect and deliver to the City any specific written warranties given by others as required by the Contract Documents. Also, the Construction Manager shall conduct, jointly with the City, Engineer and the Design-Engineer, a warranty inspection nine (9) months after the date of Substantial Completion.

2.3.16 *Continuing the Work.*

The Construction Manager shall carry on the Work and maintain the progress schedule during disputes or disagreements with the City. No Work shall be delayed or postponed pending

resolution of any disputes or disagreements, except as City and Construction Manager may otherwise agree in writing. Suspension of the Work or portion thereof by Construction Manager shall entitle City to terminate the Agreement for cause, except as otherwise provided in Article 14.

2.3.17 *Physical Conditions.*

Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Plans, Specifications, or City furnished information or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Agreement, be encountered, the Guaranteed Maximum Price and the Substantial Completion date may be equitably adjusted by Change Order upon a request for Change Order by Construction Manager in accordance with Article 10.2.

2.3.18 *Stormwater Pollution Prevention Plan.*

The Construction Manager and its subcontractors shall comply with the provisions of the Stormwater Pollution Prevention Plan and amendments thereto, which are a part of the Contract Documents, if applicable for this Project. The Construction Manager and each subcontractor implementing any measure or provision of the Stormwater Pollution Prevention Plan shall sign and date a copy of the following certification statement before conducting any activities at the site:

“I certify under penalty of law that I understand, and shall comply with, the terms and conditions of the State of Florida Generic Permit for Stormwater Discharge from Large and Small Construction Activities and this Stormwater Pollution Prevention Plan prepared thereunder.”

ARTICLE 3 - CITY'S RESPONSIBILITIES

3.1 City's Information.

The City shall provide information regarding its requirements for the Project.

3.2 City's Representative.

The City shall designate a representative who shall be fully acquainted with the Project and shall define the lines of City authority to approve Project Construction Budgets and changes in the Project. He shall render decisions promptly and furnish information expeditiously.

3.3 Design and Engineer's Agreement.

The City shall retain an Design-Engineer for design and to prepare Plans and Specifications for the Project. The Design-Engineer's services, duties and responsibilities are described in the Agreement between the City and the Design-Engineer, a copy of which will be furnished to the Construction Manager upon request.

3.4 Site Survey and Reports.

The City shall furnish for the site of the Project surveys describing the physical characteristics, soil reports, subsurface investigations, legal limitations, utility locations, and a legal description. In the event the Construction Manager believes that more site information is necessary, he shall so notify the City promptly so as not to delay progress of the Work.

3.5 *Reserved.*

3.6 *Reserved.*

3.7 Plans and Specifications.

The Construction Manager will be furnished a reproducible set of the Plans and Specifications ready for printing.

3.8 Cost of Surveys and Reports.

The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the City's expense.

3.9 Project Defect.

If the City becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, he shall give prompt written notice thereof to the Construction Manager, the Engineer and Design-Engineer.

3.10 Lines of Communication.

The City, Engineer and Design-Engineer shall communicate with the subcontractors or suppliers only through the Construction Manager while such method of communication is effective in maintaining project schedules and quality.

3.11 Lines of Authority.

The City shall establish and maintain lines of authority for his personnel and shall provide this definition to the Construction Manager and all other affected parties.

3.12 Permitting and Code Inspections.

The City recognizes and coordinates with the permitting authorities and expects the Construction Manager to do the same.

ARTICLE 4 - PERMITTING AND INSPECTION

4.1 Code Inspections.

Construction Manager shall comply with all laws, regulations, ordinances, and codes respecting inspection testing and approval by agencies having jurisdiction. Construction will be inspected for code compliance by inspectors working for the permitting authority.

(1) All projects require detailed code compliance inspections during construction in disciplines determined by the permitting authority.

(a) Inspection personnel will be provided by the permitting authority. Names, addresses, and phone numbers of the inspectors will be provided to the Construction Manager by the permitting authority.

(b) The Construction Manager shall notify the appropriate inspector(s) in advance as required by the permitting authority that the work is ready for inspection and before the Work is covered. Work not inspected and approved prior to cover-up shall be uncovered for inspection when directed by the permitting authority. All costs for uncovering and reconstruction shall be borne by the Construction Manager.

(c) All inspections shall be made for conformance with the applicable building codes.

(d) Cost for all re-inspections of Work found defective and subsequently repaired shall be borne by the Construction Manager.

(e) Construction Manager shall furnish to the Engineer copies of all certificates of inspection, testing and approval.

(f) Code inspections as described herein shall be in addition to inspection of the Work conducted by Engineer to determine conformance of construction with the Contract Documents.

4.2 City's Representative.

The Engineer will be the City's construction inspection representative during the construction of the Work. The Engineer will visit the site to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Engineer may have representatives on site to assist him, but they do not have the authority to authorize any variation or change in the work or the Contract Documents, or approve any equivalent material or equipment; undertake any of the responsibilities of the Construction Manager, subcontractors, or expedite the work; inspect, advise or issue directions relating to any aspect of the means, methods, techniques, sequences or procedures of construction; inspect, advise, or issue directions as to safety precautions and programs in connection with the work; certify Substantial Completion of the work; and participate in specialized field or laboratory tests unless qualified by an appropriate certifying agency.

(1) Communications from City to Construction Manager shall generally be issued through the Engineer. Communications from Construction Manager to the Design-Engineer and to the City shall generally be issued through the Engineer, unless provided otherwise herein.

(2) Construction Manager shall provide Engineer with reasonable advance notice to provide for timely inspection and testing of the work.

(3) The Engineer will have authority to disapprove or reject work at any time during the construction of the work, which Engineer believes to be defective. Engineer will also have authority to require special inspection or testing of the work, whether the work is fabricated, installed or completed. When Construction Manager has been notified by Engineer of disapproval or rejection of defective Work, Construction Manager shall take immediate action to correct or replace the Work as directed by Engineer.

(4) The Engineer shall not inspect, advise, or issue directions relative to any aspect of the means, methods, techniques, sequences, or procedures of construction, nor inspect, advise, or issue directions as to safety precautions and programs in connection with the Work.

(5) The Engineer or his representatives will attend meetings with the Construction Manager, such as the Preconstruction Conference, Project Meetings and any other Project-related meetings and prepare and circulate copies of minutes thereof.

(6) The Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

(7) The Engineer will determine the actual quantities of each classification of unit price work. Engineer will review with Construction Manager, Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an application for payment or otherwise). Engineer's written determination thereon will be final and binding upon Construction Manager unless, within ten (10) days after the date of any such decision, Construction Manager delivers to City written notice of a claim.

(8) The Engineer will not be responsible for the acts and omissions of Construction Manager or of any subcontractor or supplier, or of any other entity performing or furnishing any of the Work.

(9) The Engineer shall have such further duties as are set forth elsewhere in the Agreement, and in the other Contract Documents.

ARTICLE 5 - SUBCONTRACTS

5.1 Definition.

A subcontractor is a person or organization who has a Contract with the Construction Manager to perform any of the Work. Subcontractor also means an entity which has a subcontract with a subcontractor to perform any Work. Nothing contained in the Contract Documents shall create any contractual relation between the City and any subcontractor.

5.2 Proposals.

Subject to Article 9 and, in accordance with Article 2.3.4, the Construction Manager shall request and receive bids from subcontractors and suppliers, and will award those contracts to the qualified low bidder after he has reviewed each bid and is satisfied that the subcontractor is qualified to perform the Work.

5.3 Required Subcontractors' Qualifications and Subcontract Conditions.

5.3.1 *Subcontractual Relations.*

By an appropriate written agreement, the Construction Manager shall require each subcontractor to the extent of the Work to be performed by the subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager by these Contract Documents assumes toward the City, Engineer, and the Design-Engineer. Said agreements shall preserve and protect the rights of the City, the Engineer and Design-Engineer under the Contract Documents with respect to the work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the

Construction Manager shall require each subcontractor to enter into similar agreements with his subcontractor.

The Construction Manager shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Article 5.3 and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such documents available to his subcontractors.

5.3.2 *Miscellaneous.*

(1) Workforce. The subcontractor must utilize its own employees to perform the Work unless approved otherwise by the City and Construction Manager.

(2) Subcontractor Experience. The subcontractor must have suitable experience with projects of similar size and complexity.

(3) Supervision. The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its Work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar Project. The subcontractor shall include a resume of experience for each employee identified by him to supervise and schedule his Work.

(4) All subcontracts shall include the following provision:

a. **LIMITATION OF REMEDY - NO DAMAGES FOR DELAY**

The subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the City, Engineer or Design-Engineer or attributable to the City, the Engineer or Design-Engineer and including claims based on negligence, shall be an extension of its contract time.

In the event of a change in the Work, the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 15% for overhead and profit and bond costs.

The subcontract shall require that the subcontractor expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claims for increase in the contract price, damages, losses or additional compensation.

b. Each subcontract shall require that any claims by subcontractor for delay or additional cost must be submitted to Construction Manager within the time and in the manner

in which the Construction Manager must submit such claims to the City, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

5.4 Responsibilities for Acts and Omissions.

The Construction Manager shall be responsible to the City for the acts and omissions of his employees and agents and his subcontractors, their agents and employees, and anyone for whose acts or omissions any of them may be liable.

5.5 Subcontract Copies.

The Construction Manager shall provide a copy of each subcontract, including change orders to the City.

ARTICLE 6 - SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

6.1 The City and Construction Manager recognize that time is of the essence of the Agreement and Construction Manager recognizes that the City will suffer financial loss if the Work is not Substantially Completed by within 330 calendar days of the issued Notice to Proceed date _____*, ~~plus any extensions thereof allowed in accordance with Article 10 of the Agreement.~~ and the portion of the Work encompassing Segments 1A-1 through 1E-2 from Orange Ave. through Magnolia Ave. is not Substantially Completed within 150 calendar days of the issued Notice to Proceed date, plus any extensions thereof allowed in accordance with Article 10 of the Agreement. The parties also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual delay damages (excluding Design-Engineering fees and Design-Engineer and City inspection costs) suffered by the City if the Work is not completed on time. Accordingly, the Construction Manager agrees to pay City as liquidated damages One Thousand Dollars (\$1,000) per day for each day the Construction Manager exceeds the contract times stated above. The Construction Manager shall pay or reimburse, in addition to the liquidated damages specified herein, the City's expenses for Design-Engineering fees and Design-Engineer and City inspection costs arising from the Construction Manager's delay in meeting either or both the Substantial and Final Completion dates. The Work shall be finally completed and ready for final payment in accordance with Article 12.2 of the Agreement within ~~fifteen~~ thirty (30) ~~(15)~~ days after the actual date of Substantial Completion, unless agreed to otherwise by both parties in writing.

•—[To be negotiated in the GMP Addendum.]

ARTICLE 7 - GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

7.1 When the Plans and Specifications are in the design development phase and are sufficiently complete to establish the scope of Work for the Project or any portion thereof, as

generally defined by a design document listing to be provided by the Design-Engineer and Construction Manager upon execution of this Agreement, which is to be used only as a guide in developing the Specifications and Plan data necessary to establish a Guaranteed Maximum Price, or at such time thereafter designated by the City, the Construction Manager will establish and submit in writing to the City for its approval a Guaranteed Maximum Price, guaranteeing the maximum price to the City for the construction Cost of the Work or designated part thereof. However, the actual price paid for the Work by the City shall be the direct job costs as defined under Article 9, plus the Construction Manager's fees as provided in Article 8, or the GMP, whichever is less, when the Work is complete.

7.2 The GMP will only include those taxes in the Cost of the Work which are legally enacted at the time the GMP is established.

7.3 The GMP shall include a construction contingency. The City must approve the Construction Manager's use of the construction contingency and, at the completion of the Work in the bid package.

7.4 At the time of submission of a Guaranteed Maximum Price, the Construction Manager will verify the time schedule for activities and Work which were adopted by the Construction Team and used to determine the Construction Manager's cost of work. In addition to the Cost of Work, a GMP will include an agreed upon sum as the construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Construction Manager will be required to furnish documentation evidencing the need for expenditures charged to this contingency prior to the release of funds by the City. Documentation for use of the construction contingency shall be determined by the City and Construction Manager and displayed monthly in the PMIS. The Engineer shall verify the actual costs.

7.5 If bids are received below the applicable line items in the GMP, the surplus will be added to the construction contingency. If bids are received above the applicable line item in the GMP, the deficiency will be taken from the contingency, however such events shall not be cause to increase the GMP. If bids are not received for a portion of the Work at or below the applicable line item amount in the GMP, the Construction Manager, with prior written approval of the City, may perform that portion of the Work or negotiate for its performance for the specified line item amount or less.

ARTICLE 8 - CONSTRUCTION MANAGER'S FEE

In consideration of the performance of the Contract, the City agrees to pay the Construction Manager as compensation for his services, fees as set forth in subparagraphs 8.1.1, 8.1.2 and 8.1.3.

8.1.1 *Design Phase Fee.*

For the performance of the services set forth under paragraphs 2.1 and 2.2 and for profit and overhead related to these services, a total fee of not to exceed \$50,000.00.

The Construction Manager's personnel to be assigned during this phase and their duties and responsibilities to this Project and the duration of their assignments is shown on Exhibit "B" which is attached hereto and incorporated herein by reference.

8.1.2 *General Conditions Fee.*

Prior to commencement of the Construction Phase and after City acceptance of the GMP as set forth in Article 7 and the completion dates as set forth in Article 6, the City will direct the Construction Manager in writing to proceed into the Construction Phase. The Construction Manager's compensation for expenses incurred during the Construction Phase (hereafter also referred to as "General Conditions") shall be a General Conditions Fee of \$ 96,726 ~~to be negotiated in the GMP Addendum~~. (However, the City retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager, should the Project Manager question the need for the employee or employees). The General Conditions Fee shall be paid in *eleven (11) monthly payments of \$ *8,793.27 each ~~and one final monthly payment of \$ _____~~. The first monthly payment application shall be submitted thirty (30) days following the issuance of the Notice to Proceed by the Project Manager and the final monthly payment shall be paid only when construction of the Project is finally completed and occupancy of the Project accepted by the City. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the City.

(1) Adjustments in General Conditions Fee. For changes in the Project as provided in Article 10, the General Conditions Fee shall be adjusted as follows:

(a) The Construction Manager shall be paid an additional fee subject to negotiation if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager, subcontractors, or anyone for whom they may be responsible.

(b) Should the duration of the construction stipulated herein for Substantial Completion extend beyond the Substantial Completion date set forth in Article 6.1, due to no fault of the Construction Manager, subcontractors, or anyone for whose acts any of them may be liable, the Construction Manager's additional General Conditions Fee will be \$ *\$293.11 per working day, for each day or portion thereof.

CONSTRUCTION MANAGER'S EXCLUSIVE REMEDY: In the event the construction Substantial or Final Completion date is extended, regardless of whether delay is caused by any act or neglect of the City, the Engineer or the Design-Engineer, or is attributable to the City, the Engineer or the Design-Engineer, the Construction Manager's sole and exclusive

remedy is an extension of the construction completion date and payment of additional General Conditions Fees and Fees for the Construction Phase as provided above.

(2) Costs and Expenses Included in General Conditions Fee. The following are included in the Construction Manager's General Conditions Fee for services during the Construction Phase:

(a) The Construction Manager's job site personnel to be assigned during the Construction Phase, their duties and responsibilities to this Project and the duration of their assignments are shown on Exhibit "A".

(b) Salaries or other compensation of the Construction Manager's employees at the job site.

(c) General job site operating expenses incurred in the management and supervision of the Project, except as expressly included in Article 9.

(d) Those services set forth in Article 2.3.11(1).

(e) Job site office supplies - includes paper, pencils, paper clips, file folders, staples, etc., and janitorial supplies (photo copy or blue print paper not included).

(f) Minor expenses at the site, such as long distance telephone calls, telephone service, expressage, postage, and similar petty cash items in connection with the Project to be billed at cost.

(g) Costs for trash and debris control and removal from the site.

(h) Costs for such temporary facilities during construction, as approved by the City, including temporary water, heat, power, sanitary facilities, and telephones,

~~*[To be negotiated in the GMP Addendum.]~~

8.1.3 *Fee (Overhead and Profit for Construction Phase).*

For profit, overhead, including, but not limited to, home and branch office expenses, and general expenses of any kind, except as may be expressly included in Article 9, for services provided during and related to the Construction Phase, the fee shall be ~~Eleven~~ Seven Percent (~~11~~ 7%) of the Cost of the Work as defined in Article 9.1 below and shall be paid proportionally to the ratio of the cost of the work in place, excluding stored materials and less retainage (see Article 12.1), as it bears on the GMP. The balance of the Fee shall be paid upon Final Completion of the Project. If construction is authorized only for a part of the Project, the Fee paid shall be proportionate to the amount of work authorized by the City. The following are included in the Fee:

(a) Salaries or other compensation of the Construction Manager's employees at his principal office and branch offices.

(b) General operating expenses related to this Project of the Construction Manager's principal and branch offices.

ARTICLE 9 - COST OF THE WORK

9.1 Definition.

The term Cost of the Work shall mean costs necessarily incurred in the Project during the Construction Phase for construction services and paid by the Construction Manager which are not included in the General Conditions Fee or Fee. Such costs shall include the items set forth below in this Article. The City agrees to pay the Construction Manager for the Cost of the Work as defined herein. Such payment shall be in addition to the Construction Manager's fees stipulated in Article 8. However, in no event shall the City make payment in excess of the GMP.

9.2 Direct Cost Items.

(1) Wages paid for labor (as opposed to wages paid to management or supervisory personnel) in the direct employ of the Construction Manager in the performance of his Work under the Agreement, times a multiple of [to be negotiated in the GMP Addendum] to cover fringe benefits.

(2) Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.

(3) Payments due to subcontractors from the Construction Manager or made by the Construction Manager to subcontractors for their Work performed pursuant to Contract under this Agreement.

(4) Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the Work and cost less salvage value on such items used but not consumed which remain the property of the Construction Manager.

(5) Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of a subcontractor or the Construction Manager's own forces in the performance of the Work, at rental charges consistent with those prevailing in the area.

(6) Sales, use, gross receipts or similar taxes upon allowable direct costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable.

(7) The cost of corrective Work subject, however, to the GMP and except for any corrective Work made necessary because of defective workmanship, or defective materials or other causes attributable to the Construction Manager or his subcontractors or suppliers, or anyone for whose acts any of them may be liable.

No costs shall be paid by the City to the Construction Manager for any costs or expenses made necessary to correct damaged or defective workmanship or materials, design errors or omissions, or to correct any Work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts or omissions by the Construction Manager, his subcontractors or suppliers, or anyone for whose acts any of them may be liable.

(8) Costs incurred due to an emergency affecting the safety of persons and property.

(9) If approved in advance by the City, the Construction Manager, when qualified, may perform all or a portion of the Work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the Work.

(10) Costs of all reproductions used for bidding or information purposes required by the Project to directly benefit the Project.

(11) Costs for watchman and security services for the Project, if applicable.

(12) Costs for adequate storage and parking space.

ARTICLE 10 - CHANGE IN THE PROJECT

10.1 Change Orders.

The City, without invalidating this Agreement, may order changes (hereafter "Change Order) in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, the GMP and the Substantial Completion date being adjusted accordingly (hereafter "Change Order"). All changes in the Project not covered by an authorized contingency shall be authorized by Change Order signed by the City before the change is implemented.

10.1.1 A Change Order is a written order to the Construction Manager signed by the City issued after the execution of this Agreement, authorizing a change in the Project, the GMP or the Substantial Completion date. Each adjustment in the GMP resulting from a Change Order shall clearly separate the amount attributable to the Cost of the Work.

10.1.2 The increase or decrease in the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:

- (1) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Design-Engineer, Engineer and City;
 - (2) by unit prices stated in the Agreement or subsequently agreed upon;
 - (3) by cost as defined in Article 9 and a mutually acceptable fixed or percentage fee;
- or
- (4) by the method provided in Article 10.1.3.

10.1.3 If none of the methods set forth in Article 10.1.2 is agreed upon, the Construction Manager, provided he receives a written order signed by the City, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of documented time and materials costs and savings of those performing the Work attributed to the change. However, in the event a Change Order is issued under these conditions, the Engineer will establish an estimated cost of the Work and the Construction Manager shall not perform any Work whose cost exceeds that estimate without prior written approval by the City. In such case, and also under Article 10.1.2 above, the Construction Manager shall keep and present, in such form as the City may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Work as outlined in Article 9. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the City for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.

10.1.4 If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to the City or the Construction Manager, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.

10.2 Claims for Additional Cost or Time.

10.2.1 All claims for additional cost or time shall be made by request for a Change Order submitted as provided in Article 16.

10.2.2 If the Construction Manager is delayed at any time in the progress of the Work by any act or neglect of the City, the Engineer or the Design-Engineer or of any of their employees, or by any changes ordered in the Work or by labor disputes, fire, or unusual delays in transportation, or any causes beyond the Construction Manager's control and without the fault or negligence of Construction Manager, or his subcontractors, suppliers, or anyone for whose acts or omissions any of them may be liable, or by delay authorized in writing by the City pending resolution of disputes, and such delay extends the completion date, the Substantial Completion date shall be extended by Change Order for such reasonable time as the City may determine.

10.2.3 Only delays which are determined to extend the critical path for the schedule for constructing the Project will result in a time extension. Neither the City nor the Construction Manager shall be considered to own the schedule float time.

10.3 Minor Changes in the Project.

The Engineer will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Substantial Completion date and not inconsistent with the intent of the Plans and Specifications. Such changes shall be effected in writing and shall be referred to as a "field order". Documentation of changes shall be displayed monthly in the PMIS.

10.4 Emergencies.

In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. The Construction Manager shall give notice to City and Engineer as promptly after taking action as possible. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 10.

ARTICLE 11 - DISCOUNTS AND PENALTIES

11.1 All discounts for prompt payment shall accrue to the City to the extent the Cost of the Work is paid directly by the City or from a fund made available by the City to the Construction Manager for such payments. To the extent the Cost of the Work items are paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work. All penalties incurred due to fault of the Construction Manager for late payment will be paid by the Construction Manager and shall not be considered a Cost of the Work.

ARTICLE 12 - PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements.

The Construction Manager shall submit to the City a statement, sworn to if required, showing in detail all monies paid out, costs accumulated or costs incurred on account of the Work performed during the previous period and the amount of the Construction Manager's fees due as provided in Article 8. This data shall be attached to the Application for Payment form

included in the Contract Documents. Ten percent (10%) retainage shall be held on all payments until completion of fifty percent (50%) of the Work, which for purposes of this Article shall be defined as the point when the City has paid the Contractor fifty percent (50%) of the Guaranteed Maximum Price, including approved Change Orders. Upon fifty percent (50%) completion of the Work, the City shall withhold five percent (5%) retainage on payments to the Construction Manager. Upon fifty percent (50%) completion of the Work, the Construction Manager may request the City to reduce withheld retainage from ten percent (10%) to five percent (5%). The City will reduce retainage pursuant to this request unless the City has grounds for withholding the payment of retainage, such as a good faith dispute, a claim brought pursuant to §255.05, *Florida Statutes*, or otherwise a claim or demand by the City or Contractor. Retainage shall not be withheld on services or fees set forth in Article 8.

12.2 Final Payment.

Final Payment constituting the unpaid balance of the Cost of the Work and the Construction Manager's fees, shall be due and payable after the City has accepted occupancy of the Project, provided that the Project be then finally completed, that the Construction Manager has verified by its signature that it has completed all items required by the Contract Documents, and that this Agreement has been finally performed. Final Payment shall constitute a waiver of any and all claims by Construction Manager against the City, Engineer and Design-Engineer.

12.3 Payments to Subcontractors.

The Construction Manager shall promptly, within ten (10) days after receipt of payment from the City, pay all the amount due subcontractors, less a retainage equal to the retainage withheld from the Construction Manager. The Construction Manager shall submit weekly, and require the subcontractors at all tiers to submit weekly, certified payrolls on the City's designated electronic on-line payroll tracking system. An Application for Payment including the final Application for Payment shall not be considered a complete and proper invoice until complete and accurate certified payrolls for the Construction Manager and subcontractors at all tiers have been submitted electronically for all Work performed by them included in the Application for Payment. Before issuance of final payment, the subcontractors shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted, final lien waivers and releases have been given, and instruction for the City's operating and maintenance personnel is complete. Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the Final Completion of the Project but only upon approval of the City.

12.4 Payments for Materials and Equipment.

Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at the site or another location subject to prior approval and acceptance by the City on each occasion.

12.5 Withholding Payments to Subcontractors.

The Construction Manager shall not withhold payments to subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the City shall have the right to demand the return of such monies to the City, adjusting pay requests and Project bookkeeping as required.

12.6 Construction Manager's Payment Rights.

Within twenty (20) business days of receipt of an Application for Payment with required attachments, the Engineer will either make a recommendation to the City of payment or return the application to Construction Manager indicating in writing the reasons for not recommending payment. If the payment application is returned to the Construction Manager, the Construction Manager shall make all necessary corrections promptly and re-submit the Application for Payment to the Engineer for review, which if all corrections are made, such application will be paid no later than ten (10) business days after receipt. If the Construction Manager disputes the Engineer's decision as set forth below, the Engineer may recommend the portion of the Application for Payment not in dispute for payment by City.

If the Construction Manager disputes the Engineer's refusal to recommend payment of an Application for Payment or a final Application for Payment (including the Engineer's refusal to recommend payment of a corrected application for payment or final Application for Payment), the Construction Manager shall, within seven (7) days of receipt of the Engineer's notice of refusal, give City written notice of its dispute of the Engineer's determination. The Construction Manager's notice shall state with specificity the nature of the dispute and shall provide supporting documentation and information demonstrating the validity of the Construction Manager's claim. The City's Chief Administrative Officer or designee will review the claim and the Engineer's response thereto, at his/her option meet with the Construction Manager and/or Engineer to discuss the dispute, and shall provide the Construction Manager and Engineer with his/her determination of the validity of the Construction Manager's claim, which shall constitute final action on behalf of the City. The review of the claim shall be commenced no later than forty-five (45) days after the date on which the payment request, as defined in §218.72 *Florida Statutes*, was received by the Engineer and shall be concluded by final decision of the City no later than sixty (60) days after the date on which the payment request, as defined in §218.72 *Florida Statutes*, was received.

ARTICLE 13 - INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

13.1 Indemnity.

13.1.1 The Construction Manager shall indemnify and hold harmless the City, its officers and employees, from liabilities, damages, losses and costs including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful

misconduct of the Construction Manager and persons employed or utilized by the Construction Manager in the performance of the Agreement.

13.2 Loss Deductible Clause.

The City shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Construction Manager and/or subcontractor providing such insurance.

13.3 Construction Manager's Insurance.

(1) The Construction Manager shall not commence any construction Work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the City, nor shall the Construction Manager allow any subcontractor to commence Work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified to do business in Florida.

(2) Worker's Compensation and Employer's Liability Insurance. The Construction Manager shall take out and maintain during the life of this Agreement Worker's Compensation insurance for all his employees connected with the work of this Project and the Construction Manager shall require the subcontractors similarly to provide Worker's Compensation insurance for all of the latters' employees unless such employees are covered by the protection afforded by the Construction Manager. Such insurance shall comply with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous Work under this Agreement at the site of the Project is not protected under the Worker's Compensation statute, the Construction Manager shall provide adequate insurance, satisfactory to the City, for the protection of employees not otherwise protected. Such Worker's Compensation policy shall be endorsed to waive subrogation rights against the City. The Construction Manager shall take out and maintain during the life of this Agreement Employer's Liability insurance in an amount not less than \$500,000 for each employee and each accident or disease.

(3) Construction Manager's General Liability and Property Damage Insurance. The Construction Manager shall take out and maintain during the life of this Agreement General Liability and Automobile Liability Insurance as shall protect him from claims for damage for personal injury, including accidental death, as well as claims for property damages which may arise from operations under this Agreement whether such operations are by himself or by anyone directly or indirectly employed by him, and the amount of such insurance shall be in minimum limits as follows:

- | | | |
|-----|---|---|
| (a) | Construction Manager's
General Liability Coverages, Bodily Injury
& Property Damage | \$1,000,000 Each Occurrence,
Combined Single Limit |
| (b) | Automobile Liability Coverages, | \$1,000,000 Each Occurrence, |

Bodily Injury & Property Damage

Combined Single Limit

Insurance shall be amended to provide coverage on an occurrence basis. The City, Engineer and Design-Engineer shall be included by endorsement as additional insureds.

(4) Subcontractors' General Liability and Property Damage Insurance. The Construction Manager shall require each of his subcontractors to procure and maintain during the life of the subcontract, insurance of the type specified above or insure the activities of his subcontractors in his policy, as specified above. The coverage limits may be less than those stated above.

(5) Contractual Liability. The Construction Manager's General Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.

(6) Certificate of Insurance. The City shall be furnished proof of coverage of insurance as follows:

Certificate of Insurance form will be furnished to the City along with the executed Contract Documents. These shall be completed and signed by the authorized resident agent of the insurance company. This Certificate shall be dated and show:

(1) The name of the insured Construction Manager, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.

(2) Statement that the Insurer will mail notice to the City at least thirty (30) days prior to any material changes in provisions or cancellation of the policy.

(3) Certificate of Insurance shall be in the form as approved by Insurance Standards Office (ISO) and such Certificate shall clearly state all the coverages required in this Article 13.

13.4 Waiver of Subrogation.

13.4.1 The City and the Construction Manager waive all rights against each other, for damages caused by perils covered by insurance provided under Article 13.3 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the City and Construction Manager as trustees. The Construction Manager shall require similar waivers from all subcontractors at all tiers.

13.4.2 The City and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors at all tiers.

13.4.3 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owner of such policies will cause them to be so endorsed, failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 14 - SUSPENSION AND TERMINATION OF THE AGREEMENT AND CITY'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATIONS

14.1 Termination by the Construction Manager.

If the Project is stopped for a period of sixty (60) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, his employees, agents or subcontractors, or if the Project should be stopped for a period of sixty (60) days by the Construction Manager for the City's failure to make payments thereon, then the Construction Manager may, upon seven (7) days written notice to the City, terminate the Agreement and request payment for all Work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including termination expenses incurred by the Construction Manager, but excluding lost profit and overhead for the remainder of the Work.

14.2 City's Right to Perform Construction Manager's Obligations and Termination by City for Cause.

(1) If the Construction Manager fails to perform any of his obligations under this Agreement including any obligation he assumes to perform Work with his own forces, the City may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligation, make good such deficiencies. The GMP, or the actual Cost of the Work, whichever is less, shall be reduced by the cost to the City of making good such deficiencies and the Construction Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.

(2) If the Construction Manager is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls 45 days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or if he disregards the authority of the Engineer, or otherwise substantially violates a provision of the Agreement, then the City may, without prejudice to any

right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager fails to cure the violation, terminate the Agreement and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under Article 7. Reasonable termination expenses incurred by the City may be deducted from any payments left owing the Construction Manager.

(3) Notwithstanding the above notice periods, in the event of an emergency, the City may take over the site and perform any or all of the activities set out above immediately. The City shall provide notice of such takeover within twenty-four (24) hours after its occurrence.

14.3 Termination by City without Cause.

(1) After the commencement of the Construction Phase, if the City terminates this Agreement other than pursuant to Article 14.2(2), it shall reimburse the Construction Manager for any unpaid Cost of the Work due him under Article 9, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of the Work at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the City's Construction Budget. The City shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the City, for any equipment retained.

(2) Prior to commencement of the Construction Phase, the City may terminate this Agreement and pay the Construction Manager his proportionate fee due in accordance with Article 8.1.

(3) If, after City terminates the Agreement for cause, it is determined that Construction Manager was not in default, the termination shall be deemed to have been for the convenience of the City. In such event, the Construction Manager may recover from City payment in accordance with Article 14.3.

14.4 City May Stop Work.

If the work is defective and the Construction Manager has been notified by the City or Engineer, or if Construction Manager fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, or if Construction Manager fails to supply sufficient supervisory personnel or skilled or suitable materials or equipment, or if Construction Manager fails to obtain, maintain or renew insurance or bonds in compliance with the Contract Documents, or if any insurance company or surety of the Construction Manager declares bankruptcy or is declared bankrupt or becomes insolvent, or if Construction Manager's

prosecution of the Work endangers persons or property, City or Engineer may order Construction Manager to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of the City to stop the Work shall not give rise to any duty on the part of City or Engineer to exercise this right for the benefit of the Construction Manager or any other party. The Construction Manager shall bear all direct, indirect and consequential costs of such order to stop the Work and shall not be entitled to any extension of the construction completion date or increase in the GMP.

14.5. Suspension for Convenience.

Without invalidating the Agreement, City may at any time order Construction Manager in writing to stop, delay or interrupt the Work for such a period of time as the City may deem appropriate. Upon receipt of that order, the Construction Manager shall immediately proceed in accordance with any specific instructions, protect the Work, and make reasonable and diligent efforts to mitigate costs associated with the suspension of Work. If any suspension of Work causes an increase or decrease in cost or time required to complete the Project, the Guaranteed Maximum Price and the Substantial Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2.

ARTICLE 15 - ASSIGNMENT

15.1 Neither the City nor the Construction Manager shall assign its respective interests in this Agreement without the written consent of the other and any proposed assignment without such written consent shall be null and void.

ARTICLE 16 – NOTICE OF CLAIM; WAIVER OF REMEDIES; NO DAMAGES FOR DELAY

16.1 The City's liability to Construction Manager for any claims arising out of or related to the subject matter of this contract, whether in Contract or tort, including, but not limited to, claims for extension of construction time, for payment by the City of the costs, damages or losses because of changed conditions under which the Work is to be performed, or for additional Work, shall be governed by the following provisions:

(1) All claims must be submitted as a Request for Change Order in the manner as provided herein;

(2) The Construction Manager must submit a notice of claim in writing to the Engineer within ten (10) days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim;

(3) Within ten (10) days of submitting its notice of claim, the Construction Manager shall submit to the Engineer its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the Work affected; and

(4) The Construction Manager agrees that the City shall not be liable for any claim that the Construction Manager fails to submit as provided in this Article 16.

16.2 After receipt of a Request for Change Order, the City, in consultation with the Engineer, shall deliver to the Construction Manager its written determination of the claim. The City's written decision shall be final agency action.

16.3 In addition to the adjustments provided for in Article 8, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the City, Engineer or the Design-Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with 16.1 above, for an extension of the scheduled construction time and for an addition to the General Conditions Fee as set forth in Article 8.1.2(1)(b). In the event of a change in such Work, the Construction Manager's claim for adjustments in the GMP are limited exclusively to its actual costs for such changes plus five percent (5%) for profit. The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such Work, and eliminate any other remedies for claim for increase in the GMP, delays, changes in the Work, damages, losses or additional compensation.

ARTICLE 17 –INITIATIVES

17.1 Contracting and Construction Initiatives.

17.1.1 *Contracting Obligations.*

The Construction Manager shall:

(i) use good faith efforts to comply with the requirements of Chapter 57 of the City's Code of Ordinances in connection with the performance of services and Work on the Project, including: (a) meet the City's goal that eighteen percent (18%) of the aggregate monetary value of the Agreement be awarded to MBE and six percent (6%) of the aggregate monetary value of the Agreement be awarded to WBE, and (b) achieve aggregate group employment levels for minorities and women employed by the Construction Manager (and all Subcontractors at all tiers) of eighteen percent (18%) and six percent (6%), respectively;

(ii) comply and require the subcontractors to comply with the City's Living Wage Policy set forth in Section 161.3(4)(E) of the City's Policies and Procedures in effect as of the date of the Agreement (the "City Policies") with respect to the construction of the Project;

(iii) comply and require all subcontractors at all tiers, to comply with the City's Construction Policy for Public Works Department construction agreements set forth in Section 161.3(4)(F)(7)(b) of the City Policies in the construction of the Project, by paying workers on the

construction of the Project an hourly wage, based on classification, for the Orlando region established by the Davis-Bacon Act (40 U.S.C. 276a-7) as supplemented by the Department of Labor regulations (29 CFR part 5), and to provide said workers with health benefits in the manner established by such Section 161.3(4)(F)(7)(b) of the City Policies; and

(iv) The Construction Manager shall require that all contracts between the subcontractors and subcontractors at all tiers be in writing. The Construction Manager shall include language in its written agreements with subcontractors requiring compliance by subcontractors of all tiers with the requirements of this Article to the extent that such requirements are applicable to such subcontractors.

17.1.2 *Third Party Beneficiaries.*

There shall be no third party beneficiaries of the Minority Business Enterprise or Women-Owned Business Enterprise provisions of this contract. The City of Orlando shall have the exclusive means of enforcement of the MBE/WBE Ordinance and Agreement terms. No right of action for non-signatories of the Agreement is intended or implied. The City of Orlando is the sole judge of compliance and whether a good faith effort has been made under the Ordinance and the Agreement.

17.1.3 *No Discrimination.*

Firms must ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex, national origin, sexual orientation, age, or disability.

ARTICLE 18 - MISCELLANEOUS

18.1 Interest.

Any monies not paid when due to either party under this Contract shall bear interest at the rate of one percent (1%) simple interest per month.

18.2 Harmony.

Construction Manager will exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and its subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by construction managers now or hereafter on the site of the Project.

Construction Manager further agrees that this provision will be included in all subcontracts of the Construction Manager provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

18.3 Rights Cumulative; No Waiver.

No right or remedy herein conferred upon or reserved to either party hereto is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of a default hereunder. The failure of either party hereto to insist, at any time, upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy as provided in this Agreement, shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Agreement to the parties hereof may be exercised from time to time and as often as may be deemed expedient by the parties hereto, as the case may be.

18.4 Invoices Submitted Under Article 12.

Invoices submitted under Article 12 shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Invoices for any travel expenses shall be submitted in accordance with procedures specified in the City's Policy and Procedures Manual.

18.5 Venue; Applicable Laws.

This Agreement shall be governed in all respects by the laws of the State of Florida. The exclusive venue for the resolution of any litigation arising out of this Agreement shall be the courts of Orange County, Florida.

18.6 Partial Invalidity.

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights are not materially prejudiced, and if the intentions of the parties can continue to be effectuated to that end, this Agreement is declared severable.

18.7 Advertising.

No advertising shall be permitted upon any part of the site or structures located upon the site without the prior approval of the City.

18.8 Recovery of Damages.

In no event shall the Construction Manager be entitled to recover from City any indirect, incidental, or consequential damages in any proceeding arising out of or relating to this Agreement or the breach thereof.

18.9 Florida Timber.

Pursuant to Section 255 of the Florida Statutes, lumber, timber, and other forest products specified in the Contract Documents shall be produced and manufactured in Florida whenever such products are available, provided that price, fitness and quality are equal to other available products.

18.10 Public Entity Crime.

Any person or affiliate, as defined in Section 287.133 of the Florida Statutes, shall not be allowed to contract with the City, nor be allowed to enter into a subcontract for work on this Project, if such a person or affiliate has been convicted of a public entity crime within three (3) years of the date this Project was advertised for proposals, or if such person or affiliate was listed on the State's convicted vendor list, within three (3) years of the date this Project was advertised, whichever time period is greater. A public entity crime means a violation of any state or federal law with respect to and directly related to the transaction of business with any public entity or agency (federal, state or local), including but not limited to, any Contract for the construction or repair of a public building or public work involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, forgery, falsification of records, receiving stolen property or material misrepresentation.

18.11 Notices.

All notices denominated as such by this Agreement, or the City Code, or Florida law, required to be given to the Construction Manager hereunder shall be in writing, and shall be given by hand-delivery or United States mail, postage prepaid, addressed to:

Jason Seubert
Garney Companies, Inc.
370 E. Crown Point Road
Winter Garden, Florida 34787

All notices required to be given to the City shall be in writing, and shall be given by hand-delivery or United States mail, postage prepaid, addressed to the City:

CITY OF ORLANDO
City Hall
David Billingsley, CPO
Procurement and Contracts Division
400 South Orange Avenue, 4th Floor
Orlando, Florida 32801

18.12 Captions and Headings.

Captions in this Agreement are included for convenience only and are not to be taken into consideration in any construction or interpretation of this Agreement or any of its provisions.

ARTICLE 19 – RECORDS RETENTION AND AUDIT

19.1 Records and Reports Retention.

The Construction Manager shall maintain, and shall require by written agreement the subcontractors at all tiers to maintain, all information, materials and data of every kind and character related to the Project and this Agreement, including records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, invoices, leases, contracts, commitments, arrangements, notes, daily diaries, reports, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters reasonably requested by the City, pertaining to any matters, rights, duties or obligations under or covered by any contract document related to the Project or this Agreement (together, “Records and Reports”). All Records and Reports shall be retained for a period of five (5) full years. If any litigation, claim or audit is commenced prior to the expiration of the foregoing five (5) year period, the affected or related Records and Reports shall be maintained until all litigation, claims or audit findings involving the Records and Reports have been resolved.

19.2 Audit.

The City shall have full access in a timely manner during regular business hours, for inspection, review and audit, to all Records and Reports. Such Records and Reports shall be made available at the local place of business or at another local location upon reasonable notice to the City. The City shall have reasonable access to the facilities, shall be allowed to interview all current and former employees to discuss matters pertinent to the performance of the Agreement or subcontract, as applicable, and shall have adequate and appropriate work space in order to conduct audits. Records and Reports subject to audit shall also be subject to the evaluation and verification of: (i) compliance with contract requirements of this Agreement; (ii) compliance with provisions of this Agreement for pricing Change Orders; (iii) compliance with provisions of this Agreement for pricing Applications for Payment; (iv) compliance with provisions of this Agreement regarding pricing of claims submitted by the Construction Manager or the subcontractors at all tiers or their payees; or (v) compliance with applicable laws or ordinances.

19.3 Inclusion in Subcontracts

Construction Manager shall include written provisions in its subcontracts, and shall require the subcontractors to include written provisions in all of their subcontracts at all tiers, mandating compliance and timely cooperation with the record retention and audit provisions set forth in Articles 19.1 and 19.2 above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

City of Orlando, Florida

By: _____

David Billingsley, CPSM, C.P.M.
Chief Procurement Officer

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the
City of Orlando, Florida only.

_____, 20____

Assistant City Attorney
Orlando, Florida

Company

By: _____

Print Name: _____

Title: _____

WITNESS:

(CORPORATE SEAL)

(Print or Type Name)

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

My Commission Expires:

EXHIBIT A

CONSTRUCTION MANAGER'S PERSONNEL

ON-SITE SUPPORT STAFF

Individual

Title

Duties

<u>Dan Smolik</u>	<u>Construction Manager</u>	
Will Poczekaj	<u>Project Manager</u>	
Ryan Smith	<u>Safety Manager</u>	
xx	<u>Project Engineer</u>	
xx	<u>Project Superintendent</u>	

Name and resume of individual to be assigned must be submitted to the City for its approval prior to assigning individual to Project.

EXHIBIT B

**CONSTRUCTION MANAGER'S PERSONNEL ASSIGNED IN THE
DESIGN PHASE,
THEIR DUTIES AND THE DURATION OF THEIR ASSIGNMENTS**

<u>Individual</u>	<u>Title</u>	<u>Duties</u>	<u>Duration</u>
<u>Jason Suebert</u>	<u>Principal-in-Charge</u>		
<u>Dan Smolik</u>	<u>Senior Project Manager</u>		
<u>Billy Newton</u>	<u>Constructability Review</u>		
<u>Will Poczekaj</u>	<u>Cost Estimating / Design Review</u>		