

GENERAL CONDITIONS  
OF  
THE CONSTRUCTION  
MANAGEMENT AGREEMENT  
BETWEEN  
OWNER  
AND  
CONSTRUCTION MANAGER

Date: May 9, 2016

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# GENERAL CONDITIONS OF THE CONSTRUCTION MANAGEMENT AGREEMENT

## ARTICLE 1 DEFINITIONS AND CONTRACT DOCUMENTS

1.1 Definitions. In addition to other terms defined throughout these General Conditions, as used in these General Conditions, the following terms shall have the meanings indicated below:

"**ADA**" shall mean the Americans with Disabilities Act of 1990, as the same has been amended or as the same may be amended from time to time hereafter and the regulations promulgated thereunder and, to the extent that a court of competent jurisdiction would enforce the same, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, Standards for Accessible Design, 28 C.F.R. Part 36 Appendix A and the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, 36 C.F.R. Part 1191 Appendix A, as the same may have been amended or as the same may be amended from time to time hereafter.

"**Addenda**" shall mean written or graphic instruments issued by Architect, but as approved by Owner and Construction Manager, prior to the award of Subcontracts that modify or interpret the Contract Documents by addition, deletion, clarification or correction.

"**Adjacent Property**" shall mean all land adjoining and surrounding the Site, including streets, sidewalks and buildings adjoining the Site.

"**ADR Procedures**" shall have the same meaning as is set forth in Section 7.9 hereof.

"**Affiliate**" of any specified Person shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person, or which is a director, officer, employee, or partner (limited or general) of such specified Person. For the purpose of this definition, "control", when used with respect to any specified Person, means the possession, direct or indirect, of the power to vote five percent (5%) or more of the securities having ordinary voting power for the election of directors or the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Agreement**" shall mean Construction Management Agreement, by and between The Owner and Construction Manager, as the same may be amended from time to time pursuant to the terms thereof.

"**Allowances**" shall mean items of Work, if any, that Owner agrees are not detailed enough for Construction Manager to provide a definitive price.

"**Applicable Laws**" shall mean (a) any applicable law, enactment, statute, treaty, code, ordinance, charter, resolution, order, rule, regulation, guideline, authorization, or other direction or requirement of any Governmental Authority enacted, adopted, promulgated, entered or issued (including the requirements of the ADA and environmental laws

relating to the Project) relating to the performance of the Work; and (b) any judgment, decision, decree, injunction, writ, order or like action of any court, Arbitrator or other Governmental Authority with respect to any of the foregoing, the enforceability of which has not been stayed or appealed. Notwithstanding the foregoing, "Applicable Laws" shall expressly include all requirements and regulations of the City of Orlando, Florida, Orange County, administrative orders, and the Florida Statutes, as same may be modified by waivers issued in accordance with applicable laws. Except as provided in the Scope of Work as design to be provided by Construction Manager and/or is Subcontractors, Construction Manager shall not have any additional responsibility for the practice of architecture or engineering, any and all such claims against the Construction Manager being waived.

**"Application for Payment"** shall mean Construction Manager's certified request for payment for completed portions of the Work in the form required by the Contract Documents.

**"Architect"** shall mean Architect of Record

**"As-Built Drawings"** shall mean the Drawings revised to show the "as-built" condition of the Project and other changes made during the construction process.

**"Bid Manual"** shall mean volumes assembled for the Work that include the bidding requirements, sample forms, General Conditions, Specifications and Drawings.

**"Blueprint"** shall mean the Blueprint for Using Community Venues to Create a Sustainable Economic Impact, approved by the City Council on May 21, 2007.

**[If applicable]"CCIP"** shall mean Contractor Controlled insurance program for the Project to be described in **Exhibit L**.

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

**"Change Order"** shall mean a written order signed by Owner or Owner's authorized agent, Architect and Construction Manager issued after the execution of the Contract Documents authorizing a change in the scope of Work, Construction Manager's compensation, the scheduled interim completion date(s) or the Contract Time.

**"City"** shall mean the City of Orlando, Florida.

**"City-Furnished Materials"** means construction materials acquired or purchased by the City for incorporation into the Project as part of the Work in accordance with the terms of Exhibit "G" of these General Conditions.

**"Claim"** shall mean any claim, demand or assertion as a matter of right for a change in the Contract Sum, extension of time or other relief with respect to any of the terms of the Contract Documents.

**"Construction Change Directive" or "CCD"** shall mean a written order prepared by either Owner's Representative or Architect and signed by Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum, Contract Time or both.

**"Construction Plan"** shall mean a plan for construction of the Work that will include: (a) the construction staging plan setting forth construction scheduling, laydown areas and storage, trailer areas, trailer locations, priorities as to Site use, ingress/egress and other similar Site logistic matters for the Work; and (b) procedures for the assignment of responsibilities for safety precautions and programs for the Work.

**"Construction Schedule"** shall mean a detailed and comprehensive schedule (as revised in accordance with the Agreement) prepared by Construction Manager consistent with the Project Schedule set forth in the Agreement, utilizing a critical path method (CPM) network that is in conformance with accepted industry standards for projects of this size, scope and complexity and that: (a) shows all major elements and phases of the Work with no activity having a duration greater than twenty (20) days except for Submittals and procurement activities (which shall be agreed to by Construction Manager, Owner's Team and Architect); (b) breaks down each element or phase by trade; (c) shows early and late start dates so that all "float" time will be accurately identified; and (d) otherwise is in a form satisfactory to Owner and consistent with the software, practices, and procedures of Construction Manager.

**"Contract Documents"** or **"Contract"** shall mean: (a) the Agreement, (b) these General Conditions of the Agreement, (c) the Drawings, (d) the Specifications, (e) all Addenda and (f) all Modifications issued after execution of the Contract. The Contract Documents do not include Bidding Documents such as the Advertisement or Invitation to Bid, the instructions to Bidders, sample forms, Construction Manager's Bid or portions of Addenda relating to any of these, or any other documents unless specifically enumerated in the Agreement.

**"Contract Sum"** shall mean the total amount payable by Owner to Construction Manager pursuant to the Contract Documents.

**"Contract Time"** shall mean the time allowed for substantial completion of the Work as set forth in the Construction Schedule and, where applicable, the time allowed for completion of each milestone, phase or element of the Work.

**"County"** shall mean Orange County, Florida.

**"Defective Work"** shall mean any Work that does not comply with the requirements of the Contract Documents.

**"Deficiency List"** shall mean, at any time, the list of incomplete Work and Work requiring repair or replacement prepared by Architect, and approved by Owner, upon written notification from Construction Manager to Owner and Architect that a particular Subcontract is completed.

**"Drawings"** shall mean the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

**"Final Completion"** or **"finally complete"** shall mean the completion of the construction of the Project Improvements in all material respects in accordance with the Construction Contract and the issuance of a final Certificate of Occupancy for the Project Improvements. For the purposes of this Agreement, the term "Final Completion" also shall include: (i) all material Punch List Items have been completed and accepted by the



CCR and the Owner; (ii) all applicable Governmental Authorities issuing the Permits have accepted the Work performed pursuant to such Permits as complete and in compliance with the applicable Permits; (iii) final completion of the Work has been certified by the Architect as provided in Section 5.1(d) of this Agreement; (iv) the Architect has received preliminary As Built Plans from the Construction Manager and has approved the same; (v) all applicable occupancy permits have been obtained that are necessary to allow a public event to be conducted at the Project at full capacity; and (vii) the Work is finally and fully complete and complies with the design standards. The Construction Manager shall not submit to the Owner a final Application for Payment prior to the Final Completion of the Project. Final Completion does not include warranty work.

**"Force Majeure"** shall mean the occurrence of any of the following: acts of God; acts of the public enemy; the confiscation or seizure by any Government Authority; insurrections; wars or war-like action (whether actual or threatened); arrests or other restraints of government (civil or military); strikes, labor unrest or disputes (in each case without regard to the reasonableness of any party's demands or ability to satisfy such demands); unavailability of or delays in obtaining labor or materials; epidemics; landslides, lightning, earthquakes, fires, hurricanes, storms, floods or other severe weather; explosions; civil disturbance or disobedience; riot, sabotage, terrorism or threats of sabotage or terrorism; injunctions; other governmental action or change in law which prohibits or materially interferes with development or construction of the Project; power failure; or other cause, whether of the kind enumerated or otherwise, in each case, solely to the extent that is not within the reasonable control of the Party claiming the right to delay or excuse performance on account of such occurrence. Notwithstanding the foregoing, for purposes of this Agreement, no action by the City or County in their regulatory capacity shall constitute a Force Majeure event that excuses or may permit delay in performance by the Construction Manager.

**"General Conditions"** shall mean these General Conditions of the Construction Management Agreement, dated May 9, 2016.

**"GMP"** or **"Guaranteed Maximum Price"** shall mean the guaranteed maximum price to be established in the GMP Amendment, as defined in the Agreement.

**"Governmental Authority"** shall mean any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court agency, or any instrumentality of any of them having jurisdiction with respect to the Work, the Project or the Site.

**"Hazardous Materials"** shall mean any hazardous waste, toxic substance, asbestos containing material, petroleum product, or related materials including substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 *et seq.*; Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802 *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sec. 6901 *et seq.*; and the corresponding regulations (as amended) issued pursuant to these acts.

**"Indemnitees"** shall mean Owner (and any of its employees, officers, directors, board members, shareholders or agents), the City, County, Owner's Representative, CCR, CRA, the Lenders and their respective officials, officers, board members, shareholders, members, partners and employees.

**"Lender(s)"** shall mean any bank, insurance company, trust, corporation, association, firm, partnership, Person, or other entity that has loaned or agreed to lend or otherwise provide funds or credit enhancement to enable Owner to build the Project.

**"Living Wage"** shall mean compensation for employment of not less than **\$8.50 per hour** for straight time, exclusive of FICA, unemployment taxes, and workers compensation insurance and employee benefits.

**"Materials"** shall mean all materials, supplies, appliances, equipment, fixtures and other items to be incorporated into the Work or consumed in connection with the Work.

**"Modification"** shall mean (a) a written amendment to the Agreement signed by Owner and Construction Manager, (b) a Change Order or a Construction Change Directive, (c) a written interpretation issued by Architect pursuant to Section 4.2.3 hereof, or (d) a written order for a minor change in the Work issued by Architect pursuant to Section 12.11 hereof.

**"Owner"** shall mean the Dr. Phillips Center for the Performing Arts, Inc.

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

**"Permits"** shall mean all permits, consents, approvals, authorizations, variances, waivers, certificates and approvals from all Governmental Authorities, utility companies and any other Person which are required for the planning, design, construction, furnishing, equipping, completion, use and occupancy of the Project.

**"Person"** shall mean an individual, sole proprietorship, partnership, corporation, joint stock company, trust, unincorporated association, joint venture, limited liability company, limited liability association, unincorporated association, Governmental Authority, or any other entity.

**"Product Data"** shall mean illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Construction Manager to illustrate a Material, product or system for some portion of the Work.

**"Progress Report"** shall mean a monthly progress report to be prepared by Construction Manager that will contain the following: (a) listing of actual costs for completed activities and estimates for uncompleted tasks; (b) identification of variances between actual and budgeted or estimated costs; (c) the updated Construction Schedule; (d) progress photos; (e) an executive summary; (f) a discussion of pending items and existing or anticipated problems, status of Requests For Information ("RFIs"); (g) a safety and accident report; (h) information on each Subcontractor and each Subcontractor's work as well as the entire Work, showing percentages of completion and the number and amounts of Change Orders and Construction Change Directives and relating such information to the Construction Schedule and the GMP; (i) a list of all identified Claims, any threatened claims and issues that, in the reasonable judgment of Construction Manager, may

potentially become Claims; (j) status of Construction Contingency; (k) any change in the critical path; (l) a discussion of all known material issues/concerns that could affect the achievement of Substantial Completion by the scheduled date for Substantial Completion, along with plans as to how to remediate each issue; (m) significant plans and actions for the next month; (n) updates and revisions, if applicable, to the plan regarding LEED referenced in Section 4.17 hereof; (o) status of the Blueprint/ MBE/WBE program, referenced in **Exhibit H** attached hereto and made a part hereof; and (p) such other relevant information as may be reasonably required by Owner from time to time.

**"Project"** shall mean the total construction of the new Performing Arts Center – Stage II and related improvements, as more particularly described in the Contract Documents, for which the Work performed under the Contract Documents may be the whole or a part and which may include construction by Owner or by Separate Contractors.

**"Punch List"** shall mean the list prepared by Construction Manager, supplemented by Architect and approved by Owner's Representative and Owner containing minor items of incomplete Work not impacting Substantial Completion and to be completed or corrected after Substantial Completion.

**"QM/QA Plan"** shall mean the comprehensive Construction Quality Management and Quality Assurance Plan described in Section 4.1 hereof.

**"Samples"** shall mean physical examples that illustrate Materials, equipment or workmanship and establish standards by which the Work will be judged.

**"Schedule of Values"** shall mean the statement furnished by Construction Manager reflecting the portions of the Contract Sum allocated to the various portions of the Work and, when reviewed by Architect and approved by Owner, used as the basis for reviewing Applications for Payment.

**"Separate Contractor"** shall mean any entity hired by Owner, other than Construction Manager, to perform any construction services for the Project relating to any portion of the Project.

**"Shop Drawings"** shall mean drawings, diagrams, illustrations, schedules, performance charts, and other data specifically prepared for the Project by Construction Manager or any Subcontractor, manufacturer, Supplier or distributor, and if prepared by a Subcontractor, manufacturer, Supplier or distributor, then reviewed by Construction Manager for completeness and correctness, which illustrate how specific portions of the Work shall be fabricated or installed.

**"Site"** shall mean the area of land described in **Exhibit D**.

**"Specifications"** shall mean that portion of the Contract Documents consisting of the written requirements for Materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

**"Submittals"** shall mean Shop Drawings, Product Data, Samples and similar submittals.

**"Subcontract"** shall mean any contract or agreement between Construction Manager and a Subcontractor for performance of a portion of the Work.

**"Subcontractor"** shall mean a person or entity that has a direct or indirect contract with Construction Manager to perform any of the Work (including, equipment leases and Material purchase agreements) at the Site. The term Subcontractor includes Suppliers, but does not include any Separate Contractor unless expressly assigned in writing to Construction Manager by Owner and accepted by Construction Manager.

**"Sub-subcontractor"** shall mean a person or entity that has a direct or indirect contract with a Subcontractor to perform any of the Work at the Site. The term Sub-subcontractor means a sub-subcontractor or an authorized representative thereof.

**"Substantial Completion"** or **"Substantially Complete"** shall mean the Work (or separable units or phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Work is ready for opening to the general public and occupancy or use by Owner (it being understood that, without limitation of the foregoing, to the extent included in the Work, all suites, concessions and other income-generating areas and all areas serving the general public shall be ready for full operation without material inconvenience for their intended purpose). For purposes of Substantial Completion, specified areas of the entire Work or Project may be individually judged as substantially complete. In no event shall Substantial Completion be deemed to have occurred unless (i) a temporary Certificate of Occupancy has been issued by the appropriate Governmental Authorities, (ii) all Work shall have been approved and accepted by Architect, Owner's Representative and CCR (including any Work contained on a Deficiency List previously issued), subject only to the Punch List items, which approval shall not be unreasonably withheld or delayed, (iii) all systems and parts are functional, (iv) all utilities are connected and operating normally; (v) normal vehicular and pedestrian traffic routes to the Project are not obstructed or hindered by Construction Manager's operations, (vi) Construction Manager has provided the Owner with preliminary as-built record drawings, (vii) Construction Manager has provided the Owner with specifications and operation maintenance manuals for all equipment, (viii) Construction Manager has provided the Owner with all guarantees and warranties issued by Construction Manager, Subcontractors, suppliers and manufacturers, (ix) all temporary utilities are disconnected, (x) Construction Manager has delivered to Owner, respectively, all keys, appropriately marked for all locks, along with key and master key inventory records, and (xi) Construction Manager has completed its site clean-up and restoration, including, without limitation, removal of all excess materials, rock, sand, paving and miscellaneous debris, supplies, equipment and trailers and all temporary utilities are disconnected (to Owner's satisfaction). Notwithstanding the foregoing, if any certificate, inspection or approval contemplated by the foregoing clauses (i), (ii) or (iii) is not delivered or is delayed due to causes that are not the fault of Construction Manager and Construction Manager has otherwise complied with the Contract Documents, then the determination of Substantial Completion shall not be withheld or delayed for the purposes of the Contract Documents.

**"Substitution"** shall mean any substitute product or process other than that specified in the Contract Documents that completely fulfills the requirements of the Contract Documents.

**"Supplier"** shall mean a Person who has an agreement with Construction Manager or its Subcontractors or Sub-subcontractors to supply by sale or lease, directly or indirectly, any materials or equipment for the Work.

**"Work"** shall mean the furnishing of all Materials, labor, detailing, layout, equipment, supplies, plants, tools, scaffolding, transportation, temporary construction, superintendence, demolition, and all other services, facilities and items, reasonably necessary for the full and proper performance and completion of the construction requirements for the Project as set forth in the Contract Documents, and items reasonably inferable therefrom as set forth in Section 1.5.2, and consistent therewith for the proper execution and completion of the construction and other services required of Construction Manager by the Contract Documents, whether provided or to be provided by Construction Manager or a Subcontractor, or any other entity for whom Construction Manager is responsible, and whether or not performed or located on or off of the Site.

1.2 Other Terms. Unless otherwise defined herein, terms in these General Conditions shall have the same meaning as those words that have well known technical or construction industry meanings and are used in these General Conditions with such recognized meanings.

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

1.4 Incorporation by Reference. All Exhibits referenced in these General Conditions are hereby incorporated into these General Conditions by such reference and are deemed to be an integral part of these General Conditions.

1.5 Correlation and Intent of Contract Documents.

1.5.1 The Contract Documents represent the entire and integrated agreement between Construction Manager and Owner hereto and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract Documents shall not be construed to create a contractual relationship of any kind (a) between Architect and Construction Manager; (b) between Owner and a Subcontractor or Sub-subcontractor.

1.5.2 The Contract Documents are complementary and include all items necessary for the execution and performance of the Work by Construction Manager. Construction Manager shall perform all Work indicated in or reasonably inferable from and consistent with the Contract Documents for the proper execution and completion of the Work. In particular, the Specifications contain detailed procedures relating to certain Contract requirements contained in the Agreement and these General Conditions, including payment

procedures, Contract modification procedures, Submittals, Project meetings, schedules, reports, quality assurance and quality control. The detailed procedures and requirements of the Specifications shall be deemed supplementary to the requirements of the other Contract Documents and shall be followed in addition to the applicable requirements of the other Contract Documents. In all instances where Construction Manager discovers any inconsistency in the quality or quantity of Work required under the Contract Documents before Construction Manager executes the Work, then Construction Manager shall promptly bring such inconsistency to the attention of Owner and such inconsistency shall be resolved by (a) Change Order, (b) a written interpretation issued by Architect pursuant to Section 4.2.3 hereof, or (c) a written order for a minor change in the Work issued by Architect pursuant to Section 12.11 hereof.

- 1.5.3 The Specifications are separated into titled sections for convenience only and shall not control Construction Manager in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. No responsibility is assumed by Owner, Architect or Owner's Representative for defining the limits of any Subcontractor's work or the work of any trade by reason of the arrangement of the Specifications or the Drawings. Such separation shall not relieve Construction Manager from the responsibility for the satisfactory coordination and completion of the entire Work.

## 1.6 Ownership and Use of Documents.

- 1.6.1 All Drawings and Specifications prepared by Architect which become a part of the Contract Documents incorporated into the Contract shall be the joint property of Owner. Construction Manager, Subcontractors, Sub-subcontractors, suppliers, and others as necessary for the Work are authorized to use and reproduce applicable portions of the Drawings and Specifications and Contract Documents as appropriate to and for use in relation to their execution of the Work and to keep copies for their records. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications, and other documents. Submittal or distribution to meet official regulatory requirements or other purposes in connection with the Project is not to be construed as publication in derogation of the copyright or other reserved rights.

## **ARTICLE 2**

### **ARTICLE 2 ADMINISTRATION OF THE CONTRACT**

## 2.1 Project Representatives.

- 2.1.1 Owner shall designate a representative (the "Owner's Representative") in writing who is authorized to act on Owner's behalf with respect to the Project to the extent set forth in the Agreement and these General Conditions, but does not have the authority to provide any approvals or authorizations under

the Contract Documents nor the power to bind Owner. CCR is authorized to act on the City's behalf with respect to the Project and has the authority to provide any necessary approvals and authorization under the Contract Documents. Communications, approvals, agreements, and authorizations provided to or received from the Owner's Representative or CCR shall be deemed to be provided to or received from the Owner and the City respectively. Owner may change the Owner's Representative, as applicable, by written notice to Construction Manager at least five (5) days in advance of such change. Owner's Representative and CCR are not responsible for design or construction management, except as otherwise provided in the Contract Documents, and none of the activities of Owner's Representative or CCR supplants or conflicts with any services or responsibilities customarily furnished by Architect or required of Construction Manager except as otherwise provided in the Contract Documents.

- 2.1.2 All instructions by Owner to Construction Manager relating to services performed by Construction Manager will be issued or made through Owner in writing, with copies to the City (as appropriate), Architect and Owner's Representative. All communications and Submittals of Construction Manager to Owner or the City shall be issued or made through Owner's Representative, with copies to Architect. Owner's Representative has authority to establish procedures, consistent with the Contract Documents, to be followed by Construction Manager and Subcontractors. Owner shall render approvals and decisions with reasonable promptness to minimize delay in the orderly progress of Construction Manager's services and the Work of Construction Manager. It shall be Construction Manager's responsibility to timely advise Owner of all time requirements and restraints with respect to such approvals and decisions. It shall be the responsibility of Owner to secure, in a timely manner, approval of the City required under the City-OPAC Agreement or Contract Documents. Communications by or with Subcontractors, sub-subcontractors, and Suppliers shall be through Construction Manager.
- 2.1.3 It is acknowledged and agreed that no provision of the Contract Documents that provides for any approval, review or similar participation by Owner or the City shall be construed or interpreted to limit Construction Manager's obligations and responsibilities pursuant to the Contract Documents.

## 2.2 Architect.

- 2.2.1 The term Architect means Architect or Architect's authorized representative. Architect shall be an entity lawfully practicing architecture. Wherever the word "Architect" appears in the Contract Documents, it shall be deemed to include Architect's consultants, including engineers, landscape architects and others engaged by Architect. All communications, directives, instructions, interpretations and actions required of Architect shall be issued or taken only by or through the individual identified as Architect in the Contract or Architect's authorized representative.

- 2.2.2 The authorized representative of Architect may be one or more representatives designated in writing by Architect and authorized to perform the duties and carry out the responsibilities of Architect at the Site.
- 2.2.3 Architect shall not be liable to Construction Manager or any of Construction Manager's Subcontractors, their Sub-subcontractors, or Suppliers of any of them with respect to any agreement or obligation of Owner contained in the Contract Documents or otherwise arising out of the performance of the Work by Construction Manager.
- 2.3 Owner's Representative and CCR.
- 2.3.1 Neither the Owner's Representative nor CCR shall be liable to Construction Manager, Subcontractors, Sub-subcontractors, or Suppliers of any of them with respect to any agreement or obligation of Owner contained in the Contract Documents or otherwise arising out of the Work to be performed by Construction Manager.
- 2.4 Administration of the Contract.
- 2.4.1 Owner's Representative will provide administration of the Contract as hereinafter described.
- 2.4.2 Owner's Representative will be Owner Representative during construction and until final payment to Construction Manager and all Subcontractors is due. Owner's Representative will advise and consult with Owner.
- 2.4.3 Architect and Owner's Representative will have authority to act on behalf of Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Section 2.1.2 hereof.
- 2.4.4 Architect will determine in general that the Work of Construction Manager is being performed in accordance with the Contract Documents, and will endeavor to guard Owner against defects and deficiencies in the Work of Construction Manager. Owner's Representative will be Owner's day-to-day representative at the Site with whom Construction Manager may consult and through whom Construction Manager shall obtain all instructions and actions required of Owner or Architect by the Contract Documents. Owner's Representative and Architect will keep Owner informed of the progress of the Work and will be Owner's advisors concerning all instructions and actions requested of Owner during the course of the Work. Owner may, by separate written instrument, authorize Owner's Representative to take certain actions on Owner's behalf, and to the extent so authorized, to execute instruments evidencing such action.
- 2.4.5 Architect will visit the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an architect, Architect



will keep Owner informed of the progress of the Work, and will endeavor to guard Owner against defects and deficiencies in the Work of Construction Manager.

- 2.4.6 Neither Architect nor Owner's Representative will be responsible for or have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and neither will be responsible for Construction Manager's failure to carry out the Work in accordance with the Contract Documents. Neither Architect nor Owner's Representative will be responsible for or have control or charge over the acts or omissions of Construction Manager, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.
- 2.4.7 Architect, Owner and Owner's Representative shall at all times have reasonable access to the Work wherever it is in preparation and progress. Construction Manager shall provide facilities consistent with reasonable industry standards in Florida for such access so that Architect and Owner's Representative may perform their functions under the Contract Documents in accordance with the progress of the Work. Architect, Owner's Representative shall at all times comply with Construction Manager's rules for the Site, including the Project safety program.
- 2.4.8 Owner's Representative will review and approve schedules for construction to be prepared and submitted by Construction Manager in accordance with the Contract Documents, and will monitor performance of the Work by Construction Manager so as to advise Owner as to Construction Manager's compliance with its schedules for performance of the Work, but Owner's Representative shall have no responsibility to Construction Manager for Construction Manager's compliance therewith or its timely performance of the Work. Owner's Representative will schedule and coordinate the Work of Separate Contractors on the Project, including their use of the Site consistent with the Construction Schedule and the Contract Documents, and Construction Manager shall cooperate with the Owner's Representative in connection with such scheduling and coordination.
- 2.4.9 Owner's Representative will review all Applications for Payment by Construction Manager, including final payment, and will assemble them with similar applications from other contractors on the Project. Owner's Representative will then make recommendations to Owner for certification for payment.
- 2.4.10 Based on Architect's observations, the recommendations of Owner's Representative and an evaluation of the Application for Payment, Architect will determine the amount owing to Construction Manager and will issue a Certificate for Payment in accordance with Article 9 hereof.
- 2.4.11 Architect will be the interpreter of the requirements of the Contract Documents and the initial judge of the performance thereunder by both Owner and Construction Manager.

- 2.4.12 Owner or Construction Manager may make written request to Architect for interpretations necessary for the proper execution or progress of the Work.
- 2.4.13 Architect shall advise Owner regarding disputes and other matters in question between Construction Manager and Owner that relate to the execution or progress of the Work or the interpretation of the Contract Documents. After consultation with Owner's Representative, Architect will make recommendations to Owner. All interpretations of Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in graphic form.
- 2.4.14 Architect will have authority to reject Work that does not conform to the Contract Documents, and to require special inspection or testing, but will take such action only after consultation with Owner's Representative. Owner's Representative will also have the authority to reject Work that does not conform to the Contract Documents. Whenever, in Owner's Representative's opinion, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, Owner's Representative will have authority to require special inspection or testing of the Work in accordance with Section 13.1 hereof whether or not such Work be then fabricated, installed or completed. However, neither Architect's nor Owner's Representative's authority to act under this Section 2.4.14, nor any decision made by them in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of Architect or Owner's Representative to Construction Manager, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.
- 2.4.15 Architect will receive from Construction Manager and review all Submittals, and coordinate them with information contained in related documents. Such actions shall be taken with reasonable promptness, with a target return of not later than fifteen (15) days, so as to cause no delay and shall be consistent with the time periods set forth in any submittal schedule agreed to by Construction Manager and Architect. Architect, Owner and Construction Manager will mutually agree upon a more expedited submittal review time for certain, schedule critical submittals.
- 2.4.16 Architect will review and approve or take other appropriate action upon Construction Manager's Submittals, but only for conformance with the design concept of the Work and the information given in the Contract Documents and transmit the appropriate responses with the Submittal directly to Construction Manager. Such action shall be taken with reasonable promptness so as to cause no delay. Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 2.4.17 Architect will take appropriate action on Change Orders in accordance with Article 12, and will have authority to order minor changes in the Work as provided in Section 12.11 hereof.
- 2.4.18 Owner's Representative will assist Architect in conducting inspections to determine the dates of Substantial Completion and Final Completion, and will

receive and forward to Owner for Owner's review written warranties and related documents required by the Contract Documents and assembled by Construction Manager. Architect will issue a final Certificate for Payment upon compliance with the requirements of Section 9.9 hereof.

- 2.4.19 The duties, responsibilities and limitations of authority of Architect and Owner's Representative as Owner's representatives during construction as set forth in the Contract Documents, will not be modified or extended without written consent of Owner, Architect, Owner's Representative and Construction Manager, which consents shall not be unreasonably withheld.
- 2.4.20 In case of the termination of the employment of Architect or Owner's Representative, Owner shall appoint an architect or an advisor against whom Construction Manager has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect or Owner's Representative, respectively.
- 2.4.21 In no event shall an act or omission on the part of Owner's Representative or Architect relieve Construction Manager from its obligation to perform the Work in full compliance with the Contract Documents.

### **ARTICLE 3**

#### **ARTICLE 3 OWNER**

##### **3.1 Information and Services Required of Owner.**

- 3.1.1 Upon request of Construction Manager, Owner shall furnish all surveys in its possession describing the physical characteristics, legal limitations and utility locations for the Site of the Project, and a legal description of the Site, all to the extent necessary for proper performance of the Work. Construction Manager shall review all such materials submitted by Owner and notify Owner's Representative within seven (7) days of Construction Manager's discovery of any inaccuracies or inconsistencies in such materials. Construction Manager waives any right to recover damages from any such inaccuracy or inconsistency to the extent such damages are caused by its failure to notify Owner's Representative as and when required.
- 3.1.2 Except as provided in Section 4.9.1 hereof, Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.1.3 Upon written request of Construction Manager, information or services under Owner's control, and reasonably required for proper performance of the Work, shall be furnished by Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

- 3.1.4 Owner may forward instructions to Construction Manager through Owner's Representative, with simultaneous notification to Architect and the City (as appropriate.)
- 3.1.5 The foregoing are in addition to other duties and responsibilities of Owner enumerated herein and especially those in respect to Work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9 and 11, respectively.

3.2 Owner's Right to Stop the Work.

- 3.2.1 If Construction Manager fails to correct defective Work as required by Section 13.3 hereof, fails to carry out the Work in accordance with the Contract Documents or fails to comply with the Contract Documents without promptly rectifying any such failure, Owner may, by written order, direct Construction Manager to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Construction Manager or any other person or entity, except to the extent required by Section 6.1 hereof. Owner's exercise of its right to stop the Work shall not relieve Construction Manager of any of its responsibilities and obligations under or pursuant to the Contract Documents.

3.3 Owner's Right to Carry Out the Work.

- 3.3.1 If Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within five (5) business days after receipt of written notice from Owner to Construction Manager to commence and continue correction of such default or neglect with diligence and promptness, Owner may, after such five (5) business day period, and without prejudice to any other remedy Owner may have, make good such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the GMP the cost of correcting such deficiencies, including compensation for Architect's and Owner's Representative's additional services made necessary by such default, neglect or failure. If the GMP is not sufficient to cover such amount, Construction Manager shall pay the difference to Owner.

3.4 Additional Rights.

- 3.4.1 The rights stated in this Article 3 shall be in addition to and not in limitation of any other rights of Owner granted in the Contract Documents or at law or in equity.

**ARTICLE 4**  
**ARTICLE 4 CONSTRUCTION MANAGER**

4.1 Quality Management.

4.1.1 Construction Manager shall develop and implement the QM/QA Plan. The goal of the QM/QA Plan shall be to ensure that construction of the Work is in accordance with the requirements of the Contract Documents. The QM/QA Plan shall also ensure that appropriate procedures are implemented to verify and document compliance with the Contract Documents. The QM/QA Plan shall include, but shall not be limited to, the following: (a) allocation of quality control and assurance responsibilities to the various participants in the Work; (b) an inspection and testing plan for each critical component of the Work; (c) field monitoring and inspection reports, documenting the results of inspection; (d) audit plan to audit Subcontractor's quality control and assurance efforts; (e) identification and reporting procedures for non-conforming Work; (f) tracking system to monitor correction of non-conforming Work; and (g) address concerns specific to Florida, including issues associated with mold.

4.1.2 As part of the QM/QA Plan, Construction Manager shall review the Work of Subcontractors to determine if the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents, and to determine if there are any defects and deficiencies in the Work. Construction Manager shall promptly bring all such material defects and deficiencies that are not subject to correction in the normal course of construction to the attention of the applicable Subcontractor and Owner. Communications between Construction Manager and Subcontractors with regard to quality management and assurance shall not in any way be construed as releasing Construction Manager or its Subcontractors from performing their Work in accordance with the terms of the Contract Documents.

4.2 Review of the Contract Documents.

4.2.1 Construction Manager shall carefully study and compare the Contract Documents and shall at once report to Architect and Owner in writing any error, inconsistency or omission or any variance from Applicable Laws or governmental notices pursuant to Section 4.9 that are discovered and any necessary changes shall be accomplished by appropriate Modification. Notwithstanding the above, Architect, and not Construction Manager, shall have responsibility to confirm that the Contract Documents comply with Applicable Laws relating to design matters. In such event, Construction Manager shall be liable for the cost that would have otherwise been avoided had Construction Manager reported errors, inconsistencies or omissions known to Construction Manager to Owner as required in this Section 4.2.1. Construction Manager shall not be liable to Owner or Architect for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents, unless Construction Manager discovered such errors, inconsistencies or omissions and failed to report as required by this Section

- 4.2. In such event, Construction Manager shall be liable for only the cost that would have otherwise been avoided had Construction Manager reported such errors, inconsistencies or omissions to Owner as required above. Construction Manager shall perform no portion of the Work at any time without Contract Documents or, where required, approved Submittals for such portion of the Work.
- 4.2.2 In event of conflicting requirements between items on the Drawings or between items in the Specifications, the more stringent shall govern. Figured dimensions on the Drawings shall take precedence over scaled dimensions, and large-scale Drawings shall take precedence over small-scale Drawings.
- 4.2.3 In the event that errors, inconsistencies or omissions are discovered by Construction Manager in the Contract Documents, Construction Manager shall not proceed with the affected portions of the Work until Construction Manager has requested and received written interpretation with respect thereto from Architect. Requests for interpretation shall not become a reason for an extension of time, unless Architect unreasonably delays providing such interpretation. If Construction Manager proceeds with Work involving an error, inconsistency or omission in the Contract Documents prior to receipt of a clarification thereof requested from Architect, or knowing that an error, inconsistency or omission exists nonetheless proceeds with Work without requesting such interpretation, Construction Manager shall, at no additional cost to Owner, correct Work performed, or furnish and install Work that may be required in accordance with the Contract Documents as determined by Architect.
- 4.2.4 Construction Manager shall review the dimensions shown on the Drawings before laying out the Work for the purpose of facilitating construction by Construction Manager and are not for the purpose of discovering errors, omissions or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by Construction Manager shall be reported promptly to Architect as a request for information in such form as Architect may require.
- 4.2.5 Construction Manager shall perform comprehensive surveys of the concrete and steel components of the Work structure, verifying that the structure has been built in complete conformance with all dimensional requirements of the Contract Documents and Applicable Laws.
- 4.2.6 Unless otherwise noted by Construction Manager to Owner in writing, commencement of any particular portion of the Work shall constitute a representation by Construction Manager that Construction Manager has reviewed the Contract Documents associated with such portion of the Work, and that to the best of Construction Manager's actual knowledge, the Contract Documents are sufficiently detailed and complete to permit Construction Manager to (1) commence that portion of the Work and (2) complete that portion of the Work in accordance with the Contract Documents and all Applicable Laws; provided that Owner (as between Construction Manager

and Owner) and Architect shall have responsibility for the sufficiency and completeness of the Contract Documents and for confirming that the Contract Documents conform to all governmental requirements relating to design matters.

#### 4.3 Supervision and Construction Procedures.

- 4.3.1 Construction Manager shall provide administrative, management and related services as required to coordinate, supervise and direct the performance of the Work by all Subcontractors with each other and with the activities and responsibilities of Owner and Architect to complete the Work in accordance with the Contract Documents. Construction Manager shall be responsible for implementing the Construction Plan.
- 4.3.2 Construction Manager shall be solely responsible for all construction means, methods, techniques, sequences and procedures, including those employed by Subcontractors in the performance of the Work.
- 4.3.3 Construction Manager shall coordinate all aspects of the Work with all Governmental Authorities and utility companies that may be involved in the Work, but is not responsible for their actual performance.
- 4.3.4 Construction Manager shall be responsible to Owner for the acts and omissions of Construction Manager's employees, Subcontractors and their agents and employees, and any other persons performing any of the Work under a contract with Construction Manager, or claiming by, through or under Construction Manager, for all damages, losses, costs and expenses resulting from such acts or omissions.
- 4.3.5 Construction Manager shall not be relieved from Construction Manager's obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of Owner's Representative or Architect in their administration of the Contract, or by inspections, tests or approvals required or performed under Section 13.1 hereof by persons other than Construction Manager.

#### 4.4 Communication.

- 4.4.1 Construction Manager shall develop, in conjunction with Owner and Architect, procedures acceptable to Owner and Architect for implementing, documenting, reviewing and processing field questions and responses, field variance authorizations and directives, minor changes, Construction Change Directives and Change Orders. All requests for information by Construction Manager shall be submitted in good faith and shall contain Construction Manager's proposed answer to the request, unless the requesting party, in good faith, has not identified a proposed solution. The foregoing or the submission or preparation by Construction Manager of a proposed answer or proposed solution shall not be deemed to create any liability on Construction Manager for design or for the adequacy of the proposed answer or proposed solution.

#### 4.5 Meetings; Reports; Schedule Updates.

- 4.5.1 Construction Manager shall schedule and conduct pre-construction, construction and progress meetings to discuss such matters as procedures, progress, problems and scheduling. Construction Manager shall hold progress and coordination meetings with Owner, Owner's Representative and Architect at least weekly throughout the construction period. Construction Manager shall prepare and promptly distribute minutes of such meetings to Owner, Architect, Owner's Representative, and CCR and to all persons or organizations in attendance and properly identified. The CCR shall be given reasonable notice of, and shall be permitted to attend, such weekly meetings. Construction Manager shall hold regular (not less than bi-weekly) job meetings with the Subcontractors, sub-subcontractors and the Architect, as appropriate and necessary, during the construction of the Work to review the progress of development of the Work and completion of the Work. In connection therewith, an action log shall be maintained which clearly states action items, who is responsible to perform the action items, action items deadlines/due dates tied to the Project Schedule, and the status of each action item until completed.
- 4.5.2 Construction Manager shall update and distribute, on a monthly basis, the Construction Schedule incorporating its activities and those of Subcontractors, including processing of Submittals and delivery of products requiring long lead time procurement and showing current conditions and revisions required by actual experience. Construction Manager shall maintain the progress of the Work in accordance with the originally accepted Construction Schedule. Construction Manager shall advise the Owner and CCR of any delays or anticipated delays in meeting the Project Schedule and of the actual dates on which the various stages and construction indicated on the Project Schedule are started and completed. Construction Manager shall submit a Recovery Plan to the Owner and CCR for review and comment whenever there is an anticipated or actual change to an item on the critical path of the Project Schedule resulting in a delay of seven (7) calendar days or more .
- 4.5.3 On or before August 31, 2016, Construction Manager shall submit to Owner, Owner's Team and Architect a draft of the Progress Report for use on the Project for Owner's review, comment and acceptance. Upon acceptance by Owner, the form of Progress Report shall establish the standard for detail required for the remainder of the Work and shall be updated monthly. The Progress Report shall be indexed, bound and tabulated in a manner acceptable to Owner. The Progress Report shall be delivered with each monthly Application for Payment with a copy of the monthly Progress Report delivered to the CCR. Delivery of the Progress Report shall be a condition precedent to payment of that Application for Payment.
- 4.5.4 Construction Manager shall keep a daily log containing a record of weather, Subcontractor's Work on the Site, number of workers, Work accomplished, problems encountered, and other similar relevant data as Owner may reasonably require. This log shall be available to Owner at the jobsite.



- 4.5.5 Construction Manager shall inspect the Work on an ongoing basis and shall maintain an ongoing log of non-conforming Work that has been installed. The log shall record any items that have been noted as non-conforming by Governmental Authorities, Owner, Architect, or Architect's Consultants. Such log shall be available to Owner during regular business hours and shall be included in Construction Manager's monthly Progress Report.
- 4.5.6 Construction Manager shall maintain a spreadsheet based concrete placement log and shall regularly and diligently enter all concrete placement yardage for all pours broken down by footings, slab on grade, columns, beams, shear walls and elevated slabs in a format acceptable to Owner and such log shall be available to Owner during regular business hours.
- 4.5.7 Construction Manager shall maintain a log of (1) recordable OSHA incidents and (2) recordable lost time accidents, a format that is acceptable to Owner. Such log shall be available to Owner during regular business hours.
- 4.5.8 Construction Manager shall maintain a log of all Submittals in a format that is acceptable to Owner. Such log shall be available to Owner during regular business hours.
- 4.5.9 On or before August 31, 2016, Construction Manager shall prepare a quality control matrix, in a format approved by Owner, based upon the requirements of the Drawings, Specifications and Applicable Laws and listing all testing, inspections and Submittals relating to the Work with specific reference to the source of the requirement. Such matrix shall be updated as appropriate during the course of the Work. The maintenance of such matrix shall be part of Construction Manager's duties in connection with implementing the QM/QA Plan referenced in Section 4.1 hereof. Construction Manager shall submit such matrix to Owner and Architect for review and comment.
- 4.5.10 Within five (5) days of Construction Manager's knowledge of the occurrence of a Force Majeure Event or other situation, occurrence or event that, in Construction Manager's reasonable judgment, will have a material impact on the Work or Construction Schedule, Construction Manager shall notify Owner regarding the nature and impact of such event and the proposed methods and procedures for addressing and resolving any problems or issues resulting from such event (a "Significant Event Report"). Construction Manager shall deliver a Significant Event Report to Owner, Owner's Representative, and CCR within five (5) business days after Construction Manager has knowledge of the occurrence of such significant event.
- 4.5.11 Construction Manager shall provide Owner with periodic updates for the schedules and reports required pursuant to this Section 4.5.

#### 4.6 Labor and Materials.

- 4.6.1 Unless otherwise provided in the Contract Documents, Construction Manager shall provide and pay for all labor, Materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of

the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

4.6.2 Construction Manager shall at all times enforce strict discipline and good order among Construction Manager's employees and shall not employ on the Work at the Site any unfit person (including any employee who reports for work under the influence of alcoholic beverages or drugs, who drinks alcoholic beverages or illegally uses drugs on the Site) or anyone not skilled in the task assigned them.

4.6.3 Construction Manager shall promote and endeavor to maintain a workable and cooperative relationship among Subcontractors. Construction Manager shall take all steps necessary and appropriate to enforce the Subcontracts as needed to perform these General Conditions.

#### 4.7 Warranty.

4.7.1 Construction Manager warrants and guarantees that all Materials and equipment furnished under the Contract Documents to be incorporated into the Project shall be new unless otherwise specified, and that all Work will be of the specified quality, free from faults or defects in Materials or workmanship, and in accordance with requirements of the Contract Documents. This warranty is not limited by the provisions of Section 13.3 hereof.

#### 4.8 Taxes.

4.8.1 Construction Manager shall pay sales, consumer, use and similar taxes for the Work provided by Construction Manager that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The sale of certain materials and personal property that will be incorporated into the Work may be exempt from certain sales and use taxes as long as the procedures attached as **Exhibit G** hereto are followed. Construction Manager, and any applicable Subcontractor or Subcontractors, shall comply with these tax-exempt procedures and Owner shall not pay any sales or use taxes (including any penalties or interest that may be assessed) that are incurred by Construction Manager or its Subcontractors as a result of Construction Manager's and its Subcontractors' failure to do so; provided, however, Owner shall pay any sales or use taxes (including any penalties or interest that may be assessed) that are incurred by Construction Manager or its Subcontractors as a result of such compliance by Construction Manager and its Subcontractors. In no event is the Construction Management Fee to be reduced as a result of Construction Manager's compliance with the tax savings procedures relating to City-Furnished Materials set forth in attached **Exhibit G**, if applicable. Notwithstanding anything herein to the contrary, the procedures and Construction Manager's obligations as set forth in attached **Exhibit G** are subject to the following conditions and qualifications:

- .1 With respect to Construction Manager's obligation to provide a list of all intended suppliers of City-Furnished Materials to the Owner's

Representative as set forth in Section III.1 of **Exhibit G**, Construction Manager shall only be obligated to include in such list suppliers that are then known to Construction Manager.

- .2 Construction Manager shall only be responsible for obtaining and managing warranties and guarantees for the City-Furnished Materials that are incorporated into the Work by Construction Manager (the "CM installed City -Furnished Materials"). Only the CM Installed City-Furnished Materials shall be warranted and guaranteed by Construction Manager as part of Construction Manager's warranty and guarantee of the Work to the same extent and degree as other materials procured and provided to the Work by Construction Manager, and in no event shall Construction Manager's warranty obligations with respect to the CM Installed City-Furnished Materials be deemed to be greater than Construction Manager's warranty obligations with respect to other materials procured and provided to the Work by Construction Manager. Furthermore, Construction Manager's warranty obligations with respect to the CM Installed City-Furnished Materials are subject to the same limitations and qualifications that apply to other materials procured and provided to the Work by Construction Manager, including, but not limited to the exclusions contained in Section 13.3.1 hereof.
- .3 With respect to City's direct payment of the suppliers and vendors of City-Furnished Materials, Owner shall obtain from City and provide to Construction Manager prompt written notice as to the amount, date, payee and check number (if applicable) of all such direct payments. In addition, Owner shall obtain from City and provide to Construction Manager prompt written notice of any instances when less than the full payment is made on an invoice, specifying all reasons for withholding payment (or partial payment). Furthermore, Construction Manager shall not be liable for any delays or damages caused by the City's failure to timely pay any supplier or vendor providing City-Furnished Materials.

#### 4.9 Permits, Fees and Notices.

- 4.9.1 Unless otherwise provided in the Contract Documents or set forth on **Exhibit I** to the Agreement, Construction Manager shall prepare, obtain and pay applicable fees (if any) for those Permits as identified on **Exhibit I** to the Agreement and governmental fees, licenses and inspections that are customarily secured after signing of the construction contract and that are legally required at the time the GMP is agreed upon and necessary for the proper execution and completion of the Work. Construction Manager shall not be responsible for Permits relating to zoning or environmental impact. All Permits shall name the City and the Owner as their interests may appear and as otherwise required by Applicable Law.
- 4.9.2 Except for Permits and fees that are the responsibility of Construction Manager under the Contract Documents, Owner shall secure and pay for necessary approvals, easements, assessments and charges required for

construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

- 4.9.3 In addition to its responsibilities under the Agreement, Construction Manager shall give all notices and comply with all Applicable Laws bearing on the performance of the Work.
- 4.9.4 If Construction Manager knows or discovers that any of the Contract Documents are at variance with any such Permits or Applicable Laws in any respect, Construction Manager shall promptly notify Architect and Owner in writing. After consultation with Architect and Owner, to the extent that Owner determines that changes to the Contract Documents are necessary, then any such changes shall be accomplished by appropriate Modification.
- 4.9.5 If Construction Manager performs any Work that it knows or, reasonably should have known to be contrary to any Applicable Laws, and without prompt notice to Architect and Owner, then Construction Manager shall assume full responsibility therefor and shall bear all costs attributable thereto to the extent such costs could have been avoided.

#### 4.10 Royalties and Patents.

- 4.10.1 Construction Manager shall pay all royalties and license fees, shall defend all suits or claims for infringement of any patent rights and shall save Owner and Owner's Representative and Owner's Representative harmless from loss on account thereof, except that Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is selected by such person or such person's agent (including Architect) or is required by the Contract Documents. If Construction Manager or Owner, as the case may be, has reason to believe that the design, process or product selected is an infringement of a patent, that party shall be responsible for such loss unless such information is promptly given to the others and also to Architect.

#### 4.11 Allowances.

- 4.11.1 Construction Manager shall include in the Contract Sum all Allowances stated in the Contract Documents. Items covered by these Allowances shall be supplied for such amounts and by such persons as Owner may direct, but Construction Manager will not be required to employ persons against whom Construction Manager makes a reasonable objection. Materials and equipment under an Allowance shall be selected by Owner in sufficient time to avoid delay in the Work.
- 4.11.2 Unless otherwise provided in the Contract Documents:
  - .1 These Allowances shall cover the cost to Construction Manager, less any applicable trade discount, of the Materials and equipment required by the Allowance, delivered at the Site, and all applicable taxes;

- .2 Construction Manager's costs for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses contemplated for the original Allowance shall also be included in the Allowance;
- .3 Whenever the cost is more or less than the Allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize the difference between actual costs for an Allowance item and the amount of the Allowance item and changes, if any, in handling costs on the Site, labor, installation costs, overhead, profit and other expenses.

#### 4.12 Staffing.

- 4.12.1 Construction Manager shall maintain a competent, full time staff at the Site, including personnel experienced on projects of the nature and magnitude of this Project, to coordinate and provide supervision of the Work.
- 4.12.2 Construction Manager shall employ a competent senior project manager, general superintendent and necessary assistants who shall be appropriately in attendance at the Project Site during the progress of the Work. The superintendent shall represent Construction Manager and all communications given to the superintendent shall be as binding as if given to Construction Manager. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

#### 4.13 Substitutions.

- 4.13.1 When several products or manufacturers are specified by the Contract Documents as being equally acceptable, Construction Manager has the option of using any product and manufacturer combination listed. When only one product or manufacturer is specified, no Substitution will be permitted, except as provided in Section 4.13.4 hereof.
- 4.13.2 The Materials, products and equipment described in the Contract Documents establish a standard, required function, size, type, appearance or quality to be met by any proposed Substitution. Should Construction Manager wish to substitute a product by another manufacturer, Construction Manager shall submit a written request for approval by Architect prior to incorporation into the Work. Each such request shall include the information required in the Agreement and the Specifications.
- 4.13.3 When a particular manufacturer's product or process is specified for an item of Work without designation of "or equal," no Substitution shall be made, and any Substitution is unacceptable except as provided herein. However, if, in the judgment of Construction Manager, one of the conditions enumerated below exists with respect to any item so specified, Construction Manager may offer for Owner's consideration a Substitution. Substitutions will only be considered if Construction Manager submits a written request to Architect and only under the following circumstances:
  - .1 When the specified product or process is discontinued and not available from the manufacturer or Supplier;

- .2 When such Substitution, in the opinion of Architect or Owner, is otherwise in the best interests of Owner. Architect will make recommendations to Owner regarding Substitutions offered by Construction Manager and Owner may, in its reasonable discretion, reject or approve such Substitutions; or
  - .3 When Construction Manager can demonstrate that the price of the specified Material is inflated due to a sole source specification.
- 4.13.4 Requests for Substitutions of products or processes other than those specified in the Contract Documents shall be timely, fully documented in writing and will be accompanied by evidence about the proposed Substitution including: (i) quality and serviceability to the specified item; (ii) changes in details and construction of related work; (iii) design and artistic effect; and (iv) additional costs, if any, to Owner. Construction Manager's submission of a request for Substitution shall be deemed its representation that the Substitution meets or exceeds the standards and qualities of the specified item being substituted, except to the extent disclaimed with submission of the request for Substitution. Adjustments to the Contract Sum, if any, shall be described in an accompanying request for a Change Order. Construction Manager shall furnish with its request such drawings, specifications, samples, performance data and other information as required to assist Owner in making its decision.
- 4.13.5 In responding to Construction Manager's request for Substitution, Architect shall consider whether such requested Substitution is: (a) permitted by the bidding documents, (b) proposed as alternates to specified items, and (c) provides a more economical solution, system or material without compromising quality. If such substitution is approved by Architect and Owner under the foregoing conditions, Architect shall prepare and submit to Construction Manager for distribution, addenda identifying approved Substitutions to all prospective bidders.
- 4.14 Documents and Samples at the Site.
- 4.14.1 Construction Manager shall maintain at the Project Site (or such other place as approved by Owner), on a current basis: A record copy of all contracts entered into by Construction Manager for the Work (including the Agreement and all Subcontracts), Drawings, Specifications, Addenda, Construction Change Directives, Change Orders and other modifications, in good order and marked to record all changes made during construction; Submittals; As-Built Drawings; the most recent Construction Schedule; applicable handbooks; maintenance and operating manuals and instructions; and other related documents that arise out of such contracts or the Work. Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations. Construction Manager shall make all such records available to Owner, Owner's Representative, City and Architect.

#### 4.15 Shop Drawings, Product Data and Samples.

- 4.15.1 Construction Manager shall cooperate with Owner, Owner's Representative and Architect to develop an "online" system to be used by Architect, Construction Manager, Owner and Owner's Representative to facilitate quick and accurate communications and to provide for an up to date Submittal log accessible to Owner, Owner's Representative and Architect.
- 4.15.2 Shop Drawings shall show dimensions, note whether based on field measurement and shall indicate compliance with standards, and special coordination requirements.
- 4.15.3 It is Construction Manager's responsibility to check all Submittals for conformity with the Contract Documents and to correct any errors, omissions or deviation before transmittal to Architect with Construction Manager's review stamp. Architect will annotate and correct the Submittal, stamp the Shop Drawings with indication of Architect's action as appropriate, and return the Submittal to Construction Manager.
- 4.15.4 Corrected drawings resubmitted for review and approval shall have no changes other than those called for in the review notes on the previous submission. If Construction Manager shall alter any information on previously submitted Shop Drawings, besides the notations called for by the reviewing parties, Construction Manager must circle this new information to bring it to Architect's attention as well as fully explain it in writing with the resubmission.
- 4.15.5 Upon Owner's request and to the extent then known, Construction Manager shall promptly provide a list of all products proposed for installation, including the name of the manufacturer of each, for approval by Architect, Owner and Owner's Representative. The list shall be tabulated by, and be complete for, each Specification section, and shall show the names of Subcontractors providing or installing such products. If the above information is requested prior to commencement of the Work, then (a) Owner may delay issuing its notice to proceed with the Work, or (b) Construction Manager shall not commence with the Work, until the information is provided in accordance with the above, and Construction Manager shall bear all risks associated with such delay. If the above information is requested by Owner after commencement of the Work, then Architect shall not approve Construction Manager's Certificate of Payment as to any such portions of the Work until the information is provided in accordance with the above.
- 4.15.6 Construction Manager shall prepare (or cause to be prepared), review, approve and submit to Architect, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of Owner, all Submittals required by the Contract Documents. Construction Manager shall reasonably cooperate with Owner's Representative in Owner's Representative's coordination of Construction Manager's Submittals with those of other Separate Contractors.

- 4.15.7 By preparing, approving and presenting Submittals, Construction Manager represents that Construction Manager has determined and verified all Materials, field measurements and field construction criteria related thereto, or will do so with reasonable promptness, and has checked and coordinated the information contained within such Submittals with the requirements of the Contract Documents. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Construction Manager may be returned by the Architect without action.
- 4.15.8 Construction Manager shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by Architect's approval of Submittals, unless Construction Manager has specifically informed Architect in writing of such deviation at the time of submission and Architect has given written approval to the specific deviation. Construction Manager shall not be relieved from responsibility for errors or omissions in the Submittals by Architect's approval of them.
- 4.15.9 Construction Manager shall direct specific attention, in writing or on resubmitted Submittals, to revisions other than those requested by Architect on previous Submittals.
- 4.15.10 No portion of the Work requiring submission of Submittals shall be commenced until the Submittal has been approved by Architect. All such portions of the Work shall be in accordance with approved Submittals,
- 4.15.11 Without limiting the foregoing provisions of this Section 4.15, Submittals must also satisfy the requirements of and be submitted in accordance with the terms and conditions set forth in the Specifications.
- 4.15.12 Shop Drawings shall be complete, sharp, clear and easily readable. Shop Drawings within a set shall be of uniform size, each with a title block and a space for review stamps, all in the lower right hand corner. All items shall be clearly identified with the name of the manufacturer, fabricator and installer, item designation, project name and location. Each submission shall clearly show the date of the original submission and of each subsequent revisions or resubmission. Shop Drawings shall indicate model numbers and other designations and shall reflect relations to related work and equipment. A clear space, approximately 4 x 4 inches in size, shall be provided on each print or transparency for Construction Manager and Architect's approval stamp. Each person or entity reviewing Shop Drawings and affixing an approval stamp shall include on such stamp the name of the reviewing party, the date, outcome of the review and required further action (if any), among other items. Architect's or Engineer's approval does not imply that the Work shown on Shop Drawings is all-inclusive of Construction Manager's responsibilities.
- 4.15.13 Shop Drawings shall be submitted for complete systems. Partial submissions will not be permitted, without prior approval by Architect. Shop Drawings will be returned to Construction Manager without checking if they have been submitted in violation of specified procedures, have been inadequately



checked by Construction Manager, are inadequate, or contain substantial error.

- 4.15.14 Product Data, brochures, illustrations, printed charts, schedules and other such pre-prepared data shall be submitted in a minimum of six copies. Such Submittals shall be clearly marked to show the particular characteristics or model of the product to be approved.
- 4.15.15 Construction Manager shall prepare and submit to Architect, for approval, all Samples as required by the various technical sections of the Specifications. If not otherwise specified as to size, all samples shall be large enough to clearly represent all physical characteristics which have a bearing on the selection and appearance of the Material. Unless specified otherwise, Samples shall be submitted in quadruplicate. Samples shall be submitted in sufficient time to allow Architect reasonable time for consideration and so as not to delay progress of the Work in the event re-submission should be required. Each Sample should be labeled with the following information:
- .1 Project name and location;
  - .2 Name of Construction Manager;
  - .3 Name of Subcontractor and manufacturer;
  - .4 Name, finish and composition of the Material;
  - .5 Location or applicability to the Work; and
  - .6 Reference to specification section and drawing sheet number.

The labels shall include blank spaces sufficient for Construction Manager's and Architect's approval stamps. Upon approval, the Samples will be stamped or labeled to indicate approval and two samples will be returned to Construction Manager. The approved Sample retained by Architect will constitute the standard of quality and appearance of all Materials of the type represented by the Sample to be installed. In the event Samples are not approved, Construction Manager will be given reasons for disapproval and Construction Manager shall re-submit Samples until approval is obtained.

- 4.15.16 Construction Manager shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless Construction Manager needs to provide such services in order to carry out Construction Manager's responsibilities for construction means, methods, techniques, sequences and procedures. If professional design services or certifications by a design professional related to systems, Materials or equipment are specifically required of Construction Manager by the Contract Documents, Owner and Architect will specify all performance and design criteria that such services must satisfy. Construction Manager shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such

professional. Submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Architect. Owner and Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Architect have specified to Construction Manager all performance and design criteria that such services must satisfy. Construction Manager shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

- 4.15.17 The Construction Manager shall submit all Shop Drawings, Samples and Submittals to Architect in such time that will provide Architect enough time for Architect, Owner's other consultants and any Governmental Authority to thoroughly review same, for Construction Manager to revise and resubmit same (as may be applicable), for Subcontractor to procure Materials and supplies prior to field installation, and to provide for any additional coordination and changes with regard to such Submittals, but in no event less than fifteen (15) working days prior to the time that such Shop Drawings, Samples and Submittals need to be released to the appropriate Subcontractor or Supplier in order to meet the Construction Schedule. Owner shall respond or shall cause the Architect to respond to such Shop Drawings, Samples and Submittals within fifteen (15) working days after their submission by Construction Manager, or within such other time as is agreed by Owner and Architect. Any delay to the Construction Schedule or the deadlines for Substantial Completion or Final Completion caused, in whole or in part, by Construction Manager's failure to submit Shop Drawings, Samples or Submittals in sufficient time to allow for adequate review and approval shall not be deemed a delay for which the Construction Manager is entitled to a time extension under this Agreement. Construction Manager shall not submit Shop Drawings out of sequence of the Work. Construction Manager shall submit its Shop Drawings in conformance with its Shop Drawings submittal schedule which schedule shall be approved in advance by Owner.
- 4.16 Use of Site.
- 4.16.1 Execution of the Agreement by Construction Manager is a representation that Construction Manager has visited the Site, become familiar with the local conditions under which the Work is to be performed, and has correlated personal observations with the requirements of the Contract Documents.
- 4.16.2 Construction Manager shall confine operations at the Site to areas permitted by law, ordinances, Permits and the Contract Documents, and as directed in writing by Owner so as to avoid unreasonably encumbering the Site with Materials and equipment.
- 4.16.3 Construction Manager shall coordinate all of Construction Manager's operations with, and secure approval from, Owner before using any portion of the Site.

- 4.16.4 All Work required by the Contract Documents shall be conducted in such manner as to cause as little interference with the continuous conduct of business on and within Adjacent Property as is possible, and in such manner as will reduce to a minimum any inconvenience to those occupying such Adjacent Property, their patrons, employees and other invitees.
- 4.16.5 Construction Manager shall be wholly responsible for all storage and safekeeping of its tools, equipment and Materials at all times.
- 4.16.6 Construction Manager shall arrange for storage, protection and security for Owner or City furnished /contractor-installed Materials, systems and equipment, existing equipment and/or materials on site to be reused that are a part of the Work and that have been delivered to the Site until such items are incorporated into the Project.
- 4.16.7 Construction Manager shall carefully examine the Project Site and shall be presumed to be familiar with all general and local conditions of the Site which may in any way affect the Work.
- 4.16.8 Signs, placards, posters, or other advertising material will not be allowed on any part of the Site without the prior written permission of Owner.
- 4.17 Green Building Certification.
- 4.17.1 If Owner decides to pursue LEED or alternate green building certification, Construction Manager agrees to fully support such efforts and will be responsible for documentation and management to assist in achieving such certification.
- 4.18 Environmental Matters.
- 4.18.1 If Construction Manager encounters environmental conditions at the site that differ substantially from those indicated in the environmental reports, then Construction Manager shall notify Owner immediately, and before such environmental condition is disturbed, but in no event later than 24 hours after Construction Manager first observes the condition. Any such environmental condition that involves the presence of “hazardous materials” shall be governed by the provisions of Article 10.
- 4.19 Geotechnical Matters.
- 4.19.1 If Construction Manager encounters conditions at the Site that are subsurface structures, conditions or materials that differ substantially from those indicated in the geotechnical report for the Site, then Construction Manager shall notify Owner immediately, and before such conditions are disturbed, but in no event later than two (2) business days after the date Construction Manager encountered such condition.
- 4.20 Cutting and Patching of Work.

- 4.20.1 Construction Manager shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.
- 4.20.2 Construction Manager shall not damage or endanger any portion of the Work, the existing improvements, or the work of Owner or any Separate Contractors by cutting, patching or otherwise altering any work, or by excavation. Construction Manager shall not cut or otherwise alter the work of Owner or any Separate Contractor except with the written consent of Owner. Construction Manager shall not unreasonably withhold from Owner or any Separate Contractor consent to cutting or otherwise altering the Work.

#### 4.21 Cleaning Up: Recycling.

- 4.21.1 Construction Manager is responsible for the overall cleanliness and neatness of Work and shall at all times keep all areas affected by the Work free from accumulation of waste materials, rubbish and debris caused by Construction Manager's operations. Construction Manager shall leave the Work neat and broom clean. Construction Manager shall clean up after its operation by removing rubbish, including old and surplus Materials. Construction Manager shall use commercially reasonable efforts to prevent dust. Construction Manager shall establish and enforce a recycling program.
- 4.21.2 Owner and Owner's Representative shall require Separate Contractors to comply with Construction Manager's clean-up and recycling policy and procedures.

#### 4.22 Indemnification.

- 4.22.1 To the fullest extent permitted by law, and without limiting the Construction Manager's indemnification obligations under other provisions of the Contract Documents, Construction Manager shall defend, indemnify and hold the Indemnitees harmless from any and all liabilities, obligations, damages, penalties, claims, injuries, costs, charges, expenses (including reasonable fees and expenses of attorneys, expert witnesses and other consultants) arising out of or resulting from the performance of the Work which may be imposed upon, incurred by or asserted against any of them to the extent arising from any negligent, reckless or intentionally wrongful act, error or omission of Construction Manager or any Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, or as a result of any material breach of this Construction Management Agreement. This indemnification obligation shall survive any termination or expiration of the Contract Documents. The parties agree that this indemnity complies with all applicable requirements of Florida Statute § 725.06 and intend that it be construed and enforced to comply with Florida Statute § 725.06.
- 4.22.2 In the event that any Claims are brought or actions are filed against an Indemnatee with respect to the indemnity contained herein, Construction Manager agrees to defend against any such Claims or actions regardless of whether such Claims or actions are rightfully or wrongfully brought or filed

with counsel agreeable to Construction Manager and the Owner, with Owner's agreement not unreasonably withheld, delayed or conditioned.

- 4.22.3 In any and all claims against any Indemnitee by any employee of Construction Manager, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 4.22 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Construction Manager or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- 4.22.4 The obligations of Construction Manager under this Section 4.22 shall not extend to the liability of Architect or Owner's Representative, or their respective consultants, agents or employees, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, arising out of or relating to: (1) the preparation or approval of maps, Construction Drawings, opinions, reports, surveys, responses to RFI's, Change Orders, designs or Specifications, or (2) the giving of or the failure to give directions or instructions by Architect or Owner's Representative, or their respective consultants, agents or employees, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, to the extent that such giving or failure to give directions or instructions causes the injury or damage and such giving or failure to give violates Owner's Representative's or Architect's obligations under the Contract Documents or other obligations or duty under Applicable Law.
- 4.22.5 Conditional upon Owner being in compliance with its payment obligations under the Contract Documents, Construction Manager shall indemnify, defend and hold harmless the Indemnitees, from and against any and all claims, damages, losses and expenses (including, but not limited to, reasonable attorneys' fees and costs for defending any action) arising out of or resulting from mechanic's and materialmen's liens and any other construction liens of any kind whatsoever asserted against the Project, or any part thereof, arising out of the Work performed hereunder except for any such liens properly filed by Construction Manager, subcontractors, sub-sub-contractors, or suppliers arising from Owner's wrongful failure to make payments to Construction Manager.
- 4.22.6 The foregoing provisions shall in no way be deemed released, waived, or modified in any respect by reason of any insurance or bond provided by Construction Manager pursuant to the Contract Documents. If a Subcontractor, Sub-subcontractor or Supplier files a mechanics' lien against Owner's property, Construction Manager shall cause such lien to be formally released, bonded against or satisfied within seven (7) days, provided that Owner paid Construction Manager all undisputed amounts properly due.
- 4.22.7 If any party is requested but wrongfully refuses to honor its indemnity obligations hereunder, then the party refusing to honor such request shall, in

addition to other obligations, pay the cost of bringing such action to enforce indemnity obligations, including reasonable attorneys' fees and costs for prosecuting any action, to the party requesting indemnity.

#### 4.23 Project Close-Out.

- 4.23.1 Within sixty (60) days after the completion of the Construction Documents, the Construction Manager shall submit a Project commissioning and close-out plan (the "Project Commissioning and Close-Out Plan") which addresses the close-out and turnover of the Project to the Owner, including the following: occupancy prior to Substantial Completion; equipment testing and start-up; completion of Punch List Items; training of Owner employees for operation and maintenance of systems and equipment; submittal of warranties from manufacturers and suppliers; turnover of spare parts and acquired excess materials. Commissioning by the Construction Manager shall not be defined as that necessary for LEED certification, nor enhanced commissioning by a 3<sup>rd</sup> Party agent.
- 4.23.2 At Substantial Completion of the Work, Construction Manager shall deliver to Owner, City, and Architect a preliminary set of As-Built Drawings of the Work. Not later than sixty (60) days prior to the scheduled date of Final Completion, Construction Manager shall deliver to Owner and City a final set of As-Built Drawings. Such As-Built Drawings shall note all material deviations between the Work and the Drawings and Specifications, including those deviations resulting from by Change Orders.
- 4.23.3 Construction Manager shall coordinate, schedule and observe the checkout of utilities, operational systems and equipment for readiness by each of Subcontractors and shall assist in their initial start-up, personnel training and testing as required by the Contract Documents. Construction Manager shall secure from the entities required to provide such documents and transmit to Owner required warranties, guarantees, affidavits, releases, bonds, waivers and other documentation required by the Contract Documents; such documents shall be bound and indexed by Construction Manager prior to submission to Owner. Construction Manager shall collect and deliver to Owner all keys, manuals, As-Built Drawings and operating and maintenance books as required by the Contract Documents. Such manuals, As-Built Drawings and operating and maintenance books shall clarify and update the original sequences of operations to as-built conditions.
- 4.23.4 If any defect in the Work performed by any Subcontractor appears within the applicable warranty period specified in the Contract Documents for such Subcontractor, then Construction Manager shall inspect the affected portions of the Work to determine the scope of the defect and to identify Subcontractor(s) that are responsible. Construction Manager shall then promptly notify Owner of the results of such inspection and, at Owner's direction, shall take such action as may be required to enforce such Subcontractor's warranty obligations as set forth in the Contract Documents.

- 4.23.5 At the Substantial Completion of the Work, Construction Manager shall remove from and about the Project Site and surrounding areas Construction Manager's tools, construction equipment, machinery, surplus materials, waste materials and rubbish.
- 4.23.6 Supervise and coordinate the completion of Punch List Items and warranty work during the warranty period, and cause any known defects in the construction of the Work or in the installation or operation of any equipment or fixtures therein to be corrected during construction prior to Final Completion and/or within the warranty period. All warranty Work and Punch List work shall be coordinated in advance with the Owner and shall not unreasonably disrupt or interfere with either operations of the Performing Arts Center or with events held at the Performing Arts Center. All warranties (and the right to enforce such warranties) shall be assigned to the Owner as the operator of the Project upon the termination of the warranty period; and with notice provided to City.
- 4.24 Construction Manager's Review of Adjacent Property.
- 4.24.1 Construction Manager has, to the extent reasonably practicable, visited and generally familiarized itself with the Adjacent Property.
- 4.24.2 Construction Manager shall work with and collaborate with Owner and such other persons or entities as designated by Owner, in devising a phasing plan in such a way as to plan a rational, logical and coherent sequencing of construction that attempts to reasonably minimize impact on the operation of existing adjacent businesses during the construction phase of the Work.
- 4.25 Delivery of Documents.
- 4.25.1 To the extent practicable, all documents transmitted to Owner electronically shall be in an editable format.

## **ARTICLE 5**

### **ARTICLE 5 SUBCONTRACTORS**

- 5.1 Awards of Subcontracts and Other Contracts For Portions of the Work.
- 5.1.1 Subcontracts shall be awarded pursuant to the procedures set forth in the Contract Documents, Construction Manager shall make no Substitution for any Subcontractor, person or entity previously selected without the consent of Owner to the proposed Substitution, which consent shall not be unreasonably withheld.
- 5.1.2 Unless otherwise waived in writing by Owner, all Subcontracts shall be awarded on the basis of a fixed and stipulated construction price and each Subcontract shall contain the following provisions:
- .1 An agreement that Owner and the City are third party beneficiaries of the Subcontract, entitled to enforce any rights thereunder for its respective benefits, and that, subject to the terms of the applicable Subcontract and in

the event of default by subcontractor, Owner shall have the same rights and remedies *vis-a-vis* such Subcontractors that Construction Manager shall have, including the right to be compensated for any loss, expense or damage of any nature whatsoever incurred by Owner resulting from any breach of such Subcontract by Subcontractor, any breach of representations and warranties, if any, implied or expressed, arising out of such agreements and any error, omission or negligence of such Subcontractor in the performance of any of its obligations under such Subcontract;

- .2 Reserved.
  - .3 Requirement that Subcontractor promptly disclose to Owner and Construction Manager any defect, omission, error or deficiency in the Drawings, Specifications or the Work of which it has knowledge;
  - .4 A provision that permits Construction Manager's rights and duties under the Subcontract to be assigned to Owner or Owner's designee after termination of the Agreement upon written notice thereof given by Owner to both Construction Manager and Subcontractor;
  - .5 A provision requiring Subcontractor to maintain insurance in accordance with the Contract Documents;
  - .6 A provision that such agreement shall be terminable for default or convenience upon ten (10) days' prior written notice by Construction Manager, or, if the Subcontract has been assigned to Owner, by Owner;
  - .7 A provision that Subcontractor comply with and pass down to Sub-subcontractors the requirements of these General Conditions;
  - .8 A provision that Construction Manager and Subcontractor acknowledge, to the extent permitted by applicable laws, that Subcontractor has no right to file a construction lien against the Work or the Project and agrees to include a similar requirement in any purchase order or Subcontract entered into by Subcontractor;
  - .9 Provisions that Subcontractor shall comply with all Applicable Laws (including prompt payment) and maintain all files, records, accounts of expenditures for Subcontractor's portion of the Work to the standards required by the Contract Documents;
  - .10 A provision that Subcontractor shall comply with the record retention and audit provisions set forth in Section 9.1 hereof; and
  - .11 A dispute resolution procedure reasonably acceptable to Owner and Construction Manager to facilitate prompt resolution of payment disputes between Construction Manager and Subcontractors.
- 5.1.3 The form of the Subcontract and the terms and conditions thereof shall be Construction Manager's standard form subcontract, a copy of which has been provided to Owner. Any material variations therefrom must be approved in writing and in advance by Owner, said approval not to be unreasonably



withheld. Construction Manager shall supply Owner with copies of all executed Subcontracts.

- 5.1.4 Pursuant to the Agreement, and in the event of a material breach of the Agreement, Construction Manager has assigned to Owner all the rights, title and interest of Construction Manager in, to and under any and all Subcontracts. The assignment is exercisable by Owner, at its election, in the event that Owner has exercised its right to terminate the Agreement in whole or in part or to take control of, or cause control to be taken of, the Work, or any portion thereof for the Owner's convenience. Owner may reassign the Subcontracts to another contractor or any other person or entity, and such assignee may exercise Owner's rights in the Subcontracts. Each Subcontractor shall, upon written notice of Owner's exercise by Owner of its rights under the Contract Documents (or the portion thereof applicable to the Materials, equipment or services being furnished by such Subcontractor), continue to perform all of such party's obligations, covenants and agreements under such Subcontract for the benefit of Owner.
- 5.1.5 Each Subcontract entered into by Construction Manager in connection with the Work shall contain the consent of each Subcontractor to the foregoing assignment and the agreement of each such Subcontractor that, upon written notice from Owner (or the City in the event of default) that it has assumed the Subcontract and exercised its rights under these General Conditions or portion thereof applicable to the Materials, equipment or services being furnished by such Subcontractor, such Subcontractor, as so requested by Owner, shall continue to perform all of such party's obligations, covenants and agreements under Subcontractor's Subcontract with Construction Manager for the benefit of Owner.

## **ARTICLE 6**

### **ARTICLE 6 WORK BY OWNER OR BY SEPARATE CONTRACTORS**

- 6.1 Owner's Right to Perform Work and to Award Separate Contracts.
  - 6.1.1 Owner reserves the right to perform work related to the Project with Owner's own forces, and to award separate contracts in connection with other portions of the Project or other Work on the Site under these or similar General Conditions of the Contract if so noticed prior to the establishment of the GMP.
  - 6.1.2 When Separate Contracts are awarded for different portions of the Project or other work on the Site, the term "Separate Contractor" in the Contract Documents in each case shall mean the contractor who executes a separate agreement with Owner.
  - 6.1.3 Owner will provide for the coordination of the Work of Owner's own forces and of each Separate Contractor with the Work of Construction Manager, who shall cooperate therewith as provided in Section 6.2 hereof.

## 6.2 Mutual Responsibility.

- 6.2.1 Construction Manager shall afford Separate Contractors reasonable opportunity for the introduction and storage of their Materials and for the execution of their services, and shall properly connect and coordinate the Work with the services of such Separate Contractors as required by the Contract Documents and consistent with the project schedule.
- 6.2.2 If any part of the Work depends upon the proper performance of work of any Separate Contractor, Construction Manager shall, prior to proceeding with that portion of the Work, inspect and measure the work of the Separate Contractor and promptly report to Owner and Architect any apparent discrepancy or defects in such other work except for latent or concealed defects and for which Construction Manager was not aware. Construction Manager's failure to inspect and make such report shall constitute an acceptance of the Separate Contractor's work as fit and proper for the proper execution of the Work, except for latent, concealed defects for which Construction Manager was not aware.
- 6.2.3 Any costs caused by defective or ill-timed Work or other work shall be borne by the party responsible therefor.
- 6.2.4 Excluding all damages to be covered by builder's risk and any other property insurance with respect to the Project, if Construction Manager causes damage to the Work or the property of the Owner or City, then Construction Manager shall promptly remedy such damage as provided in Section 10.2.6 hereof. Excluding all damages covered by builder's risk and any other property insurance with respect to the Project, if Construction Manager causes damage to the work or property of any Separate Contractor, then Construction Manager shall promptly attempt to settle any resulting dispute or claim with such Separate Contractor. If a Separate Contractor or its Subcontractor shall assert any claim against the Owner on account of any damage or loss alleged to have been sustained as a result, and to the extent, of the fault or negligence of Construction Manager, or by anyone for whom Construction Manager is responsible, Owner shall notify Construction Manager and Construction Manager shall indemnify the Owner and City from and against any and all such claims, damages, losses and expenses, including attorneys' fees, arising from the assertion of any such claims; provided, however, Construction Manager shall not be required to indemnify the Owner and City to the extent such claim, damage, loss or expense is to be covered by builder's risk or any other property insurance with respect to the Project.
- 6.2.5 Should Construction Manager delay or cause damage to the Work or property of any Separate Contractor, except to the extent such damages is to be covered by builder's risk insurance, Construction Manager shall, upon due notice, promptly attempt to settle with such other Separate Contractor by agreement, or otherwise to resolve the dispute. If such Separate Contractor sues or initiates a court proceeding against Owner on account of any delay or damage alleged to have been caused by Construction Manager, Owner shall notify

Construction Manager who shall defend such proceedings at Construction Manager's expense, and if any judgment or award against Owner arises therefrom, Construction Manager shall pay or satisfy it and shall reimburse Owner for all attorneys' fees and costs for defending any action and court or arbitration costs which Owner has incurred.

6.2.6 Should any Separate Contractor delay or cause damage to the Work or property of Construction Manager (except to the extent such damage is covered by the builder's risk insurance), Owner shall, as between Owner and Construction Manager only, be liable to Construction Manager for such damage and, upon due notice, promptly attempt to settle with Construction Manager by agreement, or otherwise to resolve the dispute. If Construction Manager sues or initiates a court proceeding against Owner on account of any delay or damage alleged to have been caused by a Separate Contractor, Owner shall notify such Separate Contractor who shall defend such proceedings at such Separate Contractor's expense, and if any judgment or award against Owner arises therefrom, such Separate Contractor shall pay or satisfy it and shall reimburse Owner for all attorneys' fees and costs for defending any action and court or arbitration costs that Owner has incurred.

6.3 Owner's Right to Clean Up.

6.3.1 If a dispute arises between Construction Manager and Separate Contractors as to their responsibility for cleaning up as required by Section 4.21 hereof, Owner may direct Construction Manager to clean up and charge the cost thereof to the contractors responsible therefor as Owner shall determine to be just.

**ARTICLE 7**  
**ARTICLE 7 MISCELLANEOUS PROVISIONS**

7.1 Governing Law.

7.1.1 The Contract shall be governed by the laws of the State of Florida.

7.2 Owner Requirements. During the performance of this Contract, Construction Manager agrees as follows:

7.2.1 Construction Manager and each Subcontractor shall comply with the requirements set forth in **Exhibit H** hereof.

7.2.2 Construction Manager will not discriminate against any employee or qualified applicant for employment because of race, color, sex, age, religion, sexual orientation, physical handicap or national origin.

7.3 Confidentiality.

7.3.1 The terms of the Contract Documents and any and all information or materials obtained by Construction Manager from Owner or any agents, representatives or Affiliates of Owner in conjunction with or incidental to performing the Work hereunder that are identified as being confidential shall not be disclosed by Construction Manager or by any of Construction

Manager's Affiliates, employees, agents or contractors to any third party without Owner's prior written consent, provided that Construction Manager may disclose such information to its employees, attorney, consultants, insurers and Subcontractors who have a need to know such information, each of whom must agree to maintain the confidentiality thereof. The provisions of this Section 7.3.1 shall survive the termination of the Contract Documents. This provision shall not apply to information that comes into the public domain (except to the extent that it comes into the public domain as a result of a disclosure prohibited by this Section 7.3.1) or is required to be disclosed under any Applicable Law.

#### 7.4 Successors and Assigns.

- 7.4.1 Owner and Construction Manager, respectively, bind themselves, their successors and assigns to the other party and to the successors and assigns of such other party with respect to all covenants, agreements and obligations contained in the Contract Documents.
- 7.4.2 Construction Manager shall not assign or transfer any interest in the Contract Documents, other than to Construction Manager's surety or lender, without the prior written consent of Owner.
- 7.4.3 Owner may assign the Contract Documents at any time with the consent of Construction Manager, which consent shall not be unreasonably withheld, conditioned or delayed (provided that Construction Manager shall have no right of consent if Construction Manager is in default hereunder at the time consent to assignment is requested, subject to any applicable notice and cure periods or provided if the assignment is being made to the City).
- 7.4.4 The Contract and the remaining Contract Documents may be assigned by Owner to any Lender for the Project without the prior written consent of Construction Manager, and Construction Manager agrees to execute any and all documents reasonably required by Owner to acknowledge and consent to such assignment, provided Owner remains responsible for its obligations under the Agreement and such documents are consistent with the Contract Documents and do not materially alter Construction Manager's rights or obligations. If Owner unconditionally assigns the Contract Documents to its Lender, the Lender shall, upon Construction Manager's request, assume Owner's obligations under the Contract Documents.

#### 7.5 Written Notice.

- 7.5.1 Notices required by the Contract Documents shall be in writing and shall be deemed to have been given when delivered if done so in accordance with the notice provisions of the Agreement.

#### 7.6 Claims for Damages.

- 7.6.1 Should Owner or Construction Manager suffer injury or damage to person or property because of any act or omission of the other party or of any of the other party's employees, agents or others for whose acts such party is legally

liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

7.6.2 No claim for damage by any party pursuant to this Section 7.6 shall be made after final payment unless involving a claim arising out of faulty Work or Materials, latent defects or otherwise made following final payment by the express provisions of the Contract Documents.

7.6.3 Nothing contained in this Section 7.6 shall be construed to permit a party to claim damages that are not recoverable under the provisions of the Construction Documents.

#### 7.7 Performance Bond and Labor and Material Payment Bond.

7.7.1 Construction Manager shall have the right with the Owner's written approval to require each Subcontractor to provide performance and payment bonds. Such bonds shall name the Construction Manager as obligee and the Owner as additional obligee and the City, as the fee simple owner, as an additional obligee thereunder. The bonds will be in a form attached as Exhibit H. The bonds shall be written through a surety company (a) authorized to do business in the State of Florida, (b) having a rating of not less than "A-" in the latest version of Best's Insurance Guide, published by A.M. Best & Company, (c) a financial size category of "X" or higher, as rated by A.M. Best Company; and (d) is listed by the United States Treasury Department as acceptable for bonding Federal projects and that the bond amount is within the limit set by the Treasury Department as the net limit on any single risk. There shall be no affiliation between Subcontractor and the bonding agent or agency. The performance bonds shall cover all warranties and guarantees and all obligations under the respective Subcontract. Alternatively, Construction Manager will be allowed to implement a Subguard program in lieu of a traditional subcontractor performance and payment bond.

7.7.2 In the event the rights and obligations of the Owner are assigned to the City pursuant to an Enforcement Action brought by the City, then Construction Manager shall require each Subcontractor to procure new or amended bond forms identical to the forms attached as Exhibit H excepting only that the identity of the Owner will be changed from Dr. Phillips Center for the Performing Arts, Inc. to City and Dr. Phillips Center for the Performing Arts, Inc. will replace the City as an additional obligee. The new or amended bond forms shall be attached to the Change Order required in paragraph 10.3.1 of the Construction Management Agreement.

#### 7.8 Rights and Remedies.

7.8.1 Except as otherwise expressly set forth herein, the rights and remedies available hereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

7.8.2 No action or failure to act by Owner, Architect, Owner's Representative or Construction Manager shall constitute a waiver of any right or duty afforded

any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

- 7.8.3 The invalidity, partial invalidity or unenforceability of any provision of the Contract Documents shall not impair or affect the validity, enforceability or effect of any other provision of the Contract Documents. If any provision of the Agreement or these General Conditions is held to be unenforceable, no other provision shall be affected thereby, and the remainder of the Agreement or these General Conditions, as applicable, shall be interpreted as if it did not contain the unenforceable provision.

7.9 Dispute Resolution.

- 7.9.1 Any Claims brought under the Contract Documents shall be subject to the dispute resolution procedures set forth in **Exhibit G** attached hereto, including the on-site, expedited alternative dispute resolution process set forth therein (the "ADR Procedures"). Failure of Owner or Construction Manager to comply with the provisions of the ADR Procedures shall be in contravention of the parties' express intention to implement this alternative means of dispute resolution and shall constitute a waiver by such party of any Claim with respect to which it fails to comply with the provisions of the ADR Procedures in any material respect.

- 7.9.2 In the event of any dispute arising by or between Owner and Construction Manager, each party shall continue to perform as required under the Contract Documents notwithstanding the existence of such dispute. In the event of such a dispute, Owner shall continue to pay Construction Manager all undisputed amounts associated with such dispute.

- 7.9.3 In the event of any dispute between Owner and Construction Manager, the prevailing party shall be awarded its reasonable attorneys' fees and costs, in addition to any other damages or other amounts to which it may be entitled.

7.10 Lender Requirements.

- 7.10.1 Construction Manager and any Subcontractors agree to comply with all reasonable Lender requirements that are consistent with the Contract Documents and do not materially alter the rights and obligations of Construction Manager and Subcontractor.

## ARTICLE 8

### ARTICLE 8 TIME

8.1 Definitions.

- 8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the Work.

- 8.1.2 The date of commencement of the Work is the date established in the Construction Schedule.
- 8.1.3 The date of Substantial Completion of the Work or any designated portion thereof is the date certified by Architect as the date when the Work is Substantially Complete.
- 8.1.4 The term day as used in the Contract Documents shall mean calendar day unless specifically designated otherwise.

## 8.2 Progress and Completion.

- 8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.
- 8.2.2 Construction Manager shall begin the Work on the date of commencement, which shall occur upon Agreement execution. Construction Manager shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.
- 8.2.3 To the extent allowed by Applicable Law, the Construction Manager shall use diligent efforts and make all commercially reasonable arrangements to permit the Owner to have partial occupancy of the Project no later than the earlier of (i) thirty (30) days prior to Substantial Completion, or (ii) the date of partial occupancy of the Project by the Owner.
- 8.2.4 At the request of Owner from time to time, Construction Manager and Architect shall each provide a written statement for the benefit of Owner and Owner's Lender(s) setting forth the date on which each believes Substantial Completion can be accomplished. No such statement shall relieve Construction Manager of its obligations to complete the Work within the Contract Time nor create any obligations in addition to those in the Contract Documents.

## 8.3 Delays and Extensions of Time.

- 8.3.1 If the performance by Construction Manager of any obligation under the Contract Documents is delayed because of events of Force Majeure or for any reason beyond Construction Manager's reasonable control, the time for the performance thereof (including the Scheduled Substantial Completion Date) shall be extended as provided in the Contract Documents, provided that in each instance the notice provisions and other conditions and requirements of the Contract Documents are satisfied. Notwithstanding the foregoing, no extension of time shall be granted for delays on account of, or resulting from, weather conditions except for the severe, adverse weather conditions that are abnormal for the period of time and could not have been reasonably anticipated; nor shall Construction Manager be granted any time extension due to Construction Manager's financial inability to perform. Any time extension shall be limited to the period of time that the delay actually affects the critical path of the Construction Schedule. For concurrent delays, (i.e., a delay for which the Construction Manager is entitled to a time extension occurs during the same period of time as a delay for which Construction

Manager is not entitled to a time extension), Construction Manager shall be entitled to a time extension without adjustment to the GMP. Construction Manager shall use commercially reasonable efforts to remove, relieve or minimize the effect of any delay, whether caused by any event of Force Majeure or other causes.

- 8.3.2 Any claim for extension of time shall be made in writing to Owner not more than ten (10) days after Construction Manager has knowledge or should have had knowledge of the commencement of the delay; otherwise it shall be waived for the period of time prior to when the notice should have been delivered. In the case of a continuing delay only one claim is necessary. Construction Manager shall provide an estimate of the probable effect of such delay on the progress of the Work. These notice requirements are in addition to the notice requirements for significant events set forth in Section 4.5.10 hereof.
- 8.3.3 Except to the extent prohibited by law, Construction Manager agrees that whether or not any delays, hindrances, obstructions or interferences with the Work shall be the basis for an extension of time, it shall have no claim against Owner for any increase in the Contract Sum for the first ten (10) cumulative days of time extension; thereafter, Construction Manager's claim shall be limited to its direct, actual and substantiated increased costs associated with such time extension, but Construction Manager shall not be entitled to any increased home office overhead costs or other such indirect costs.

#### 8.4 Acceleration.

- 8.4.1 If, in the reasonable judgment of Owner and upon ten (10) days written notice to Construction Manager, Construction Manager shall (i) fail, refuse or neglect to supply a sufficiency of workers or to deliver the Materials or equipment with such promptness as to prevent the delay in the progress of the Work; (ii) fail in any respect to commence and diligently prosecute the Work and proceed to the point to which Construction Manager shall proceed in accordance with the Construction Schedule in order to achieve Substantial Completion in accordance with the Construction Schedule; (iii) fail to commence, prosecute, finish, deliver or install the different portions of the Work on time as herein specified in accordance with the Construction Schedule; or (iv) fail in the performance of any of the material covenants of the Contract Documents directly impacting the construction schedule, Owner shall have the right to direct Construction Manager to accelerate the Work to comply with the Construction Schedule, including providing additional labor or expediting deliveries of Materials, performing overtime, additional shifts or re-sequencing the Work without adjustment to the Contract Sum. Owner shall, after having provided Construction Manager written notice and a reasonable opportunity to cure, and without waiving any other rights or remedies, have the right to withhold progress payments to the extent reasonably necessary to protect Owner's interests and supplement Construction Manager's forces with



Separate Contractors or to seek other redress for Construction Manager's default.

## ARTICLE 9

### **ARTICLE 9 PAYMENTS AND COMPLETION**

#### 9.1 Contract Sum/Records Retention Audit Rights.

9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments thereto, is the total amount payable by Owner to Construction Manager for the performance of the Work under the Contract Documents.

9.1.2 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 Owner, City, County, the City of Orlando, Florida Community Redevelopment Agency ("Agency") or the Orange County Comptroller (the "Comptroller") pertaining to any matters, rights, duties or obligations under or covered by any Contract Document related to the Project or this Agreement to which such entity is a party (together, "Records and Reports"). For the purposes of this provision, each entity obligated to maintain Records and Reports as provided herein is referred to as a "Reporting Person". Such Records and Reports shall include, with respect to each Reporting Person: hard copy, as well as computer readable data, written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating worksheets; correspondence; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; change order files (including pricing data used to price change order proposals and documentation covering negotiated settlements); back-charge logs and supporting documentation; and other evidence according to GAAP procedures and practices which sufficiently and properly reflect all costs and expenditures of any nature incurred by the Owner, City, Agency or any person operating the Project, in connection with this Agreement or the Project. All Records and Reports shall be retained by each Reporting Person for a period of five (5) full years from the date of transmission by the City to the Comptroller of a report itemizing in detail expenditures related to the Project as required by Section 9.3.4 of the Interlocal Agreement (hereafter "Interlocal Agreement") between the City, Agency and Orange County, Florida. 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 by the Reporting Party until all litigation, claims or audit findings involving the Records and Reports have been resolved.

- 9.1.3 The Owner, City, Agency, the County and, pursuant to Section 9.4 of the Interlocal Agreement, the Comptroller (or his or her designee)(the aforesaid agencies collectively hereafter “Governmental Authority”), shall have full access in a timely manner during regular business hours, for inspection, review and audit, to all Records and Reports for purposes of reviewing compliance with the Interlocal Agreement and this Agreement. Such Records and Reports shall be made available at the Reporting Person’s local place of business or at another local location upon reasonable notice to the requesting Governmental Authority. The direct cost of copying any Records and Reports, excluding any overhead costs, shall be at the expense of the Governmental Authority requesting such Records and Reports. The requesting Governmental Authority shall have reasonable access to the Reporting Person’s facilities, shall be allowed to interview all current and former employees of the Reporting Person 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 in accordance with Section 9.4 of the Interlocal Agreement. Records and Reports subject to audit shall also include (1) those records and documents necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement, and (2) any other records of the Reporting Person which may have a bearing on matters related to this Agreement or the Reporting Person’s dealings with the Owner to the extent necessary to adequately permit 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.
- 9.1.4 In those situations where records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), the requesting Governmental Authority’s representatives shall be provided with extracts of data files in computer readable format on data disks or suitable alternative computer exchange formats. Should any audit or inspection by the Owner, City, Agency, the County or the Comptroller disclose overpricing or overcharges (of any nature) to the Owner in excess of one-half of one percent (0.5%) of the total contract billings, the reasonable actual cost of the audit shall be reimbursed to the auditing entity by the Person committing such overcharges. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Reporting Person’s invoices and/or records and supporting documents shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the auditing Governmental Authority’s findings to the Reporting Person.

## 9.2 Schedule of Values.

- 9.2.1 Before the first Application for Payment, Construction Manager shall submit to Owner a Schedule of Values allocated to the various portions of the Work, prepared in the form required by the Agreement and the Specifications. This schedule, unless objected to by Owner or Architect, shall be used only as a basis for Construction Manager's Applications for Payment.
- 9.2.2 The Schedule of Values shall be prepared in such a manner that each major item of Work and each subcontracted item of Work is shown as a single line item. Construction Manager will provide a listing of the Work items and the code costing items to be shown on Construction Manager's Schedule of Values, which listing shall meet the approval and shall be subject to revision by Owner.

## 9.3 Applications for Payment.

- 9.3.1 For each payment period established in the Agreement, Construction Manager shall submit to Owner, in triplicate, the itemized and notarized Application for Payment, together with such supporting documentation as required by the Specifications and the Agreement.
- 9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of Materials or equipment not incorporated in the Work but delivered and suitably stored at the Site and, if approved in advance by Owner, payments may similarly be made for Materials or equipment suitably stored at some other location agreed upon in writing. Payments for Materials or equipment stored on or off the Site shall be conditioned upon submission by Construction Manager of bills of sale or such other procedures satisfactory to Owner to establish the Owner's title to such Materials or equipment upon payment therefore or otherwise protect the Owner's interest, including applicable insurance and transportation to the Site for those Materials and equipment stored off the Site. Construction Manager waives and releases any claims of subrogation it may have against Owner for damage to, destruction or loss of equipment or Materials not stored at the Project Site. Payments for Owner-furnished Materials shall be made in accordance with the terms and provisions of **Exhibit J** hereof.
- 9.3.3 Construction Manager warrants and guarantees that title to all Work, Materials, and equipment covered by an Application for Payment, regardless whether then incorporated in the Project, will pass to the Owner or City, as the case may be, upon receipt of payment free and clear of all liens, claims, security interests or encumbrances. Construction Manager agrees to bond off or otherwise discharge any liens or other encumbrances upon the Project filed by subcontractors, sub subcontractors, Vendors or others providing labor or materials for the Project pursuant to the Agreement.
- 9.3.4 All Work for which Construction Manager receives payment from Owner pursuant to an Application for Payment shall thereupon become the property of Owner or City, as applicable. This provision shall not be construed as

relieving Construction Manager from the sole responsibility for all Work for which payment has been made, or any obligation to restore any damaged Work that may exist, or as a waiver of the right of Owner to require the fulfillment of all the terms of the Contract Documents. Until Substantial Completion or such earlier date as Owner may take occupancy, all Work, Materials and equipment are deemed to be in the care and custody of Construction Manager and with Construction Manager bearing the risk of loss with respect thereto except to the extent insured pursuant to Article 11 hereof. The provisions of this Section 9.3 regarding ownership of the Work by Owner or City upon payment shall not constitute an acceptance of the Work, for which payment is made, except as and when provided in the Contract Documents.

- 9.3.5 At the request of Owner from time to time, Construction Manager shall provide a written statement for the benefit of the City and the City's Lender(s), Owner and the Owner's Lender(s), setting forth the total cost of all Work necessary to accomplish Final Completion of all of the Work, such statement to contain sufficient information so that the City and the City's Lender(s), Owner and Owner's Lender(s) can determine whether or not the Work can be completed for the remaining unpaid portion of the Contract Sum. No such statement shall relieve Construction Manager of its obligations to complete the Work for the Contract Sum and within the Contract Time. Payments may be withheld by Owner until Construction Manager is able to furnish such written statement.

#### 9.4 Certificates For Payment.

- 9.4.1 Architect will, within seven (7) days after the receipt of the Application for Payment with the recommendations of Owner's Representative, review the Application for Payment and either issue a Certificate for Payment to Owner for distribution to Construction Manager for such amounts as Architect determines are properly due, or notify Owner in writing of the reasons for withholding a Certificate as provided in Section 9.6.1 hereof. Such notification will be forwarded to Construction Manager by Owner.
- 9.4.2 The issuance of a Certificate for Payment will constitute a representation by Architect to Owner that, based on Architect's observations at the Site as provided in Section 2.4 hereof and the data comprising the Application for Payment, the Work has progressed to the point indicated; that, to the best of Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion of the Work, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate); and that Construction Manager is entitled to payment in the amount certified. However, by issuing a Certificate for Payment, Architect shall not thereby be deemed to represent that Architect has made exhaustive or continuous on-site inspections to check the quality or

quantity of the Work, has reviewed the construction means, methods, techniques, sequences or procedures, or has made any examination to ascertain how or for what purpose Construction Manager has used the monies previously paid on account of the Contract Sum.

## 9.5 Progress Payments.

- 9.5.1 After Architect has issued a Certificate for Payment and provided no liens related to the Work have been filed against the Project and not bonded off or otherwise removed (excluding liens due to Owner's failure to comply with its payment obligations under the Contract Documents) and no Governmental Authorities have raised any objections to the Work due to Construction Manager's fault or neglect, Owner shall make payment in the manner and within the time provided in the Agreement.
- 9.5.2 Construction Manager shall promptly pay each Subcontractor upon receipt of payment from Owner, out of the amount paid to Construction Manager on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to Construction Manager on account of such Subcontractor's Work. Such payments shall be made in the manner and within the time provided for in Section 8.4 of the Agreement. Construction Manager shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to their Sub-subcontractors in similar manner.
- 9.5.3 Neither Owner, Architect nor Owner's Representative shall have any obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by law.
- 9.5.4 No certification of a progress payment, any progress payment, or any partial or entire use or occupancy of the Project by Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.
- 9.5.5 Upon any default by Construction Manager under the Contract Documents, Owner may, at its sole option, make payments due under any Application for Payment directly to Subcontractors whose work is covered by such Application for Payment.

## 9.6 Owner's Right To Withhold Payment.

- 9.6.1 Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make payment to Construction Manager to the extent needed to protect Owner if any one or more of the following conditions exists:
  - .1 Construction Manager is in default of any of its obligations hereunder or otherwise is in default under any of the Contract Documents.
  - .2 Any part of such payment is attributable to services or Work that is defective or is not performed in accordance with the Contract Documents; provided, however, such payment shall be made as to the part thereof attributable to services or Work that is rendered or performed in accordance with the Contract Documents and is not defective.

- .3 Construction Manager has failed to make timely payments due and owing to Subcontractors or others or for Material or labor used in the rendering of services or performance of Work for which Owner has made payment.
- .4 Owner has received notice of a pending claim filed by a Subcontractor against the Project and Owner can demonstrate that there is a reasonable likelihood that such claim will require Owner to incur costs, provided such claims are not attributable to the fault of Owner.
- .5 Third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Construction Manager.
- .6 Damage to the Owner or another contractor.
- .7 Reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP.
- .8 Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance of the GMP would not be adequate to cover actual or liquidated damages for the anticipated delay.

9.6.2 Any amounts withheld pursuant to this Section 9.6 shall be reasonably related to a defined issue identified by Owner.

9.6.3 If the portion of the Contract Sum then remaining unpaid will reasonably not be sufficient to complete the Work in accordance with the Contract Documents, then no additional payments will be due hereunder unless and until Construction Manager, at no cost to Owner, causes a sufficient portion of the Work to be performed so that the portion of the Contract Sum then remaining unpaid is reasonably sufficient to complete the Work in accordance with the Contract Documents. In connection with any claim of Owner under this Section 9.6, Owner shall provide Construction Manager with the basis for Owner's withholding.

9.6.4 No partial payments made hereunder shall be construed to be final acceptance or approval of that part of the Work to which such partial payment relates or to relieve Construction Manager of any of its obligations hereunder with respect thereto.

## 9.7 Failure of Payment.

9.7.1 If Owner does not pay Construction Manager within seven (7) days after the date established in the Contract Documents any amount properly due and certified by Architect or awarded by court proceeding, then Construction Manager may, upon seven (7) additional days' written notice to Owner, Architect and Owner's Representative, stop the Work until payment of the amount owing has been received. In such event, the Contract Sum shall be increased by the amount of Construction Manager's reasonable, actual and substantiated costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order in accordance with Section 12.2 hereof.

## 9.8 Substantial Completion.

- 9.8.1 When Construction Manager considers the Work or a designated portion thereof Substantially Complete, Construction Manager shall prepare for Architect, Owner's Representative and CCR an initial list of incomplete or unsatisfactory items and a schedule for their completion in a form satisfactory to Owner and Architect. Architect, in cooperation with Owner's Representative and CCR, shall, as necessary, supplement this list and the list, as supplemented, shall be the Punch List. The Punch List shall be developed within sixty (60) calendar days of Substantial Completion as established by the Contract Documents. The Punch List shall be delivered to Construction Manager within five (5) days of review and development of the Punch Lists as provided for herein. After Architect certifies the date of Substantial Completion of the Work, Construction Manager shall complete all items of incomplete Work and perform any corrective Work as required by the Punch List and the Certificate of Substantial Completion. Construction Manager shall develop in conjunction with Owner and Architect a schedule setting forth anticipated dates for inspections of the Work or portions thereof (as the case may be) by Owner and Architect in order to determine Substantial Completion and Final Completion of the Work or designated portions thereof. It is anticipated that Architect shall make an initial visit and one re-inspection for each area of the Work designated on the schedule developed by Architect, Construction Manager and Owner. If, after making such re-inspections, Architect, after consultation with Owner, determines that the Work or such portion thereof is not Substantially Complete or Finally Complete (as the case may be) or that previously scheduled Punch List work has not been completed, then Construction Manager shall pay (without reimbursement from Owner) for any costs and expenses incurred in connection with such additional inspections, including compensating Architect for additional services rendered in connection with the performance of such additional inspections, to the extent Architect expended more time for such inspections than initially budgeted.
- 9.8.2 Upon Substantial Completion of the Work or designated portion thereof, and upon application by Construction Manager and certification by Architect, Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents. Owner shall not release retainage to Construction Manager to the extent that any such release will result in Owner holding total retainage that is more than 150% of the amount that Architect or Owner determines to be necessary to complete and correct items on Construction Manager's list referred to in Section 9.8.1 hereof.
- 9.8.3 When Architect, on the basis of inspections, determines that the Project; or designated portions thereof; is Substantially Complete, Architect will then prepare a Certificate of Substantial Completion of the Project that shall establish the Date of Substantial Completion of the Project and fix the time (not less than thirty (30) days after delivery of the Punch Lists) within which

Construction Manager shall complete any uncompleted items on the Certificate of Substantial Completion.

- 9.8.4 Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Project or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion of the Work or designated portion thereof.

9.9 Final Completion and Final Payment.

9.9.1 Following Architect's issuance of the Certificate of Substantial Completion of the Work or designated portion thereof, and Construction Manager's completion of the Work, Construction Manager shall forward to Architect a written notice that the Work is ready for final inspection and acceptance, and shall also forward to Architect a final Application for Payment. Owner shall accept or reject such final Application for Payment and deliver payment within the time frames and subject to the provisions of Section 8.4.5 of the Agreement and the provisions of this Section 9.9. Upon receipt, Architect will promptly make such inspection. When Architect finds the Work acceptable under the Contract Documents, Architect will issue a Certificate for Payment which will approve the final payment due Construction Manager. This approval will constitute a representation that, to the best of Architect's knowledge, information and belief, and on the basis of observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due Construction Manager, and noted in said Certificate, is due and payable. Architect's approval of said Certificate for Payment will constitute a further representation that the conditions precedent to Construction Manager's being entitled to final payment as set forth in Section 9.9.2 hereof have been fulfilled.

9.9.2 Final payment (including retainage) shall not be due until Final Completion of the Work and after Construction Manager has furnished to Owner: (a) an affidavit stating that to Construction Manager's best knowledge, information and belief, all payrolls, bills for Materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied; (b) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to Owner; (c) a written statement that Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (d) all warranties and guaranties required by the Contract Documents; (e) one reproducible copy and an electronic copy (in a PDF file format, which shall be reimbursable as part of the reproduction cost allowance to be established as part of the General Conditions Expenses (as defined in the Agreement) and with one electronic copy, in a PDF file format, to be furnished to the City) of the As-Built Drawings and the other Submittals



required by the Contract Documents; (f) consent of surety, if any, to final payment; (g) all Project closeout documents required by the Specifications; and (h) if required by Owner, other reasonable data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Work not caused by Owner's failure to pay amount due to Construction Manager, to the extent and in such form as may be reasonably designated by Owner. If any such lien remains unsatisfied after all payments are made, Construction Manager shall refund to Owner all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

- 9.9.3 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of Construction Manager or by the issuance of Change Orders affecting Final Completion, Owner shall, upon application by Construction Manager and certification by Architect and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Construction Manager to Architect prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payments, except that it shall not constitute a waiver of claims.
- 9.9.4 Acceptance of final payment shall constitute a waiver of Claims by Construction Manager, a Subcontractor or a vendor except those previously made in writing and identified by Construction Manager as unsettled at the time of the final Application for Payment.
- 9.9.5 All provisions of the Agreement, including those establishing obligations and procedures, shall remain in full force and effect notwithstanding the making or acceptance of final payment prior to the Date of Substantial Completion of the Project.
- 9.10 No Creation of Liens.
- 9.10.1 Construction Manager acknowledges that it has no right to file a construction lien against the Work or the Project.

## ARTICLE 10

### **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

#### 10.1 Hazardous Materials.

- 10.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Construction Manager is not responsible for any Hazardous Materials encountered at the Site. If any reasonably suspected Hazardous

Materials are encountered on the Site by Construction Manager, Construction Manager shall, upon recognizing the condition, have the right to immediately stop Work in the affected area and report the condition to Owner in writing.

- 10.1.2 Construction Manager shall not use, in connection with the Work, any Hazardous Materials in such manner as would violate any Applicable Laws. The foregoing shall not be deemed to prohibit Construction Manager from using in the Work any item specified by name in the Construction Documents unless Construction Manager knows them to be in violation of any Applicable Laws, and Owner shall issue an appropriate Change Order in such circumstances.
- 10.1.3 Upon receiving notice of the presence of a suspected Hazardous Material, not expressly provided in the Contract Documents to be part of the Work Owner shall take the necessary measures required to ensure that the Hazardous Material is removed or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether a Hazardous Material has actually been encountered, and, if so, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Material or render the Hazardous Material harmless. Unless otherwise required by the Contract Documents, Owner shall furnish in writing to Construction Manager the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. Construction Manager and Architect will promptly reply to Owner in writing stating whether or not either has a commercially reasonable objection to the persons or entities proposed by Owner. If Construction Manager has a commercially reasonable objection to a person or entity proposed by Owner, Owner shall propose another to whom Construction Manager have no commercially reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume only upon written agreement of Owner and Construction Manager, and if Construction Manager requires, only after Owner's expert provides Construction Manager with written certification that (i) the Hazardous Material has been removed or rendered harmless and (ii) all necessary approvals have been obtained from Governmental Authorities. The time requirements, including the Construction Schedule and the Scheduled Substantial Completion Date, shall be extended appropriately and the Contract Sum shall be increased in the amount of Construction Manager's reasonable, actual and substantiated additional costs of shut-down, delay and start-up, plus a reasonable fee for overhead and profits, which adjustments shall be accomplished by Change Order.
- 10.1.4 Owner shall not be responsible for Hazardous Materials brought to the Site by Construction Manager, unless such Hazardous Materials were required by the Contract Documents. To the fullest extent permitted by law, Construction Manager shall indemnify, defend and hold harmless the Indemnitees from and against all claims, losses, damages, liabilities and expenses, including

attorneys' fees, judgments, fines, penalties, and expenses, arising out of or resulting from those Hazardous Materials introduced to the Site by Construction Manager, its Subcontractors, or anyone for whose acts they may be liable. The foregoing indemnity shall not apply to Hazardous Materials introduced to the Site by Construction Manager, its Subcontractors, or anyone for whose acts they may be liable, if such Hazardous Materials were required by the Contract Documents (with the exception of Hazardous Materials utilized by the Construction Manager as part of the means and methods of performing the Work) and if Construction Manager complied with all Applicable Laws relating to the handling of such Hazardous Materials once on Site.

10.1.5 To the fullest extent permitted by law and to the extent not covered by applicable insurance, Owner shall indemnify, defend and hold harmless Construction Manager, Subcontractors and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in any area of the Site if Hazardous Materials have been encountered and if they in fact present a risk of bodily injury or death or property damage and have not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the negligence of a party seeking indemnity. If, without negligence on the part of Construction Manager or Subcontractors, Construction Manager is held liable for the cost of remediation of any Hazardous Materials solely by reason of performing Work as required by the Contract Documents (with the exception of Hazardous Materials utilized by the Construction Manager as part of the means and methods of performing the Work), Owner shall indemnify Construction Manager for all reasonable, actual and substantiated cost and expense, including but not limited to fees, expenses, penalties, or fines thereby incurred.

10.1.6 Construction Manager shall not be required to perform, without written consent, any Work relating to Hazardous Materials.

## 10.2 Safety Precautions and Programs.

10.2.1 Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

10.2.2 Construction Manager shall monitor the establishment and execution of effective safety practices known to the industry, as applicable to Work on the Project, and the compliance with all applicable regulatory and advisory agency construction safety standards. Subject to the terms of Section 10.2.9 below, Construction Manager has overall responsibility for Work safety and shall implement the safety and fire prevention program on the Work developed by Construction Manager as part of the Construction Plan and shall require all Subcontractors to adhere to such program.

- 10.2.3 Construction Manager shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss from the Work to:
- .1 All employees on the Work and all other persons who may be affected thereby;
  - .2 All of the Work, whether in storage on or off the Site, under the care, custody or control of Construction Manager or any of Construction Manager's Subcontractors or Sub-subcontractors;
  - .3 Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction;
  - .4 The work of Owner or Separate Contractors;
  - .5 All owners and tenants of the Adjacent Property, and their patrons, employees and other invitees; and
  - .6 Construction Manager shall give all notices and comply with all Applicable Laws bearing on the safety of persons or property or their protection from damage, injury or loss.
- 10.2.4 Construction Manager shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.
- 10.2.5 Construction Manager shall not use, in connection with the Work, any Hazardous Materials in such manner as would violate any Applicable Laws or cause liability to Owner or City. The foregoing shall not be deemed to prohibit Construction Manager from using in the Work any item specified by name in the Construction Documents unless Construction Manager knows them to be in violation of any Applicable Laws. When the use or storage of explosives or other Hazardous Materials or equipment is necessary for the execution of the Work, Construction Manager shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel. No explosives shall be used without the prior written consent of Owner. Construction Manager shall not load or permit any part of the Work to be loaded so as to endanger its safety.
- 10.2.6 Construction Manager shall promptly remedy all damage or loss (other than damage or loss insured and covered under property insurance required by the Contract Documents) to any property referred to in Sections 10.2.3.2 and 10.2.3.3 hereof caused in whole or in part by Construction Manager, any Subcontractor, any Sub-subcontractor, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and for which Construction Manager is responsible under Sections 10.2.3.2 and 10.2.3.3 hereof, except damage or loss attributable to the acts or omissions of Owner, Architect, Owner's Representative or anyone directly or indirectly

employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of Construction Manager. The foregoing obligations of Construction Manager are in addition to Construction Manager's obligations under Section 4.22 hereof.

- 10.2.7 Construction Manager shall designate a responsible and qualified member of Construction Manager's organization at the Site whose duty shall be the management of Construction Manager's safety program. This person shall be Construction Manager's Safety Engineer unless otherwise designated by Construction Manager in writing to Owner.
- 10.2.8 Construction Manager shall report in writing to Owner, Owner's Representative and CCR all accidents arising out of or in connection with the Work which cause death, personal injury or property damage, giving full details and statements of witnesses. Construction Manager shall submit its report to Owner within twenty (20) days after the occurrence. In addition, if death or serious personal injuries or serious property damage are caused, the accident shall be reported immediately by telephone or messenger to Owner and City.
- 10.2.9 Construction Manager shall, with the Owner, review the safety programs of each of the Subcontractors and Sub-subcontractors and make appropriate recommendations regarding their implementation. The performance of such services by Construction Manager shall not relieve Subcontractor of its contractual responsibility for the safety of persons and property, and for any compliance with all Applicable Laws. Construction Manager's responsibility for review, monitoring and coordination of the Subcontractor's safety programs shall not extend to direct control over execution of the Subcontractor's safety programs; notwithstanding Construction Manager's safety obligations to Owner, it is agreed and understood that each individual Subcontractor shall remain controlling employer responsible for the safety programs and precautions applicable to its own work and the activities of others' work in areas designated to be controlled by such Subcontractors.

### 10.3 Emergencies.

- 10.3.1 In any emergency affecting the safety of persons or property, Construction Manager shall act, at Construction Manager's discretion, to prevent threatened damage, injury or loss and shall promptly notify Owner. Any additional compensation or extension of time claimed by Construction Manager on account of emergency work shall be determined as provided in Article 12 for Changes in the Work.

## ARTICLE 11

### ARTICLE 11 INSURANCE

#### 11.1 Construction Manager's Liability Insurance.

- 11.1.1 Prior to the commencement of Work at the Site, Construction Manager and Owner shall agree on an appropriate insurance program to be implemented for the Work. In any event, Construction Manager and all Subcontractors shall at all times comply with the insurance requirements set forth in **Exhibit C**.
- 11.1.2 Prior to the commencement of the Work at the Site, Construction Manager shall file with Owner valid Certificates of Insurance in form and substance in compliance with the requirements of **Exhibit C** attached hereto. Copies of the required policies to be maintained by each Party hereto shall be made available for inspection by the other Party upon request from that other Party. As to the liability policies to be maintained by Construction Manager, those policies shall provide for severability of interests of all insureds thereto and, where Owner is named as additional insured, Owner shall be provided that coverage on a primary and noncontributory basis.
- 11.1.3 Construction Manager shall obtain, maintain and file certificates of coverage with Owner for such additional insurance coverage that may be required by any duly constituted authorities having jurisdiction over the Work.
- 11.1.4 When any insurance required under the Contract Documents is scheduled to expire, due to the attainment of a normal expiration date or renewal date, Construction Manager shall, not less than thirty (30) days prior to such expiration or renewal date, supply Owner with updated replacement Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection and scope of coverage as was provided by the Certificates of Insurance and amendatory riders or endorsements originally supplied.

#### 11.2 Waiver of Subrogation.

- 11.2.1 The Owner and Construction Manager waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors of the Owner, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Agreement or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Construction Manager, as appropriate, shall require of the Architect, Architect's consultants, Owner's separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A

waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

## ARTICLE 12

### ARTICLE 12 CHANGES IN THE WORK

#### 12.1 Change Orders.

12.1.1 All Change Orders shall be executed in writing by Owner and Construction Manager, shall be in the form attached hereto as **Exhibit A**, and shall contain full particulars of the changes, and any adjustments of the Contract Sum or Contract Time. Except as otherwise provided in the Specifications and in Section 12.7 hereof, no changes to the scope of Work, the Contract Sum or the Contract Time shall be made except in accordance with a duly issued Change Order executed by both Owner and Construction Manager authorizing such changes or Construction Change Directives issued by Owner.

#### 12.2 Changes Directed by Owner.

12.2.1 Owner may direct a change that would alter, add to or deduct from the scope of Work, by submitting to Construction Manager a written request setting forth in reasonable detail the nature of the requested change. If Construction Manager determines in good faith that such change directed by Owner will (i) increase or decrease Construction Manager's cost of performing the Work, (ii) adversely affect Construction Manager's ability to meet any dates for Substantial Completion set forth in Construction Schedule, or (iii) adversely affect Construction Manager's ability to comply with the warranties provided in the Contract Documents, then Construction Manager shall furnish Owner with the information specified in Section 12.7 hereof with respect to such changed Work. If Owner then elects to proceed with the changed Work, then it shall issue a Change Order to Construction Manager authorizing such modification as shall have been agreed to by Owner and Construction Manager. No change shall commence until a written estimate of the change has been submitted to Owner and Owner's Representative and a Change Order has been issued, except in an emergency endangering life or property (in which case Construction Manager shall proceed in accordance with Section 10.3 hereof).

12.2.2 The cost or credit to Owner resulting from a change in the Work shall be determined in accordance with the **Exhibit B**.

12.2.3 If unit prices are stated in the Contract Documents 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 Owner or Construction Manager, the applicable unit prices shall be equitably adjusted.

12.2.4 No claim for impact costs resulting from the performance of a Change Order shall be permitted subsequent to the time that the change is authorized by Owner and Owner's Representative.

12.2.5 Owner shall obtain all prior consents by City and/or Lender that are required to proceed with any change work, and Owner shall provide Construction Manager with reasonable evidence of such consent at Construction Manager's request.

### 12.3 Changes other than Owner Directed Changes.

12.3.1 Notice. Construction Manager shall give timely written notice to Owner of any Claim for extension of time or any Claim for additional compensation, which notice shall, to the extent practicable, specify the length of delay in the Substantial Completion Date and, as applicable, the additional compensation claimed and shall reasonably substantiate the same. Such notice shall be issued promptly but in no event later than within fourteen (14) days following actual knowledge of the event giving rise to the Claim by Construction Manager's Project Manager or Project Executive. If it is impracticable to specify the length of such delay or amount of the Claim at the time the notice referred to in the preceding sentence is delivered, then Construction Manager shall provide Owner with periodic supplemental notices during the period over which the event continues. Such supplemental notices shall keep Owner informed of any change, development, progress or other relevant information concerning the event of which Construction Manager is aware. It is a condition precedent to the consideration or prosecution of any Claim that the foregoing procedures be strictly adhered to in each instance, and if Construction Manager fails to comply, Construction Manager shall be deemed to have waived such Claim to the extent such failure prejudiced Owner.

#### 12.3.2 Concealed or Unknown Conditions and Changes in Applicable Laws.

- .1 If conditions are encountered at the Project Site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed (to the extent practicable) and in no event later than two (2) business days after first observance of the conditions. Owner will promptly investigate such conditions and, if they differ materially and cause an increase in the cost of, or time required for, performance of any part of the Work, Construction Manager will be entitled to equitable adjustment in the Contract Sum or Construction Schedule (and other time requirements), or both. If the conditions at the Project Site are not materially different from those indicated in the Contract Documents and



no change is justified, then Owner shall so notify Construction Manager in writing, stating the reasons. Claims in opposition to such determination must be made within fourteen (14) days after Owner has given notice of its decision. If Owner and Construction Manager cannot agree on an adjustment in the Contract Sum or Construction Schedule and other time requirements, the adjustment shall be submitted to dispute resolution as provided these General Conditions.

- .2 To the extent that there is a change in Applicable Laws after the Effective Date of the Agreement that impacts the Contract Sum or Construction Schedule, and such change in Applicable Laws was not known by Construction Manager prior to the Effective Date, then Construction Manager shall be entitled to an adjustment in the Contract Sum or Construction Schedule (and other time requirements), or both; provided, however, a law that is passed before the Effective Date for implementation after the Effective Date would not be considered a change in Applicable Laws for the purposes of this Section.

#### 12.4 Owner Review of Request.

- 12.4.1 If Owner accepts Construction Manager's finding as to an event of delay, then, subject to the provisions of Section 8.3 hereof, Owner shall issue a Change Order adjusting any dates for Substantial Completion set forth in Construction Schedule (and other time requirements) by extending the time for performance of Construction Manager's obligations under the Contract Documents for a period equal to the delay in completion of the Work. If Owner does not accept Construction Manager's findings, then the propriety of a Change Order for such event may be submitted to dispute resolution as provided in the Contract Documents.

#### 12.5 Mitigation of Event.

- 12.5.1 Construction Manager and Owner shall use reasonable efforts to mitigate the effect of any delay, whether caused by any event of Force Majeure or other causes.

#### 12.6 Performance of Changed Work.

- 12.6.1 If Owner and Construction Manager are unable to agree on the adjustment to the Contract Sum applicable to a Change Order, then Owner may nonetheless issue a Construction Change Directive for such changed Work and Construction Manager shall proceed to perform such changed Work so long as Construction Manager is paid on a time and materials basis in accordance with the pricing set forth in **Exhibit B** until such agreement can be reached. If Owner and Construction Manager cannot ultimately reach an agreement, then either party may refer the issue to dispute resolution as provided in Section 7.9 hereof.

12.7 Price and Schedule Adjustments for Change Order Work.

12.7.1 The price of any Work ordered by a Change Order or Construction Change Directive shall be calculated on the basis set forth in **Exhibit B** unless otherwise agreed by Owner and Construction Manager. Construction Manager shall, as soon as reasonably practical following a request therefore, furnish Owner with detailed estimates, quotations or costs to be used in determining the amount of any proposed adjustment to the Contract Price. Each Change Order incorporating the agreed Contract Price adjustment shall be accompanied by a modified payment schedule reflecting such adjustment and each Change Order incorporating the agreed extension of any dates for Substantial Completion shall be accompanied by a modified Construction Schedule reflecting such adjustment.

12.8 Constructive Acceleration.

12.8.1 Notwithstanding anything in the Contract Documents to the contrary, if Construction Manager is entitled to an extension of time pursuant to the Contract Documents, but Owner nevertheless requires Construction Manager to perform without a change in any dates for Substantial Completion set forth in Construction Schedule, with the result that Construction Manager is required to accelerate its performance of the Work, the Contract Sum shall be adjusted in accordance with this Article 12 to the extent of any increase in the reasonable costs (including losses of efficiency and amounts owed to Subcontractors) incurred by Construction Manager as a result of such constructive acceleration plus reasonable additions to the Lump Sum Staff Cost/Reimbursable Expenses, plus a profit and overhead as set forth in **Exhibit B**. In no event shall Construction Manager be entitled to any other compensation or recovery of any damages in connection with constructive acceleration, including consequential damages, lost opportunity costs or similar remuneration. Construction Manager shall accelerate its Work in a reasonably cost efficient manner.

12.9 Unit Prices.

12.9.1 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to Owner or Construction Manager, the applicable unit prices shall be equitably adjusted.

12.10 Accounting.

12.10.1 Construction Manager and all Subcontractors affected by a Change Order or Construction Change Directive being charged on the basis of costs incurred shall maintain itemized accounts showing all relevant charges and credits for additions to, deletions from, or other changes in the Work ordered by Owner which shall at all times be open to inspection by Owner, Owner's Team, CCR and Architect and shall comply with Section 9.1 hereof.

12.11 Minor Changes In The Work.

12.11.1 Owner will have authority, after consultation with Architect and Owner's Representative, to order minor changes in the Work not involving an adjustment in the Contract Sum or extension of the Contract Time or other time requirements and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on Owner and Construction Manager. Construction Manager shall carry out such written orders promptly.

**ARTICLE 13**

**ARTICLE 13 UNCOVERING AND CORRECTION OF WORK**

13.1 Testing.

13.1.1 Construction Manager shall develop a checking and testing procedure that will ensure that all systems are adequately tested and balanced prior to their acceptance. Construction Manager shall cooperate with all testing provided by others as required by the technical sections of the Drawings, Specifications and Applicable Laws, including the tests and inspections of one or more inspectors employed by Owner to inspect the construction, perform soils and materials testing and other threshold inspections required by Applicable Laws or Permits. Construction Manager shall keep an accurate record of all tests, inspections conducted, findings, and test reports for the Work to the extent prepared by or on behalf of Construction Manager or provided to Construction Manager.

13.1.2 If the Contract Documents or Applicable Laws require any portion of the Work to be inspected, tested or approved, Construction Manager shall give Architect, Owner's Team and Owner's applicable testing or inspection companies timely notice of its readiness so Architect, Owner's Team and Owner's applicable testing or inspection companies may observe such inspection, testing or approval. Unless otherwise provided, Owner shall bear all costs of inspections, tests or approvals.

13.1.3 If Architect or Owner determines that any Work requires special inspection, testing or approval that Section 13.1.1 hereof does not include, Owner will instruct Construction Manager to order such special inspection, testing or approval, and Construction Manager shall give notice as provided in Section 13.1.2 hereof. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, Construction Manager shall bear all costs thereof, including compensation for Architect's, Owner's Representative's and Owner's additional services made

necessary by such failure; otherwise Owner shall bear such costs, and an appropriate Change Order shall be issued.

13.1.4 Required certificates of inspection, testing or approval shall be promptly secured by Construction Manager if required by the Contract Documents and, where practicable, at the source of supply.

### 13.2 Uncovering of Work.

13.2.1 If any portion of the Work should be covered contrary to the written request of Owner or Architect, or to requirements specifically expressed in the Contract Documents, it must, if required in writing by either Owner or Architect, be uncovered for their observation and shall be replaced at Construction Manager's expense.

13.2.2 If any other portion of the Work has been covered which Owner and Architect have not specifically requested in writing to observe prior to it's being covered, either of them may request to see such Work and it shall be uncovered by Construction Manager. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to Owner. If such Work is found to be not in accordance with the Contract Documents, Construction Manager shall pay such costs unless it be found that this condition was caused by Owner or a Separate Contractor as provided in Article 6, in which event Owner shall be responsible for the payment of such costs.

### 13.3 Correction of Work.

13.3.1 Construction Manager warrants and guarantees that all Materials and equipment to be incorporated into the Project by it under the Contract Documents shall be new unless otherwise specified, and that all Work will be of the required quality, free from faults or defects in Materials or workmanship not inherent in the quality required or permitted, and in accordance with requirements of the Contract Documents. Warranties exclude any remedy for damages or defect caused by abuse, modifications not executed by Construction Manager, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. Construction Manager shall, or shall cause the applicable Subcontractor, to remove or correct, without cost to Owner, all Work that is discovered to be not in conformance with the Contract Documents within a period of one (1) year from the date of Substantial Completion of the Work occurs, or for such longer periods of time as may be set forth with respect to specific warranties contained in the Contract Documents. Construction Manager also agrees to remove or correct any portions of the Work that may be damaged or destroyed by such Defective Work or by the removal or correction of such Defective Work. Owner shall send written notice to Construction Manager of any claim relating to the foregoing warranty and shall provide Construction Manager a reasonable opportunity to cure the Defective Work prior to Owner's undertaking to correct the Defective Work.

- 13.3.2 If Owner does not require Defective Work to be removed or corrected by Construction Manager, then an equitable deduction from the Contract Sum shall be made by Change Order between Construction Manager and Owner. Owner may withhold such sums as are just and reasonable from amounts, if any, due Construction Manager hereunder, until the amount of any such deduction is agreed upon by Owner and Construction Manager. All such deductions from the Contract Sum shall be evidenced by a Change Order.
- 13.3.3 If Construction Manager does not fully perform its obligations under Section 13.3.1 hereof within a reasonable time following written notice by Owner to Construction Manager, then Owner may perform or cause such obligations to be performed at the cost and expense of Construction Manager and (a) either the GMP shall be decreased by the amount of such costs and expenses, or (b) if the GMP has already been exceeded by Construction Manager, or would be exceeded as a result of such costs and expenses, then the portion of such costs and expenses exceeding the GMP shall be deducted from amounts to be paid by Owner to Construction Manager or shall be indebtedness of Construction Manager to Owner, payable on demand.
- 13.3.4 Nothing contained in this Article 13 shall be construed to establish a period of limitation with respect to any other warranty obligation under the Contract Documents. The establishment of the time period set forth in Section 13.3.1 hereof relates only to the specific obligation of Construction Manager to correct the Work, and has no relationship to the time within which obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish Construction Manager's liability with respect to its obligations other than specifically to the warranty period to correct the Work. The period of corrections shall not be extended by corrective Work.
- 13.3.5 The expiration of any guarantee or any obligation of Construction Manager to correct Work shall not relieve Construction Manager of the obligation to correct any latent defect in the Work or deficiencies that are not readily ascertained, including defective Materials and workmanship, defects attributable to Substitutions for specified Materials, and substandard performance of any of the Work otherwise not in compliance with the Contract Documents. Following the correction or replacement of any of the Work, Construction Manager shall correct any defects or deficiencies in the portion of the Work that was corrected or replaced Materials and that is found within one (1) year after the date of correction or replacement, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty or guarantee required by the Contract Documents.
- 13.3.6 Construction Manager will collect all written guaranties, warranties and equipment manuals and deliver copies of them to each of the Owner and City upon Substantial Completion of the Work.
- 13.3.7 All warranties arising from this Article 13 and from other provisions of the Contract Documents shall run directly to the Owner. All warranties and

guaranties of manufacturers or Suppliers shall be fully assignable to the Owner and City or their designee and shall be assigned to the Owner and City upon Substantial Completion of the Work. The warranties provided in this Article 13 shall be in addition to and not in limitation of any other warranty or remedy arising by law or by the Contract Documents. Construction Manager shall assist the Owner and City in enforcement of long term warranties or guaranties from manufacturers or Suppliers.

13.3.8 On or about the date that is ten (10) months after the date of Substantial Completion, Construction Manager shall, together with Architect and Owner's Representative, attend a final inspection of the Work to assure that it comports with all warranties and guarantees. Construction Manager shall promptly correct any deficiencies noted during such inspection.

13.4 Acceptance of Defective or Nonconforming Work.

13.4.1 If Owner prefers to accept defective or nonconforming Work, Owner may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 14

### **ARTICLE 14 TERMINATION OF THE CONTRACT**

14.1 Termination by Construction Manager.

14.1.1 If Owner fails to pay within thirty (30) days after written notice from the Construction Manager that any undisputed amounts that are due and owing to Construction Manager under the Agreement have not been paid when due, then Construction Manager may, upon ten (10) days' prior written notice to Owner, during which time Owner fails to make such payment, terminate the Agreement and recover from Owner payment for all Work executed and the portion of the Contract Sum earned prior to the date of termination (based on the percentage of Work completed as such date) and all Cost of the Work actually incurred by Construction Manager as a result of such termination, including reasonable, documented termination expenses, such as cancellation fees or other costs actually incurred including reasonable and substantiated demobilization costs not to exceed \$10,000 and a reasonable profit not to exceed 10% of the balance of the unearned Construction Manager's Fee on the remainder of the incomplete Work. The foregoing payment shall be the exclusive recovery to Construction Manager and Construction Manager hereby waives any other right of recovery for damages by reason of termination, including anticipated profits or consequential damages. Any notice of termination by the Construction Manager pursuant to this Section shall be simultaneously provided to the City. In the event Construction

Manager provides such notice of termination, the Agreement shall be assignable to the City at the City's option.

14.2 Owner's Right to Perform and Termination by Owner.

- 14.2.1 If Construction Manager fails to properly and timely perform any of its obligations under the Agreement, Owner may, after fourteen (14) days' prior written notice, during which period Construction Manager fails to commence, and thereafter diligently pursue, performance of such obligations, without prejudice to and cumulative of any other remedy Owner may have, perform such Construction Manager obligations. No action taken hereunder by Owner shall be deemed a termination of the Agreement or relieve Construction Manager from any consequences or liabilities arising from such actions or omissions. All costs and expenses incurred by Owner in correcting such deficiencies shall become indebtedness of Construction Manager to Owner payable upon demand and may be offset against the Contract Sum.
- 14.2.2 If Construction Manager is adjudged to be bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it fails to supply enough properly skilled workmen or proper Materials, or if it fails to make proper payment due to Subcontractors or for Materials or labor, or fails to comply with Applicable Laws, or if it otherwise materially breaches the Agreement, then Owner may, without prejudice to any right or remedy and after giving Construction Manager fourteen (14) days' prior written notice, during which period Construction Manager fails to commence to cure the violation, terminate the Agreement for default and take possession of the Project Site and of all Materials, equipment, tools, construction equipment and machinery thereon owned by Construction Manager and may finish the Work by whatever reasonable method it may deem expedient. In such case, Construction Manager shall not be entitled to receive any further payment until the Work is finished nor shall it be relieved from its obligations under the Contract Documents.
- 14.2.3 If Owner completes the Work and the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including Owner's additional costs, compensation for Architect and Owner's Team's additional services, and all losses, damages, costs and expenses not expressly waived under the Agreement, including attorney's fees, sustained or incurred by reason of Construction Manager's failure to complete the Work, an amount shall be paid to Construction Manager only to the extent as will compensate it for the Work Construction Manager actually performed. If such cost to Owner to complete the Work exceeds such unpaid balance of the Contract Sum, then Construction Manager shall pay the difference to Owner upon demand. This obligation for payment shall survive the termination of the Agreement.
- 14.2.4 Upon determination by a court of competent jurisdiction or an arbitration panel, as the case may be, that termination of Construction Manager pursuant to Sections 14.2.2 or 14.2.3 hereof was wrongful, such termination shall be

deemed converted to a termination for convenience pursuant to Section 14.4 hereof and Construction Manager's remedy shall be limited to the recovery of only those payments permitted for termination for convenience as set forth in Section 14.4 hereof.

14.3 Suspension by Owner for Convenience.

14.3.1 Owner may, without cause, order Construction Manager in writing to suspend, delay or interrupt the Work in whole or in part for a period of time as Owner may determine not to exceed thirty (30) consecutive days during performance of the work. Shall the total consecutive days exceed this limit, Construction Manager may terminate this Agreement for cause.

14.3.2 Any claim for adjustment in the Contract Sum caused by suspension, delay or interruption under this Section 14.3 shall be made pursuant to Sections 12.2 and 8.3 hereof. No adjustment shall be made to the extent: (a) that performance is or, was suspended, delayed or interrupted by another cause for which Construction Manager is responsible; or (b) that an equitable adjustment is made or denied under another provision of the Contract Documents.

14.4 Termination by Owner for Convenience.

14.4.1 In addition to any other rights Owner may have at law or under the Agreement with respect to cancellation or termination, Owner may terminate, without cause, the Agreement in whole or, from time to time, in part, if Owner determines that a termination is appropriate for its convenience. Owner shall terminate by delivering to Construction Manager a notice of termination for convenience specifying the extent and the effective date of termination, which effective date shall be at least fourteen (14) days from the date of delivery of the notice. Owner shall, upon Construction Manager executing such confirmatory assignments as Owner shall request, accept and assume all of Construction Manager's obligations under all Subcontracts executed in accordance with the terms of the Contract Documents that may accrue after the date of such termination and that Construction Manager has incurred in good faith in connection with the Work. Construction Manager shall be paid for all Work completed to the date of such termination, together with the portion of the Contract Sum earned to the date of termination (based upon the percentage of Work completed as of such date) and reasonable, documented demobilization costs. Construction Manager shall not be entitled to consequential damages, lost profits, anticipated profits or unallocated overhead on any Work not performed or on Materials or equipment not furnished.



## ARTICLE 15

### **ARTICLE 15 WAIVER OF CLAIMS FOR CONSEQUENTIAL DAMAGES**

#### 15.1 Waiver of Claims for Consequential Damages.

15.1.1 Construction Manager and Owner, each waive all claims and right of recovery against each other for consequential damages arising out of or relating to the Agreement. This mutual waiver includes:

- .1 Damages incurred by Owner, including any third party claims, for rental expenses, for losses of use, lost opportunity, income, profit, financing, funding, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 Damages incurred by Construction Manager for principal office expenses including the compensation of personnel stationed there for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the Agreement. Nothing contained in this Article 15 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

**LIST OF EXHIBITS**

- EXHIBIT A CHANGE ORDER FORM
- EXHIBIT B CHANGE ORDER PRICING
- EXHIBIT C INSURANCE REQUIREMENTS
- EXHIBIT D DISPUTE RESOLUTION PROCEDURES
- EXHIBIT E BLUEPRINT/ MBE/WBE REQUIREMENTS
- EXHIBIT E-1 COMMUNITY IMPACT PLAN
- EXHIBIT F PERMITTING FEES
- EXHIBIT G PROCEDURES FOR CITY-FURNISHED MATERIALS
- EXHIBIT H CONTRACTOR'S FORM OF BONDS FOR SUBCONTRACTORS