

**CONSTRUCTION MANAGER AT RISK  
(CMAR) AGREEMENT FOR DESIGN  
AND CONSTRUCTION OF SEMINOLE  
COUNTY CRIMINAL JUSTICE CENTER  
RENOVATION AND FIVE POINTS  
BUILDING SYSTEM IMPROVEMENTS  
(PS-5968-24/RTB).**

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**CONSTRUCTION MANAGER AT-RISK (CMAR) AGREEMENT FOR DESIGN AND  
CONSTRUCTION OF SEMINOLE COUNTY CRIMINAL JUSTICE CENTER  
RENOVATION AND FIVE POINTS BUILDING SYSTEM IMPROVEMENTS  
(PS-5968-24/RTB)**

**CHAPTER 1  
INTRODUCTION AND PROJECT OVERVIEW**

**THIS CONSTRUCTION MANAGEMENT AT-RISK SERVICES AGREEMENT** (“the Agreement” or “Agreement for Construction Management Services”) is dated as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, duly authorized to conduct business in the State of Florida, whose address is \_\_\_\_\_, in this Agreement referred to as “CONSTRUCTION MANAGER”, and **SEMINOLE COUNTY**, a charter county and political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 E. 1<sup>st</sup> Street, Sanford, Florida 32771, in this Agreement referred to as “OWNER” (collectively, “Parties,” individually, “Party”).

The authorized representatives and addresses of OWNER, CONSTRUCTION MANAGER and Professional are:

**OWNER/PROJECT MANAGER:**

Representative:  
Address:  
City, State, Zip:  
Telephone:  
Email:



**CONSTRUCTION MANAGER:**

Representative:  
Address:  
City, State, Zip:  
Telephone:  
Email:

**PROFESSIONAL:**

Representative:  
Address:  
City, State, Zip:  
Telephone:  
Email:

The Project shall be identified as:

**PROJECT TITLE:** Construction Management At-Risk Services for Design and Construction of Seminole County Criminal Justice Center Renovation and Five Points Building System Improvements

**PROJECT LOCATION:** Seminole County

**RECITALS**

- A. **WHEREAS**, OWNER desires to retain the services of a competent and qualified CONSTRUCTION MANAGER to provide construction management services for the Design and Construction of Seminole County Criminal Justice Center Renovation and Five Points Building System Improvement (“the Project”), that will include two phases: (1) preconstruction phase services (“Preconstruction Phase”); and construction phase services (“Construction Phase”), each of which are more fully described in this Agreement; and
- B. **WHEREAS**, the OWNER’s engagement of the CONSTRUCTION MANAGER is based upon CONSTRUCTION MANAGER’s representations to the Owner that CONSTRUCTION MANAGER (i) is experienced in providing construction management services for projects of similar size and complexity to the Project; (ii) is authorized and licensed to perform the type of labor and services for which it is being engaged in the State and locality in which the Project is located; (iii) is qualified, willing and able to perform construction management services for the Project; and (iv) has the expertise and ability to provide construction management services which will meet the OWNER’s objectives and requirements and which will comply with the requirements of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project, all as set forth herein; and
- C. **WHEREAS**, CONSTRUCTION MANAGER has certified that it is competent and qualified and desires to undertake the Work according to the terms and conditions stated in this Agreement, including all of its contractual documents; and
- D. **WHEREAS**, OWNER intends to engage, or has engaged, one or more Design Professionals (“Professional”) to perform architectural services and/or engineering services for the Project, including preparation of Site-specific Construction Documents, and may desire to have the CONSTRUCTION MANAGER involved in the selection process of such or other Professionals to ensure that their qualifications and capabilities align with the Project’s objectives and requirements.

**NOW, THEREFORE**, for and in consideration of foregoing recitals and the mutual covenants and conditions contained in this Agreement, OWNER and CONSTRUCTION MANAGER agree as follows:

**PROJECT DESCRIPTION/OVERVIEW**

The CONSTRUCTION MANAGER is hereby tasked with providing construction management services under the at-risk model for the \_\_\_\_\_ Project. As described in greater detail herein, the Services provided by the CONSTRUCTION MANAGER for the Project shall consists of those performed at the Pre-Construction Phase and at the OWNER’s discretion, the Construction Phase (each “Phase” or collectively the “Phases”). The estimated construction cost is \$ \_\_\_\_\_ to \$ \_\_\_\_\_.

The CONSTRUCTION MANAGER shall provide overall coordination, management, supervision, and scheduling of the work of each contractor/subcontractor so as to complete the Project in

accordance with the OWNER's objectives of safety, cost, time, and quality. The CONSTRUCTION MANAGER shall serve under the at-risk model and shall be responsible for the preparation of bid packages, as well as all claims of any nature arising from subcontractors' exceedance of the initially submitted bids, including but not limited to discrepancies in the scope of work or cost escalations. The CONSTRUCTION MANAGER shall promptly address and resolve any such claims and shall indemnify and hold the OWNER harmless from any liability, costs, or damages incurred as a result of these claims. The CONSTRUCTION MANAGER shall maintain accurate records to include direct and indirect costs of services and equipment, change orders, direct purchases, and both bidding and construction timelines. Other general duties shall include, but are not limited to, Preconstruction Services and Value Engineering, as defined herein.

At the OWNER's discretion, the CONSTRUCTION MANAGER, during the Preconstruction Phase may participate in the evaluation of proposals for the Design Professional ("Professional") and provide advisory services to OWNER. The CONSTRUCTION MANAGER shall provide input and recommendations during the selection process to ensure the Professional's qualifications align with the project requirements and objectives. This collaboration aims to ensure the selected Professional meets the project's design and constructability needs, facilitating a cohesive and efficient project delivery. Notwithstanding the foregoing, the OWNER has the right to engage a Professional independently prior to or concurrently with the engagement of the CONSTRUCTION MANAGER. In such instances, the CONSTRUCTION MANAGER shall collaborate fully and cooperatively with the OWNER's selected Professional, respecting and adhering to all design plans, specification, and directives provided by the Professional. The CONSTRUCTION MANAGER's responsibilities shall include the integration of the Professional's design into the Project and ensuring that all construction activities align with the Professional's specification.

CONSTRUCTION MANAGER shall not proceed with any work or any Phase, nor shall CONSTRUCTION MANAGER be entitled to any compensation for any such work unless and until OWNER has issued a written Notice to Proceed for that Phase. In entering into this Agreement, the Parties expressly agree that OWNER is under no obligation to issue a Notice to Proceed for any specific Phase.

## **ARTICLE 1**

### **CONTRACT DOCUMENTS**

- 1.1. The above referenced recitals are true and correct and are incorporated into this Agreement by reference. The Construction Management At-Risk Services Agreement with a Guaranteed Maximum Price ("the Agreement" or the "Agreement for Construction Management") includes and hereby incorporates in full by reference the following documents which are the "Contract Document(s)," including all exhibits, drawings, specifications, and documents herein, and attachments and addenda thereto:

This Chapter 1, Introduction and Project Overview, including the foregoing recitals, and the Project Overview (hereinafter "Chapter 1").

Chapter 2, Construction Manager's Required Services (hereinafter "Chapter 2").

**Appendices**

Appendix A: Preconstruction Services Fees

Appendix B: Index of Preliminary Plans and Specifications for the Project

Appendix C: Schedule for Performance of Pre-Construction Services

Appendix D: Schedule of Required Insurance and Contractor’s Certificate  
of Insurance for Pre-Construction Services

Appendix E: Schedule of Required Insurance for Construction of the Work

Appendix F: Construction Manager’s Pre-Construction Services Team

Appendix G: Owner’s Consultant’s Chart

Appendix H: Required Form of Payment and Performance Bond

Appendix I: Authorization for Construction

Exhibit 1: Index of Final Plans and Specifications

Exhibit 2: Construction Schedule

Exhibit 3: Construction Manager’s Project Team

Exhibit 4: Schedule of Values

Exhibit 5: Unit Prices

Exhibit 6: Construction Manager’s Subcontractors and  
Suppliers Chart

Exhibit 7: Qualifications and Assumptions

Exhibit 8: Schedule of Allowances

Appendix J: Proposed Pricing Schedule

Any amendment or addenda executed by OWNER and CONSTRUCTION  
MANAGER hereafter; and

Approved Change Order(s) or field orders.

These documents, as outlined above, collectively form an integral part of the RFP  
package.

1.2. Documents not included or expressly contemplated by this Chapter, do not and shall not  
form part of this Agreement.

1.3. Capitalized terms used in this Agreement shall have the meaning ascribed to them in Chapter  
3, Article 28, the Definitions section of this Agreement, unless otherwise specified.

1.4. The OWNER shall: *[Select and complete as appropriate]*

- ☐ Furnish the CONSTRUCTION MANAGER with one (1) reproducible copy of the  
Construction Documents.
- ☐ Furnish the CONSTRUCTION MANAGER with electronically formatted  
Construction Documents

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- ✓ Not furnish the CONSTRUCTION MANAGER with a copy of the Construction Documents; provided, however, the CONSTRUCTION MANAGER may obtain copies of the plans and specifications from Professional, if any.

## ARTICLE 2 NOTICES

- 2.1. Unless otherwise provided, all notices shall be in writing and considered duly given if the original is (i) hand delivered, including delivery by independent delivery service, including Federal Express, United Parcel Service or United States Postal Service; (ii) sent by U.S. Mail, postage prepaid; or (iii) emailed to the authorized representative provided by this Agreement. Notices hand delivered, delivered by independent delivery services, or emailed to the authorized representative designated by Agreement, shall be deemed given on the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.
- 2.2. The place for giving of notice will remain such until it has been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice:

**For OWNER:**

Seminole County Facilities Management Division  
205 W. County Home Road  
Sanford, FL 32773



**With a copy to:**

Seminole County Purchasing & Contracts Division  
1301 E. Second Street  
Sanford, FL 32771

**For CONSTRUCTION MANAGER:**

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**For PROFESSIONAL:**

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- 2.3. Either party may change the addresses or persons for receipt of notices by written notice.



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**ARTICLE 3**  
**SCOPE OF CONSTRUCTION MANAGER'S SERVICES**

**3.1. General Scope of Services.** Upon execution of this Agreement, the CONSTRUCTION MANAGER shall commence the performance of Pre-Construction Phase Services ("Execution Date"), and upon execution of **Appendix "I,"** Authorization for Services, the CONSTRUCTION MANAGER shall commence the Construction Phase and/or Renovation Services, in accordance with the scheduled start date provided in Appendix I and the subsequent Notice to Proceed. The Parties acknowledge that (i) the OWNER, in its sole discretion, may determine that it shall not proceed with the Construction Phase; (ii) performance of the Pre-Construction Phase Services may overlap performance of the Construction Phase Services; (iii) categories of Work performed during the Construction Phase may be performed in separate phases; and (iv) payment of the CONSTRUCTION MANAGER for Pre-Construction Services shall be separate from payment, if any, for Construction Services.

**3.1.1. Scope of Pre-Construction Services.** The CONSTRUCTION MANAGER shall furnish and pay for out of the Pre-Construction Services Fee, all Pre-Construction Services required by this Agreement. All such services are hereinafter referred to "Pre-Construction Services" or "the Pre-Construction Phase."

**3.1.2. Scope of Construction Services.** Upon execution of Appendix I, Authorization for Construction, the CONSTRUCTION MANAGER shall furnish and pay for out of the Construction Price all Construction Services required by this Agreement. All such services shall hereinafter be referred to as "Construction Services" or "the Construction Phase."

**3.2. Self-Performance by the CONSTRUCTION MANAGER.** *[select as appropriate]:*

- ☐ The CONSTRUCTION MANAGER shall not be allowed to self-perform any category of the Work without prior written approval of the OWNER.
- ☒ The CONSTRUCTION MANAGER shall be allowed to bid for subcontract work, and, if it is the lowest acceptable bidder of a minimum of three (3) competing bids, perform those categories of Work which the OWNER agrees, said categories to be incorporated into the Authorization for Construction (**Appendix "I"**).
- ☐ The CONSTRUCTION MANAGER shall be allowed, with the prior written approval of the OWNER, to perform categories of Work for which there is no acceptable bidder or if a subcontractor fails to execute an acceptable contract with the CONSTRUCTION MANAGER.

**3.3. Term and Renewal.** The Construction Management At-Risk Services Agreement with a

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Guaranteed Maximum Price takes effect on the date of its execution by OWNER and shall remain in effect until completion of the Project, unless terminated earlier in accordance with this Agreement.

- 3.3.1. **Preconstruction Phase.** The Preconstruction Phase shall begin on the Execution Date and shall continue until all preconstruction services outlined in this Agreement are completed to the satisfaction of OWNER. The estimated duration for the completion of preconstruction services is \_\_\_\_\_. The CONSTRUCTION MANAGER shall complete all pre-construction services within this estimated duration, unless otherwise agreed in writing by OWNER. In the event the CONSTRUCTION MANAGER fails to complete the preconstruction services within the specified duration, the OWNER reserves the right to terminate this Agreement or to impose penalties as set forth in this Agreement.
- 3.3.2. **Construction Phase.** Upon the satisfactory completion of the Preconstruction Phase, and upon the execution of **Appendix “I”, Authorization for Construction**, the Construction Phase shall continue until Substantial Completion and Final Completion as defined in this Agreement.
- 3.3.3. **Renewals.** If additional time is required to complete the Project, the OWNER and the CONSTRUCTION MANAGER may mutually agree to renew the term of this Agreement. Such renewals shall be documented in writing and shall specify the new completion date and any other terms and conditions relevant to the renewal. Continuation of the contract beyond the initial period and any renewal option subsequently exercised is an OWNER prerogative and not a right of the CONSTRUCTION MANAGER. This prerogative will be exercised only when such continuation is clearly in the best interest of the OWNER at OWNER’s sole discretion. The prices stated herein shall prevail for the full duration of the initial contract term and any optional term subsequently exercised.

## ARTICLE 4 COMPENSATION OF CONSTRUCTION MANAGER

- 4.1. **Compensation for Pre-Construction Phase.** The OWNER shall pay, and the CONSTRUCTION MANAGER shall accept, as full and complete payment for the CONSTRUCTION MANAGER’s timely and complete performance of Pre-Construction Services, the Pre-Construction Services Fee. The compensation for Pre-Construction Services shall either be based on a lump sum fixed fee or a time and material not-to-exceed basis, as forth in **Appendix “A”**.
- 4.1.1. **Pre-Construction Service Fee – Payment.** CONSTRUCTION MANAGER shall render to OWNER, at the close of each calendar month, an itemized invoice and OWNER shall make payment as following: *[Select one of the following]*:
- ☒ The lump sum fixed Pre-Construction Services Fee shall be paid in accordance with Appendix “A.” The lump sum fixed Pre-Construction Services Fee shall be set and paid pursuant to the time schedule in Appendix “C” when executed by the parties.
  - ☐ The time and material not to exceed Pre-Construction Services Fee shall be paid

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in accordance with the labor and material rates set forth in Appendix “C.”

☐ Other:

**4.2. Guaranteed Maximum Price.** As more particularly described in Chapter 2, Article 2, the CONSTRUCTION MANAGER shall prepare and deliver to the OWNER, with a copy to the PROFESSIONAL, a Guaranteed Maximum Price (“GMP”) proposal for which the CONSTRUCTION MANAGER proposes to provide Construction Services [*Select one (1) and complete as appropriate*]:

- ☐ Upon completion of \_percent (\_\_\_\_%) of the Construction Documents.
- ☒ Sixty (60) calendar days after 100% completion of the Construction Documents for the entire project.
- ☐ No later than\_\_\_\_\_, 20\_\_ .
- ☐ Other:

If the GMP proposal is accepted by the OWNER, the CONSTRUCTION MANAGER shall execute **Appendix “I”, Authorization for Construction**. An executed **Appendix I, Authorization for Construction**, and a subsequent Notice to Proceed, shall serve as written notice to the CONSTRUCTION MANAGER establishing the date construction is to commence (“the Commencement Date”).

**4.3. Compensation for Construction Phase.** The OWNER shall pay, and the CONSTRUCTION MANAGER shall accept, as full and complete payment for Construction Services, the Construction Price as agreed by the parties (“the Construction Price”). The Construction Price shall not exceed the Guaranteed Maximum Price (GMP) agreed by the Parties. Any costs that would result in the Construction Price exceeding the GMP shall be the sole responsibility of the CONSTRUCTION MANAGER, with no obligation on the part of the OWNER to provide additional reimbursement.

**4.3.1. Construction Price – Amount.** The Construction Price shall include, and is limited to, the total of:

- (i) Costs of the Work. The Costs of the Work for the Project as defined in Chapter 2, Article 2, Section 2.7.2.1 incorporated herein.
- (ii) General Conditions. The OWNER shall pay, and the CONSTRUCTION MANAGER shall accept as complete payment for General Conditions, as defined in Chapter 2, Article 2, Section 2.7.2.2. The method of payment, however, shall be set forth in Appendix “I.”
- (iii) Fixed Management Fee. The OWNER shall pay, and the CONSTRUCTION MANAGER shall accept as complete payment for the performance of Construction Management Services, a negotiated fixed fee in the amount of \_\_\_\_\_ (\_\_\_\_%) of the GMP for the Project.

**4.3.2. Construction Price – Payment and Retainage.** Payment requests shall be processed and paid in accordance with Part VII, Chapter 218, Florida Statutes, known as the Florida

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Prompt Payment Act, and the terms of this Agreement. CONSTRUCTION MANAGER shall render to OWNER, at the close of each calendar month, an itemized invoice. The date on which payment is due shall be referred to as the "Payment Date."

4.3.2.1 For Projects with an estimated cost of less than \$10 million. The OWNER or its agent shall, pursuant to Section 218.735(7), Florida Statutes, prepare and deliver to the CONSTRUCTION MANAGER a single list of items, including the estimated cost to complete each item, to be rendered complete, satisfactory, and acceptable within thirty (30) calendar days after reaching substantial completion. For projects having an estimated cost of \$10 million or more, within thirty (30) calendar days, or, if extended by change order, up to sixty (60) calendar days after reaching substantial completion.

4.3.2.2 Multi-Phased Projects. For projects with multiple phases, the OWNER or its agent must provide for the development of a list of items required to render complete, satisfactory, and acceptable for each building, structure, or phase of the Project within the time limitations stated in subsection 4.3.2.1 above.

4.3.2.3 The final completion date must be at least thirty (30) days after the CONSTRUCTION MANAGER receives the list of items. If the list is not provided within the required timeframe, the final completion date shall be extended by the number of days the OWNER's delivery was delayed.

4.3.2.4 Failure of the CONSTRUCTION MANAGER to include any corrective work or pending items not yet completed on the list developed pursuant to this section does not alter the responsibility of the CONSTRUCTION MANAGER to complete all construction services set forth herein. If a good-faith dispute exists as to whether one or more items have been completed pursuant to this Agreement, the OWNER may continue to withhold an amount not to exceed one hundred fifty percent (150%) of the total costs to complete the remaining items. The CONSTRUCTION MANAGER's project representative shall be required to review these estimates with the OWNER and sign the estimate in agreement.

4.3.2.5 Retainage shall be released as set forth in Section 218.735, Florida Statutes.

**4.4. Billing and Payment: Preconstruction and Construction Services.** CONSTRUCTION MANAGER shall render to Owner, at the close of each calendar month, an itemized invoice, properly dated including, but not limited to, the following information:

(i) The name and address of CONSTRUCTION MANAGER

(ii) Contract Number.


(iii) A complete and accurate time record of services performed by CONSTRUCTION MANAGER for all services performed by CONSTRUCTION MANAGER during that

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month and for which Owner is billed.

- (iv) A description of the services rendered, corresponding to the 1/10 time increment, with sufficient detail to identify the exact nature of the work performed. As an example of the specificity required, it would not be appropriate to list the service performed simple as “research.” Instead, it is required that the specific matter being researched be specified in such detail as would permit a determination being made as to the necessity for the research and whether the time attributable to it as reasonable.
- (v) Any such information as may be required by this Agreement or requested by OWNER from time to time.

4.4.1. Submittal Instructions for invoices are as follows:

- (i) The original invoice must be emailed to:  
[AP@SeminoleClerk.org](mailto:AP@SeminoleClerk.org)
- (ii) The original invoice may also be mailed or delivered to:  
Director of County Comptroller’s Office  
Seminole County Board of County Commissioners  
P.O. Box 8080  
Sanford, Florida 32772-8080
- (iii) A copy of the invoice must be sent to:  
  
Seminole County Facilities Management Division  
205 W. County Home Road  
Sanford, FL 32773

4.4.2. OWNER shall make payment after OWNER’s review and approval and within thirty (30) days of receipt of a proper invoice from CONSTRUCTION MANAGER.

4.5. **Compensation for Change Orders.** Amounts owed by the OWNER to the CONSTRUCTION MANAGER, and the amount of the GMP for Construction Services for the Project established in the executed **Appendix “I,” Authorization for Construction**, shall only be adjusted by duly authorized Change Orders.

4.5.1. **Change Order – Increase in Scope or Costs.** For change orders increasing the CONSTRUCTION MANAGER’s scope of services or costs, the CONSTRUCTION MANAGER shall be compensated in the amount of the Cost of the Work added by the Change plus the CONSTRUCTION MANAGER’s Management Fee in the amount as set forth above.

4.5.2. **Change Order – Decrease in Scope or Cost.** For change orders decreasing the CONSTRUCTION MANAGER’s scope of services or costs, the OWNER shall receive a credit in the amount of the Cost of the Work which is decreased by

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the Change plus a deduction of the CONSTRUCTION MANAGER's Management Fee in the amount as set forth above.

4.5.3. **Change Orders and General Conditions.** For the purposes of Changes to the Work, those items described in Chapter 2, Article 2, Section 2.7.2.2 (General Conditions) shall not be included in the calculation of the increased or decreased Cost of the Work unless the Change directly increases or decreases the cost of a line item therein in a direct and documentable manner and, in that case, only the line item directly increased or decreased shall be included in the calculation. An increase or decrease in the scope of supervisory or staff personnel's responsibility shall not be considered to increase/decrease the cost of line items relating to supervisory or staff personnel.

4.5.4. **Change Orders for Extension of Time.** If the project duration is impacted for excusable delays such as abnormal weather, OWNER delays, etc., CONSTRUCTION MANAGER is entitled to request a change order for consideration within fifteen (15) days of the delay event, for time which shall be the sole remedy. After fifteen (15) days of the delayed event, the CONSTRUCTION MANAGER waives any right to claim. The OWNER shall respond in writing to the CONSTRUCTION MANAGER's claim within fifteen (15) days of receipt, or such longer period as may be mutually agreed, either approving or denying the claim. Any adjustment to the Contract Price or Contract Time resulting from such claim shall be authorized by Change Order.

4.5.5. **Change Order – Disputed.**



- (i) If the CONSTRUCTION MANAGER disputes a change order decision pursuant to Chapter 3, Article 9, Section 9.7, it must give the OWNER its written notice of dispute, including the reasons, therefore, within seven (7) calendar days of the disputed decision.
- (ii) For change orders directed by a Professional to be performed by the CONSTRUCTION MANAGER on a time-and-materials basis pursuant to Chapter 3, Article 9, Section 9.5.1, the OWNER shall pay the CONSTRUCTION MANAGER the actual reasonable incurred cost and expenses paid to those subcontractors and suppliers performing the Work plus the CONSTRUCTION MANAGER fee.

4.6. **Time is of the Essence.** Both the OWNER and CONSTRUCTION MANAGER acknowledge that time is of the essence in this project. The OWNER requires beneficial occupancy of the building at the conclusion of each phase to sustain normal operations. Failure to achieve timely occupancy will result in additional costs for the OWNER. Hence, the liquidated damages specified in this paragraph are not considered penalties but are designed as a mechanism for the OWNER to cover the additional costs incurred due to any delays. Liquidated Damages. If liquidated damages are assessed pursuant to Chapter 3, Article 17, such damages shall be imposed where the delay to the Substantial or Final Completion date is due to the fault of the CONSTRUCTION MANAGER. For failure to meet Substantial Completion, liquidated damages shall be calculated at the following daily rates: \$ [REDACTED]. For failure to meet the Final Completion Date, liquidated damages shall be calculated at \$ [REDACTED].



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- 4.7. **Limitations on OWNER's PROJECT MANAGER.** The OWNER's PROJECT MANAGER is limited in their authority to authorize changes to the Scope of Services. They may only approve modifications that fall within their specific authorization level, as established during the Agreement's approval process, and in accordance with OWNER's Procurement Policies and Procedures. Any changes that exceed these established limits require prior approval from the Board of County Commissioners. The CONSTRUCTION MANAGER must not rely on any approvals from the PROJECT MANAGER that go beyond these established limits, and any such reliance will be deemed unreasonable. A copy of the Procurement Policies and Procedures will be provided upon request.

## **ARTICLE 5 SPECIFIC INSURANCE REQUIREMENTS**

- 5.1 **Insurance Requirements.** All insurance obligations under this Agreement, including the types of coverages and minimum limits of liability required, shall be governed by the provisions set forth in Chapter 3, Article 21. The CONSTRUCTION MANAGER shall adhere to the insurance requirements as outlined in that section.
- 5.2 **CONSTRUCTION MANAGER's Obligations.** The CONSTRUCTION MANAGER shall provide insurance as required by Chapter 3, Article 21, and in accordance with the terms set forth therein. The OWNER will communicate and cooperate with the CONSTRUCTION MANAGER and the CONSTRUCTION MANAGER's insurance broker, as required.
- 5.2.1 In accordance with Chapter 3, Article 21, the CONSTRUCTION MANAGER shall purchase and maintain at all times that it is performing services under this Agreement from a company or companies authorized to do business in the State of Florida, insurance policies containing the types of coverages and minimum limits of liability as set forth in **Appendix "D"** and **Appendix "E,"** protecting against claims that may arise out of or result from the performance or non-performance of services under this Agreement.

## **ARTICLE 6 PERSONNEL, SUBCONTRACTOR, SUPPLIER AND CONSULTANT CHARTS**

- 6.1 **Pre-Construction Service Team.** Attached hereto as **Appendix "F"** is the CONSTRUCTION MANAGER's Personnel Chart for Pre-Construction services, which lists by name, job category, and responsibility, the CONSTRUCTION MANAGER's primary employees who will perform those services.
- 6.2 **Construction Service Team.** In addition, during the performance of Pre-Construction Services, the CONSTRUCTION MANAGER shall provide the OWNER with the CONSTRUCTION MANAGER's Personnel Chart for Construction, as described in Chapter 2, Article 2, Section 2.7.5.11.
- 6.3 **OWNER's Approval of Service Teams.** The OWNER shall review and approve the personnel chart prior to the commencement of the Work, both for Pre-Construction and

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Construction. The OWNER reserves the right to request the immediate replacement of any personnel, with or without providing reasons, and the CONSTRUCTION MANAGER shall propose the replacement within 48 hours for the OWNER's review and approval. With respect to both lists, the CONSTRUCTION MANAGER shall promptly inform the OWNER in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The OWNER shall have the right to reject any proposed replacement for good cause.

- 6.4 CONSTRUCTION MANAGER's Subcontractors and Suppliers. During the performance of Pre-Construction Services, the CONSTRUCTION MANAGER shall provide the OWNER with the CONSTRUCTION MANAGER's Subcontractors and Suppliers Chart, as described in Chapter 2, Article 2, Section 2.7.5.10. The Chart shall list by name and general Project responsibility each entity that will be utilized by the CONSTRUCTION MANAGER to provide goods or services with respect to the Project. The CONSTRUCTION MANAGER shall promptly inform the OWNER in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The OWNER shall have the right to reject any proposed replacement for good cause.
- 6.5 **OWNER's CONSULTANT CHART.** The OWNER shall prepare and attach as **Appendix "G"** to this Contract the OWNER's Consultants Chart which lists by name and general duties each consultant retained by the OWNER to provide services with respect to the Project. The OWNER reserves the right to engage any other consultants which it may deem necessary or desirable, or to replace any Consultant listed thereon.



## ARTICLE 7 CONSTRUCTION SCHEDULE, SPECIFIC BOND REQUIREMENTS, PAYMENT SCHEDULE AND QUALITY CONTROL AND TESTING

- 7.1 **Time for Performance.** OWNER and CONSTRUCTION MANAGER acknowledge that time is of the essence.
- 7.1.1 **Delivery of Pre-Construction Services.** The CONSTRUCTION MANAGER shall commence delivery of its Pre-Construction Services on an agreed-upon date reflected in the **Appendix "C"** submitted with the Project-specific scope of services and shall deliver such services in a prompt and expeditious manner so as not to delay the OWNER or the Professional(s).
- 7.1.2 **Commencement of Construction.** As provided by **Appendix "I," Authorization for Construction**, and the Construction schedule incorporated therein, CONSTRUCTION MANAGER shall have an expected date for commencement of the construction activities. Notwithstanding, OWNER will issue a formal Notice to Proceed (NTP), and only upon receipt of the NTP will CONSTRUCTION MANAGER commence its construction services (the "Commencement Date").
- 7.1.3 **Substantial Completion.** The CONSTRUCTION MANAGER shall accomplish Substantial Completion of the Work of the Project on or before a date to be agreed



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upon and set forth in **Appendix “I”** and shall prosecute the Work pursuant to the Construction Schedule incorporated therein. In the event that the original substantial completion date specified in the contract cannot be met, the substantial completion date shall be determined by the issuance of the Certificate of Occupancy (CO) by the building official. This date shall serve as the official substantial completion date, allowing the OWNER to legally take beneficial occupancy of the building.

- 7.1.4 **Final Completion.** The CONSTRUCTION MANAGER shall achieve Final Completion of the Work of the Project on or before the date established in Chapter 1, Article 4, Section 4.3.2.1 (the “required date of Final Completion”) or within 30 days after substantial completion, if any extensions to the contract are executed.
- 7.2 **Construction Schedule.** The CONSTRUCTION MANAGER shall prepare an estimate of construction time for the Project as part of Pre-Construction Services as described in Chapter 2, Article 2, Section 2.6. The actual Construction Schedule shall be incorporated into the **Authorization for Construction (Appendix “I”)**.
- 7.3 **Schedule of Values.** The CONSTRUCTION MANAGER shall prepare a preliminary Schedule of Values for the Construction Work as part of Pre-Construction Services as described in Chapter 2, Article 2, Section 2.7.5.5 with a Project-specific Schedule of Values to be incorporated into the **Authorization for Construction (Appendix “I”)**.
- 7.4 **Bond Requirements.**
- 7.4.1 The CONSTRUCTION MANAGER shall be required to provide payment, performance, and warranty bonds each having a penal sum equal to the GMP. The amount of the premiums for such bonds shall be included in the estimate of OWNER’s Costs provided to the OWNER and the same shall be incorporated into the **Authorization for Construction (Appendix “I”)**.

Performance, Payment, and Warranty Bonds shall meet all requirements of Section 255.05, Florida Statutes, for public construction bonds. Additionally, upon execution of this Agreement, all original Performance and Payment bonds will be submitted to the OWNER for recording of said bonds. The bonds will be acceptable to the OWNER only if the following conditions are met:

- (i) The Surety is licensed to do business in the State of Florida;
- (ii) The Surety holds a Certificate of Authority authorizing it to write surety bonds in this State;
- (iii) The Surety has twice the minimum surplus and capital requirements required by the Florida Insurance Code at the time the invitation to bid is issued;
- (iv) The Surety is otherwise in compliance with the Florida Insurance Code;

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- (v) The Surety holds a currently valid Certificate of Authority issued by the United States Department of Treasury under 31 U.S.C. § 9304;
  - (vi) The Surety shall have the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide: Financial Stability **A- to A+**. If the rating of the insurer or surety should fall below this standard, the CONSTRUCTION MANAGER shall cause the policy to be replaced promptly by an acceptable insurer or surety.
  - (vii) The Payment and Performance Bonds are in the same or substantially and materially identical form to **Appendix "H"**.

If the Surety for any bond furnished by the CONSTRUCTION MANAGER is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by this Agreement, the CONSTRUCTION MANAGER shall, within thirty (30) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the OWNER's approval.

The CONSTRUCTION MANAGER shall use the OWNER's bond forms attached hereto as **Appendix "H"**.

7.4.2 The CONSTRUCTION MANAGER (☐ shall) (☐ shall not) be required to provide a maintenance bond. If so, the penal sum of the bond shall be (\$           ).

7.4.3 Payment for bonds shall be as follows:  *[Select one (1) as appropriate]*

- (i) The cost of required bonds shall be identified in the Schedule of Values and shall be incorporated into the **Authorization for Construction (Appendix "I")**.

- (ii) Other \_\_\_\_\_

7.4.4 Quality Control and Testing *[Select one as appropriate]:*

- ☐ The OWNER shall select the quality control and testing agencies.
- ☐ The CONSTRUCTION MANAGER shall select the quality control and testing agencies.

*(Select as appropriate)*

- ☐ The cost of specified measures and tests required by the Construction Documents shall not be included in the Guaranteed Maximum Price and shall be paid by the OWNER to the testing company as OWNER's Costs pursuant to Chapter 2, Article 2, Section 2.7.3. CONSTRUCTION MANAGER will not provide threshold inspections.
- ☐ Other.

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## **CHAPTER 2 CONSTRUCTION MANAGER'S REQUIRED SERVICES**

### **ARTICLE 1 GENERAL PROJECT SERVICES**

- 1.1 **Essential Services.** The CONSTRUCTION MANAGER agrees to provide all services required to professionally complete the Work in accordance with the Construction Documents and in an expeditious and economical manner consistent with this Agreement for Construction Management and the best interests of the OWNER.
- 1.2 **Compliance with Contractual Requirements.** At all times the CONSTRUCTION MANAGER is performing services, it shall comply with the requirements set forth in Chapter 1, Chapter 2, and Chapter 3 of this Agreement for Construction Management.
- 1.3 **Cooperative Effort.** The CONSTRUCTION MANAGER shall, in consultation with the OWNER, Professional(s), and the subcontractors, endeavor to develop, implement, and maintain a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.
- 1.4 **Additional or Modified Required Services.** Additional or modified required services, if any, shall be included Index of Preliminary Plans and Project Specifications, Appendix B, and incorporated herein by reference.

### **ARTICLE 2 PRE-CONSTRUCTION SERVICES AND DELIVERABLES**

- 2.1. **Project and Program Review and Knowledge.**
  - 2.1.1 CONSTRUCTION MANAGER shall review the Project documents, including plans and specifications at minimum intervals directed by the OWNER, developed and issued by the Professional from time to time and shall possess the knowledge relating thereto necessary for the performance of its services. A written Constructability Review of the documents shall be provided at each phase so the Professional can also provide written responses to each item.
  - 2.1.2 CONSTRUCTION MANAGER shall review the Project Site, including any features or aspects of the Site which may affect the constructability of the Project as designed and shall possess the knowledge relating thereto necessary for the performance of its services.
  - 2.1.3 CONSTRUCTION MANAGER shall review the OWNER's program for the intended use of the Project, including, without limitation, the intended purposes and

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uses of the facility and each element, and the scope and extent of use of the Project and shall possess the knowledge relating thereto necessary for the performance of its services.

## **2.2 Project Meetings and Consultation.**

- 2.2.1 The CONSTRUCTION MANAGER shall attend any and all such meetings with representatives of the OWNER, the Professional or others as are reasonably requested by the OWNER throughout the CONSTRUCTION MANAGER's performance of this Contract. At a minimum, the CONSTRUCTION MANAGER shall attend one meeting per week, at such date, time, and place as scheduled by the OWNER during the construction of the Project, upon reasonable notice. Other meetings may be scheduled by upon request of the OWNER.
- 2.2.2 CONSTRUCTION MANAGER shall regularly consult with the OWNER and the Professional regarding issues relating to the Project and the Project program, including, without limitation:
- (i) Site use and improvements;
  - (ii) The selection of materials, equipment, finishes, and color schedules;
  - (iii) Construction feasibility and issues relating to the constructability of various designs and alternatives;
  - (iv) Opinion and recommendations regarding the constructability of the Project documents with regard to life safety requirements, Fair Housing Act requirements and requirements of the Americans with Disabilities Act (ADA), including, without limitation, the CONSTRUCTION MANAGER's recommendations for the means and methods required to construct the Project in accordance with these requirements of the Project documents;
  - (v) Analysis and recommendations for the Project services and systems, including, without limitation, mechanical, electrical, plumbing, and computer, phone, and cabling systems;
  - (vi) Time requirements for procurement, installation, and construction completion, with a special emphasis on long-lead time items;
  - (vii) Strategies for managing competitive bidding for the Project, including generating subcontract and vendor interest in the Project;
  - (viii) Factors related to construction cost, including estimates of alternative designs or materials; and
  - (ix) General consultation and written analysis regarding issues relating to the Project and Project program are included in the Consideration described in Chapter 1, Article 4, relating to compensation. In the event OWNER requests a written analysis or a substantial and detailed analysis in relation

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to the requested consultation, the CONSTRUCTION MANAGER shall request that a change order be issued prior to incurring any time or costs in excess of the compensation described herein.

## **2.3 Preliminary Design Review.**

- 2.3.1 The CONSTRUCTION MANAGER shall actively and jointly participate with the OWNER and the Professional(s) in the formation of the final Project design.
- 2.3.2 The Professional is required, in accordance with the schedule requirements, to provide preliminary design drawings. The CONSTRUCTION MANAGER shall promptly and in accordance with the schedule requirements:
- (i) Familiarize itself with the preliminary design drawings;
  - (ii) Analyze and evaluate the constructability of the preliminary design drawings;
  - (iii) Analyze and evaluate the preliminary design drawings in regard to the completeness of intended bid categories, conflicts or overlaps in the divisions of the Work, design details affecting construction, value engineering, identification of long-lead materials affecting the Construction Schedule, availability of labor and other factors affecting construction; and
  - (iv) Estimate total project cost formatted by the Construction Specifications Institute (CSI) Master Format.
- 2.3.3 The CONSTRUCTION MANAGER and the Professional(s) shall jointly schedule and attend both physical and virtual meetings with the OWNER to review and evaluate the preliminary design drawings.
- 2.3.4 The CONSTRUCTION MANAGER shall, in accordance with schedule requirements, notify the designated Professional in writing and assist the Professional(s) with the resolution of all problems, conflicts, defects, or deficiencies identified during the review and evaluation of the preliminary design drawings.
- 2.3.5 Upon completion of the preliminary design drawings, the CONSTRUCTION MANAGER is required, in accordance with the schedule requirements, to prepare and submit a preliminary estimate of Total Project Construction Cost broken down by line item into major construction disciplines and systems, and prepare a Critical Path Method (CPM) Schedule from Notice to Proceed to Final Completion.

The CONSTRUCTION MANAGER shall, in accordance with schedule requirements, review the preliminary estimate of the Total Project Construction Cost and promptly inform the OWNER and Professional of recommended adjustments, if any.

## **2.4 Construction Documents Review.**

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- 2.4.1 The Professional is required, in accordance with the schedule requirements, to provide Construction Documents and other information.
- 2.4.2 The CONSTRUCTION MANAGER shall, in accordance with schedule requirements, prepare applicable Construction Schedule(s), the estimate of Total Project Construction Cost, the cost of local utilities, fees for permits and licenses, any modifications necessitated by local conditions, and other information necessary for a full understanding of the Project, and the Construction Documents. The CONSTRUCTION MANAGER shall undertake the following:
- (i) Examine the Construction Documents for clarity, adequacy of detail, consistency, accuracy, and completeness;
  - (ii) Identify all discovered conflicts, omissions or overlaps in the proposed divisions of the Work, evaluate the completeness of intended bid categories, and identify unusual design details affecting construction cost and schedules;
  - (iii) Apply established value engineering principles and practices to reduce the cost of the Project;
  - (iv) Identify factors with the potential to impact the Construction Schedule, such as materials with long lead time, the unavailability of required labor, and other factors, and make suggestions for acceptable alternatives;
  - (v) Evaluate and make suggestions to optimize Site utilization;
  - (vi) Recommend proposed modifications or alternatives to the Construction Documents based on evaluation and review;
  - (vii) Notify the OWNER and the Professional(s) in writing of any variances between the Construction Documents and applicable laws, statutes, building codes, rules, and regulations of which it is aware; and
  - (viii) Notify the OWNER and the Professional(s) in writing of all problems, conflicts, defects or deficiencies in the Construction Documents of which it is aware.
- 2.4.3 The CONSTRUCTION MANAGER shall, in accordance with schedule requirements, assist the Professional with resolving all problems, conflicts, defects or deficiencies identified during the review and evaluation of the Construction Documents.
- 2.4.4 Upon completion of the review and examination of the Construction Documents, the Professional is required, in accordance with schedule requirements, to prepare and submit a final estimate of Total Project Construction Cost.

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- 2.4.5 Upon completion of review and examination of the Construction Documents, the CONSTRUCTION MANAGER, in accordance with schedule requirements, shall prepare and submit a final estimate of Total Project Construction Cost.
- 2.4.6 If the final estimates of Total Project Construction Cost by the CONSTRUCTION MANAGER and the Professional differ materially, the CONSTRUCTION MANAGER and Professional shall meet promptly to reconcile the discrepancies between their estimates. This will permit submission to the OWNER of a final estimate of Total Project Construction Cost on which both the Professional and the CONSTRUCTION MANAGER agree, or where the parties cannot agree, identify to the OWNER the specific portions that differ.
- 2.4.7 In performing the Preconstruction Services, the CONSTRUCTION MANAGER is not assuming responsibilities of the Professional(s) for design of the Project. The standard of care for the CONSTRUCTION MANAGER in performing these services is that of an experienced and skilled General Contractor or CONSTRUCTION MANAGER, not that of a licensed engineer or other professional.

## **2.5 Value Engineering**

- 2.5.1 Throughout the development of the Project documents and contemporaneously with the development of the estimates of Total Project Construction Cost, the CONSTRUCTION MANAGER shall identify elements in the Project documents that are outside of the parameters established by OWNER's Project budget. All elements of the Project shall be considered including, without limitation, structural, mechanical, electrical, plumbing, finish, and exterior elements.
- 2.5.2 If the CONSTRUCTION MANAGER identifies an element that exceeds the budget for that element or which results in a Total Project Construction Cost in excess of the OWNER's Project budget, the CONSTRUCTION MANAGER shall report each such element to the OWNER. The CONSTRUCTION MANAGER shall thereafter research and identify alternative materials and systems to reduce the cost of each such element. If the alternative materials and systems are unacceptable to the OWNER, the CONSTRUCTION MANAGER shall research and identify other elements in the Project that can be reduced or modified in order to offset the over-budget elements. All value engineering items must have the following: the scope that is deleted from the Design documents; the new scope that is added to the Design; the ripple effects from other trades; and any applicable mark-up impacts.
- 2.5.3 The CONSTRUCTION MANAGER shall otherwise participate in the "value engineering" of the Project, as that term is commonly understood in the construction industry, including, without limitation, reviewing the Project documents to identify opportunities to reduce the cost of Project elements and to otherwise satisfy OWNER's Project budget without materially modifying OWNER's program for the Project.
- 2.5.4 The CONSTRUCTION MANAGER shall prepare periodic reports as requested by the OWNER on the value engineering process, in addition to each scheduled project



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design milestone (30%, 60%, 90%), including, without limitation, an updated Project estimate that incorporates accepted value engineering revisions.

- 2.5.5 The described process shall be complete upon the OWNER's consideration of all alternative recommended elements arising out of the CONSTRUCTION MANAGER's review of the 90% construction documents.

## 2.6 Planning and Scheduling.

- 2.6.1 **Construction Schedule.** The CONSTRUCTION MANAGER understands and acknowledges the OWNER's intent that the Project shall reach Substantial Completion by the designated Date of Substantial Completion and Final Completion by the designated Date of Final Completion. The CONSTRUCTION MANAGER shall prepare and submit the Construction Schedule for the Work in a timely manner for the OWNER's review and approval. The Construction Schedule shall detail the milestones leading to Substantial Completion and Final Completion and shall complement, and shall not conflict with, the Design Schedule.

- 2.6.2 The CONSTRUCTION MANAGER shall establish and submit in a timely manner for OWNER review:

- (i) Project cost control procedures;
- (ii) Project reporting procedures;
- (iii) Project Manual; 
- (iv) Quality Management Program;
- (v) Staffing Plan for the Construction period; and
- (vi) Job Site Safety Plan.

- 2.6.3 The Construction Schedule shall strictly conform in all respects to the requirements for the Project Schedule set forth in Article 16, Chapter 3. The start date of the Project Schedule shall be consistent with the date upon which the CONSTRUCTION MANAGER anticipates that a Notice to Proceed may reasonably be issued, given the conditions and progress of the development of the Project documents at the time of the issuance of the schedule. The CONSTRUCTION MANAGER shall provide the schedule in hard copy format and as an electronic data file in a format requested by the OWNER.

- 2.6.4 Sixty (60) days after the delivery of 100% Construction Documents, the CONSTRUCTION MANAGER shall deliver the Project Schedule to the OWNER. This Project Schedule shall be considered the CONSTRUCTION MANAGER's proposed Project Schedule to construct the Project pursuant to the 100% Project documents and shall be attached to and incorporated as **Exhibit "2" to Appendix "I"**.



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- 2.6.5 With the Project Schedule, the CONSTRUCTION MANAGER shall provide a list of the project-specific executive, management team, site supervisors, cost estimators, and scheduling personnel assigned to the Work. The list shall include each person's job description, length of employment with the CONSTRUCTION MANAGER, title(s) held during their employment, and pertinent information for the OWNER's evaluation, such as education, experience, certifications, and training. This list must be attached to and incorporated as **Exhibit "3" to Appendix "I"**.

## **2.7 Guaranteed Maximum Price Proposal.**

- 2.7.1 The CONSTRUCTION MANAGER shall develop the Construction Price for the Work ("Construction Price"). Costs shall be allocated consistent with the Guaranteed Maximum Price (GMP). All other costs shall be allocated as provided herein.

- 2.7.2 The Construction Price shall be equal to the sum of:

- 2.7.2.1 The Cost of the Work. The Cost of the Work shall be the allowable costs incurred by the CONSTRUCTION MANAGER in performing the Work.

- (i) Allowable Costs. Allowable Costs are comprised of:

- (a) Subcontractor Costs. Payments made by the CONSTRUCTION MANAGER to Subcontractors per the requirements of the subcontracts.
- (b) Costs of Materials and Equipment incorporated into the Completed Construction - Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- (c) Costs of General Conditions as defined by Paragraph 2.7.2.2

- (ii) Disallowed Costs. Costs which shall not be included as the Cost of the Work will be:

- (a) Any Costs not specifically described in Paragraph 2.7.2.1(i), above;
- (b) Costs for which the CONSTRUCTION MANAGER is compensated by the Management Fee as described in Paragraph 2.7.2.3 below;
- (c) Overhead and general expenses, including, without limitation, home office overhead and expenses (included within Management Fee);

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- (d) The CONSTRUCTION MANAGER's capital expenses, including interest on the CONSTRUCTION MANAGER's capital employed for the Work (included within Management Fee);
  - (e) Rental costs of machinery and equipment (included within General Conditions);
  - (f) Costs due to the negligence of the CONSTRUCTION MANAGER or to the failure of the CONSTRUCTION MANAGER to fulfill a specific responsibility to the OWNER set forth in this Agreement (included within General Conditions)
  - (g) Costs incurred in the performance of Preconstruction Services;
  - (h) Costs which would cause the Guaranteed Maximum Price to be exceeded unless otherwise approved by a change order;
  - (i) Costs associated with all insurance and bonds, including without limitation, performance and payment bonds (included within OWNER's costs, General Conditions or Management Fee);
  - (j) Costs associated with permits, insurance, and testing (included within OWNER's costs or General Conditions); and
  - (k) Costs associated with licenses (included within the subcontractors' costs).

2.7.2.2 The General Conditions. General Conditions shall be limited to: security costs, temporary facilities (temporary office, water, heat, power, sanitary facilities, telephones), trash and debris control and removal costs, insurance, bonds, specialty equipment rental, storage fees, and permits. The OWNER has the right to audit the General Conditions to establish that the fee includes the items listed herein.

2.7.2.3 The Management Fee. The CONSTRUCTION MANAGER agrees that the fee which the OWNER must pay the CONSTRUCTION MANAGER for the following described items shall not exceed the percentage of the Cost of the Work as set forth in **Appendix "I"**. However, the OWNER shall, at the OWNER's sole discretion, have the ability to convert this Cost to a fixed sum at the time the Guaranteed Maximum Price Proposal is accepted by the OWNER, which conversion shall be documented on **Appendix "I"**. Further, the OWNER has the right to audit the Management Fee. The Management Fee shall include the Preconstruction Services Fee and all costs, including overhead and profit, associated with the construction of the

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project excluding General Conditions, which will be itemized and documented in the GMP. Items under this provision include:

- (i) The CONSTRUCTION MANAGER's provision of management services for the Project pursuant to Articles 1, 3 and 4, Chapter 2
- (ii) Direct costs incurred with the exception of those specifically enumerated compensable as General Conditions Cost, Cost of the Work, cost of self-performed Work, or a Subcontractor or Supplier Cost;
- (iii) The cost of the CONSTRUCTION MANAGER's home or branch office employees or consultants not at the Project Site (except as set forth in the GMP Proposal);
- (iv) Non-field office (home and branch office) operational expenses such as telegrams, telephone service and long-distance and zone telephone charges, postage, office supplies, expressage, and other similar expenses;
- (v) Data-processing costs indirectly related to the Work, including hardware, software, and CAD costs;
- (vi) Cost of all non-project specific insurance (i.e., any insurance for which the GMP Proposal does not provide for payment to the CONSTRUCTION MANAGER for insurance);
- (vii) All general operating expenses;
- (viii) All capital expenses, including any interest;
- (ix) Any costs which would cause the Construction Price to exceed the GMP;
- (x) Costs or expenses incurred by the CONSTRUCTION MANAGER, not included in the General Conditions Cost, or Cost of the Work, to provide management services necessary to complete the Project;
- (xi) Related taxes and fees on the above items;
- (xii) Reasonable expenses of the CONSTRUCTION MANAGER's personnel incurred while traveling in discharge of duties directly connected with the Work;
- (xiii) Expenses incurred in accordance with the CONSTRUCTION MANAGER's standard personnel policy for relocation and temporary living allowances of personnel required for the Work;
- (xiv) Wages, salaries, bonuses, and incentive compensation, of the CONSTRUCTION MANAGER's supervisory, technical,

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administrative, and clerical personnel engaged in supervision and management of the Work on or off the Project Site, including all company overhead and expenses;

(xvi) Cost of fringe benefits, contributions, assessments, and taxes, including for example such items as Unemployment Compensation and Social Security, to the extent that such cost is required by law and is based on the compensation paid to the CONSTRUCTION MANAGER's employees referred to above; and

(xvii) Construction staff, staffing and all related costs.

2.7.3 OWNER's Costs. The CONSTRUCTION MANAGER shall prepare an itemized estimate of the costs to be incurred by the OWNER, if any, which will be required to be paid by the OWNER for the Substantial Completion of the Work (hereinafter, the "OWNER's Costs"). These costs shall be identified in the GMP as OWNER's Costs and may be paid directly by OWNER or be paid by the CONSTRUCTION MANAGER and billed to OWNER along with a construction management fee. The CONSTRUCTION MANAGER shall itemize each of these categories of costs for the OWNER's review.

2.7.4 Sixty (60) days after the delivery of 100% Construction Documents, the CONSTRUCTION MANAGER shall deliver to the OWNER a Guaranteed Maximum Price (hereinafter "GMP"). The GMP shall be a bound document comprised of an itemized Construction Price for the Project, which by definition shall not include the OWNER's Costs. This Construction Price shall be the CONSTRUCTION MANAGER's proposal to construct the Project pursuant to the 100% Project documents for a Guaranteed Maximum Price. The CONSTRUCTION MANAGER shall not withdraw this Guaranteed Maximum Price Proposal for ninety (90) days following submission to the OWNER.

2.7.5 The CONSTRUCTION MANAGER shall include with the GMP the following items:

2.7.5.1 Cover Sheet including project title and the County project number.

2.7.5.2 Summary sheet of the GMP Proposal, including subcontractor bids, allowances, contingencies, bonds, insurance, conditions, and exclusions. This sheet shall also contain contract time, construction start date, date of substantial completion, date of final completion, critical path schedule, and proposed work hours.

2.7.5.3 Detailed summary of general conditions.

2.7.5.4 A list of allowances and data supporting that its basis is reasonable and consistent with OWNER's program.

2.7.5.5 A detailed itemization of the GMP, including a Schedule of Values for each structure incorporated into the GMP. A Schedule of Unit Prices shall be made available at OWNER's request.

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- 2.7.5.6 A description of any qualifications or assumptions incorporated into the development of the GMP.
  - 2.7.5.7 A statement of the date of Substantial Completion, consistent with the date with provided in the CONSTRUCTION MANAGER's Final Project Schedule as described elsewhere herein.
  - 2.7.5.8 List of all solicited contractors.
  - 2.7.5.9 Subcontractor bid sheets with proposed selected contractors highlighted.
  - 2.7.5.10 A CONSTRUCTION MANAGER's Subcontractors and Suppliers Chart. The CONSTRUCTION MANAGER's Subcontractors and Suppliers Chart shall list by name and general Project responsibility each subcontractor and supplier who will be utilized by the CONSTRUCTION MANAGER to provide goods or services for the Project. Prior to the execution of **Appendix "I"**, the OWNER shall have the right to reject any proposed Subcontractor or Supplier. During the course of the Work, the CONSTRUCTION MANAGER shall promptly inform the OWNER in writing of any proposed replacements, the reasons for the replacements, and the name(s) and qualification(s) of proposed replacement(s). The OWNER shall have the right to reject any proposed replacement for good cause.
  - 2.7.5.11 A CONSTRUCTION MANAGER's Personnel Chart for Construction. The CONSTRUCTION MANAGER's Personnel Chart for Construction shall list by name, job category, and responsibility the CONSTRUCTION MANAGER's primary employees who will perform those services. Prior to the execution of **Appendix "I"**, the OWNER shall have the right to reject any proposed employee. During the course of the Work, the CONSTRUCTION MANAGER shall promptly inform the OWNER in writing of any proposed replacements, the reasons for replacements, and the name(s) and qualification(s) of proposed replacement(s). The OWNER shall have the right to reject any proposed replacement for good cause.
  - 2.7.5.12 Plans, drawings, and specifications specific to the GMP.
  - 2.7.5.13 Any supporting documentation referenced in the GMP.

## **2.8. Execution of Appendix "I".**

- 2.8.1 If the GMP proposal is not accepted by the OWNER, the OWNER shall promptly notify the CONSTRUCTION MANAGER in writing. Within fourteen (14) calendar days of such notification, the OWNER, Professional(s), and the CONSTRUCTION MANAGER shall meet to discuss and resolve any differences, inconsistencies, or misunderstandings and to negotiate recommended adjustments to the Work and/or the GMP. If the parties are unable or unwilling to agree on a negotiated variant, the OWNER shall hire an independent cost estimator to verify the

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GMP amount. If the independent estimate shows that the GMP should be within five percent (5%) of the project budget, the County may terminate this Contract at no cost, except for paying the General Contractor the required Preconstruction Services Fee. If the independent estimate shows that the GMP exceeds the project budget by more than five percent (5%), then the Professional shall revise the plans to bring the GMP within the project budget.

- 2.8.2 The OWNER may, at its sole discretion and based upon its sole judgment: (i) accept a GMP proposal; (ii) reject a GMP proposal; (iii) terminate the Project; or (iv) proceed to construct the Project using a party or parties other than the CONSTRUCTION MANAGER.
- 2.8.3 If the OWNER rejects a GMP proposal within budget, neither party shall have any further obligation pursuant to this Agreement for Construction Management, except the duty to pay for Preconstruction services.
- 2.8.4 If the OWNER accepts the GMP, the GMP provided by the CONSTRUCTION MANAGER pursuant to Paragraph 2.7.4 above shall be inserted into **Appendix “I”**. The deliverables described in this Article 2 shall be incorporated into **Appendix “I”** as follows:
- (i) **Exhibit “1” to Appendix “I”** shall consist of the Drawings, Specifications, and addenda provided by the Professional upon which the CONSTRUCTION MANAGER based the GMP.
  - (ii) **Exhibit “2” to Appendix “I”** shall consist of the Construction Schedule provided by the CONSTRUCTION MANAGER pursuant to Paragraph 2.6 above.
  - (iii) **Exhibit “3” to Appendix “I”** shall consist of the CONSTRUCTION MANAGER’s Construction Project Team provided by the CONSTRUCTION MANAGER pursuant to Paragraph 2.7.5.11 above.
  - (iv) **Exhibit “4” to Appendix “I”** shall consist of the Schedule of Values provided by the CONSTRUCTION MANAGER pursuant to Paragraph 2.7.5.5 above.
  - (v) **Exhibit “5” to Appendix “I”** shall consist of the Schedule of Unit Prices provided by the CONSTRUCTION MANAGER pursuant to Paragraph 2.7.5.5 above.
  - (vi) **Exhibit “6” to Appendix “I”** shall consist of the CONSTRUCTION MANAGER's Subcontractors and Suppliers Chart provided by the CONSTRUCTION MANAGER pursuant to Paragraph 2.7.5.10 above.
  - (vii) **Exhibit 7 to Appendix “I”** shall consist of the Qualifications and Assumptions as required by Paragraph 2.7.5.6 above.
  - (viii) **Exhibit 8 to Appendix “I”** shall consists of the Schedule of Allowances.

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- 2.8.5 If the OWNER accepts the GMP, the CONSTRUCTION MANAGER shall execute **Appendix “I,”** incorporating the deliverables described above. The CONSTRUCTION MANAGER agrees that there is sufficient consideration in the Agreement for the CONSTRUCTION MANAGER’s obligation to execute **Appendix “I”** as provided herein.
- 2.8.6 The OWNER’s determination of whether or not to accept the CONSTRUCTION MANAGER’s deliverables hereunder and whether or not to execute **Appendix “I”** is at the OWNER’s sole, absolute and exclusive discretion. In determining whether to accept the CONSTRUCTION MANAGER’s GMP or other terms of **Appendix “I”**, and whether or not to execute **Appendix “I”**, the OWNER may consider any and all criteria, which, in its sole, absolute and exclusive discretion, it undertakes to consider. The deliverables produced pursuant to Article 2 hereof are the property of the OWNER and can be used by the OWNER for any purpose, including, without limitation, incorporation into future bidding or proposal documents for the Project. Any such decisions, including, without limitation, any decision to construct or not construct the proposed Project, to bid or negotiate the Project in any particular manner, to engage or not engage the CONSTRUCTION MANAGER in any capacity with respect to the construction of the Project, shall be at the OWNER’s sole, absolute, and exclusive discretion.
- 2.8.7 The OWNER shall thereafter issue a written notice to the CONSTRUCTION MANAGER (“Notice to Proceed”) establishing the date construction is to commence (the “Commencement Date”). The CONSTRUCTION MANAGER shall not expend any monies for construction prior to receipt of such Notice to Proceed without the written approval of the OWNER.

## **2.9 Price Guarantees.**

- 2.9.1. Upon execution of **Appendix “I”**, the CONSTRUCTION MANAGER guarantees that the Construction Price shall not exceed the GMP, as adjusted hereunder for changes. All costs or expenses that would cause the Construction Price to exceed the GMP shall be borne by the CONSTRUCTION MANAGER unless adjusted by change order. The actual cost of the Work shall be documented by the CONSTRUCTION MANAGER as compared to the agreed-upon Guarantee Maximum Price. This information shall be reported quarterly to the OWNER. Upon completion of the Work, if the total cost of the Work is less than the final GMP (taking into account any adjustments made during the term of the Agreement), the OWNER shall be entitled to 100% of the savings.
- 2.9.2 Upon execution of **Appendix “I”**, the CONSTRUCTION MANAGER guarantees that the General Conditions Cost shall not exceed the agreed-upon General Conditions amount. Any costs or expenses that would cause the General Conditions Cost to exceed this amount shall be borne by the CONSTRUCTION MANAGER unless adjusted by change order.

## **2.10 Other Provisions Relating to Pre-Construction Services**



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- 2.10.1 The CONSTRUCTION MANAGER shall exercise its best skill and judgment in discharging its responsibilities as a pre-construction consultant throughout the performance of its obligations under this Agreement.
- 2.10.2 The CONSTRUCTION MANAGER agrees that its scope hereunder includes generating subcontractor and vendor interest in the Project, including, without limitation, interest in providing prices for the Project and performing the Work.
- 2.10.3 The CONSTRUCTION MANAGER represents to the OWNER that it has the experience and skill to perform the Work required under this Agreement and will perform the Work in accordance with the terms of this Agreement and all applicable federal, state, county, city laws, statutes, regulations, codes, ordinances and orders, as well as those of any other governing bodies having jurisdiction over the Project and pursuant to applicable industry standards.
- 2.10.4 If during the term of this Agreement, the OWNER directs any portion or all of the CONSTRUCTION MANAGER's Work, or if OWNER requests that CONSTRUCTION MANAGER perform a Scope Change, that CONSTRUCTION MANAGER believes is improper or made in error, the CONSTRUCTION MANAGER shall promptly notify OWNER in writing of its position.
- 2.10.5 Each of the activities above shall be performed only when authorized by the OWNER and at the OWNER's request. The CONSTRUCTION MANAGER shall not undertake to direct or instruct the Professional or other consultants to the OWNER without the express written authorization from the OWNER.
- 2.10.6 The CONSTRUCTION MANAGER shall not contract with any subconsultants or other independent construction managers to perform any of the services under this Agreement without the prior written approval of OWNER. The OWNER reserves the right to review and approve/reject any and all personnel who will perform work under this Agreement.
- 2.10.7 The OWNER may, from time-to-time, request that the CONSTRUCTION MANAGER arrange for the services of subconsultants or third parties to assist CONSTRUCTION MANAGER in its Work. In that event, the CONSTRUCTION MANAGER shall request, and OWNER shall provide, written authorization for the retention of the services of others. All costs to the CONSTRUCTION MANAGER for those requested services will be paid by the OWNER along with the CONSTRUCTION MANAGER fee. In no event shall the CONSTRUCTION MANAGER employ subconsultants or third parties pursuant to this provision without the prior written authorization of the OWNER.
- 2.10.8 The deliverables described in this Article, shall be incorporated into the **Appendix "I"**, as described in Paragraph 2.8.4 hereof. The determination of whether or not to accept the CONSTRUCTION MANAGER's deliverables under this Agreement, which, if any, of those deliverables hereunder, which, if any of those deliverables to incorporate into **Appendix "I"** and whether or not to execute **Appendix "I"** is in the sole, absolute and exclusive discretion of the OWNER. In determining whether or not to accept the CONSTRUCTION MANAGER's Guaranteed



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Maximum Price or other terms of **Appendix “I”** and whether or not to execute **Appendix “I”** the OWNER may consider any and all criteria, which, in its sole, absolute and exclusive discretion, it undertakes to consider.

- 2.10.9 Compensation for the Services and Work described in this Article 2, shall be paid for as set forth in Chapter 1, Article 4, relating to compensation. This Compensation is acknowledged by the CONSTRUCTION MANAGER as sufficient consideration for the services, obligations, and liabilities described herein. Prior to the OWNER's acceptance of the CONSTRUCTION MANAGER's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the CONSTRUCTION MANAGER shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the OWNER may specifically authorize in writing.

### **ARTICLE 3 CONSTRUCTION SERVICES**

#### **3.1 Bidding and Negotiation.**

- 3.1.1 With the Professional's assistance, the CONSTRUCTION MANAGER shall prepare and assemble document packets for use in bidding or negotiating the Subcontracts Cost. Any and all costs for plans, specifications, or other items needed to obtain such bids/proposals shall be the responsibility of the CONSTRUCTION MANAGER. These costs shall be considered part of the Management Fee.
- 3.1.2 The CONSTRUCTION MANAGER shall develop subcontractor and supplier interest for each division of the Work and shall pre-qualify proposed subcontractors using a pre-qualification form approved by the OWNER and Professional.
- 3.1.3 The CONSTRUCTION MANAGER shall:
- (i) Submit to the Professional and OWNER the proposed list of subcontractors and review and evaluate information received from the Professional regarding proposed subcontractors; and
  - (ii) Evaluate the technical competence of all pre-qualified subcontractors.
- 3.1.4 The CONSTRUCTION MANAGER shall negotiate or competitively bid each trade category only by invitation to a minimum of five (5) pre-qualified subcontractors. In the event a subcontractor does not meet a pre-qualification requirement, the CONSTRUCTION MANAGER in its best judgment and with the OWNER's prior approval, may still allow the subcontractor to bid.
- 3.1.5 The CONSTRUCTION MANAGER shall notify the OWNER in writing in advance of all bid related meetings to include pre-bid meetings, and bid/proposal openings. The CONSTRUCTION MANAGER shall conduct private bid openings in the presence of the OWNER's Representative. The CONSTRUCTION

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MANAGER shall communicate bid results only to the OWNER and Professional, and to no other persons or entities.

3.1.6 The CONSTRUCTION MANAGER shall, for each subcontract, trade or bid division:

- (i) Determine the final bid amounts;
- (ii) Develop, with the participation of Seminole County Department of Resource Management, Purchasing and Contracts Division, the selection criteria for determining the bid/proposal that provides the best value to the OWNER;
- (iii) Prepare and furnish to the OWNER a bid tabulation which includes by subcontract, trade and/or bid division, the applicable final GMP estimate and the related final bid amount;
- (iv) Identify to the OWNER in writing the subcontractors to whom the CONSTRUCTION MANAGER recommends awarding subcontracts; and
- (v) Award and enter into a subcontract between itself and each subcontractor which it has recommended unless otherwise notified by the OWNER. If the GMP has been set before bidding, then the CONSTRUCTION MANAGER will receive an equitable adjustment to the GMP and schedule if the OWNER, for good cause, rejects a proposed subcontractor or supplier, requiring the CONSTRUCTION MANAGER to contract with a more costly subcontractor or supplier.

### **3.2 Construction Supervision.**

3.2.1 Commencing with the award of the first subcontract and terminating on the Date of Final Completion, the CONSTRUCTION MANAGER shall provide the services described in this subsection.

3.2.2 The CONSTRUCTION MANAGER shall act as the OWNER's construction representative throughout the construction, advising and consulting with the OWNER and the Professional(s), and administering the Construction Documents. The CONSTRUCTION MANAGER shall hold weekly progress meetings with the OWNER, Professional(s) and trade contractors to ensure effective advisement, coordination, and consultation.

3.2.3 The CONSTRUCTION MANAGER shall supervise and direct the Work at the Site. The CONSTRUCTION MANAGER shall, at a minimum, staff the Project Site with personnel who shall:

- (i) Supervise and coordinate the CONSTRUCTION MANAGER's personnel and serve as its primary liaison with the OWNER and the OWNER's Consultants;

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- (ii) Coordinate trade contractors and suppliers, and supervise Site construction management services;
  - (iii) Be knowledgeable about all trade divisions and trade contractors' scopes of Work, all applicable building codes, the Construction Documents, and this Agreement for Construction Management;
  - (iv) Review shop drawings and materials delivered to the Site, regularly review the Work to determine its compliance with the Construction Documents and this Agreement for Construction Management, and regularly confer with, the appropriate OWNER's consultants to assure acceptable levels of quality; and prepare and maintain Project records, process documents, and staff the Site field office.

3.2.4 The CONSTRUCTION MANAGER shall promptly reject any Work which does not conform to the Construction Documents or does not comply with any applicable laws, statutes, building codes, rules or regulations of any public authority or agency. The CONSTRUCTION MANAGER shall immediately notify the Professional(s) and the OWNER in writing upon rejecting any Work.

3.2.5 The CONSTRUCTION MANAGER shall comply with and cause its subcontractors and suppliers to comply with the Project Construction Schedule and applicable subschedules. The CONSTRUCTION MANAGER shall obtain and review schedules from subcontractors and suppliers, coordinate subschedules with the Construction Schedule, and enforce compliance with all applicable schedules to ensure timely completion of the Work. If at any time a Project is delayed, the CONSTRUCTION MANAGER shall immediately notify the OWNER of the probable cause(s) and possible alternatives and recommend "recovery schedules" to allow for completion of the CONSTRUCTION MANAGER's work in accordance with the Contract Time.

3.2.6 The Professional will visit the Project Site at intervals appropriate to the construction stage and with sufficient frequency to assess the progress and quality of the Work. The CONSTRUCTION MANAGER shall request additional Site visits from the Professional as needed to attend meetings, inspect the Work, and provide necessary interpretations for proper execution of the Work. The Professional's interpretations and decisions concerning the Construction Documents and the Work shall be final.

3.3 **CONSTRUCTION MANAGER's On-Site Facilities.** Commencing at the Date of Commencement and terminating on the Date of Final Completion, the CONSTRUCTION MANAGER shall provide a Site field office and toilet facilities at the Project Site.

3.3.1 The field office facilities shall be large enough to accommodate required meetings and shall include office furnishings and equipment such as desks, telephones, computers, copiers and other similar office equipment.

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- 3.3.2 The CONSTRUCTION MANAGER shall maintain in the Site field office, on a current basis, all necessary Construction Documents, schedules, shop drawings, product data, samples, purchase orders, maintenance manuals and instructions, daily logs, correspondence, memoranda, and all other Project-related documents.
- 3.3.3 The CONSTRUCTION MANAGER shall provide temporary toilets at the Site for all workers for the duration of the construction period.
- 3.4 **Additional or Modified Required Services.** Additional or modified required services, if any, included in Construction Service are listed in **Appendix “I”** and incorporated by reference.

## ARTICLE 4 EXTRA SERVICES

- 4.1 **Initiation of Extra Services.** The CONSTRUCTION MANAGER shall provide such Extra Services as are initiated and authorized in writing by the OWNER prior to performance. The services described in this Article 4 are not included in Required Services unless identified as an “Additional Required Service or Modified Required Service.”
- 4.2 **Definition of Extra Services.** Extra services include, but are not limited to:
- 4.2.1 Services performed after the Date of Final Completion, except when required as Basic Services.
- 4.2.2 Services for preparation for and attendance at deposition, discovery or court or other dispute resolution proceedings on behalf of the OWNER, except when such proceedings involve issues of fault, neglect or alleged liability of the CONSTRUCTION MANAGER, or its agents, employees, or consultants.
- 4.2.3 Other services not included in CONSTRUCTION MANAGER’s Required Services mutually agreed to by the OWNER and the CONSTRUCTION MANAGER in writing.
- 4.3 **Payment for Extra Services.** Payment of the CONSTRUCTION MANAGER for Extra Services shall be in accordance with the agreement of the Parties when such services are requested.
- 4.4 The CONSTRUCTION MANAGER shall use the OWNER’s recommended software to manage the project and keep its history for future reference. The software to be used for this Project shall be determined by the OWNER after the award of the Agreement and communicated to the CONSTRUCTION MANAGER in writing.

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## CHAPTER 3 GENERAL TERMS AND CONDITIONS

### ARTICLE 1 PROJECT DOCUMENTATION

- 1.1 **Additional Sets of Documents.** Any additional copies of the Construction Documents required by the CONSTRUCTION MANAGER for executing the Work shall be reproduced by the CONSTRUCTION MANAGER from the set provided by the OWNER at no cost to the OWNER.
- 1.2 **Electronic Media.** Unless otherwise specified in this Agreement, the CONSTRUCTION MANAGER may request that the Construction Documents required for the Work be provided in an electronic format. If available, the CONSTRUCTION MANAGER will receive one set of the requested documents in electronic media. Any additional electronic copies required by the CONSTRUCTION MANAGER for executing the Work shall be made by the CONSTRUCTION MANAGER.
- 1.3 **Minimum Requirements.** The requirements established by the Construction Documents shall be considered the accepted standard in all cases.
- 1.4 **OWNER Disclaimer of Warranty.** The OWNER has requested that its Professional(s) to prepare comprehensive, accurate, coordinated, and adequate documents for the Project, including plans and specifications, suitable for bidding, negotiating and constructing the Work. While the CONSTRUCTION MANAGER will use its best skill and provide Preconstruction Services as outlined in this and other Chapters, OWNER makes no representation or warranty of any nature regarding the completed Construction Documents. The CONSTRUCTION MANAGER hereby acknowledges that it has not relied on any representations or warranties by the OWNER concerning these documents. The CONSTRUCTION MANAGER will review the Construction Documents and identify in writing all errors or omissions that it discovers, before establishing the GMP. The GMP Proposal will identify the assumptions or provide exclusions or clarifications on all identified errors or omissions. Notwithstanding the foregoing, OWNER agrees that the CONSTRUCTION MANAGER's GMP otherwise does not include costs for errors or omissions in the Construction Documents provided by the OWNER, and that, subject to the limitations in this Chapter 3, Article 2, Section 2.1 the CONSTRUCTION MANAGER may request a change order for additional costs and/or time incurred as a result of any such errors or omissions.
- 1.5 **Conflicts in Documents.** In the event of any conflict, discrepancy, or inconsistency among the documents comprising this Agreement, the following shall control:
- 1.5.1 As between figures given on plans and scaled measurements, the figures shall govern;
- 1.5.2 As between large-scale plans and small-scale plans, the large-scale plans shall govern;

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- 1.5.3 As between plans and specifications, the requirements of the specifications shall govern;
  - 1.5.4 As between **Appendix “I”**, and this Agreement, and the plans, specifications, general conditions or general requirements, **Appendix “I”** governs, followed by this Agreement and its attachments.
  - 1.5.5 However, if there is a discrepancy among the plans and specifications provided by the OWNER, the more stringent requirement, shall take precedence, unless otherwise directed by OWNER, regardless of which document contains it.
- 1.6 **Shop Drawings and Submittals.** Shop drawings and other submittals from the CONSTRUCTION MANAGER or its subcontractors and suppliers do not constitute a part of this Agreement for Construction Management but are Construction Documents after approval by the OWNER or Professional.
- 1.7 **Contract Changes.** The CONSTRUCTION MANAGER understands and agrees that this Agreement for Construction Management cannot be changed except as provided herein. No act, omission, or course of dealing by the parties shall alter the requirement that modifications of this Agreement for Construction Management can be accomplished only by written documents signed by the parties.

## ARTICLE 2 CONSTRUCTION MANAGER'S REVIEWS AND EVALUATIONS

- 2.1 **Sufficiency of Construction Documents and Drawings.** The CONSTRUCTION MANAGER acknowledges its ongoing duty to review and evaluate the Construction Documents throughout the performance of its services. The CONSTRUCTION MANAGER shall immediately notify the OWNER and the Professional(s) of any: (i) problems, conflicts, defects, deficiencies, inconsistencies, or omissions it discovers in or between the Construction Documents; and (ii) variances between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.
- 2.1.1 If the CONSTRUCTION MANAGER performs any Work which it knows or reasonably should have known involves (i) a recognized problem, conflict, defect, deficiency, inconsistency, or omission in the Construction Documents; or (ii) a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations (but only if CONSTRUCTION MANAGER knew of such variance) without notifying the Professional(s) and prior to receiving written authorization from the appropriate Professional(s) to proceed, the CONSTRUCTION MANAGER shall be responsible for the consequences of such performance.
  - 2.1.2 Drawings are generally drawn to scale; however, the figured dimensions or notes on the drawings shall govern. Before ordering any materials or doing any Work, the CONSTRUCTION MANAGER and subcontractors shall make reasonable efforts, consistent with the schedule, to verify all measurements at the Site and shall



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be responsible for the correctness of same. Discrepancies discovered shall be reported in writing to the Professional prior to proceeding with the Work. No extra charge or compensation will be considered due to differences between actual measurements and dimensions indicated on drawings, if such differences do not result in a change in the scope of Work, or if the Professional failed to receive written notice from CONSTRUCTION MANAGER, despite knowledge of the discrepancy, before the Work was performed.

- 2.1.3 If the CONSTRUCTION MANAGER believes that additional time or cost is required due to clarifications or instructions from the Professional resulting from a conflict in the Construction Documents, the CONSTRUCTION MANAGER shall make claims as provided for in Chapter 3, Article 3, Section 25.8. If the CONSTRUCTION MANAGER fails to comply with Chapter 3, Article 2, Section 2.1.1 or 2.1.2, the CONSTRUCTION MANAGER shall pay such costs and damages to the OWNER as would have been avoided if the CONSTRUCTION MANAGER had complied. The CONSTRUCTION MANAGER will not be liable to the OWNER or Professional for damages resulting from errors, inconsistencies, or omissions in the Construction Documents, or for differences between field measurements or conditions and the Construction Documents, unless the CONSTRUCTION MANAGER recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Professional and the OWNER.

2.2 **Sufficiency of Site.** Prior to signing this Agreement for Construction Management, the CONSTRUCTION MANAGER has:



- 2.2.1 Visited the Site and become familiar with observable local conditions under which the Project is to be constructed and operated;
- 2.2.2 Reviewed and familiarized itself with the Site survey and any existing structures on the Site, and reviewed all other information provided by OWNER and necessary for a full understanding of the Work. OWNER will provide all hazmat and subsurface reports and test results, and all as-builts for existing facilities, utilities, and infrastructure;
- 2.2.3 Without limitation, the CONSTRUCTION MANAGER shall ascertain the location of all existing utilities prior to beginning new and alteration work, shall verify locations of utility lines shown on drawings and shall locate and mark each utility prior to start of construction. Any damage caused to any utility as a result of work on this Project shall be promptly repaired or replaced at the sole expense of the Contractor, and no additional money will be paid by the OWNER; and
- 2.2.4 In addition, if the Work involves modifications to or remodeling of an existing structures or other man-made feature(s) on the Site, the CONSTRUCTION MANAGER has also:
- (i) Reviewed available as-built and record drawings, plans and specifications; and

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- (ii) Observed structure(s) and man-made feature(s) to be modified or remodeled to the best of CONSTRUCTION MANAGER's ability, prior to submission of the GMP Proposal.

***Claims resulting from the CONSTRUCTION MANAGER's failure to familiarize itself as required in this paragraph with the Site or pertinent documents shall be deemed waived.***

### **ARTICLE 3 CONSTRUCTION MANAGER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES**

- 3.1 **Execution of Work.** The CONSTRUCTION MANAGER shall diligently execute and fulfill its obligations under this Agreement for Construction Management, employing its utmost skill and attention. The CONSTRUCTION MANAGER covenants with the OWNER to provide management, supervision, coordination, labor, and services: (i) that complete the Work expeditiously, economically, and in a manner most aligned with the OWNER's interest and objections; (ii) that adhere to the Construction Documents and this Agreement; and (iii) that conform to the highest standards currently practiced by individuals and entities undertaking projects of similar scope, complexity, and cost.
- 3.1.1 The CONSTRUCTION MANAGER may not be required to provide professional services which constitute the practice of landscape architecture, architecture or engineering.
- 3.1.2. All services provided by the CONSTRUCTION MANAGER for the Project shall be performed by or under the immediate supervision of individuals with expertise in the relevant discipline, unless such services are specifically required by the Construction Documents or are necessary to fulfilling the CONSTRUCTION MANAGER's responsibilities regarding construction means, methods, techniques, sequences, and procedures. The CONSTRUCTION MANAGER shall not provide professional services in violation of law. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required by the Construction Documents, the OWNER and Professional shall specify all performance and design criteria that such services must satisfy. The CONSTRUCTION MANAGER shall ensure such services or certifications are furnished by a duly licensed design professional, whose signature and seal shall appear on the drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by such professional. Shop drawings and other 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 the Professional. The OWNER and the Professional shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the OWNER and the Professional have specified to the CONSTRUCTION MANAGER all performance and design criteria that such services must satisfy. The Professional shall review, approve, or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept



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expressed in the Construction Documents. The CONSTRUCTION MANAGER shall not be responsible for the adequacy of the performance or design criteria required by the Construction Documents.

3.1.3 The CONSTRUCTION MANAGER shall, in the course of providing the Work, cooperate and communicate with the OWNER and all other persons or entities as required for satisfactory completion of the Project.

3.1.4 The CONSTRUCTION MANAGER shall not damage, endanger, compromise, or destroy any part of the Project or the Site, except as required by the Construction Documents, including by way of example and not limitation, work being performed by others on the Site, monuments, stakes, benchmarks and other survey points, utility services, and existing features or structures on the Site. Subject to the provisions of the Agreement concerning Builder's Risk insurance, and the terms of **Appendix "I"**, should the CONSTRUCTION MANAGER or their sub-contractors and/or suppliers damage, compromise or destroy any part of the Project or the Site, the CONSTRUCTION MANAGER shall be fully and exclusively responsible for and bear all associated costs.

3.2 **Compliance with Governmental Requirements.** The CONSTRUCTION MANAGER shall:

3.2.1 Comply with all applicable laws, statutes, building codes, rules, regulations, and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project, provided, however, that the CONSTRUCTION MANAGER is not responsible for ensuring that the Construction Documents comply with applicable codes or laws;

3.2.2 Prepare and file documents required to obtain, and shall obtain, all necessary approvals and permits, including any permit fees as identified in CONSTRUCTION MANAGER's GMP Proposal, such as building permit(s), from all governmental authorities having jurisdiction over the Work; and

3.2.3 Provide notices required of it by governmental authorities relating to the Project.

3.3 **Safety.** Safety shall be a primary concern of the CONSTRUCTION MANAGER at all times. The CONSTRUCTION MANAGER shall be responsible for and have control over the means, methods, techniques, sequences, and procedures for coordinating and constructing the Work, including Site safety, precautions, and programs. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the CONSTRUCTION MANAGER shall evaluate the jobsite safety and shall be fully and solely responsible for the jobsite safety. If the CONSTRUCTION MANAGER determines that such means, methods, techniques, sequences, or procedures defined in the Contract Documents may not be safe, the CONSTRUCTION MANAGER shall give timely written notice to the OWNER and the Professional and shall not proceed with that portion of the Work. In such case, the CONSTRUCTION MANAGER shall provide written notice of an alternative approach that can be executed safely, under supervision of the CONSTRUCTION MANAGER.

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- 3.4 **Concurrent Records.** The CONSTRUCTION MANAGER shall, concurrently with performance, maintain detailed records of activities on the Site.
- 3.5 **As-Built Drawings.** The CONSTRUCTION MANAGER shall maintain at the Site a copy of all drawings, specifications, addenda, approved shop drawings, change orders, submittals, and other modifications, ensuring they are in good order and accurately marked to reflect all changes occurring during construction. These as-built drawings shall be available at all times to the OWNER, the Professional(s), the OWNER's consultants, and quality control and testing agency personnel. The drawings shall be neatly and clearly marked in color to document all variations during construction, and the CONSTRUCTION MANAGER shall include necessary supplementary notes and details to clearly and accurately represent as-built construction. However, the as-built drawings shall be kept electronically and signed and sealed by the Professional, if requested by the OWNER.
- 3.6 **Bribes and Kickbacks.** The CONSTRUCTION MANAGER shall not by any means:
- 3.6.1 Induce any person or entity employed in the construction of the Project to relinquish any part of the compensation to which that person or entity is entitled;
  - 3.6.2 Confer on any governmental, public, or quasi-public official with authority to influence the Project, any payment, loan, subscription, advance, deposit of money, services, or anything of value, present or promised;
  - 3.6.3 Offer or accept any bribes or kickbacks in connection with the Project from or to any individual or entity, including any trade contractors, subcontractors, consultants, suppliers, or manufacturers of Project goods and materials; or
  - 3.6.4 Without the express written permission of the OWNER, mandate or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process, or procedure in which the CONSTRUCTION MANAGER has a direct or indirect proprietary or other pecuniary interest.
- 3.7 **Quality Control and Testing.** The CONSTRUCTION MANAGER shall establish and enforce a comprehensive quality management program to ensure superior construction quality. Unless otherwise specified in this Agreement for Construction Management, the OWNER shall select and compensate the quality control and testing agencies for the costs of specified tests and measures as required by the Construction Documents. The CONSTRUCTION MANAGER shall coordinate all tests and inspections, ensuring they are conducted in a manner that does not impede the Work's progress. No claims for time extensions or additional costs shall be permitted due to testing, retesting, inspection, re-inspection, or rejection of Work when defective or deficient Work is found.
- 3.8 **Incident Reporting.** The CONSTRUCTION MANAGER shall promptly notify the OWNER and Professional(s), both orally and in writing, of any incidents that may negatively impact the Work's quality or progress, including but not limited to union jurisdictional disputes, accidents, delays, damages to Work and other significant occurrences.

- 3.9 **Hazardous Substances.** The CONSTRUCTION MANAGER shall immediately notify the OWNER and the Professional(s), both orally and in writing, of the presence and location of any physical evidence of, or information regarding, environmental contamination on the Site (including but not limited to Hazardous Substances and petroleum releases) of which it becomes, or reasonably should have become, aware. If the CONSTRUCTION MANAGER encounters environmental contamination (including but not limited to Hazardous Substances and petroleum releases), the CONSTRUCTION MANAGER shall (i) immediately cease Work or that portion of the Work affected by or affecting such contamination; (ii) secure the contaminated area against unauthorized access; (iii) not disturb or remove the contamination; (iv) not proceed, nor permit any subcontractor or supplier to proceed, with any activities in the contaminated area until directed by OWNER; and (v) undertake all necessary measures to protect life and health. The OWNER shall retain the services of a licensed Environmental Consultant to verify the presence or absence of the material or substance reported by the CONSTRUCTION MANAGER and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. To the fullest extent permitted by Section 768.28, Florida Statutes, the OWNER shall indemnify and hold harmless the CONSTRUCTION MANAGER, 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 the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) or other hazardous materials and has 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) including loss of use resulting therefrom.



In the event of an accident, the CONSTRUCTION MANAGER shall prepare a detailed report of the incident. This report shall encompass all pertinent information, including the cause, corrective measures, preventive measures, along with photographic documentation and the results of all tests conducted subsequent to the incident.

- 3.10 **OWNER's Use of and Access to the Site.** The CONSTRUCTION MANAGER shall perform the Work so as not to unduly interrupt any operations of the OWNER on the Site. OWNER and CONSTRUCTION MANAGER shall coordinate any planned interruptions or closures.
- 3.10.1 The CONSTRUCTION MANAGER acknowledges that the OWNER may require access to or use of certain Site areas or Work before Substantial Completion is achieved by CONSTRUCTION MANAGER, and such access or use shall not signify or constitute the OWNER's acceptance of any Work.
- 3.10.2 The CONSTRUCTION MANAGER shall not enter any Owner-occupied Site area or Project unless first approved and scheduled by the OWNER. The CONSTRUCTION MANAGER understands and acknowledges that the OWNER may incur damages if the OWNER's operations on the Site are unduly interrupted or impaired as a result of the Work.
- 3.10.3 The CONSTRUCTION MANAGER shall provide reasonable access to the Site for the OWNER's own forces, and other consultants, trade contractors, subcontractors

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and suppliers, coordinating its construction and operations with theirs as required by the Construction Documents. All such personnel must adhere to CONSTRUCTION MANAGER's rules for the Site.

- 3.11 **Commissioning.** The CONSTRUCTION MANAGER shall work with the OWNER's Representative to schedule and coordinate the start-ups of all equipment and systems, as well as the commissioning of the Project.
- 3.11.1 The CONSTRUCTION MANAGER shall provide the OWNER with at least two (2) bound copies and one (1) electronic copy of the operation and maintenance manuals. These manuals shall include, but not be limited to, building system instruction manuals, building system warranties, and as built drawings/diagrams. The manuals must be delivered no less than thirty (30) calendar days before the Substantial Completion date to allow sufficient time for training before commissioning and the OWNER's occupancy of the Project.
- 3.11.2 The CONSTRUCTION MANAGER shall meet with the OWNER's personnel at least thirty (30) calendar days before the Substantial Completion date to facilitate and schedule training regarding the maintenance and operation of the Project. The appropriate Professional(s) will attend and assist with such familiarization and training.
- 3.12 **OWNER's Procedures and Review.** The OWNER has established specific procedures for the review and approval of plans, drawings, specifications, construction, and the quality of Work related to the Project. These procedures include reviews by the OWNER's personnel and agencies. The compensation provided herein anticipates and requires the CONSTRUCTION MANAGER's participation in these procedures. These procedures and committees are solely for the OWNER's use and benefit and do not confer any benefit on other parties including, the CONSTRUCTION MANAGER. These procedures do not modify, alter, or reduce the CONSTRUCTION MANAGER's standard of care under this Agreement or provide any defense or offset for issues related to its performance under the Agreement.
- 3.13 **Coordination of Work.** The CONSTRUCTION MANAGER recognizes that other contractor(s) may be engaged in work on or near the Project. The CONSTRUCTION MANAGER agrees to coordinate its activities with those of other contractor(s) to prevent interference with their work and to ensure that all prior work is completed and accepted before commencing its own Work as set forth herein.

#### ARTICLE 4 CONSTRUCTION MANAGER'S PERSONNEL, SUBCONTRACTORS, SUPPLIERS AND SITE FACILITIES

- 4.1 **Project Staffing.** The CONSTRUCTION MANAGER shall assign qualified and designated personnel and entities to fulfill its obligations and performance on the Project. The CONSTRUCTION MANAGER must submit a roster of project staff for the OWNER's review and approval. The OWNER reserves the right, at any time during the

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project, to request the substitution and/or removal of any personnel, with or without providing a reason.

4.1.1 The CONSTRUCTION MANAGER shall designate a representative (the “CONSTRUCTION MANAGER’s Representative”) to act as the primary communication liaison with the OWNER and the Professional(s).

4.1.2 The CONSTRUCTION MANAGER shall employ individuals skilled in their assigned tasks assigned and contract with subcontractors and suppliers skilled in their designated roles, ensuring harmonious collaboration with all trades, crafts, and personnel on the Project. The CONSTRUCTION MANAGER shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

4.1.3 The CONSTRUCTION MANAGER shall immediately remove from the Site, for the duration of the Project, any person making an inappropriate religious, racial, sexual, or ethnic comment, statement, or gesture toward any other individual.

4.1.4 The CONSTRUCTION MANAGER shall immediately remove from the Site, for the duration of the Project, any person who is incompetent, careless, or not working in harmony.

4.1.5 The CONSTRUCTION MANAGER shall be responsible to the OWNER for the actions and omissions of its agents and employees, consultants, subcontractors and suppliers.



4.1.6 The CONSTRUCTION MANAGER shall maintain a drug-free and alcohol-free work environment and job site.

4.2 **Subcontractor / Supplier Contracts.** The CONSTRUCTION MANAGER shall enter into written contracts with its subcontractors and suppliers, and those written contracts shall be consistent with this Agreement for Construction Management.

4.2.1 Prior to executing contracts, the CONSTRUCTION MANAGER shall provide each subcontractor and supplier with the relevant sections of this Agreement for Construction Management, including applicable portions of the Construction Documents to which the subcontractor or supplier will be bound. Each subcontractor and supplier must similarly provide their respective subcontractors and suppliers with these documents.

4.2.2 The CONSTRUCTION MANAGER shall include a provision in its contracts with subcontractors and suppliers acknowledging receipt and review of the applicable terms, conditions and requirements of this Agreement for Construction Management, and agreeing to comply with them.

4.2.3 The CONSTRUCTION MANAGER’s contracts with subcontractors and suppliers shall preserve and protect OWNER’s rights, ensuring compliance with the Construction Documents. Each subcontractor or supplier shall acknowledge that, in the event of the CONSTRUCTION MANAGER’s default or persistent failure to

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enforce the subcontracts, the OWNER may exercise rights as a third-party beneficiary of the contract. The agreements must stipulate that, upon default or termination of this Agreement for Construction Management and at the OWNER's request, the contracts will be assigned to OWNER.

- 4.3 **Resolution of Trade Disputes.** The CONSTRUCTION MANAGER shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.

## **ARTICLE 5 GOODS, PRODUCTS, AND MATERIALS**

- 5.1. **Quality of Materials.** The CONSTRUCTION MANAGER shall furnish goods, products, materials, equipment and systems which:

- 5.1.1 Comply with this Agreement for Construction Management;
- 5.1.2 Conform to applicable specifications, descriptions, instructions, drawings, data and samples;
- 5.1.3 Are new (unless otherwise specified or permitted) and without apparent damage;
- 5.1.4 Are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;
- 5.1.5 Are merchantable;
- 5.1.6 Are free from defects; and
- 5.1.7 Are beyond and in addition to those required by manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.

- 5.2 **Installation and Use of Materials.** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as approved equals, shall be furnished, used, installed, employed, and protected in strict compliance with the manufacturer's or supplier's specifications, recommendations, and instructions, unless these deviate from accepted construction practices or the Construction Documents. In such cases, the CONSTRUCTION MANAGER shall inform the OWNER and the appropriate Professional and proceed as directed by that Professional unless otherwise instructed by the OWNER. The CONSTRUCTION MANAGER shall coordinate all trade contracts and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and the validity of all warranties and guarantees, required by the Construction Documents.

- 5.3 **Unsuitable Materials.** The CONSTRUCTION MANAGER shall inform the OWNER of goods, products, materials, equipment or systems which the CONSTRUCTION MANAGER knows are unsuitable or unavailable at the time of bid submission. Claims



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regarding unsuitability or unavailability will not be entertained unless the CONSTRUCTION MANAGER, subcontractor, or supplier provided written notice to the OWNER at the time of bid submission, along with proposed alternatives of equal or better quality with commensurate warranties, unless such issues arose post-submission. Approval by the OWNER and a Professional of substitute goods, products, materials, equipment or systems does not imply final acceptance if such items should be defective or misrepresented. Should the CONSTRUCTION MANAGER furnish any approved goods, products, materials, equipment or systems different from those specified in the Construction Documents, requiring additional materials or installation procedures, these shall be provided at no additional cost to the OWNER.

- 5.4 **Security for the Project.** The CONSTRUCTION MANAGER shall implement comprehensive security measures to protect the Project, including but not limited to the Work in progress, and all goods, products, materials, equipment, systems, construction machinery, tools, devices, and other items used or intended for use in the Work, whether stored on or off-site the CONSTRUCTION MANAGER or its subcontractors, materialmen, or others under its supervision. The CONSTRUCTION MANAGER shall bear all costs associated with implementing and maintaining these security measures and shall be responsible for any loss or damage resulting from a failure to provide adequate security. The CONSTRUCTION MANAGER shall regularly review and update the security measures to address changing conditions and merging threats throughout the duration of the project.
- 5.5 **Payment for Materials.** Unless otherwise specified in this Agreement for Construction Management, payments shall be for materials and equipment delivered and suitably stored at the Site for subsequent incorporation into the Work. If approved in advance by the OWNER in writing, payment may also be made for materials and equipment suitably stored off-site at an agreed location. Payment for stored materials and equipment, whether on or off-site, is contingent upon the CONSTRUCTION MANAGER's compliance with procedures satisfactory to the OWNER to establish the OWNER's title to such materials and equipment or otherwise protect the OWNER's interest. This includes costs for applicable insurance, storage, and transportation to the Site for such materials and equipment stored off-site.
- 5.6 **Brand Name or Alternate.** Notwithstanding the foregoing, if a product or service has been identified in the specifications by brand name, such identification is intended to be descriptive and not restrictive and is to indicate the quality and characteristics of service that will be acceptable. Unless the CONSTRUCTION MANAGER clearly indicated in its bid that it was proposing an alternate product or service, the bid shall be considered as offering the same brand name referenced in the specifications; provided, however, that if the CONSTRUCTION MANAGER proposes to furnish an alternate product or service after this Agreement for Construction Management has been fully executed, or after **Appendix "I"** has been executed if applicable, the CONSTRUCTION MANAGER shall receive the written authorization from the Professional and OWNER prior to incorporating such alternate product or service into the Work. An alternate to the brand name product/material specified will only be considered if the product/material is not readily available to meet the Construction Schedule, or if there is a cost-benefit to the OWNER. Should the Professional/OWNER accept an alternate brand name product/material any



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additional costs shall be borne by the CONSTRUCTION MANAGER. Also, such alternate will require cost comparison evidence and if found to be less expensive than the brand specified, the OWNER will be entitled to a credit for the cost difference including the apportioned General Conditions and Management Fee. For purposes of this paragraph, an alternate shall be defined as a product or material differing substantially in quality and characteristics from the product or material set forth in the Contract Documents. If the Contract Documents specify an “or equal” product or material, an equal is defined as a product or material with the same quality or characteristics as that specified but differing in brand name.

## **ARTICLE 6**

### **ARTICLES DOCUMENTS AND INFORMATION**

- 6.1 **Information from OWNER.** If applicable, the OWNER shall provide the CONSTRUCTION MANAGER with information reasonably necessary to assist the CONSTRUCTION MANAGER in performing its services including but not limited to:
- 6.1.1 The Site legal description and any required survey;
  - 6.1.2 All written and tangible material in its possession concerning Site conditions below ground, and in unobservable areas of existing structures;
  - 6.1.3 If the Project involves an existing structure, all available as-built drawings, record drawings, plans, specifications, and structure system information with respect to such structure; and
  - 6.1.4 The OWNER’s pertinent Project dates and key milestone dates.
- 6.2 **Resolution of Questions.** The CONSTRUCTION MANAGER shall resolve all questions concerning the Construction Documents with the Professional who has prepared the documents by properly submitting a Request for Information (RFI).
- 6.3 **Processing of Documents.** When requested to do so by the OWNER, the CONSTRUCTION MANAGER shall process documents and provide other reasonably required drawings, services, and certifications necessary to enable the OWNER to (i) obtain financing or insurance for the Project; (ii) obtain approvals, permits, and Certificates of Occupancy for the Project not otherwise required to be obtained by CONSTRUCTION MANAGER; and (iii) represent that the Work complies with requirements of governmental agencies having jurisdiction over the Project.
- 6.4 **Sufficiency of OWNER Information.** The furnishing of information by the OWNER to the CONSTRUCTION MANAGER shall not relieve the CONSTRUCTION MANAGER of its obligations under this Agreement to assess and evaluate the information and documents provided. The CONSTRUCTION MANAGER shall diligently review all information and promptly notify the OWNER in writing if any additional information or services are necessary for the CONSTRUCTION MANAGER to effectively perform the Work. The CONSTRUCTION MANAGER is responsible for identifying and requesting

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any such additional information or services in a timely manner to prevent delays in the Project.

## **ARTICLE 7 SUBMITTALS**

- 7.1 **Submittal Schedule.** The CONSTRUCTION MANAGER shall timely prepare and transmit to the designated Professional a schedule for all anticipated submittals. The schedule shall (i) include submittals required by the specifications, (ii) be in a format acceptable to the Professional, and (iii) set forth specific dates for submission of the listed submittals. The CONSTRUCTION MANAGER shall review and approve all submittals prior to submission to the Professional.
- 7.2 **Processing of Submittals.** The CONSTRUCTION MANAGER shall, in a timely fashion review, approve if appropriate, and forward submittals to the Professional(s) for review and approval, along with such detail and information as the Professional requires. No part of the Work dealt with by a submittal shall be fabricated or performed until such approval has been given.
- 7.2.1 A Professional is responsible to the OWNER, but not to the CONSTRUCTION MANAGER, to verify that the submittals conform to the design concept and functional requirements of the plans and specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in submittals are of the quality specified and will function properly, and that the submittals comply with the Agreement for Construction Management.
- 7.2.2 The CONSTRUCTION MANAGER shall perform no portion of the Work for which the Contract Documents require submittal and review of shop drawings, product data, samples or similar submittals until the respective submittal has been approved by the Professional. The Work shall then be performed in accordance with the approved submittals except that the CONSTRUCTION MANAGER shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Professional's approval of shop drawings, product data, samples, or similar submittals unless the CONSTRUCTION MANAGER has specifically in writing informed the Professional of such deviation at the time of submittal and (i) the Professional has given written approval to the specific deviation as a minor change in the Work; or (ii) a change order or construction change directive has been issued authorizing the deviation. The CONSTRUCTION MANAGER shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the Professional's approval thereof.
- 7.3 The Professional shall review and approve, or otherwise appropriately act upon, the CONSTRUCTION MANAGER's submittals, such as shop drawings, product data, and samples, solely to verify conformance with the information given and the design concept expressed in the Contract Documents. The Professional shall perform this review with reasonable promptness to avoid delaying the Work or the activities of the OWNER, CONSTRUCTION MANAGER, or other contractors, while allowing sufficient time, as

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the Professional deems necessary, for thorough evaluation. The review of submittals is not intended to verify the accuracy of or completeness of details such as dimensions or quantities or to validate installation or performance instructions for equipment or systems, which remain the CONSTRUCTION MANAGER's responsibility under the Contract Documents. The Professional's review does not relieve the CONSTRUCTION MANAGER of its obligations, nor does it signify approval of safety precautions or, unless specifically noted, any construction means, methods, techniques, sequences, or procedures. Approval of a specific item does not constitute approval of the entire assembly to which the item belongs.

- 7.4 By approving and submitting shop drawings, product data, samples, and similar submittals, the CONSTRUCTION MANAGER represents that the CONSTRUCTION MANAGER has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

## **ARTICLE 8**

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

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

8.1.1 The CONSTRUCTION MANAGER shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and whether fabricated, installed, or completed. The CONSTRUCTION MANAGER shall bear all costs of correcting such Work, including additional testing and inspections and compensation for all services and expenses necessitated by such correction, so long as the correction was due to an error or omission in the CONSTRUCTION MANAGER's Work.

8.1.2 The CONSTRUCTION MANAGER shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the OWNER or other trade contractors or subcontractors caused by the CONSTRUCTION MANAGER's correction or removal of Work rejected due to an error in the CONSTRUCTION MANAGER's Work.

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

8.2.1 If the designated portion of the Work was covered contrary to the request of the OWNER or the Professional, inspection required by Authority Having Jurisdiction (AHJ) or to requirements specifically expressed in the Construction Documents, the CONSTRUCTION MANAGER shall receive no additional compensation for

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the costs of uncovering and replacement or modification of the Construction Schedule.

- 8.2.2 If the designated portion of the Work was covered prior to a specific request by the OWNER or the Professional that it remain uncovered, the CONSTRUCTION MANAGER shall receive additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule(s) only if the designated portion of the Work was in conformance with the Construction Documents.
- 8.3 **Acceptance of Non-Conforming Work.** If the OWNER chooses to accept work that does not conform to the requirements of the Contract Documents, the OWNER may, at its sole discretion, accept such non-conforming work instead of requiring its removal and correction. In such cases, the Construction Price shall be equitably reduced to account for the diminished value of the non-conforming Work, as determined by the OWNER. This adjustment shall be made regardless of whether final payment has been issued or not. The OWNER also reserves the right to enforce any necessary corrections or adjustments even after acceptance, if it is later determined that the non-conforming Work adversely affects the project's overall quality or functionality.

## **ARTICLE 9**

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

- 9.1 **Change Order Requests.** Changes to the Work, compensation, or schedules may be requested by the OWNER, CONSTRUCTION MANAGER, or Professional after the execution of this Agreement, without invalidating the Agreement. The OWNER's Project Manager shall be responsible for preparing change orders and construction change directives unless otherwise specified. All Change Order requests must be submitted in writing and approved before the commencement of the Work subject to the Change Order, except as otherwise provided herein.
- 9.1.1 With respect to such requests for changes by the CONSTRUCTION MANAGER, the CONSTRUCTION MANAGER shall prepare and submit Change Order requests to the OWNER's Project Manager.
- 9.1.2 The CONSTRUCTION MANAGER shall promptly review and respond to Change Order requests submitted by OWNER or Professional.
- 9.1.3 When requested, the CONSTRUCTION MANAGER shall provide the OWNER's Project Manager and/or the Professional with drawings, specifications, or other relevant data in supporting a Change Order request.
- 9.1.4 Each Change Order shall clearly state the impact on both the construction schedule and the Contract Price. This impact assessment must include: (i) the time extension or reduction, if any, resulting from the change; and (ii) the additional cost or cost reduction associated the change. The Change Order shall address these impacts separately, but together with any other concurrent Change Orders or adjustments, to ensure an accurate and comprehensive adjustment to the overall project timeline and budget.

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- 9.2 **OWNER-Directed Changes.** The OWNER may unilaterally direct the CONSTRUCTION MANAGER to implement changes in the Work, provided such changes fall within the general scope of this Agreement. Upon receipt of written direction from the OWNER, the CONSTRUCTION MANAGER, shall promptly proceed with the directed changes.
- 9.3 **Professional-Directed Changes.** A Professional, with the OWNER's prior written approval, may direct the CONSTRUCTION MANAGER to make minor changes that are consistent with the intent of the Construction Documents and do not affect Project cost, construction time, scope, or approved design elements. Such minor changes shall be documented by written field orders and executed by the CONSTRUCTION MANAGER and OWNER.
- 9.4 **Administration of Changes.** The Professional will prepare all required technical documentation, including drawings and specifications, for minor changes, Change Order requests, and Change Orders. The OWNER's Project Manager will administer and manage the overall Change Order process, ensuring coordination among all parties and integration of changes into the project schedule and budget.
- 9.5 **Compensation for Changes.** With respect to all change order requests involving credit to the OWNER or additional compensation to the CONSTRUCTION MANAGER, the CONSTRUCTION MANAGER shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare an itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the proposed change; and (iv) provide a reasonable price quotation to the Owner's Project Manager and Professional.
- 9.5.1 If price quotations for change order requests are determined to be unreasonable, the CONSTRUCTION MANAGER shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the OWNER's Project Manager and/or Professional determines the quotation is unreasonable, the OWNER may require the subject Work be performed on a time and material basis.
- 9.5.2 The CONSTRUCTION MANAGER and its subcontractors and suppliers shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by this Agreement and shall not be entitled to additional reimbursement for home office, other non-jobsite or indirect overhead expenses, but shall be paid for change order Work as allowed by other sections of this Agreement.
- 9.5.3 It is the responsibility of the CONSTRUCTION MANAGER to review and approve all pricing of additional work required of its subcontractors and suppliers.
- 9.5.4 Additional work which is not part of the Contract Documents, and which does not impact the critical path shall require an executed change order and is not entitled to an extension of time, but the CONSTRUCTION MANAGER shall be compensated as provided in Chapter 1, Article 4, Section 4.3.

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- 9.5.5 Additional work which is not part of the Contract Documents, and which does impact the critical path shall require a change order and the CONSTRUCTION MANAGER is entitled to an extension of time and the CONSTRUCTION MANAGER shall be compensated as provided in Chapter 1, Article 4, Section 4.3. No other costs relating to the approved extension of time shall be permitted.
- 9.6 **Performance of Changes.** Upon receipt of a field order or fully executed change order, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Construction Documents.
- 9.7 **Disputes Regarding Changes.**
- 9.7.1 Regardless of if there is a dispute (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the change shall be carried out if the OWNER so directs. No claim shall be prejudiced by performance of the Work so long as the OWNER is notified of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the OWNER recites the reasons for its dispute in the written notice. Failure to notify the OWNER in writing shall constitute a waiver of any claim resulting from the change.
- 9.7.2 In the event a change order request is approved by the OWNER in the absence of an agreement as to cost, time, or both, the appropriate Professional will (i) receive and maintain all documentation pertaining thereto; (ii) examine such documentation on the OWNER's behalf; (iii) take such other action as may be reasonably necessary or as the OWNER may request; and (iv) make a written recommendation to the OWNER concerning any appropriate adjustment in the Construction Price or time.
- 9.7.3 A Construction Change Directive is a written order prepared by the Professional and signed by the OWNER and the Professional, directing a change in the Work prior to agreement on any change in the Contract Price, time or both. The issuance of a Construction Change Directive does not invalidate the Agreement for Construction Management. A Construction Change Directive shall be used in the absence of agreement on the terms of a Change Order. If the Directive provides for a change in the Contract Price, the adjustment shall be based on one of the following:
- (i) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
  - (ii) Unit prices stated in the Contract Documents or subsequently agreed upon;
  - (iii) Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or as set forth below.
- 9.7.4 The CONSTRUCTION MANAGER shall promptly proceed with the Work upon receipt of a Construction Change Directive and shall immediately advise the



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Professional of any disagreement with the method of compensation set forth in the Directive.

9.7.5 The CONSTRUCTION MANAGER shall sign the Construction Change Directive if the CONSTRUCTION MANAGER agrees with the adjustment in the time or Contract Price. Upon signature, the Change Order Directive shall be effective as a Change Order.

9.7.6 If the CONSTRUCTION MANAGER does not respond promptly or disagrees with the method of adjustment, the method of adjustment shall be determined by the Professional on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, include a reasonable allowance for overhead and profit on increases and decreases in scope. In such case, the CONSTRUCTION MANAGER shall keep and present to the Professional and the OWNER an itemized accounting together with appropriate supporting data. Unless otherwise specified herein, costs shall be limited to:

- (i) Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance directly attributable to the change;
- (ii) Costs of materials, supplies and equipment, including the cost of transportation, whether incorporated or consumed directly attributable to the change;
- (iii) Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the CONSTRUCTION MANAGER or others directly attributable to the change;
- (iv) Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work directly attributable to the change.

9.7.7 The amount of credit to be allowed by the CONSTRUCTION MANAGER to the OWNER for a deletion or change which results in a net decrease in the Contract Price shall be the actual net cost as confirmed by the Professional. When there are both increases and decreases in the Work, the allowance for overhead and profit shall be figured on the basis of net increase, if any, of the change.

9.7.8 Pending the final determination of the total cost of the Change Directive, amounts not in dispute shall be included in future invoices for payment, accompanied by a fully executed Change Order. For costs in dispute, the Professional shall make an interim determination for purposes of monthly certification for payment for those costs. Either party may then submit a claim according to other provisions contained herein.

9.8 **Necessity for Signed Writing.** No act, omission or course of dealing shall alter the requirement that change orders shall be in writing and signed by the OWNER, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. The CONSTRUCTION MANAGER understands and agrees, on



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behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order.

- 9.9 **Change Order as Final Agreement.** Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work, which is the subject of the Change Order, including but not limited to, all direct and indirect costs and general conditions associated with such change and any and all adjustments to the Contract Sum, Contract Time and the Construction Schedule. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.
- 9.10 **Incorporated Language to Change Orders.** Each and every Change Order executed under this Agreement shall be interpreted to incorporate and include the following clause, whether or not such clause is specifically included or incorporated into the Change Order: “This Change Order represents a written modification between the parties to the Agreement and is based on the terms and conditions of that Agreement. This Change Order supersedes all prior negotiations, qualifications and terms for the changes in scope described in this Change Order and the Work contemplated is, except as noted otherwise specifically provided, subject to all the terms and conditions of the Agreement, including, without limitation, those concerning payment. By executing this Change Order, Contractor acknowledges that this Change Order includes all direct and indirect charges and costs arising out of this change. The Contractor further agrees that by executing this Change Order, it will be fully compensated for the cost and time impact of the change(s) required by the OWNER. All claims against the OWNER which are incidental to or as a consequence of this change, including, without limitation, delays, disruptions, suspensions, acceleration or other impacts, or claims arising out of the cumulative effect of the Change Orders for the Work, are fully satisfied. Contractor will commence its services upon the execution of this Change Order and will complete the Work in accordance with the current schedule, it being understood and agreed that time is of the essence in the completion of each and every provision or condition of this Change Order and the Agreement.” The omission of this clause from any particular Change Order, any number of Change Orders or all Change Orders shall not constitute a waiver of this provision. Change orders must not include contingency and should accurately reflect the total amount required for completing the Work.

## **ARTICLE 10**

### **FINANCIAL CLAIMS AND LIENS**

- 10.1 **Notification Regarding Liens.** The CONSTRUCTION MANAGER shall immediately notify the OWNER and Professional(s), both orally and in writing, of the nature and details of any mechanics’ liens, construction liens, CONSTRUCTION MANAGER’s trust fund claims, or claims of any type made by anyone against the OWNER, the Professional(s), the CONSTRUCTION MANAGER or any subcontractor or supplier of any of them or against the Project whether or not such claims arise from the Work or not. The CONSTRUCTION MANAGER is obligated to submit partial payment affidavits with each pay application, certifying that all subcontractors have been duly compensated and have waived any claims

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on the project. For final completion, the CONSTRUCTION MANAGER shall furnish all final payment affidavits within 30 days of receiving the subcontractors' retainage.

- 10.2 **Discharge of Liens.** The CONSTRUCTION MANAGER shall take all action necessary to obtain the prompt discharge of any liens or claims filed against the Project. If any lien or claim filed against the Project is not discharged and released by the claimant, the CONSTRUCTION MANAGER shall, within a reasonable period of time, but in no event more than thirty (30) calendar days after request and at its own cost, promptly obtain discharge and release of, or indemnity for, such lien or claim by providing or filing, as appropriate, the requisite bond. If the CONSTRUCTION MANAGER fails to have any such lien or claim discharged and released, or fails to provide or file the requisite bond, the OWNER shall have the right to pay all sums necessary to obtain such a discharge and release, and the CONSTRUCTION MANAGER shall bear all expenses incurred by the OWNER in so doing.

## **ARTICLE 11**

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

- 11.1 **OWNER's Designated Professional Representative.** Unless otherwise directed by the OWNER, one (1) designated Professional shall act as the OWNER's Professional representative from the effective date of this Agreement for Construction Management until one (1) year from the date of achievement of Substantial Completion.

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

11.1.2 The designated Professional will act as initial interpreter of the requirements of this Agreement for Construction Management and as the OWNER's advisor on claims.

- 11.2 **Professional Site Visits.** The Professional(s) will visit the Site with sufficient frequency for familiarization with the progress and quality of the Work and to inspect the Work to determine compliance of the Work with (i) this Agreement for Construction Management, including approved shop drawings and other submittals; (ii) the Construction Schedule; and (iii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

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

- 11.4 **Professional Evaluations.**

11.4.1 The Professional(s) will review and evaluate the results of all inspections, tests and written reports required by this Agreement for Construction Management and by any governmental entity having or asserting jurisdiction over the Project. The

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Professional(s) will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s). The Professional(s) will promptly reject Work which does not conform to and comply with testing requirements.

- 11.4.2 The Professional(s) may require inspection or testing of any Work in addition to that required by this Agreement for Construction Management or governmental entities having or asserting jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The Professional(s) will take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s).
- 11.5 **Professional Submittal Activities.** The Professional(s) will timely review and approve, reject or take other appropriate action on submittals such as shop drawings, product data, samples and proposed equal materials or equipment and requested substitutions within not more than fourteen (14) calendar days, and will not approve any submittals unless such submittals conform with (i) the Project Construction Documents; (ii) this Agreement for Construction Management; and (iii) the OWNER's budgeted Total Project Construction Cost. A Professional's review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should be defective or not as represented by approved submittals or as otherwise required by the Construction Documents. The CONSTRUCTION MANAGER remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for selecting fabrication processes, for techniques of assembly, and for performance of the Work.
- 11.6 **Professional Interpretations.** The Professional will, when requested to do so in writing by the CONSTRUCTION MANAGER, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the Work. A Professional's interpretations and decisions relating to artistic effect shall be final if not inconsistent with this Agreement for Construction Management.
- 11.7 **Professional Change Order Activities.** The Professional(s) will consult with and advise the OWNER concerning all change order requests and change orders on behalf of the OWNER.
- 11.8 **Professional Pay Application Activities.** The appropriate Professional will review applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the CONSTRUCTION MANAGER and shall authorize payment by the OWNER to the CONSTRUCTION MANAGER in writing. After the Work is determined to be finally complete and the Professional determines that the CONSTRUCTION MANAGER has completed the Work, the Professional will determine whether the CONSTRUCTION MANAGER is entitled to final payment, and if so will so certify to the OWNER in writing.
- 11.9 **Professional Relationship to CONSTRUCTION MANAGER.** The duties, obligations, and responsibilities of the CONSTRUCTION MANAGER under this Agreement for

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Construction Management shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation, or responsibility of any Professional. The CONSTRUCTION MANAGER shall not be a third-party beneficiary of any agreement by and between the OWNER and any Professional. The duties of the CONSTRUCTION MANAGER to the OWNER will be independent of, and shall not be diminished by, any duties or obligations of the Professional to the OWNER.

## **ARTICLE 12**

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

- 12.1 **Substantial Completion.** Substantial Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Substantial Completion inspection, and the required Substantial Completion documentation and items have been produced. Notwithstanding anything herein, Substantial Completion shall not occur prior to the date which all applicable governmental agencies having jurisdiction over the Work have issued either an unconditional Certificate of Completion or unconditional Certificate of Occupancy with respect to the Work, including landscaping and common areas (whichever is applicable) and the OWNER is otherwise able to fully utilize the Work for its intended purpose. Notwithstanding anything to the contrary contained herein, the Contractor shall be responsible for obtaining the unconditional Certificate of Completion or unconditional Certificate of Occupancy (whichever is applicable) with respect to the Work, and in connection therewith the OWNER shall comply with all its obligations required by the issuing authority in order to enable the Contractor to obtain such Certificate.
- 12.1.1 When the CONSTRUCTION MANAGER believes that the Work is substantially complete, it shall notify the OWNER and the appropriate Professional that the Work is ready for a Substantial Completion inspection.
- 12.1.2 At or prior to the Substantial Completion inspection, the CONSTRUCTION MANAGER will prepare and furnish to the Professional a Declaration of Substantial Completion, which at a minimum, must:
- (i) Contain a blank for entry of the date of Substantial Completion, which date will fix the commencement date of warranties and guaranties and allocate between the OWNER and the CONSTRUCTION MANAGER responsibility for security, utilities, damage to the Work, and insurance;
  - (ii) Include a list of items to be completed or corrected and state the time within which the listed items will be completed or corrected; and
  - (iii) Contain signature lines for the OWNER, the CONSTRUCTION MANAGER, and the Professional.
- 12.1.3 Upon receipt of notification from the CONSTRUCTION MANAGER, the appropriate Professional will coordinate with the OWNER and the CONSTRUCTION MANAGER a date for inspection of the Work to determine whether the Work is substantially complete.

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- 12.1.4 At inspection(s) to determine whether the Work is substantially complete, the Professional will:
- (i) Inspect the Work;
  - (ii) List additional items to be completed or corrected; and
  - (iii) Determine, in consultation with the OWNER, whether Substantial Completion of the Work has occurred.
- 12.1.5 If the Work is determined not to be substantially complete, the Work shall be prosecuted until the Work is substantially complete and the inspection process shall be repeated at no additional cost to the OWNER until the Work is determined to be substantially complete.
- 12.1.6 On or prior to the required date of Substantial Completion, the CONSTRUCTION MANAGER shall deliver to the appropriate Professional keys, permits, the certificate of occupancy, and other necessary and customary documents and items pre-requisite for the OWNER's occupancy and use of the Work for its intended purpose. The Professional will obtain and review Substantial Completion documentation and items and will inform the CONSTRUCTION MANAGER of any deficiencies.
- 12.1.7 When the OWNER, the CONSTRUCTION MANAGER, and the appropriate Professional agree that the Work has passed the Substantial Completion inspection and the CONSTRUCTION MANAGER has produced the required Substantial Completion documentation and items, they shall each sign the Declaration of Substantial Completion declaring the Work substantially complete and establishing the actual date of Substantial Completion. The Declaration of Substantial Completion shall also include a list of and timeline for the completion of Work needing completion and correction. Failure of the CONSTRUCTION MANAGER to include an item on the list does not alter the responsibility of the CONSTRUCTION MANAGER to complete all Work in accordance with this Agreement for Construction Management.
- 12.1.8 The CONSTRUCTION MANAGER shall promptly correct the Work properly rejected by the Professional or failing to conform to the requirements of this Agreement for Construction Management, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting the rejected Work, including additional testing and inspections and compensation for the Professional's services and expenses made necessary thereby, shall be at the CONSTRUCTION MANAGER's expense.
- 12.1.9 Substantial Completion must be accompanied by a Certificate of Occupancy issued by the Authority (or Authorities) Having Jurisdiction over the Project.
- 12.2 **Final Completion.** Final Completion of the Work shall be recognized on the date that the Work successfully passes the Final Completion inspection. Final Completion shall not be deemed to have occurred and no final payment shall be due the CONSTRUCTION

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MANAGER or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection.

12.2.1 When the CONSTRUCTION MANAGER believes the Work is finally complete, the CONSTRUCTION MANAGER shall notify the OWNER and the appropriate Professional that the Work is ready for Final Completion inspection.

12.2.2 Upon receipt of such notification from the CONSTRUCTION MANAGER, the Professional will coordinate with the OWNER and the CONSTRUCTION MANAGER to schedule an inspection date to determine whether the Work is finally complete.

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

- (i) Inspect the Work;
- (ii) Determine whether all items on the list included with the Declaration of Substantial Completion have been satisfactorily completed and corrected;
- (iii) Determine whether the Work complies with (a) this Agreement for Construction Management; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and (c) applicable installation and workmanship standards;
- (iv) Determine whether required inspections and approvals by the official(-s) having or asserting jurisdiction over the Project have been satisfactorily completed;
- (v) Assess whether all closeout documents, attic stock, spare parts, etc, have been properly transmitted to the OWNER; and
- (vi) Determine, in consultation with the OWNER, whether the Work is finally complete.

12.2.4 If the Work is not finally complete, the CONSTRUCTION MANAGER shall continue to prosecute the Work, and the inspection process shall be repeated at no additional cost to the OWNER, until the Work is finally complete.

12.2.5 On or prior to the date of Final Payment, the CONSTRUCTION MANAGER shall deliver to the appropriate Professional the following Final Completion close-out documentation:

- (i) Two (2) bound and one (1) electronic operation and maintenance manuals as required by Chapter 3, Article 3, Subsection 3.11.1
- (ii) Two (2) sets of as-built drawings and markups;



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- (iii) Certification and affidavit that all insurance required of the CONSTRUCTION MANAGER beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to the OWNER;
  - (iv) Written consent of the surety(ies), if any, to final payment;
  - (v) Full, final, and conditional waivers of mechanics or construction liens or full and final affidavits of payment, releases of CONSTRUCTION MANAGER's trust fund or similar claims, and release of security interests or encumbrances on the Project property from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim against the OWNER or the OWNER's property;
  - (vi) Full, final, and conditional certification and affidavit that all of the CONSTRUCTION MANAGER's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;
  - (vii) All written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work have been endorsed, countersigned, and assigned as necessary;
  - (viii) Affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of the Work;
  - (ix) A list of any item(s) due but unable to be delivered and the reason for non-delivery; and
  - (x) Any other documents reasonably and customarily required or expressly required herein and final close-out of the Work.

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

### **ARTICLE 13**

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

13.1 **One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in this Agreement for Construction Management, the CONSTRUCTION MANAGER, upon request by the OWNER or the Professional, shall promptly correct all failures or defects in the Work for a period of one (1) year after the actual date of Substantial Completion.

13.1.1 The CONSTRUCTION MANAGER shall schedule, coordinate and participate in a walk-through inspection of the Work one (1) month prior to the expiration of the one-year correction period, and shall notify the OWNER, the appropriate



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Professional(s), and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.

13.1.2 Should the CONSTRUCTION MANAGER fail to promptly correct any failure or defect; the OWNER may take whatever actions it deems necessary to remedy the failure or defect and the CONSTRUCTION MANAGER shall promptly reimburse the OWNER for any expenses or damages it incurs as a result of the CONSTRUCTION MANAGER's failure to correct the failure or defect.

13.2 **Express Warranties and Guarantees – CONSTRUCTION MANAGER.** In addition to the warranties and guarantees set forth elsewhere herein, the CONSTRUCTION MANAGER expressly warrants and guarantees to the OWNER:

13.2.1 That the Work complies with (a) the Construction Documents; and (b) to the best of its knowledge all applicable laws, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

13.2.2 That all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of quality equal to or higher than that required by the Construction Documents; and (c) merchantable; and

13.2.3 That all management, supervision, labor, and services required for the Work shall comply with this Agreement for Construction Management and shall be performed in a workmanlike manner.

13.3 **Express Warranties and Guarantees - Subcontractors and Suppliers.** The CONSTRUCTION MANAGER shall require that all of its subcontractors and suppliers provide written warranties, guarantees, and other undertakings to the OWNER and the CONSTRUCTION MANAGER in a form identical to the warranties, guarantees, and other undertakings set forth in this Agreement, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees, and undertakings shall run to the benefit of the OWNER as well as the CONSTRUCTION MANAGER.

13.4 **Non-Exclusivity and Survival.** The warranties and guarantees set forth in this Article shall be in addition to all other warranties, express, implied, or statutory, and shall survive the OWNER's payment, acceptance, inspection of or failure to inspect the Work, and review of the Construction Documents.

13.5 **Non-Limitation.** Nothing contained in Paragraph 13.1 shall be construed to establish a period of limitation with respect to the CONSTRUCTION MANAGER's obligations under this Agreement for Construction Management. Paragraph 13.1 relates only to the CONSTRUCTION MANAGER's specific obligations with respect to the Work and has no relationship to the time within which the CONSTRUCTION MANAGER's contractual obligations under this Agreement for Construction Management may be enforced, nor to

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the time within which proceedings may be commenced to establish the CONSTRUCTION MANAGER's liability with respect to any contractual obligations pursuant to Paragraph 13.1 or contained elsewhere herein.

- 13.6 **Commencement of Obligations.** Unless otherwise specified, all of the CONSTRUCTION MANAGER's warranty and guaranty obligations, including the time periods for all written warranties and guarantees of specifically designated equipment required by the Construction Documents, shall begin on the actual date of Substantial Completion.
- 13.7 **Limitation.** The CONSTRUCTION MANAGER's warranty excludes remedy for damage or defect caused by abuse, unauthorized modifications, improper or insufficient maintenance, improper operation, or normal wear and tear under standard use. If required by the OWNER, the CONSTRUCTION MANAGER shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### ARTICLE 14 OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

- 14.1 **Timely Compensation of CONSTRUCTION MANAGER.** The OWNER shall timely compensate the CONSTRUCTION MANAGER in accordance with this Agreement for Construction Management.
- 14.2 **Payment for Testing.** Unless otherwise required to be provided by the CONSTRUCTION MANAGER in its scope of services, the OWNER shall secure and pay for all Project testing.
- 14.3 **OWNER Review of Documents.** The OWNER shall review documents prepared by the CONSTRUCTION MANAGER in a timely manner and in accordance with schedule requirements. Review by the OWNER shall be solely for the purpose of determining whether such documents are generally consistent with the OWNER's intent. No review of such documents shall relieve the CONSTRUCTION MANAGER of any of its responsibilities.
- 14.4 **Status of OWNER.** The OWNER shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the CONSTRUCTION MANAGER, for any of the foregoing purposes, be deemed the agent of the OWNER.
- 14.5 **OWNER's Utilities.** The OWNER shall provide water/sewer, gas and electrical energy only as they exist at the Site prior to the start of construction. Any fee charged by a utility company shall be an OWNER's Cost with the exception of any utility usage charges incurred during construction, which shall be the responsibility of the CONSTRUCTION MANAGER as a part of the General Conditions. The CONSTRUCTION MANAGER shall additionally be responsible for the costs associated with the provision of chemical toilets, with such costs included in the General Conditions. Costs associated with temporary wiring, temporary lighting, temporary electrical connections, temporary water/sewer connections, temporary gas connections, protection of existing utilities, and routing of utilities for jobsite

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and office trailer use shall be a Subcontractors' Cost. Any fees charged by a utility after installation of permanent meters will be an OWNER's Cost.

Acceptance by the CONSTRUCTION MANAGER of the use of the OWNER's water, gas and electrical energy constitutes a release from the CONSTRUCTION MANAGER to the OWNER of all claims and liability for any damages or losses which may be incurred by the CONSTRUCTION MANAGER as a result of water, gas and electrical energy outages or voltage variations or surges, but not for time extensions arising out of the interruption or cessation of these utilities.

- 14.6 **Statements of OWNER's Capacity.** The OWNER, upon reasonable written request, shall furnish to the CONSTRUCTION MANAGER in writing statements of:

14.6.1 The record legal title to the Site on which the Project is located and the OWNER's interest therein at the time of execution of this Agreement for Construction Management.

## ARTICLE 15 CONSTRUCTION MANAGER'S COMPENSATION

- 15.1 **Unit Prices.** For the purposes of calculating any additive or deductive changes for materials or items of work for which the CONSTRUCTION MANAGER has provided Unit Prices as incorporated into Exhibit "5" of **Appendix "I"**, the cost or savings of the change shall be calculated using the Unit Prices described in Exhibit "5" of **Appendix "I"**.

- 15.2 **Schedule of Values.** Attached as Exhibit "4" of **Appendix "I"**, is the CONSTRUCTION MANAGER's Schedule of Values apportioning the different elements of the Work for purposes of periodic and final payment, including the times and amounts of payments for General Conditions and Management Fees. The CONSTRUCTION MANAGER's schedule of values shall be presented in the format, and with such detail and supporting information, requested by the Professional or OWNER. The CONSTRUCTION MANAGER shall not imbalance or artificially inflate any element of its schedule of values. Upon the Professional and OWNER's acceptance, the schedule of values shall be used to process and pay the CONSTRUCTION MANAGER's payment requests. The schedule of values shall not be changed without written approval by the OWNER.

- 15.3 **Invoicing Procedures.** In accordance with the procedures and requirements set forth in this Article, the CONSTRUCTION MANAGER shall invoice the OWNER and the OWNER shall pay the CONSTRUCTION MANAGER the Construction Price.

15.3.1 At least every thirty (30) calendar days after commencement of performance, but no more frequently than once a month, the CONSTRUCTION MANAGER shall submit invoices to the Professional requesting payment for labor and services rendered during the preceding thirty (30) calendar days. Each invoice shall contain such detail and be backed up with whatever supporting information the OWNER or the Professional reasonably requests and shall, at a minimum, state:

- (i) The total Construction Price for the Project;

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- (ii) The amount due for properly provided labor, materials and equipment properly incorporated into the Project; and with respect to amounts invoiced for materials or equipment necessary for the Project and properly stored at the Site (or elsewhere if offsite storage is approved in writing by the OWNER), be accompanied by written proof that the OWNER has title to such materials or equipment and that such material and equipment is fully insured against loss or damage;
  - (iii) A breakdown of the various parts of the Work as related to the Construction Price as shown on the Schedule of Values;
  - (iv) The value of the various parts of the Work actually performed;
  - (v) Previously invoiced amounts and credit payments made;
  - (vi) The total amount due, less any agreed retainage;
  - (vii) Submit a current Critical Path Method Schedule CPM Schedule with every pay application.

15.3.2. Additionally, invoices must include lien waivers and other documentation verifying payment to subcontractors and suppliers as reasonably requested by OWNER or Professional. The OWNER may require lien releases from CONSTRUCTION MANAGER, subcontractors, or any other parties providing labor, materials, or services, specifically related to the application for payment.

#### 15.4 **Payment Procedures.**

15.4.1 The Professional will review the CONSTRUCTION MANAGER's applications for payment, including such accompanying data, information, and schedules as the Professional requires, to determine the amounts due to the CONSTRUCTION MANAGER and, based upon such review, together with its inspections of the Work, shall authorize payment by the OWNER to the CONSTRUCTION MANAGER in writing. Such authorization will constitute the Professional's certification to the OWNER that:

- (i) The Work described in the CONSTRUCTION MANAGER's invoice has progressed to the level indicated;
- (ii) The Work has been performed in accordance with the Agreement for Construction Management;
- (iii) All necessary and appropriate lien waivers have been submitted; and
- (iv) The amount requested is currently due and owing to the CONSTRUCTION MANAGER.

15.4.2 In the case of unit price work, the Professional's recommendations for payment will constitute a final determination of quantities and classifications of such work.

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15.4.3 Payments shall be deemed timely if postmarked at least two (2) business days before the Payment Date defined in Chapter 1 or any other payment due date stated in this Article.

15.4.4 The Professional may withhold all or part of an application for payment to the extent reasonably necessary to protect the OWNER if in the Professional's opinion the representations to the OWNER required by subsection 15.4.1 cannot be made. If the Professional is unable to certify payment in the amount of the application, the Professional shall notify the CONSTRUCTION MANAGER and the OWNER as provided for herein. If the CONSTRUCTION MANAGER and the Professional cannot agree on a revised amount, the Professional shall promptly authorize payment for the amount which the Professional is able to make such representations to the OWNER. The Professional may also withhold payment or, because of subsequently discovered evidence, may nullify the whole or part of an application for payment previously issued, to such extent as may be necessary in the Professional's opinion to protect the OWNER from loss for which the CONSTRUCTION MANAGER is responsible, including loss resulting from its acts and omissions, because of:

- (i) Defective Work not remedied;
- (ii) 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;
- (iii) Failure of the CONSTRUCTION MANAGER to make payments properly to subcontractors for labor, materials or equipment;
- (iv) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (v) Damage to the OWNER or other contractor;
- (vi) Reasonable evidence that the Work will not be completed within dates established in the Construction Schedule, and that the unpaid balance would not be adequate to cover liquidated damages for the anticipated delay; or
- (vii) Persistent failure to carry out the Work in accordance with this Agreement for Construction Management.

15.5 **OWNER's Right to Refuse Payment.** The Professional's approval of the CONSTRUCTION MANAGER's invoice will not preclude the OWNER from exercising any of its remedies under this Agreement for Construction Management. These remedies include, without limitation the OWNER's right to withhold all or part of any payment (including Final Payment) for the reasons described in Paragraph 15.4.1 or in this Paragraph 15.5. In the event of a dispute, payment shall be made on or before the Payment Date for amounts not in dispute, subject to any setoffs claimed by the OWNER. The OWNER shall have the right to refuse to make payment and, if necessary, may demand the

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return of a portion or all of the amount previously paid to the CONSTRUCTION MANAGER to the extent due to:

- 15.5.1 The CONSTRUCTION MANAGER's failure to perform the Work in compliance with the requirements of this Agreement for Construction Management or any other agreement between the parties;
  - 15.5.2 The CONSTRUCTION MANAGER's failure to correctly and accurately represent the Work performed in a payment request, or otherwise;
  - 15.5.3 The CONSTRUCTION MANAGER's performance of the Work at a rate or in a manner that, in the OWNER's reasonable opinion, is likely to result in the Project being inexcusably delayed;
  - 15.5.4 The CONSTRUCTION MANAGER's failure to use funds previously paid the CONSTRUCTION MANAGER by the OWNER, to pay the CONSTRUCTION MANAGER's Project-related obligations including, but not limited to, the CONSTRUCTION MANAGER's subcontractors, materialmen, and suppliers;
  - 15.5.5 Claims made against the OWNER or its property;
  - 15.5.6 Loss caused by the CONSTRUCTION MANAGER or the CONSTRUCTION MANAGER's subcontractors, or suppliers and not paid by insurance or covered by bonds provided by CONSTRUCTION MANAGER; or
  - 15.5.7 The CONSTRUCTION MANAGER's failure or refusal to perform any of its obligations to the OWNER.
- 15.6 **CONSTRUCTION MANAGER's Right to Refuse Performance for Non-Payment.** If within the time set forth in Section 218.735, Florida Statutes, the OWNER, without cause or basis hereunder, fails to pay the CONSTRUCTION MANAGER any amounts then due and payable to the CONSTRUCTION MANAGER, the CONSTRUCTION MANAGER shall have the right, in addition to all other rights and remedies contained herein, to cease performance of the Work until receipt of proper payment after first providing fourteen (14) calendar days written notice to the OWNER of its intent to cease work.
- 15.7 **Correction of Past Payments.** All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any subsequent payment and shall be corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent payment by the Payment Date, the OWNER shall notify the CONSTRUCTION MANAGER in writing of such defect or impropriety in accordance with Section 218.735, Florida Statutes. Any disputed amounts determined by the OWNER to be payable to the CONSTRUCTION MANAGER shall be due in the time frames set forth in Section 218.735, Florida Statutes, from the date the dispute is resolved.
- 15.8 **Interest on Outstanding Amounts Due.** To the extent allowed by Chapter 218, Florida Statutes, interest shall accrue on amounts owed by the OWNER to the CONSTRUCTION MANAGER which remain unpaid thirty (30) calendar days following the date on which payment is due.



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No interest shall accrue when payment is delayed because of a dispute between the OWNER and the CONSTRUCTION MANAGER, or a dispute as to the accuracy or completeness of any request for payment received. This exception to the accrual of interest shall apply only to that portion of a delayed payment which is actually the subject of the dispute and shall apply only for the duration of such disagreement. Interest shall accrue on retainage which is withheld to assure performance of this Agreement for Construction Management.

**15.9 Invoice Warranties and Guarantees.** The CONSTRUCTION MANAGER expressly warrants and guarantees to the OWNER that:

15.9.1 Title to all goods, products, materials, equipment, and systems covered by an invoice will pass to the OWNER either by incorporation into the Work, or upon receipt of payment by the CONSTRUCTION MANAGER, whichever occurs last;

15.9.2 All goods, products, materials, equipment, and systems covered by an invoice are free and clear of liens, claims, security interests or encumbrances; and

15.9.3 No goods, products, materials, equipment or systems covered by an invoice have been acquired by the CONSTRUCTION MANAGER, or its subcontractors or suppliers, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the CONSTRUCTION MANAGER, or its subcontractors or suppliers.

**15.10 CONSTRUCTION MANAGER's Signature.** The signature of the CONSTRUCTION MANAGER on any invoice constitutes the CONSTRUCTION MANAGER's certification to the OWNER that (i) the CONSTRUCTION MANAGER's services listed in the invoice have progressed to the level indicated and have been performed as required by this Agreement for Construction Management; (ii) the CONSTRUCTION MANAGER has paid its subcontractors and suppliers their proportional share of all previous payments received from the OWNER; and (iii) the amount requested is currently due and owing.

**15.11 Taxes.** The CONSTRUCTION MANAGER shall incorporate into the Construction Price, and pay, all sales, consumer, use and similar taxes for goods, products, materials, equipment and systems incorporated into the Work which were legally required at the time of execution of this Agreement for Construction Management, whether or not yet effective or merely scheduled to go into effect. The CONSTRUCTION MANAGER shall secure, protect, hold harmless, and indemnify the OWNER from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) relating to any taxes assessed or imposed upon, incurred by or asserted against the OWNER by any taxing authority with respect to such taxes. The CONSTRUCTION MANAGER shall cooperate with and assist the OWNER in securing qualified refunds of any sales or use tax paid by the OWNER or CONSTRUCTION MANAGER on goods, products, materials, equipment, or systems. Any refund secured shall be paid to the OWNER.

15.11.1 Sales Tax Recovery Program. In accordance with Section 212.08(6), Florida Statutes, and Rule 12A-1.094, Florida Administrative Code, the OWNER is tax exempt when it purchases tangible personal property for use in public works



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projects, subject to certain restrictions. In the event this project is declared a sales tax recovery project by the OWNER, the following procedures will apply:

- (i) The OWNER, through Resource Management or the Purchasing and Contracts Department, shall determine whether the OWNER shall directly purchase certain materials required for the Work.
- (ii) Upon acceptance of the GMP, the CONSTRUCTION MANAGER shall prepare a list of proposed items that may be desirable for OWNER direct purchasing. Proposed items shall be items that are purchased in a single order from a single vendor with a value greater than \$10,000. Upon reviewing this list, the OWNER shall determine whether it will directly purchase certain materials. The OWNER shall notify the CONSTRUCTION MANAGER in writing of the specific materials which are intended to be purchased.
- (iii) Within ten (10) calendar days from receipt of the written notice described in Paragraph 15.11.1(ii), the CONSTRUCTION MANAGER shall advise the OWNER in writing of: (a) the date upon which the materials must be on-site according to the Construction Schedule approved at that time, (b) the date that the CONSTRUCTION MANAGER directs that the OWNER place the order for the described materials, (c) the location to which the materials are to be delivered, and (d) any other particular details of the order which the CONSTRUCTION MANAGER requests that the OWNER include in the Purchase Order to the vendor.
- (iv) The OWNER may, but is not required to, provide the CONSTRUCTION MANAGER with the proposed Purchase Order for the materials. In that case, the CONSTRUCTION MANAGER shall review the Purchase Order for compliance with the Construction Documents, including, without limitation, the plans, specifications, and Construction Schedule. Within the earlier of: five (5) calendar days from the receipt of the proposed Purchase Order or the day prior to the date provided by the CONSTRUCTION MANAGER pursuant to Paragraph 15.11.1(ii)(b) above, the CONSTRUCTION MANAGER shall provide the OWNER with written approval of the Purchase Order or shall provide written revisions to the Purchase Order, in order that the materials and the delivery thereof shall comply with the Construction Documents, including, without limitation, the plans, specifications and Construction Schedule.
- (v) The OWNER shall thereafter issue a Purchase Order for the materials with the vendor.
- (vi) The OWNER shall take title to those materials directly from the vendor and shall bear the risk of loss or damage to the materials which are delivered by the vendor through the time that the materials are delivered to the location designated by the CONSTRUCTION MANAGER. After the materials are delivered to the location designated by the CONSTRUCTION MANAGER, the CONSTRUCTION MANAGER shall have full responsibility for their

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storage, protection, risk-of-loss and installation pursuant to the Construction Documents, including, without limitation, the plans, specifications and Construction Schedule.

- (vii) The vendor shall invoice the OWNER directly for the materials purchased from the vendor. The OWNER shall pay the invoices for the materials directly, presenting its sales tax exemption certificate to each vendor at the time of payment.

With respect to the materials specifically designated by this section, the CONSTRUCTION MANAGER shall be relieved only of its responsibilities to place the order for the subject materials, to pay for the materials, and to ensure the materials against loss through the date that they are delivered to the location designated by the CONSTRUCTION MANAGER, otherwise, nothing herein shall revise or modify the CONSTRUCTION MANAGER's responsibilities set forth in this Agreement, including, without limitation, the responsibility to schedule the timely ordering and delivery of the materials purchased under this Paragraph 15.11.1, the management of the materials once delivered or the incorporation of the materials into the Work, as provided in the Construction Documents, including, without limitation, the plans, specifications and Construction Schedule.

The cost of any materials purchased through the sales tax recovery program shall be deducted from the contract amount. The OWNER and CONSTRUCTION MANAGER shall execute a written change order described in this Agreement, and approved in accordance with the OWNER's policy and the Change Order shall become a part of the Contract Documents as provided in this Agreement. The CONSTRUCTION MANAGER's fee will be calculated on the basis that the CONSTRUCTION MANAGER, rather than the OWNER, procured the materials. Therefore, for purpose of calculating the fee, the total of subcontractor and supplier costs will include payments made by the OWNER under this program. The calculation of the fee in this manner shall provide, among other things, specific supplemental consideration for the provisions of this Paragraph 15.11.1.

#### **15.12 Compensation of CONSTRUCTION MANAGER's Subcontractors and Suppliers.**

Upon receipt of payment from the OWNER, the CONSTRUCTION MANAGER shall pay each of its subcontractors and suppliers out of the amount received by the CONSTRUCTION MANAGER on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to the CONSTRUCTION MANAGER on account of such entity's portion of the Work. The OWNER shall have no obligation to pay, and shall not be responsible for payments to, the CONSTRUCTION MANAGER's subcontractors or suppliers. However, the OWNER reserves the right, but has no duty, to make payment jointly to the CONSTRUCTION MANAGER and to any of its subcontractors or suppliers in the event the OWNER becomes aware that the CONSTRUCTION MANAGER fails to pay or unreasonably withholds payment from one or more of those entities. Such joint check procedure, if employed by the OWNER, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the OWNER to repeat the procedure in the future.

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- 15.13 **Final Payment.** Prior to being entitled to receive final payment, and as a condition precedent thereto, the CONSTRUCTION MANAGER must achieve Final Completion of the Work and provide documents needed for final payment. The OWNER shall, subject to its rights set forth above in this Article, make final payment of all sums due the CONSTRUCTION MANAGER within fourteen (14) calendar days of a Professional's execution of a final approval for payment.

## **ARTICLE 16**

### **SCHEDULE REQUIREMENTS**

- 16.1 **Construction Schedule.** The Construction Schedule for the project shall include all pertinent dates and periods for timely completion of the Work.
- 16.1.1 Unless otherwise directed and approved by the OWNER, the CONSTRUCTION MANAGER shall prepare the Construction Schedule as a critical path schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-site requirements and tasks, so that the Work can be completed in a timely and orderly manner consistent with the required dates of Substantial Completion and Final Completion.
- 16.1.2 Any Construction Schedule shall include (i) the required Commencement Date, the required dates of Substantial Completion and Final Completion; (ii) any guideline and milestone dates required by the OWNER; (iii) any applicable subcontractor and supplier subschedules; (iv) a submittal schedule which allows sufficient time for review of documents and submittals; (v) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; and (vi) required decision dates.
- 16.1.3 By reviewing the Construction Schedule, the OWNER and Professional do not assume any of the CONSTRUCTION MANAGER's responsibility (i) that the Construction Schedule be coordinated or complete; or (ii) for timely and orderly completion by the required dates of Substantial Completion, Final Completion and any milestone dates required by the OWNER.
- 16.1.4 The CONSTRUCTION MANAGER shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. The CONSTRUCTION MANAGER shall discuss the status of the Work weekly with the designated Professional, so that proper overall management may be provided.
- 16.1.5 The CONSTRUCTION MANAGER shall periodically and in all instances when the CONSTRUCTION MANAGER anticipates that performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare a revised Construction Schedule and show actual progress of the Work through the revision date, projected completion of each remaining activity, activities modified since previous submittal, major changes in scope, and other identifiable changes. The updated Construction Schedule shall be accompanied by a narrative report which (i) states and explains any modifications of the critical path schedule,

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including any changes in logic; (ii) defines problem areas and lists areas of anticipated delays; (iii) explains the anticipated impact the problems and delays will have on the schedule and scheduled activities; (iv) reports corrective action taken or proposed; and (v) states how problems anticipated by projections shown on the schedule will be resolved to avoid delay in delivering the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the OWNER, if any.

- 16.1.6 The Contractor's initial Construction Schedule, developed during the Preconstruction Phase, must be attached as Exhibit "2" to **Appendix "I"**. In the event that the attached Construction Schedule does not strictly comply with this Paragraph, the OWNER does not waive, and specifically reserves, its right to require the CONSTRUCTION MANAGER's strict compliance with this Paragraph.
- 16.1.7 The receipt of the required updated Construction Schedule is a condition precedent to payment upon any application for payment. In addition, the CONSTRUCTION MANAGER agrees to provide an updated Construction Schedule which strictly complies with this Paragraph on or before ten (10) days after the OWNER's written request. Any submissions of the Construction Schedule hereunder must be in hard copy and electronic data file format, either in its native data format, or converted to a format requested by the OWNER.
- 16.1.8 In the event any updated Construction Schedule indicates any delays to the required Milestones or Completion Date, the CONSTRUCTION MANAGER shall propose an affirmative plan to recover from any delay to achieve the Milestones and Completion Date, including overtime and additional labor, if necessary. In no event shall any updated Construction Schedule or plan for recovery hereunder constitute notice, demand, or acceptance of an adjustment in the Contract Time, Contract Sum, any Milestone Date, or the Completion Date unless any such adjustment is agreed to by the OWNER and authorized pursuant to a Change Order as provided in the Agreement.
- 16.1.9 The OWNER may, but is not required to, review any Construction Schedule for, among other things, whether the schedule describes in a manner satisfactory to the OWNER, a reasonable and realistic progress of the Work that achieves the required Milestones and Completion Date. The OWNER may reject the Construction Schedule if the Construction Schedule fails to describe in a manner satisfactory to the OWNER, a reasonable and realistic progress of the Work that achieves the required Milestones and Completion Date, or, if the Construction Schedule indicates any delays to the required Milestones or Completion Date, whether the CONSTRUCTION MANAGER has provided a plan for recovery which describes in a manner satisfactory to the OWNER, a reasonable and realistic recovery that achieves the required Milestones and Completion Date. If the Construction Schedule is not accepted by the OWNER, the CONSTRUCTION MANAGER shall promptly revise the Construction Schedule in accordance with the reasonable recommendations of the OWNER and re-submit a revised updated Construction Schedule to the OWNER.

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- 16.1.10 The CONSTRUCTION MANAGER shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the OWNER of any proposed change in the Construction Schedule or of any delays or potential delays in the Construction Schedule.
- 16.1.11 The CONSTRUCTION MANAGER shall engage such personnel and staff as are required to fulfill its requirements under this Section. At the very least, the CONSTRUCTION MANAGER shall staff the Project with one (1) scheduling manager who shall have, as his or her responsibility for the Project, the fulfillment of the CONSTRUCTION MANAGER's requirements hereunder. The manager shall be assigned to the Project for such hours per week as are required to achieve the CONSTRUCTION MANAGER's responsibilities hereunder and consistent with the conditions of the Project.
- 16.1.12 CONSTRUCTION MANAGER agrees to perform the Work in the manner, sequence and timing necessary to fully comply with the Construction Schedule or any updates thereof. CONSTRUCTION MANAGER will perform the Work diligently, expeditiously and with adequate resources to complete all the Work by the date determined in the Construction Schedule.
- 16.1.13 TIME IS OF THE ESSENCE WITH RESPECT TO EACH TERM OF THE CONSTRUCTION MANAGER'S PERFORMANCE OF THIS AGREEMENT. WITHOUT LIMITATION, ACHIEVEMENT OF EACH MILESTONE IN THE CONSTRUCTION SCHEDULE AND SUBSTANTIAL COMPLETION OF THE CONSTRUCTION OF THE WORK BY THE SUBSTANTIAL COMPLETION DATE, THE CONSTRUCTION MANAGER'S PERFORMANCE OF THE AGREEMENT PURSUANT TO THE CONSTRUCTION SCHEDULE, INCLUDING WITHOUT LIMITATION, ACHIEVEMENT OF EACH MILESTONE IN THE CONSTRUCTION SCHEDULE AND SUBSTANTIAL COMPLETION OF THE CONSTRUCTION OF THE WORK BY THE COMPLETION DATE IS A CRITICAL AND MATERIAL REQUIREMENT OF THE CONSTRUCTION MANAGER'S PERFORMANCE OF THE WORK. THE CONSTRUCTION MANAGER ACKNOWLEDGES THAT THE ACHIEVEMENT OF SUBSTANTIAL COMPLETION OF THE WORK BY THE COMPLETION DATE IS A CRITICAL AND MATERIAL REQUIREMENT OF THE CONSTRUCTION MANAGER'S PERFORMANCE OF THE WORK, AGREES THAT THE WORK CAN BE PERFORMED BY THE COMPLETION DATE AND OTHERWISE AGREES TO USE ITS BEST EFFORTS TO PERFORM THE WORK TO ACHIEVE THE SUBSTANTIAL COMPLETION BY THE COMPLETION DATE.**

## **16.2 Delay in Performance.**

- 16.2.1 The CONSTRUCTION MANAGER expressly agrees to complete the work within the time specified. Upon request and approval as provided for in the Contract Documents, OWNER may grant an extension of the allowable Contract



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Time when Work on the critical path is delayed by factors or impacts determined to be beyond the CONSTRUCTION MANAGER's control which could not have been reasonably anticipated or contemplated at the time bids for the Work were received. Extension of the Contract Time will not be granted for impacts or delays due to fault or negligence of the CONSTRUCTION MANAGER, or for reasonable anticipated adverse weather conditions. No claim for an extension of time for delays shall be considered unless notice is provided to the OWNER in writing within five (5) business days after commencement of each such occurrence stating the probable duration of the delay and unless the CONSTRUCTION MANAGER establishes by critical path method (CPM) analysis that the impact affects the critical path of the project and delays the planned Substantial Completion date of the Work.

- 16.2.2 The extension of time provided for in Paragraph 16.2.1 shall be the CONSTRUCTION MANAGER's sole remedy for any delay. The OWNER shall not be obligated or liable to the CONSTRUCTION MANAGER for, and the CONSTRUCTION MANAGER expressly waives any claims against the OWNER on account of, any damages, costs or expenses of any nature whatsoever which the CONSTRUCTION MANAGER, its subcontractors of any tier or any other person may incur as a result of any delays, interference, suspensions, rescheduling, changes in sequence, congestion, disruptions or the like, it being understood and agreed that the CONSTRUCTION MANAGER's sole and exclusive remedy in such event shall be an extension of the schedule as provided for above. Without limitation, the CONSTRUCTION MANAGER waives claims relating to damages, delay damages or time-related costs or damages, including, without limitation: (1) profit on the additional costs beyond those as allowed elsewhere in the documents; (2) loss of anticipated profit; (3) indirect expenses; (4) impact costs; (5) loss of productivity; (6) inefficiency costs; (7) home-office overhead; (8) consequential damages, including but not limited to, loss of bonding capacity, loss of bidding opportunities, and insolvency; and (9) legal fees, claims preparation, expenses, or costs of dispute resolution. However, this provision shall not preclude the recovery of damages by the CONSTRUCTION MANAGER for hindrances or delays due solely to fraud, bad faith or active interference on the part of the OWNER or the OWNER's Professional(s).
- 16.2.3 Claims relating to time shall be made in accordance with the applicable provisions of Chapter 3, Article 9.
- 16.2.4 In the event the CONSTRUCTION MANAGER is delayed through fraud, bad faith, or active interference of the OWNER or OWNER's Professional(s), or is delayed as a result of an OWNER's requested Change Order that impacts the critical path, then the CONSTRUCTION MANAGER shall be entitled to compensation in the same manner as set forth in Article 4 of Chapter 1. Additionally, in the event the CONSTRUCTION MANAGER's delay is deemed compensable by a court of competent jurisdiction, then the CONSTRUCTION MANAGER's compensation shall be in accordance of the procedures set forth in Article 4 of Chapter 1.



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- 16.3 **Modifications to Time for Performance.** The CONSTRUCTION MANAGER shall determine and promptly notify the OWNER and the Professional(s) in writing when it believes adjustments to the required dates of Substantial Completion or Final Completion, or other milestone dates required by the OWNER, if any, are necessary, but no such adjustments shall be effective unless approved in writing by the OWNER and Professional(s).
- 16.4 **Early Completion.** The CONSTRUCTION MANAGER may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the CONSTRUCTION MANAGER's sole convenience and shall not create any additional CONSTRUCTION MANAGER's rights or OWNER obligations under this Agreement for Construction Management, nor shall it change the required dates of Substantial Completion or Final Completion. The OWNER shall not pay the CONSTRUCTION MANAGER any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates nor will the OWNER owe the CONSTRUCTION MANAGER any compensation should the OWNER cause the CONSTRUCTION MANAGER not to achieve Substantial Completion earlier than the required date of Substantial Completion or Final Completion earlier than the required date of Final Completion.
- 16.5 **Modification Substantial Completion or Final Completion Dates.** The CONSTRUCTION MANAGER may propose modifications to the required dates of Substantial Completion or Final Completion. The OWNER has the discretion to accept or reject such proposals. Any modification to these dates must be formalized through an authorized and accepted change order, explicitly stating the revised date(s). The change order must also specify that all references in this Agreement to the dates of Substantial Completion or Final Completion shall refer to the newly established dates. Consequently, all rights and obligations, including any liability of the CONSTRUCTION MANAGER for liquidated damages, will be based on the modified date(s).
- 16.6 **Document Submission for Review.** The CONSTRUCTION MANAGER shall provide documents to the OWNER and Professional(s) for review in accordance with the construction schedule detailed in **Appendix "I"**. Submissions must allow sufficient lead time to provide the OWNER and Professional(s) with a reasonable opportunity review, ensuring that all schedule requirements are met.

## **ARTICLE 17**

### **LIQUIDATED DAMAGES**

- 17.1 **Time of the Essence.** The parties hereto mutually understand and agree that time is of the essence in the performance of this Agreement for Construction Management and that the OWNER will incur damages if the Work is not completed on time. The CONSTRUCTION MANAGER shall at all times carry out its duties and responsibilities as expeditiously as possible and shall perform and complete its services so that (i) the Work progresses in accordance with the Construction Schedule; (ii) the Work is substantially completed by the required date of Substantial Completion; and (iii) the Work is finally complete by the date of Final Completion.

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- 17.2 **Failure to Timely Achieve Completion.** The parties acknowledge that the OWNER will incur significant monetary and other damages if the CONSTRUCTION MANAGER fails to complete the work on time. If the CONSTRUCTION MANAGER, due to its own fault or neglect, fails to achieve Substantial Completion by the specified date in this Agreement, the CONSTRUCTION MANAGER shall pay the OWNER liquidated damages at the rate specified in Chapter 1 for each day of delay until Substantial Completion is achieved or the CONSTRUCTION MANAGER is terminated for default, whichever occurs first. If the CONSTRUCTION MANAGER is terminated for default, the OWNER reserves the right to recover damages separately for delays or impacts attributable to the CONSTRUCTION MANAGER's performance prior to termination. Similarly, if the CONSTRUCTION MANAGER fails to achieve Final Completion by the required date, liquidated damages, as outlined in Chapter 1, shall accrue for each day of unexcused delay.
- 17.3 **Excusable Delay.** If the CONSTRUCTION MANAGER is delayed in the progress or performance of the Work due to any of the following circumstances, such delays shall be considered an "excusable delay" and will entitle the CONSTRUCTION MANAGER to an extension of the Construction Schedule equal to the length of such delay provided: (i) such delay is not in any way caused by default or collusion on the part of the CONSTRUCTION MANAGER or by any cause which the CONSTRUCTION MANAGER could reasonably control or circumvent; (ii) the CONSTRUCTION MANAGER would have otherwise been able to timely perform all of its obligations under this Agreement for Construction Management but for such delay; and (iii) immediately but not later than seven (7) calendar days after the beginning of any such delay or after CONSTRUCTION MANAGER knows of the delay, the CONSTRUCTION MANAGER gives notice of its delay claim to the OWNER. Excusable delays include: (i) acts or omissions by the OWNER or Professional(s); (ii) changes ordered by the OWNER in the scope of Work; (iii) fire; (iv) unusual delays in transportation; (v) adverse unusual weather conditions not reasonably anticipated by the CONSTRUCTION MANAGER and material or labor shortages resulting therefrom; (vi) unavoidable casualties (including terrorism or acts of God); (vii) causes beyond the CONSTRUCTION MANAGER 's control which the OWNER agrees in writing are justifiable; or (viii) any other cause which the OWNER reasonably determines may justify the delay.
- 17.3.1. **Concurrent delays.** If delays are caused by a combination of factors, including both the CONSTRUCTION MANAGER's own actions or inactions and the aforementioned excusable delays, such delays are considered "concurrent delays." Concurrent delays are excusable but not compensable. This means that while the CONSTRUCTION MANAGER is entitled to an extension of time for these delays, they are not entitled to additional compensation for any extra costs resulting from the concurrent delays.
- 17.4 **OWNER's Right to Withhold Payment.** The OWNER may withhold payment to the CONSTRUCTION MANAGER if it reasonably believes that (i) Substantial Completion will be inexcusably delayed; or (ii) the CONSTRUCTION MANAGER will fail to achieve Final Completion by the date of Final Completion. The OWNER shall be entitled, but not required, to withhold an amount equal to the daily rate of liquidated damages specified in this Agreement for each calendar day of unexcused delay from any amounts otherwise due the CONSTRUCTION MANAGER.

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17.4.1 Release of Withheld Funds. If the CONSTRUCTION MANAGER overcomes the delay and timely achieves Substantial Completion or Final Completion, or any part thereof, for which the OWNER had withheld payment, the OWNER shall promptly release to the CONSTRUCTION MANAGER the funds that were withheld but no longer applicable as liquidated damages.

17.4.2 Delay due to Labor Disputes. Delay caused by labor disputes, picketing, employee boycotts, or the like which directly or indirectly involves employees of the CONSTRUCTION MANAGER, its subcontractors or suppliers are not the responsibility of the OWNER. Such delays will only be considered for time extensions if agreed in writing by the OWNER at the time such events arise.

## **ARTICLE 18**

### **CONCEALED AND UNFORESEEN CONDITIONS**

18.1 **Notification Regarding Unusual Conditions.** If (i) the CONSTRUCTION MANAGER encounters concealed and unforeseen conditions of an unusual nature which affect the performance of the Work; or (ii) the conditions vary from those indicated by the Construction Documents; and (iii) such conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided by the CONSTRUCTION MANAGER, the CONSTRUCTION MANAGER shall promptly, but in no event later than three (3) calendar days after first observance of the conditions, or within three (3) calendar days of the CONSTRUCTION MANAGER being notified by a subcontractor of the condition, notify the appropriate Professional(s) and the OWNER before conditions are disturbed and give the Professional(s) or the OWNER opportunity to observe the condition in its undisturbed state.

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

18.1.2 All adjustments in compensation or extensions of time shall be by change order. From the date of observation of the changed conditions, the CONSTRUCTION MANAGER shall have (21) twenty-one days to make a request for a change order.

18.1.3 The CONSTRUCTION MANAGER's failure to notify the Professional(s) and OWNER as provided in this Article shall constitute a waiver of any claim arising out of or relating to such concealed or unknown condition.

## **ARTICLE 19**

### **CONSTRUCTION MANAGER'S RECORDS**

19.1 **Preparation of Records.** The CONSTRUCTION MANAGER shall, concurrently with performance of its services, prepare substantiating records regarding services rendered and goods furnished.

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19.2 **Retention of Records.** The CONSTRUCTION MANAGER shall retain in its records copies of all (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) change order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including by way of example overhead allocations, payroll records, time sheets, rental receipts, fixed asset records); and (xii) other documents such as plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, accounting records, documents reflecting the unit price of construction and other writings or things which document the Project, its design, its cost, and its construction.

19.2.1 The CONSTRUCTION MANAGER shall maintain substantiating records for five (5) years after the date of Final Completion or for any longer period of time as may be required by law or good construction practices. If the CONSTRUCTION MANAGER receives notification of a dispute or the commencement of litigation regarding the Project within this five-year period, the CONSTRUCTION MANAGER shall continue to maintain all Project records until final resolution of the dispute or litigation.

19.2.2 The CONSTRUCTION MANAGER shall, upon fourteen (14) calendar days' request from the OWNER, for good cause secure from its subcontractors and suppliers copies of (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) Change Order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including overhead allocations), and (xii) other documents generated with respect to the Project.

19.3 **Access to Records.** The CONSTRUCTION MANAGER, upon the OWNER's request, shall provide access to its Project records during normal business hours to the OWNER, its authorized representative, or any state, federal, or other regulatory authority. These parties shall have the right to audit, inspect, examine, review, and copy the CONSTRUCTION MANAGER's Project records. Such access shall be provided at the requesting party's reasonable expense and within a suitable workspace at the CONSTRUCTION MANAGER's facilities. If the CONSTRUCTION MANAGER fails to provide the requested documentation or records, including those from its subcontractors and suppliers, the OWNER reserves the right to disallow and withhold payment for any costs that cannot be substantiated with appropriate records. This means that any costs related to the incomplete documentation will not be reimbursed under this Agreement, ensuring that only properly documented expenses are considered for payment.

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#### 19.4 Public Records / Copyrights.

- A. CONSTRUCTION MANAGER acknowledges OWNER's obligations under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, to release public records to members of the public upon request. CONSTRUCTION MANAGER acknowledges that OWNER is required to comply with Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and this statute controls over the terms of this Agreement. Upon OWNER's request, CONSTRUCTION MANAGER shall provide OWNER with all requested public records in CONSTRUCTION MANAGER's possession, or shall allow OWNER to inspect or copy the requested records within a reasonable time and at a cost that does not exceed costs as provided under Chapter 119, Florida Statutes.
- B. All electronic files, audio and/or video recordings, and all papers pertaining to any activity performed by the CONSTRUCTION MANAGER for or on behalf of the County shall be the property of the County and will be turned over to the County upon request. In accordance with Chapter 119, Florida Statutes, each file and all papers pertaining to any activities performed for or on behalf of the County are public records available for inspection by any person even if the file or paper resides in the contractor's office or facility. The CONSTRUCTION MANAGER shall maintain the files and papers for not less than three (3) complete calendar years after the project has been completed or terminated, or in accordance with any grant requirement, whichever is longer. Prior to the close out of the contract, the CONSTRUCTION MANAGER shall appoint a records custodian to handle any records request and provide the custodian's name and telephone numbers to the County.
- C. Any copyright derived from this agreement shall belong to the author. The author and the CONSTRUCTION MANAGER shall expressly assign to the County nonexclusive, royalty free rights to use any and all information provided by the CONSTRUCTION MANAGER in any deliverable and/or report for the County's use which may include publishing in County documents and distribution as the County deems to be in the County's best interests. If anything included in any deliverable limits the rights of the County to use the information, the deliverable shall be considered defective and not acceptable, and the contractor will not be eligible for any compensation.
- D. Pursuant to Section 119.0701, Florida Statutes, the CONSTRUCTION MANAGER shall comply with the Florida Public Records' laws, and shall:
  - (i) Keep and maintain public records that ordinarily and necessarily would be required by the OWNER in order to perform the services identified herein.
  - (ii) Provide the public with access to public records on the same terms and conditions that the OWNER would provide the records and at a cost that does not exceed the cost provided for by law.



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- (iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
  - (iv) Meet all requirements for retaining public records and transfer, at no cost, to the OWNER all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the OWNER in a format that is compatible with the information technology systems of the OWNER.
- E. Failure to comply with this Section will be deemed a material breach of this Agreement for which OWNER may terminate this Agreement immediately upon written notice to CONSTRUCTION MANAGER. CONSTRUCTION MANAGER may also be subject to statutory penalties as set forth in Section 119.10, Florida Statutes.
- F. **IF CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONSTRUCTION MANAGER MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS, THE SEMINOLE COUNTY PURCHASING AND CONTRACTS MANAGER, AT 407-665-7116, [PURCH@SEMINOLECOUNTYFL.GOV](mailto:PURCH@SEMINOLECOUNTYFL.GOV), PURCHASING AND CONTRACTS DIVISION, 1301 E. SECOND STREET, SANFORD, FL 32771.**

## **ARTICLE 20**

### **PROPRIETARY DOCUMENTS AND CONFIDENTIALITY**

- 20.1 **Nature and Use of Information.** All information, documents, and electronic media furnished by the OWNER to the CONSTRUCTION MANAGER (i) belong to the OWNER; (ii) are proprietary and confidential; (iii) are furnished solely for use on the OWNER's Project; (iv) shall be kept confidential by the CONSTRUCTION MANAGER except for use for this Project; and (v) shall not be used by the CONSTRUCTION MANAGER on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the OWNER hereunder is specifically authorized in writing by the OWNER in advance. The OWNER hereby grants to the CONSTRUCTION MANAGER a limited license to use and reproduce applicable portions of the Construction Documents necessary for execution of the Work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the documents.
- 20.2 **Disclosure of Information.** The CONSTRUCTION MANAGER shall not disclose any information it receives from the OWNER to any other person or entity except to the extent



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necessary to allow it to perform its duties under this Agreement for Construction Management.

- 20.3 **Instructions to Employees.** Because it is difficult to separate proprietary and confidential information from that which is not, the CONSTRUCTION MANAGER shall instruct its employees and agents to regard all information which is not in the public domain as information which is proprietary and confidential, subject to uses permitted hereunder.
- 20.4 **Non-Publication.** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the OWNER's common law copyrights or other reserved rights.

## ARTICLE 21 GENERAL INSURANCE REQUIREMENTS

- 21.1 CONSTRUCTION MANAGER, at its sole expense shall maintain the insurance under this Agreement at all times throughout the duration of this Agreement and have this insurance approved by OWNER's Risk Manager with the Resource Management Department. CONSTRUCTION MANAGER shall immediately provided written notice to the OWNER upon receipt of cancellation of an insurance policy or a decision to terminate an insurance policy.
- 21.1.1. CONSTRUCTION MANAGER shall require and ensure that each of its sub-vendors or subcontractors providing services under this Agreement, if any, procures and maintains adequate insurance, until the completion of their respective services, to protect the interests of OWNER and CONSTRUCTION MANAGER. At a minimum, this will include Workers' Compensation, Commercial General Liability, and Business Auto Liability to the limits required of CONSTRUCTION MANAGER in Appendix D and E. Sub-vendors or subcontractors providing professional services under this Agreement, if any, shall also be required to carry adequate Professional Liability insurance.
- 21.1.2. Neither approval by OWNER nor failure by OWNER to disapprove the insurance furnished by CONSTRUCTION MANAGER will relieve CONSTRUCTION MANAGER of its full responsibility for liability, damages, and accidents.
- 21.1.3. Neither OWNER's review of the coverage afforded by or the provisions of the policies of insurance purchased and maintained by CONSTRUCTION MANAGER in accordance with this Section, nor OWNER's decisions to raise or not to raise any objections about either or both, in any way relieves or decreases the liability of CONSTRUCTION MANAGER.
- 21.1.4. If OWNER elects to raise an objection to the coverage afforded by or the provisions of the insurance furnished, then CONSTRUCTION MANAGER shall promptly provide to OWNER such additional information as OWNER may reasonably request, and

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CONSTRUCTION MANAGER shall remedy any deficiencies in the policies of insurance within ten (10) days.

- 21.1.5. OWNER's authority to object to insurance does not in any way whatsoever give rise to any duty on the part of OWNER to exercise this authority for the benefit of CONSTRUCTION MANAGER or any other party.

## 21.2 General Requirements.

- 21.2.1. Before commencing Work, CONSTRUCTION MANAGER shall furnish OWNER with a current Certificate of Insurance on a current ACORD Form signed by an authorized representative of the insurer evidencing the insurance required by this Section and the applicable Appendix, either Appendix D (Preconstruction Insurance Requirements), or Appendix E (Construction Insurance Requirements) and including the following as Certificate Holder:

Seminole County, Florida  
Seminole County Services Building  
1101 E. First Street  
Sanford, Florida 32771

The Certificate of Insurance must evidence and all policies must be endorsed to provide the OWNER with not less than thirty (30) days (10 days for non-payment) written notice prior to the cancellation or non-renewal of coverage directly from the Insurer and without additional action of the Insured or Broker. Until such time as the insurance is no longer required to be maintained, CONSTRUCTION MANAGER shall provide OWNER with a renewal or replacement Certificate of Insurance within ten (10) days after the expiration or replacement of the insurance for which a previous certificate has been provided.

- 21.2.2. In addition to providing the Certificate of Insurance, upon request of the OWNER, CONSTRUCTION MANAGER shall provide OWNER with a certified copy of each of the policies of insurance providing the coverage required by this Agreement within thirty (30) days after receipt of the request. Certified copies of policies may only be provided by the Insurer, not the agent or broker.
- 21.2.3. Deductible and self-insured retention amounts must be declared to and approved by OWNER and must be reduced or eliminated upon written request from OWNER. The risk of loss within the deductible amount, if any, in the insurance purchased and maintained pursuant to this document must be borne by CONSTRUCTION MANAGER.
- 21.2.4. The insurer's cost of defense, including attorney's fees and attorney's fees on appeal, must not be included within the policy limits, but must remain the responsibility of the insurer for all General Liability, Auto Liability, Employers' Liability, and Umbrella Liability coverages.

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- 21.2.5. In the event of loss covered by Property Insurance, the proceeds of a claim must be paid to OWNER and OWNER shall apportion the proceeds between OWNER and CONSTRUCTION MANAGER as their interests may appear.
- 21.2.6. Additional Insured: Seminole County, Florida, its commissioners, officials, officers, and employees must be included as Additional Insureds under General Liability, Umbrella Liability, Business Auto Liability, and Pollution Liability. Such policies shall provide exception to any “Insured versus Insured” exclusion for claims brought by or on behalf of Additional Insureds.
- 21.2.7. Coverage: The insurance provided by CONSTRUCTION MANAGER pursuant to this Agreement must apply on a primary and non-contributory basis and any other insurance or self-insurance maintained by the Seminole County Board of County Commissioners or OWNER’s officials, officers, or employees must be in excess of and not contributing with the insurance provided by CONSTRUCTION MANAGER.
- 21.2.8. Waiver of Subrogation: All policies must be endorsed to provide a Waiver of Subrogation clause in favor of the Seminole County, Florida and its respective officials, officers, and employees. This Waiver of Subrogation requirement does not apply to any policy that includes a condition that specifically prohibits such an endorsement or voids coverage should the Named Insured enter into such an agreement on a pre-loss basis.
- 21.2.9. Provision: Commercial General Liability and Umbrella Liability Policies required by this Agreement must be provided on an occurrence rather than a claims-made basis.
- 21.3 Insurance Company Requirements. Insurance companies providing the insurance must meet the following requirements:
- (i) Such companies must be either: (a) authorized by maintaining Certificates of Authority or Letters of Eligibility issued to the companies by the Florida Office of Insurance Regulation to conduct business in the State of Florida, or (b) with respect only to the coverage required by this agreement for Workers' Compensation/Employers' Liability, authorized as a group self-insurer by Section 624.4621, Florida Statutes (2023), as this statute may be amended from time to time.
  - (ii) In addition, such companies other than those authorized by Section 624.4621, Florida Statutes (2023), as this statute may be amended from time to time, must have and maintain a Best’s Rating of “A-“ or better and a Financial Size Category of “VII” or better according to A.M. Best Company.
  - (iii) If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company, (A) loses its Certificate of Authority or Letter of Eligibility, (B) no longer complies with Section 624.4621, Florida Statutes (2023), as this statute may be amended from time to time, or (C) fails to maintain the Best’s Rating and Financial Size Category, then CONSTRUCTION MANAGER shall immediately

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notify OWNER as soon as CONSTRUCTION MANAGER has knowledge of any such circumstance and, upon request of OWNER, immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as CONSTRUCTION MANAGER has replaced the unacceptable insurer with an insurer acceptable to the OWNER, CONSTRUCTION MANAGER will be deemed to be in default of this Agreement.

- 21.4 Specifications. Without limiting any of the other obligations or liabilities of CONSTRUCTION MANAGER, CONSTRUCTION MANAGER, at CONSTRUCTION MANAGER's sole expense, shall procure, maintain, and keep in force amounts and types of insurance conforming to the minimum requirements set forth in the applicable Appendix, either Appendix D (Preconstruction Insurance Requirements), or Appendix E (Construction Insurance Requirements). Except as otherwise specified in this Agreement, the insurance must become effective prior to the commencement of Work by CONSTRUCTION MANAGER and must be maintained in force until final completion or such other time as required by this Agreement.

The amounts and types of insurance must conform to the following minimum requirements:

**21.4.1. Worker's Compensation/Employer's Liability.**

- 21.4.1.1. CONSTRUCTION MANAGER's insurance must cover CONSTRUCTION MANAGER and its subcontractors of every tier for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation and Employers Liability Policy (NCCI Form WC 00 00 00 A), as filed for use in Florida by the National Council on Compensation Insurance. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the United States Longshoremen and Harbor Workers' Compensation Act, Federal Employers' Liability Act and any other applicable federal or state law.
- 21.4.1.2. Subject to the restrictions of coverage found in the standard Workers' Compensation and Employers Liability Policy, there must be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act, and if applicable, the United States Longshoremen's and Harbor Workers' Compensation Act or any other coverage customarily insured under Part One of the standard Workers' Compensation and Employers Liability Policy.
- 21.4.1.3. The minimum limits to be maintained by CONSTRUCTION MANAGER are as specified in the applicable Appendix, either Appendix D (Preconstruction Insurance Requirements), or Appendix E (Construction Insurance Requirements), depending on the phase of the Project.
- 21.4.1.4. If CONSTRUCTION MANAGER asserts an exemption to the provisions of Chapter 440, Florida Statutes, Workers' Compensation (2023), as this statute may be amended from time to time, CONSTRUCTION MANAGER shall

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provide notification to OWNER's Risk Manager with the Resource Management Department and shall complete the OWNER's Workers' Compensation Waiver Request. Approval of exemption is subject to OWNER's sole discretion. If approved, the named individuals listed in OWNER'S approved exemption will be the only individuals authorized to perform work under this Agreement.

- 21.4.1.5. Any vendor or contractor, including CONSTRUCTION MANAGER, using an employee leasing company must complete the OWNER'S Leased Employee Affidavit.

**21.4.2. Commercial General Liability.**

- 21.4.2.1. CONSTRUCTION MANAGER's insurance must cover CONSTRUCTION MANAGER for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, or equivalent acceptable to OWNER. Such coverage must not contain any endorsements excluding or limiting Products/Completed Operations, Contractual Liability, or Separation of Insureds. If CONSTRUCTION MANAGER's work, or work under its direction, control, or sub-contract, requires blasting, explosive conditions, or underground operations, the comprehensive general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of structures, or damage to underground property.
- 21.4.2.2. ISO Endorsement CG 20 10 or CG 20 26 and CG 20 37 or their equivalent must be used to provide such Additional Insured status.
- 21.4.2.3. The minimum limits to be maintained by CONSTRUCTION MANAGER are as specified in the applicable Appendix, either Appendix D (Preconstruction Insurance Requirements), or Appendix E (Construction Insurance Requirements), depending on the phase of the Project.

**21.4.3. Business Auto Liability.**

- 21.4.3.1. CONSTRUCTION MANAGER's insurance must cover CONSTRUCTION MANAGER for those sources of liability which would be covered by Section II of the latest edition of the standard Business Auto Policy (ISO Form CA 00 01), as filed for use in the State of Florida by the Insurance Services Office. Coverage must include owned, non-owned, and hired autos or any auto. In the event CONSTRUCTION MANAGER does not own automobiles, CONSTRUCTION MANAGER shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. If the contract involves operations governed by Sections 29 or 30 of the Motor Carrier Act of 1980, endorsement MCS-90 is required.

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21.4.3.2. If CONSTRUCTION MANAGER'S operations involve pollutants as defined in the ISO Form CA 00 01, Form CA9948, Pollution Liability – Broadened Coverage for Covered Autos, is required.

21.4.3.3. The minimum limits to be maintained by CONSTRUCTION MANAGER are as specified in the applicable Appendix, either Appendix D (Preconstruction Insurance Requirements), or Appendix E (Construction Insurance Requirements), depending on the phase of the Project.

**21.4.4. Excess/Umbrella Liability.**

21.4.4.1. Prior to the start of construction, CONSTRUCTION MANAGER shall evidence Excess/Umbrella Liability coverage. CONSTRUCTION MANAGER's insurance must follow form above the Commercial General Liability, Automobile Liability, and Employer's Liability policies.

21.4.4.2. The minimum limits to be maintained by CONSTRUCTION MANAGER are as specified in the applicable Appendix, either Appendix D (Preconstruction Insurance Requirements), or Appendix E (Construction Insurance Requirements), depending on the phase of the Project.

**21.4.5. Pollution Liability.**

21.4.5.1. Prior to the start of construction, CONSTRUCTION MANAGER shall evidence Pollution Liability coverage. CONSTRUCTION MANAGER's insurance must cover CONSTRUCTION MANAGER for all of the following: (i) bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death; (ii) Property damage including physical injury to or destruction of tangible property including the resulting loss of use of such property, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; (iii) Defense costs including costs, charges, and expenses incurred in the investigation, adjustment, or defense of claims for such compensatory damages.

21.4.5.2. If CONSTRUCTION MANAGER is operating a hazardous or non-hazardous treatment, storage, or disposal facility, coverage for losses that arise from the insured facility that is accepting the waste.

21.4.5.3. Coverage must apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in Bodily Injury or Property Damage.

21.4.5.4. The minimum limits to be maintained by CONSTRUCTION MANAGER are as specified in the applicable Appendix, either Appendix D (Preconstruction Insurance Requirements), or Appendix E (Construction Insurance Requirements), depending on the phase.



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21.4.6. **Professional Liability.** CONSTRUCTION MANAGER shall maintain an Errors & Omissions Liability Policy providing professional liability coverage for any damages by wrongful acts, errors, or omissions.

21.4.6.1. In the event that the professional liability insurance required by this contract is written on a claims-made basis, CONSTRUCTION MANAGER warrants that any retroactive date under the policy will precede the effective date of this Agreement and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this contract is completed.

21.4.6.2. If CONSTRUCTION MANAGER contends that any of the insurance it maintains pursuant to other sections of this clause satisfies this requirement (or otherwise insures the risks described in this section), then CONSTRUCTION MANAGER shall provide proof of such satisfactory coverage, subject to approval of OWNER.

21.4.6.3. The minimum limits to be maintained by CONSTRUCTION MANAGER are as specified in the applicable Appendix, either Appendix D (Preconstruction Insurance Requirements), or Appendix E (Construction Insurance Requirements), depending on the phase.

21.4.7. **Builder's Risk.**



21.4.7.1. Prior to the start of construction, the CONSTRUCTION MANAGER shall provide All Risk Coverage no more restrictive than that afforded by the latest editions of Insurance Services Office Forms CP 00 20 and CP 10 30.

21.4.7.2. Waiver of Occupancy Clause or Warranty: Policy must be specifically endorsed to eliminate any "Occupancy Clause" or similar warranty or representation that the building(s), addition(s), or structure(s) in the course of construction must not be occupied without specific endorsement of the policy. The policy must be endorsed to provide that Builder's Risk coverage will continue to apply until final acceptance of the building(s), addition(s), or structure(s) by the OWNER.

21.4.7.3. The policy must be written on a replacement cost/completed value basis in an amount at least equal to 100% of the projected completed value of the Work, as well as subsequent modifications of that sum due to Change Orders, including Soft Cost Coverage, Loss of Use/Delay in Start-up Costs, which must at a minimum include additional expenses for interest, legal, consulting, insurance, architectural and engineering, contractor's overhead and general Conditions, and equipment rental and must contain an agreed amount endorsement waiving any coinsurance penalty.

21.4.7.4. Such insurance must cover all property during construction and testing, materials while stored onsite and offsite and while in transit and must include

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the OWNER, CONSTRUCTION MANAGER, Consultants, Contractors, and Subcontractors to the Project as Named Insured's. No crane, boom, jig, or weight exclusion may apply.

21.4.7.5. Loss Payee: The Board of County Commissioners of Seminole County, Florida, must be included as loss payee.

21.4.7.6. The minimum limits to be maintained by CONSTRUCTION MANAGER are as specified in the applicable Appendix, either Appendix D (Preconstruction Insurance Requirements), or Appendix E (Construction Insurance Requirements), depending on the phase.

21.5 The maintenance of the insurance coverage set forth in this Section may not be construed as to limit or have the effect of limiting CONSTRUCTION MANAGER's liability under the provisions concerning indemnification or any other provision of this Agreement.

## **ARTICLE 22 GENERAL BOND REQUIREMENTS**

22.1 **General Bond Requirements.** In accordance with section 255.05, Florida Statutes, the CONSTRUCTION MANAGER shall furnish performance and payment bond(s), each in an amount not less than the Construction Price, inclusive of any modifications through change orders. Each bond shall:

22.1.1 Be issued by a surety authorized to conduct business in Florida and approved by the OWNER;



22.1.2 Be in a form that meets the standards established by the OWNER and includes all necessary statutory requirements;

22.1.3 Incorporate by reference all terms and conditions of this Agreement for Construction Management, ensuring full compliance with its provisions;

22.1.4 Be accompanied by a power of attorney certifying that the person(s) executing the bond have the authority to do so; and

22.1.5 Clearly state the names, addresses, and contact information of the CONSTRUCTION MANAGER, surety, and OWNER, as well as the contract and bond number and a detailed description of the Project.

22.2 **Delivery of Bonds.** The CONSTRUCTION MANAGER shall deliver any required bond(s), check(s) for all recording fees, and power(s) of attorney to the OWNER prior to commencement of the Work. All costs associated with procuring and recording the bonds shall be considered part of the general conditions cost. The OWNER shall not release any payments to the CONSTRUCTION MANAGER until all bond-related requirements are satisfied.

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## ARTICLE 23

### OWNER'S RIGHT TO STOP WORK OR RIGHT TO CARRY OUT WORK

- 23.1 **Cease and Desist Order.** If the CONSTRUCTION MANAGER fails or refuses to perform the Work or correct defective Work as required, or persistently fails to carry out the Work in accordance with this Agreement, the OWNER may issue a written notice, ordering the CONSTRUCTION MANAGER to cease and desist any portion of the Work until the issue is resolved to the OWNER's satisfaction. Upon receipt of such notice, the CONSTRUCTION MANAGER must immediately stop the specified Work and not resume until the OWNER provides authorization.
- 23.1.1 The CONSTRUCTION MANAGER shall not be entitled to an adjustment in the time for performance or the Construction Price under this clause since such stoppages are considered to be the fault of the CONSTRUCTION MANAGER.
- 23.1.2 The OWNER's right to stop Work does not impose any duty on the OWNER to exercise this right for the benefit of the CONSTRUCTION MANAGER or others.
- 23.1.3 If the OWNER issues a written cease and desist order and the CONSTRUCTION MANAGER fails, within seven (7) calendar days, to provide adequate assurance that the cause of the order will be resolved, the OWNER may proceed to carry out the Work in accordance with Paragraph 23.2, using its own forces, or those of another contractor, with the CONSTRUCTION MANAGER being responsible for the cost of performing such Work.
- 23.1.4 The rights detailed herein are additional to, and do not limit, any other rights or remedies the OWNER may have against the CONSTRUCTION MANAGER.
- 23.2 **Right to Carry Out Work.** If the CONSTRUCTION MANAGER defaults or neglects to perform the Work according to the Contract Documents and fails to commence and continue correction of such default or neglect within seven (7) days of receiving the OWNER's notice as set forth in Paragraph 23.1.3, the OWNER may issue a second written notice. The second notice shall require correction of the deficiencies within three (3) days of receipt. If the CONSTRUCTION MANAGER does not correct the deficiencies, the OWNER may, without prejudice to other remedies available to the OWNER, correct the deficiencies and issue a Change Order deducting the reasonable costs of corrections, including OWNER's expenses and compensation for additional services by the Professional, from the Contract Price. Such action by the OWNER and charges are subject to the Professional's prior approval. If payments due to the CONSTRUCTION MANAGER are insufficient to cover these costs, the CONSTRUCTION MANAGER must pay the difference to the OWNER.

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**ARTICLE 24 TERMINATION OR SUSPENSION OF  
AGREEMENT FOR CONSTRUCTION MANAGEMENT**

**24.1 Termination for Cause by OWNER.**

24.1.1 For purposes of this Agreement, “Termination for Cause” refers to the OWNER’s right to terminate this Agreement for Construction Management if the CONSTRUCTION MANAGER materially breaches the Agreement. As such, the CONSTRUCTION MANAGER materially breaches this Agreement by:

- (i) Failing or refusing to properly manage or perform the Project;
- (ii) Failing or refusing to supply sufficient skilled workers, proper materials, or maintain applicable schedules;
- (iii) Failing or refusing to make prompt payment to subcontractors or suppliers;
- (iv) Disregarding laws, ordinances, rules, regulations or orders of any authority or authority having jurisdiction over the Project;
- (v) Failing or refusing to substantially perform in accordance with this Agreement for Construction Management, as determined by the OWNER, or as otherwise defined herein; or
- (vi) Failing or refusing to substantially perform in accordance with any other agreement between the OWNER and CONSTRUCTION MANAGER.

24.1.2 Upon identifying a breach, the OWNER will issue a written notice specifying the nature of the default and requesting that the CONSTRUCTION MANAGER cure the default within seven (7) calendar days from the date of the notice. If the CONSTRUCTION MANAGER fails to initiate or diligently continue the cure, the OWNER may issue a subsequent written notice requiring the default be cured within three (3) calendar days. If the breach remains, the OWNER may notify the CONSTRUCTION MANAGER in writing of its intent to immediately terminate this Agreement, and the OWNER, without prejudice to any other rights or remedies, undertake the following actions:


- (i) Complete all or any part of the Work, including supplying workers, material and equipment which the OWNER deems expedient to complete the Work;
- (ii) Contract with others to complete all or any part of the Work, including supplying workers, material, and equipment which the OWNER deems expedient to complete the Work;
- (iii) Take such other action as is necessary to correct such failure;
- (iv) Take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the CONSTRUCTION MANAGER that were purchased for and intended to become a part of the

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Project. For leased equipment, the CONSTRUCTION MANAGER shall facilitate the continued use of the equipment or promptly secure a suitable substitute to prevent delays to the Project;

- (v) Directly pay the CONSTRUCTION MANAGER's subcontractors and suppliers compensation due to them from the CONSTRUCTION MANAGER;
- (vi) Finish the Work by whatever method the OWNER may deem expedient; and/or
- (vii) Require the CONSTRUCTION MANAGER to assign the CONSTRUCTION MANAGER's right, title, and interest in any or all of CONSTRUCTION MANAGER's subcontracts or orders to the OWNER.

24.1.3 If the OWNER takes possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the CONSTRUCTION MANAGER as a result of OWNER's decision to terminate for cause, the CONSTRUCTION MANAGER's will be fairly compensated either through purchase or rental at the election of the OWNER. Compensation, however, is subject to the OWNER's right to recover damages resulting from the termination.

24.1.4 If the OWNER terminates this Agreement for Construction Management for Cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause,  then in such event, said termination shall be deemed a termination for convenience.

24.2 **Termination Due to Unavailability of Funds.** When funds are not appropriated or otherwise made available to support continuation of performance under this Agreement for Construction Management, the CONSTRUCTION MANAGER will be promptly notified in writing and the Agreement shall be cancelled. The CONSTRUCTION MANAGER shall be reimbursed for the reasonable non-recurring costs incurred not amortized and for any fees earned on those costs. This includes prices of the goods or services delivered under this Agreement and reasonable documented demobilization costs.

24.3 **Termination or Suspension for Convenience.** The OWNER may at any time give written notice to the CONSTRUCTION MANAGER terminating this Agreement for Construction Management or suspending the Project, in whole or in part, for the OWNER's convenience and without cause ("Termination for Convenience"). If the OWNER suspends the Project for Convenience, the CONSTRUCTION MANAGER shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension. If the OWNER terminates for Cause, and it is subsequently determined that the grounds for the cause did not exist, the Termination for Cause shall be deemed a Termination for Convenience pursuant to this clause, effective from the original Termination for Cause notice date.

24.4 **CONSTRUCTION MANAGER's Compensation Upon Termination for Cause or Convenience.** If this Agreement for Construction Management is (i) terminated by the OWNER for Cause or Convenience, or (ii) suspended by the OWNER for more than three

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(3) months, the OWNER shall only pay the CONSTRUCTION MANAGER for work actually and satisfactorily performed prior to the effective termination date, the fee earned through termination as well as a portion of the fee earned through the date of termination.

24.4.1 Compensation shall be limited to reasonable costs incurred in performing the work up to the date of termination, excluding any overhead or profit associated with unperformed work or anticipated profit.

24.4.2 The CONSTRUCTION MANAGER shall also be reimbursed for reasonable costs incurred in settling and paying claims arising out of the termination of subcontracts or supplier orders, excluding amounts that are covered under other provisions of this Agreement. Reasonable costs for this purpose shall include:

- (i) Actual costs paid: the amounts actually paid to subcontractors or suppliers to settle claims, provided that these amounts are consistent with the original terms of the subcontracts or supplier orders;
- (ii) Verification of Claims: Costs will be considered reasonable only if they are substantiated with documentation, such as invoices, receipts, or payment records, demonstrating that the claimed amounts were necessary and directly related to the terminated portion of the Work;
- (iii) Mitigation of Cost: The CONSTRUCTION MANAGER must demonstrate that efforts were made where possible, such as negotiating lower settlement amounts or canceling orders without penalty;
- (iv) Exclusion of Profit on Settled Claims: The CONSTRUCTION MANAGER shall not include any overhead, profit, or markup on settled claims. Only the actual amounts paid to third parties to discharge the claims will be considered; and
- (v) Approval by OWNER: All claimed costs must be reviewed and approved by OWNER or an appointed representative. The OWNER reserves the right to audit or require additional justification for any costs deemed excessive or unrelated to the termination.

24.5 **CONSTRUCTION MANAGER's Compensation When OWNER Terminates for Cause.** If the OWNER terminates this Agreement for Construction Management for Cause, the CONSTRUCTION MANAGER shall be paid for all Work performed in compliance with the project specifications and accepted by the OWNER through the date of termination, less any costs, damages, or expenses incurred by the OWNER as a result of the CONSTRUCTION MANAGER's default, including applicable liquidated damages. No further payments shall be made until the OWNER determines all outstanding claims, costs, damages resulting from the termination, whether through settlement, litigation, or other resolution. Additionally, the CONSTRUCTION MANAGER shall reimburse the OWNER for any additional costs or expenses incurred as a result of the default.

24.6 **Limitation in Termination Compensation.** Regardless of the reason for termination, the total amount payable to the CONSTRUCTION MANAGER shall not exceed the adjusted



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Contract Construction Price, minus any payments already made and penalties or deductions incurred under this Agreement. Payments will not include any duplication of compensation.

- 24.7 **CONSTRUCTION MANAGER's Responsibility Upon Termination.** Irrespective of the reason for termination or the party terminating, if this Agreement for Construction Management is terminated, the CONSTRUCTION MANAGER shall, unless notified otherwise by the OWNER:

24.7.1 Immediately stop work to the extent requested and ensure the site and structures are made safe;

24.7.2 Terminate or assign outstanding orders and subcontracts to OWNER, if requested;

24.7.3 Settle any liabilities and claims arising from the termination of subcontracts and orders; and

24.7.4 Transfer title and deliver to the OWNER such completed or partially completed Work, and, if paid for by the OWNER, materials, equipment, parts, fixtures, information, and such contract rights as the CONSTRUCTION MANAGER has.

- 24.8 **Lack of Duty to Terminate.** The right of either party to terminate or suspend the Work, as provided herein, shall not impose an obligation on the terminating party to exercise such right for the benefit of the other party or any third parties. Neither the OWNER or the CONSTRUCTION MANAGER shall be required to terminate or suspend the Agreement solely for the benefit of the other party or to avoid potential claims or disputes arising from such termination or suspension. The decision to terminate or suspend the Agreement remains at the sole discretion of the party exercising such right.

- 24.9 **Limitation on Termination Claim.** If the CONSTRUCTION MANAGER does not submit a claim for termination compensation within one (1) year from the effective date of termination, the OWNER shall only be liable for payment for services actually performed and expenses actually incurred up to the termination date. Any claims submitted after this one-year period shall not be considered, and the OWNER shall have no further liability beyond what is due for work completed and expenses incurred before termination.

## **ARTICLE 25**

### **APPLICABLE LAW AND DISPUTE RESOLUTION**

- 25.1 **Applicable State Law.** This Agreement for Construction Management shall be deemed to be entered into in and shall be interpreted under the laws of the state of Florida.

- 25.2 **Court Actions.** Except as expressly prohibited by law:

25.2.1 All legal actions hereunder shall be conducted only in state court or federal court districts where the Project is located and having subject matter jurisdiction over the matter in controversy except that any final judgment may be enforced in other jurisdictions in any manner provided by law;

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- 25.2.2 The choice of jurisdiction and venue described in the preceding paragraph shall be mandatory and not permissive in nature, thereby precluding the possibility of litigation or trial in any jurisdiction or venue other than that specified herein;
- 25.2.3 The parties waive any right to assert the doctrine of *forum non conveniens* or to object to venue; and
- 25.2.4 The parties waive any right to a jury trial, and agree that all legal actions shall be tried, both as to factual and legal issues, only to the Court.
- 25.3 **Mutual Discussion.** In case of any dispute, claim, question or disagreement, arising from or relating to the Project or arising out of this Agreement for Construction Management or the breach thereof, the parties shall first attempt resolution through mutual discussion.
- 25.4 **Facilitative Mediation.** If the parties cannot resolve any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of this Agreement for Construction Management or the breach thereof through mutual discussion, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable solution satisfactory to all parties. In the event that mediation pursuant to this section was not conducted within six (6) months prior to the initiation of any Court Action or litigation of any dispute, claim, question, or disagreement hereunder, the parties shall participate in the mediation described herein of the issues described in the Court Action or litigation within three (3) months of the initiation of any such Court Action or litigation.
- 25.4.1 All parties to a mediation shall promptly provide all other parties to the mediation with copies of essential documentation relevant to the support or defense of the matter being mediated.
- 25.4.2 The parties shall not be required to mediate for a period greater than ninety-one (91) calendar days unless otherwise agreed to in writing by the parties. The parties shall share equally any administrative costs and fees of such proceedings but shall each be responsible for their own expenses otherwise incurred.
- 25.4.3 In the event that the statute of limitations would run during the required mediation period, either party may institute litigation so as to avoid the running of such statute upon the condition that such party immediately seek a stay of such litigation pending the conclusion of the mediation period.
- 25.4.4 During the course of mediation, any party to the mediation may apply for injunctive relief from any court of competent jurisdiction until the mediation period expires or the dispute is otherwise resolved.
- 25.4.5 The OWNER, the Professional(s), the CONSTRUCTION MANAGER, and any other parties involved in any way in the design or construction of the Project are each required to engage in mediation before initiating any litigation. This obligation applies to any party that has signed this Agreement for Construction Management, an agreement incorporating this Agreement by reference, or any other related agreement mandating mediation. Each party agrees to be joined in

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mediation with other parties under any such agreement. If multiple mediations are commenced under these agreements and any party asserts that the mediations are substantially related, the mediations may be consolidated and conducted by the mediator selected in the earliest-commenced mediation.

25.5 **Conflicting Dispute Resolution Provisions.** Neither party to this Agreement for Construction Management shall enter into any contract with regard to the Project which directly or indirectly gives the right to resolve any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution procedures required by this Article.

25.6 **Arbitration Preclusion.** In case of a dispute relating to the Project, or arising out of this Agreement for Construction Management, no party to this Agreement for Construction Management shall be required to participate in or be bound by, any arbitration proceedings.

25.7 **Performance During Dispute Resolution.** The OWNER and the CONSTRUCTION MANAGER agree that pending the resolution of any dispute, controversy, or question, the OWNER and the CONSTRUCTION MANAGER shall each continue to perform their respective obligations without interruption or delay, and the CONSTRUCTION MANAGER shall not stop or delay the performance of the Work as long as CONSTRUCTION MANAGER continues to be paid for undisputed amounts.

25.8 **Claims and Disputes.**

25.8.1 For purposes of this Agreement for Construction Management, a claim is a demand by one of the parties seeking an adjustment or interpretation of the Contract Documents, Contract Price, Contract Time, or seeking resolution to other disputes or matters in question between the OWNER and the CONSTRUCTION MANAGER. Claims must be initiated by written notice to the Professional and any other party within twenty-one (21) calendar days after reasonably recognizing that the event giving rise to the claim has or will have a cost or schedule impact, unless another provision of this Agreement for Construction Management sets a different time. Pending final resolution of a claim, except as otherwise agreed to in writing executed by the parties, the CONSTRUCTION MANAGER shall proceed diligently with performance of the Agreement for Construction Management and the OWNER shall continue to make payments in accordance with the Contract Documents. A claim shall be filed in accordance with this paragraph if the CONSTRUCTION MANAGER believes that additional cost is involved for reasons including but not limited to (i) a written interpretation from the Professional; (ii) an order by the OWNER to stop the Work where the CONSTRUCTION MANAGER was not at fault; (iii) a written order for a minor change in the Work issued by the Professional; (iv) failure of payment by the OWNER; (v) termination of this Agreement for Construction Management by the OWNER; (vi) OWNER's suspension; or (vii) other reasonable grounds.

25.8.2 Claims shall be referred initially to the Professional for decision. An initial decision by the Professional shall be required as a condition precedent to mediation, arbitration, or litigation of all claims between the CONSTRUCTION MANAGER

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and the OWNER, unless thirty (30) calendar days have passed after the claim has been referred to the Professional with no decision having been rendered by the Professional. The Professional shall not decide disputes between the CONSTRUCTION MANAGER and persons or entities other than the OWNER.

- 25.8.3 The Professional shall review claims within ten (10) calendar days of receipt and shall either (i) request additional supporting data from the claimant or a response with supporting data from the other party, to be submitted to the Professional within ten (10) calendar days of receipt of the request; (ii) reject the claim in whole or in part; (iii) approve the claim; (iv) suggest a compromise; or (v) advise the parties that the Professional is unable to resolve the claim. The Professional shall have the option to seek information from or consult with either party or other persons with special knowledge who may assist the Professional in rendering a decision. The Professional may also retain other persons as necessary with prior written approval of the OWNER and at the OWNER's expense.
- 25.8.4 The Professional shall issue a written decision on any claim, including the reasons for the decision and any resulting changes to the Contract Price or Time. After the Professional renders the decision, the parties have thirty (30) calendar days to request mediation. If mediation is not requested within this period, the Professional's decision will be considered final and binding on both the OWNER and the CONSTRUCTION MANAGER.
- 25.8.5 Upon receiving a claim against the CONSTRUCTION MANAGER, the Professional or the OWNER may, but is not obligated to, notify the surety, if any, of the nature and amount of the claim. If the claim relates to the possibility of the CONSTRUCTION MANAGER's default, the Professional or the OWNER may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

## **ARTICLE 26 DAMAGES AND REMEDIES**

- 26.1 **CONSTRUCTION MANAGER's Repair.** The CONSTRUCTION MANAGER shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in this Agreement, or any other applicable warranty or guarantee.
- 26.2 **CONSTRUCTION MANAGER's Reimbursement.** The CONSTRUCTION MANAGER shall promptly reimburse the OWNER for any expenses or damages incurred by the OWNER as a result of (i) the CONSTRUCTION MANAGER's failure to substantially perform in accordance with the terms of this Agreement for Construction Management; (ii) deficiencies or conflicts in the Construction Documents directly attributable to the CONSTRUCTION MANAGER or of which the CONSTRUCTION MANAGER was or should have been reasonably aware; (iii) breach of the warranties and guarantees set forth in this Agreement for Construction Management or any other applicable warranty or guarantee; or (iv) other acts or omissions of the CONSTRUCTION MANAGER.

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- 26.3 **General Indemnity.** To the fullest extent permitted by law the CONSTRUCTION MANAGER shall hold harmless, indemnify, and, to the extent applicable, defend the OWNER, its officers, employees, and agents from and against any and all claims, damages, demands, suits, liabilities, losses, costs, fees and expenses (including reasonable attorney's fees and expert witness fees), to the extent caused by negligence, intentional wrongful acts, or breach of this Agreement by the CONSTRUCTION MANAGER or by the CONSTRUCTION MANAGER's subcontractors, suppliers, or their agents, employees, or servants, arising out of or resulting from the performance of the Work. This obligation extends to claims arising from bodily injury, sickness, death, or property damage (except to the Work itself but including loss of use) caused by the acts or omissions of the CONSTRUCTION MANAGER. The CONSTRUCTION MANAGER's obligations under this Article shall not extend to the liability of OWNER, the Professional(s), their consultants, or their agents and employees.
- 26.3.1 To the fullest extent permitted by law, the CONSTRUCTION MANAGER, on behalf of itself and its subcontractors and suppliers, and their respective agents, employees, and servants, expressly waives any and all statutory or common law immunity or damage limitations under workers' compensation, disability benefits, or similar statutes. This waiver ensures that such statutory limitations do not reduce or restrict the indemnification obligations set forth in this provision.
- 26.4 **Intellectual Property Indemnity.** To the fullest extent permitted by law, the CONSTRUCTION MANAGER shall hold harmless, and indemnify the OWNER and the OWNER's Related Parties from and against any and all liability, loss, claims, damages, losses, and expenses (including reasonable attorneys' fees and expert witnesses fees), to the extent caused by the CONSTRUCTION MANAGER's infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the OWNER or Professional(s) in writing. If the CONSTRUCTION MANAGER has reason to believe the use of a required design, process or product is an infringement of a patent, the CONSTRUCTION MANAGER shall be responsible for such loss unless such information is promptly given to the OWNER.
- 26.5 **Non-Exclusivity of OWNER's Remedies.** The OWNER's choice of any remedy for breach of this Agreement shall not limit or preclude the OWNER from pursuing any other remedy available under this Agreement or by law. Remedies specified in this Agreement are cumulative and not exclusive of any other legal remedies, unless expressly excluded. For delays, the OWNER's sole remedy is limited to liquidated damages as outlined in this Agreement.
- 26.6 **Waiver of Damages.** The CONSTRUCTION MANAGER and OWNER mutually waive any claims for, and shall not be entitled to, damages related to lost profits, lost business opportunities, unabsorbed overhead, or any indirect or consequential damages.
- 26.7 **Interest.** The OWNER shall be entitled to interest on any amount due from the CONSTRUCTION MANAGER that remain unpaid for (30) thirty days after they are deemed due, whether resulting from a dispute resolution or otherwise. Interest shall be calculated in accordance with the method set forth in Paragraph 15.8 of this Chapter.

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**ARTICLE 27**  
**MISCELLANEOUS PROVISIONS**

- 27.1 **Integration.** This Agreement for Construction Management represents the entire and integrated agreement between the OWNER and the CONSTRUCTION MANAGER, and supersedes all prior negotiations, representations, or agreements, either written or oral, for the Project. This Agreement for Construction Management may be amended only by written instruments signed by both the OWNER and the CONSTRUCTION MANAGER and is subject to such reasonable modifications as may be required by the OWNER's lender(s) or insurer(s), if any.
- 27.2 **Severability.** If any provision of this Agreement for Construction Management, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.
- 27.3 **Waiver.** No provision of this Agreement for Construction Management may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Agreement for Construction Management. Furthermore, no action or failure to act by the OWNER, Professional, or CONSTRUCTION MANAGER shall constitute a waiver of a right or duty afforded them under this Agreement for Construction Management, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed to in writing.
- 27.4 **Strict Compliance.** The OWNER's failure to enforce strict compliance with any provision of this Agreement does not release, modify, or affect the CONSTRUCTION MANAGER's obligations under this Agreement.
- 27.5 **Third-Party Beneficiaries.** This Agreement for Construction Management is for the sole benefit of the parties involved and their respective successors and assigns. Except as explicitly stated in this Agreement, it does not create any rights or causes of action for any third party against either the OWNER or the CONSTRUCTION MANAGER.
- 27.6 **Survival.** All provisions of this Agreement for Construction Management which contain continuing obligations shall survive its expiration or termination.
- 27.7 **Assignment.** Except as prohibited by applicable law, neither party may assign any part of its benefits or obligations under this Agreement without the written consent of the other party. Exceptions to this requirement include assignments for security purposes, assignments by the OWNER to a related Party of OWNER, or assignments in the event of default as specifically provided in this Agreement. Both the OWNER and the CONSTRUCTION MANAGER bind their successors and assigns to the other party to this Agreement for Construction Management.
- 27.8 **Execution of Documents.** Upon the OWNER's request, the CONSTRUCTION MANAGER shall execute any documents required by the OWNER's lender. These documents will affirm that, in the event of a default by the OWNER under a construction



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loan agreement, the CONSTRUCTION MANAGER will complete the services required under this Agreement provided that the lender meets the OWNER's obligations to the CONSTRUCTION MANAGER as specified in this Agreement for Construction Management.

- 27.9 **Public Entity Crimes.** A person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.
- 27.10 **Prohibition Against Contingent Fees.** CONSTRUCTION MANAGER warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSTRUCTION MANAGER to solicit or secure this Contract and that they have not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSTRUCTION MANAGER, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

## **ARTICLE 28 DEFINITIONS**

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

**Construction Price:** Refers to the compensation for the Construction Phase and includes and is limited to the total cost of the Work set forth in this Agreement, General Conditions, and a fixed Management Fee, as provided by Chapter 1, Article 4.

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

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

**Contract Price:** The total amount payable to the Construction Manager under this Agreement which includes compensation for Preconstruction Services and if applicable, the Construction Price for the execution of the Work, including any adjustments as may be permitted under this Agreement.

**Contract Time:** The period established by the Agreement within which the CONSTRUCTION MANAGER is required to achieve Substantial Completion and Final Completion of the Work, as defined in this Agreement. The Contract Time may be adjusted by Change Orders or other modifications allowed under the terms of the Agreement.

**Critical Path Method Schedule:** The Critical Path Method Schedule (CPM Schedule) is a detailed project schedule that identifies all tasks, their durations, dependencies, and critical path. It will be

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used for planning, managing, and tracking project progress and must be updated regularly to reflect the current status of the Project.

**Agreement for Construction Management:** A written agreement between the OWNER and a CONSTRUCTION MANAGER for provision of goods, products, materials, equipment, systems, management, supervision, labor and services required to construct all or part of a Project.

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

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

**Hazardous Substances:** The term “Hazardous Substance” shall have the same meaning and definition as set forth in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder (collectively “CERCLA”) and any corresponding state or local law or regulation, and shall also include: (a) any Pollutant or Contaminant as those terms are defined in CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder (collectively “RCRA”) and any corresponding state or local law or regulation; (c) crude oil, petroleum and fractions of distillates thereof; (d) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling; and (e) any infectious or medical waste as defined by any applicable federal or state laws or regulations.

**OWNER’s Related Parties:** Any parent, subsidiary, or affiliated entities of the OWNER, including the respective officers, trustees, office holders, directors, shareholders, partners, and employees of each.

**Professional:** An entity, including but not limited to an architect, landscape architect, civil engineer, or geotechnical engineer, engaged directly by the OWNER to provide design or engineering services.

**Project:** A planned construction undertaking as more specifically described immediately preceding the recitals in Chapter 1 of the Agreement for Construction Management.

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

**Substantial Completion:** The stage of construction when the OWNER can occupy or beneficially use satisfactorily completed Work for its intended purpose.

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**Total Project Construction Cost:** The total cost to the OWNER to complete construction of the Project, including, without limitation, the Cost of the Work, the General Conditions, the Management Fee, and the OWNER's costs.

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

*[Balance of page left intentionally blank, signature pages begin on next page]*



IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: OWNER, through its Board of County Commissioners, signing by and through its Chair, authorized to execute same by Board Action, and by CONSTRUCTION MANAGER, through its duly authorized representative.

ATTEST:

(CONSTRUCTION MANAGER)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name

By: \_\_\_\_\_  
(INSERT NAME, title),

Date: \_\_\_\_\_

SEMINOLE COUNTY, FLORIDA

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name

By: \_\_\_\_\_  
STEPHEN KOONTZ,  
Purchasing Manager

Date: \_\_\_\_\_

For the use and reliance  
of Seminole County only.

As authorized for execution by the Board of  
County Commissioners at its \_\_\_\_\_  
20\_\_\_\_, regular meeting.

Approved as to form and  
legal sufficiency.

\_\_\_\_\_  
County Attorney

CP/dbh

2/20/25

T:\Users\Legal Secretary CSB\Purchasing 2024\PS-5968.docx

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# APPENDICES



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## APPENDIX A

### Pre-Construction Services Fees

- ☐ LUMP SUM or
- ☐ TIME AND MATERIAL NOT TO EXCEED





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## **APPENDIX B**

### **INDEX OF PRELIMINARY PLANS AND SPECIFICATIONS FOR THE PROJECT**

[To be included in the Project-specific Scope of Services]



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**APPENDIX C**  
**SCHEDULE FOR PERFORMANCE**  
**OF PRE-CONSTRUCTION**  
**SERVICES**

[To be included in the Project-specific Scope of Services]



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**DRAFT APPENDIX D**

**SCHEDULE OF REQUIRED INSURANCE  
FOR PRE-CONSTRUCTION SERVICES**

The CONSTRUCTION MANAGER shall provide and maintain at all times during the term of this contract without costs or expenses to the OWNER policies of insurance with a company or companies authorized to do business in the State of Florida and which are acceptable to the County, insuring the CONSTRUCTION MANAGER against any and all claims, demands or causes of action whatsoever, for injuries received, or damage to property relating to the performance of duties, services and/or obligations under this contract.

Such policies of insurance and confirming certificates of insurance shall ensure the CONSTRUCTION MANAGER is in accordance with the following minimum limits:

- (i) General Liability insurance on forms no more restrictive than the latest edition of the Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$1,000,000/2,000,000
Products-Completed Operations	\$2,000,000
Personal & Adv. Injury	\$1,000,000
Fire Damage	\$50,000
Medical Expense	\$5,000
Contractual Liability	Included



- (ii) Automobile liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverage:

Combined Single Limit	\$1,000,000
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- (iii) Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc.). If not required by law to maintain workers' compensation insurance, the CONSTRUCTION MANAGER must provide a notarized statement that if he or she is injured, he or she will not hold the County responsible for any payment or compensation.

- (iv) Employers Liability insurance with the following minimum limits and coverage:

Each Accident	\$1,000,000
Disease-Each Employee	\$1,000,000
Disease-Policy Limit	\$1,000,000

- (v) Professional liability and/or specialty insurance (medical consultant, environmental, pollution, errors and omissions), limits of \$1,000,000 and annual aggregate of \$2,000,000.

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The following additional coverage must be provided:

Builder's Risk at coverage value of:

\$                     

Seminole County, a Political Subdivision of the State of Florida, and the Board of County Commissioners, shall be named as additional insured as their interest may appear the general liability policy.

Certificates of insurance shall provide for a minimum of thirty (30) days prior written notice to the County of any change, cancellation, or nonrenewal of the required insurance.

Certificate(s) of insurance shall identify the contract number in the Description of Operations section of the Certificate.

Certificate holder shall be:

SEMINOLE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AND  
THE BOARD OF COUNTY COMMISSIONERS  
1101 E. FIRST STREET  
SANFORD, FL 32771

Certificates of insurance shall evidence a waiver of subrogation in favor of the County, that coverage must be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium by the County.

The CONSTRUCTION MANAGER shall be responsible for subcontractors and their insurance. Subcontractors are to provide certificates of insurance to the CONSTRUCTION MANAGER evidencing coverage and terms in accordance with the CONSTRUCTION MANAGER's requirements.

All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the County. At the option of the County, the insurer must reduce or eliminate such self-insured retentions; or the vendor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

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

Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the Agreement for default.

Neither approval by the County of any insurance supplied by the vendor, nor a failure to disapprove that insurance, will relieve the vendor of full responsibility of liability, damages, and accidents as set forth here

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**DRAFT APPENDIX E**

**SCHEDULE OF REQUIRED INSURANCE  
FOR CONSTRUCTION OF THE WORK**

The CONSTRUCTION MANAGER shall provide and maintain at all times during the term of this contract without costs or expense to the County policies of insurance with a company or companies authorized to do business in the State of Florida and which are acceptable to the County, insuring the CONSTRUCTION MANAGER against any and all claims, demands, or causes of action whatsoever, for injuries received or damage to property relating to the performance of duties, services and/or obligations under this contract.

Such policies of insurance and confirming certificates of insurance shall ensure the CONSTRUCTION MANAGER is in accordance with the following minimum limits:

- (i) General Liability insurance on forms no more restrictive than the latest edition of the Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$1,000,000/2,000,000
Products-Completed Operations	\$2,000,000
Personal & Adv. Injury	\$1,000,000
Fire Damage	\$50,000
Medical Expense	\$5,000
Contractual Liability	Included



- (ii) Automobile liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverage:

Combined Single Limit	\$1,000,000
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- (iii) Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc.). If not required by law to maintain workers' compensation insurance, the CONSTRUCTION MANAGER must provide a notarized statement that if he or she is injured, he or she will not hold the County responsible for any payment or compensation.

- (iv) Employers Liability with the following minimum limits and coverage:

Each Accident	\$1,000,000
Disease-Each Employee	\$1,000,000
Disease-Policy Limit	\$1,000,000

- (v) Professional liability and/or specialty insurance (medical malpractice, engineers, architect, consultant, environmental, pollution, errors and omissions,

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etc.) insurance as applicable, with minimum limits of \$1,000,000 and annual aggregate of \$2,000,000.

The following additional coverage must be provided:

Builder's Risk at coverage value of: \$                     

Seminole County, a Political Subdivision of the State of Florida, and the Board of County Commissioners, shall be named as additional insured as their interest may appear on the general liability policy.

Certificates of insurance shall provide for a minimum of thirty (30) days prior written notice to the County of any change or cancellation of the required insurance.

Certificate(s) of insurance shall identify the contract number in the Description of Operations section of the Certificate.

Certificate holder shall be:

SEMINOLE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AND  
THE BOARD OF COUNTY COMMISSIONERS.  
1101 E. FIRST STREET  
SANFORD, FL 32771

Certificates of insurance shall evidence a waiver of subrogation in favor of the County, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the County.

The CONSTRUCTION MANAGER shall be responsible for subcontractors and their insurance. Subcontractors are to provide certificates of insurance to the CONSTRUCTION MANAGER evidencing coverage and terms in accordance with the CONSTRUCTION MANAGER's requirements.

All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the County. At the option of the County, the insurer shall reduce or eliminate such self-insured retentions; or the vendor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

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

Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the Agreement for default.

Neither approval by the County of any insurance supplied by the vendor, nor a failure to disapprove that insurance, shall relieve the vendor of full responsibility of liability, damages, and accidents as set forth herein.



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## APPENDIX F

### CONSTRUCTION MANAGER'S PRE-CONSTRUCTION AND CONSTRUCTION SERVICES TEAM

Project Executive:

Project Manager:

Administrative Executive:

Safety Director:

Superintendent:

Project Controller:

### CONSTRUCTION MANAGER'S CONSTRUCTION SERVICES TEAM

### CONSTRUCTION MANAGER'S SUBCONTRACTORS AND SUPPLIER CHART



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**APPENDIX G**  
**OWNER'S CONSULTANT CHART**

**[To be determined on a Project-specific basis]**

**PROFESSIONAL:**

Representative:

Address:

Office:

Cell:

Direct:

E-mail:

General Duties:



## APPENDIX H

### REQUIRED FORM OF PAYMENT, PERFORMANCE, & WARRANTY BOND

#### PAYMENT BOND

**BOND NO.:** \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS** that **[CONTRACTOR NAME]** **[Address, Phone No.]**, as Principal, and **[SURETY NAME]**, **[Address, Phone No.]**, as Surety, are held and firmly bound to Seminole County, Florida, **[Address, Phone No.]**, as Obligee, in the sum of \_\_\_\_\_ **and 00/100 Dollars (\$\_\_\_\_\_.**00), for the payment of which Principal and Surety do bind themselves, their heirs, executors, personal representatives, administrators, successors, and assigns, jointly and severally.

**WHEREAS**, Principal has agreed to perform construction services for the construction project titled \_\_\_\_\_, located at \_\_\_\_\_, which involves **[general description of the project]** (“Project”); and

**WHEREAS**, Principal entered into Contract No.: \_\_\_\_ with Obligee (“Contract”), which is hereby incorporated by reference and made a part hereof.

**THE CONDITION OF THIS BOND** is that if Principal:

- a. Promptly makes payment to all claimants, as defined in Section 255.05(1), *Florida Statutes*, supplying Principal with labor, materials, or supplies used directly or indirectly by Principal in the prosecution of the work provided for in the Contract;
- b. Pays Obligee all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Obligee sustains because of Principal's failure to make payments to claimants; and
- c. Defends, indemnifies, and holds Obligee harmless from any claims, demands, suits, or liens,

then the obligation of this Bond is void, otherwise, it remains in full force.

1. Surety's obligations to Obligee under this Bond shall be triggered upon Surety's receipt of Obligee's written correspondence notifying Principal and Surety of any claims, demands, liens, or suits against Obligee or the Project by any person or entity seeking payment for labor, materials, or equipment provided to Principal for use in performance of the Contract.
2. Upon Surety's receipt of Obligee's written notice identified in Paragraph 1, Surety shall promptly, and at its sole expense, defend, indemnify, and hold Obligee harmless against any claim, demand, lien, or suit by any person or entity seeking payment for labor, materials, or equipment provided to Principal for use in performance of the Contract.
3. Any changes in or under the Contract, including changes to time or price, are binding on Surety and will not affect Surety's obligation under this Bond. Any increase to the Contract

price shall accordingly increase the amount of this Bond. Surety hereby waives its right to notice of any change to the Contract.

4. Any claim against this Bond by a claimant shall be submitted in accordance with Section 255.05, *Florida Statutes*. Any suit or action by a claimant pursuant to this Bond must be commenced in accordance with the time and notice provisions of Section 255.05(2) and (10), *Florida Statutes*. Any suit or action pursuant to this Bond shall be instituted in the courts of Seminole County, Florida. Any suit or action pursuant to this Bond, except an action for recovery of retainage, must be instituted within one (1) year after the last day of furnishing labor, services, or materials by claimant.
5. Written notice to any party shall be delivered to the party's address identified on page one (1) of this Bond.
6. This Bond is intended to be construed as a statutory bond and not a common law bond. This Bond is furnished to comply with Section 255.05, *Florida Statutes* and shall be construed in accordance with the statute. The terms of this Bond are hereby amended and modified so all provisions and limitations of the statute, including conditions precedent, notice, and time limitations, are incorporated into this Bond. Any provisions of this Bond which conflict with or purport to grant coverage in excess of the minimum requirements of the statute are deemed deleted or amended such that the Bond provisions will provide the only the coverage specified in the statute. This Bond is unconditional. Consistent with Section 255.05, *Florida Statutes*, in any action brought to enforce a claim against this Bond, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs.
7. The date of the Bond must not be prior to date of the Contract. If Principal is a joint venture, all venturers shall execute the Bond. If Principal is a partnership, all partners shall execute the Bond. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State of Florida, unless otherwise specifically approved in writing by Obligee. All bonds shall be originals and issued or countersigned by a local producing agent who is authorized to operate in the State of Florida. Attorneys-in-fact who sign bonds must file with such bond a certified copy of their Power of Attorney to sign such bond. Agents of surety companies must list their name, address, and telephone number on all bonds.

*[Signatures on Following Pages]*

IN WITNESS WHEREOF, the Principal and Surety have caused this Bond to be executed by their duly authorized officers this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**PRINCIPAL:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name of Corporation

\_\_\_\_\_  
Printed Name

By: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this \_\_\_\_\_ day of \_\_\_\_\_ 202\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary)  
Name: \_\_\_\_\_

(AFFIX OFFICIAL SEAL)  
Notary Public, State of Florida  
Serial No., If Any: \_\_\_\_\_

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

**SURETY:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name of Corporation

\_\_\_\_\_  
Printed Name

By: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this \_\_\_\_\_ day of \_\_\_\_\_ 202\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary)

Name: \_\_\_\_\_

(AFFIX OFFICIAL SEAL)

Notary Public, State of Florida

Serial No., If Any: \_\_\_\_\_

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced



## PERFORMANCE BOND

**BOND NO.:** \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS** that [**CONTRACTOR NAME**] [**Address, Phone No.**], as Principal, and [**SURETY NAME**], [**Address, Phone No.**], as Surety, are held and firmly bound to Seminole County, Florida, [**Address, Phone No.**], as Oblige, in the sum of \_\_\_\_\_ **and 00/100 Dollars (\$ \_\_\_\_\_ .00)**, for the payment of which Principal and Surety do bind themselves, their heirs, executors, personal representatives, administrators, successors, and assigns, jointly and severally.

**WHEREAS**, Principal has agreed to perform construction services for the construction project titled \_\_\_\_\_, located at \_\_\_\_\_, which involves [**general description of the project**] (“Project”); and

**WHEREAS**, Principal entered into Contract No.: \_\_\_\_\_ with Oblige (“Contract”), which is hereby incorporated by reference and made a part hereof.

**THE CONDITION OF THIS BOND** is that if Principal:

- a. Promptly, fully, and completely performs the Contract in the time and manner prescribed in the Contract, and
- b. Pays Oblige for any and all losses, damages, expenses, costs and fees, including direct, indirect, and consequential damages, that Oblige sustains as a result of any Principal Default,

then the obligation of this Bond is void, otherwise it remains in full force.

1. Surety’s obligations under this Bond shall be triggered upon Surety’s receipt of Oblige’s written correspondence to Principal and Surety declaring a Principal Default and terminating the Contract.
2. Upon Oblige’s declaration of a Default, Surety shall promptly and at its sole expense, proceed with one of the following:
  - a. Arrange for the Principal to perform and complete the Contract in the time and manner prescribed in the Contract, but only if consented to by the Oblige;
  - b. Perform and complete the Contract itself through an alternative contractor(s) or agent(s), that Oblige approves of, however, Surety may not use the defaulted Principal unless consented to by the Oblige;
  - c. Procure bids or proposals from contractors acceptable to Oblige for performance and completion of the Contract; select a contractor that Oblige approves of; arrange for a contract to be executed by Oblige and contractor to be secured with payment, warranty, and performance bonds from a qualified surety in the same amounts as those issued on the Contract; pay the completion costs and pay damages to Oblige, as provided herein; however, Surety shall complete the foregoing actions no later than thirty (30) days after Surety’s receipt of Oblige’s written correspondence declaring a Principal Default; or

- d. Make payment to Obligee in an amount that Obligee and Surety mutually agree upon; if Obligee and Surety cannot agree to the amount of the payment, then Surety must proceed with a different option under this Paragraph 2.
3. Within ten (10) days of Surety's receipt of Obligee's written notice of a Principal Default, Surety shall notify Obligee, in writing, which of the four (4) actions identified in Paragraph 2 that Surety will perform to remedy the Principal Default.
4. If Surety fails to promptly proceed as provided in Paragraph 2 and Paragraph 3, Obligee shall send written correspondence demanding that the Surety perform its obligations under the Bond ("Breach Correspondence"). If Surety fails to perform within seven (7) days of receipt of the Breach Correspondence, Surety shall be deemed in default under the Bond and Obligee shall be entitled to enforce any remedy available to it in law or in equity. If Surety makes payment pursuant to Paragraph 2.d and Obligee refuses the payment, Obligee shall be entitled to enforce any remedy available to it without further notice to Surety or Principal.
5. Pursuant to this Bond, Surety is responsible for the following:
  - a. Principal's obligation to correct and replace defective work, including post completion warranty work, under the Contract;
  - b. Principal's obligation to complete the Contract within the time specified in the Contract;
  - c. Payment to the Obligee of direct damages, indirect damages, and consequential damages, including but not limited to attorney's fees and costs and design professional fees, resulting from a Default;
  - d. Payment to Obligee of direct damages, indirect damages, and consequential damages resulting from Surety's actions or inaction under Paragraph 4;
  - e. Liquidated damages, or if no liquidated damages are provided under the Contract or if liquidated damages have not yet accrued, Obligee's actual delay damages resulting from Principal's delayed performance or nonperformance.

Surety and Obligee agree that any damages waiver in the Contract shall not bar Obligee's recovery of the damages identified in this Paragraph.

6. If Surety chooses to perform pursuant to the Paragraphs 2(a), 2(c), or 2(d), Surety's liability shall be limited to the amount of this Bond.
7. Surety shall not be responsible for obligations unrelated to the Contract. The Balance of the Contract Price shall not be reduced by any amount unrelated to the Contract. No right of action on this Bond shall accrue to any person or corporation other than the Obligee named herein or its heirs, executors, administrators, successors, and assigns.
8. Any changes in or under the Contract, including changes to time or price, are binding on Surety and will not affect Surety's obligation under this Bond. Any increase to the Contract Price shall accordingly increase the amount of this Bond. Surety hereby waives its right to notice of any change to the Contract.
9. Any proceeding under this Bond shall be instituted in the courts of Seminole County, Florida and shall be instituted within the notice and time limitation provisions in Section 255.05, *Florida Statutes*.

10. In the event any provision of this Bond conflicts with applicable legal or statutory authority, the provision shall be deemed deleted and a conforming provision shall be deemed incorporated herein.
11. This Bond is intended to be construed as a statutory bond and not a common law bond. This Bond is furnished to comply with Section 255.05, *Florida Statutes* and shall be construed in accordance with the statute. The terms of this Bond are hereby amended and modified so all provisions and limitations of the statute, including conditions precedent, notice, and time limitations, are incorporated into this Bond.
12. This Bond shall remain in effect through the expiration of the warranty period specified in the Contract.
13. Written notice to any party shall be delivered to the party's address identified on page one (1) of this Bond
14. The following definitions govern this Bond:
  - a. **Contract Price.** The total amount payable by the Obligee to the Principal for complete and full performance of the Contract.
  - b. **Balance of the Contract Price.** The Contract Price less all payments made on behalf of Obligee to Principal.
  - c. **Principal Default.** Principal's failure to perform or comply with a term of the Contract.
15. The date of the Bond must not be prior to date of the Contract. If Principal is a joint venture, all venturers shall execute the Bond. If Principal is a partnership, all partners shall execute the Bond. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State of Florida, unless otherwise specifically approved in writing by Obligee. All bonds shall be originals and issued or countersigned by a local producing agent who is authorized to operate in the State of Florida. Attorneys-in-fact who sign bonds must file with such bond a certified copy of their Power of Attorney to sign such bond. Agents of surety companies must list their name, address, and telephone number on all bonds.

*[Signatures on Following Pages]*

IN WITNESS WHEREOF, the Principal and Surety have caused this Bond to be executed by their duly authorized officers this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**PRINCIPAL:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name of Corporation

\_\_\_\_\_  
Printed Name

By: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this \_\_\_\_\_ day of \_\_\_\_\_ 202\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary)

Name: \_\_\_\_\_

(AFFIX OFFICIAL SEAL)

Notary Public, State of Florida

Serial No., If Any: \_\_\_\_\_

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced

**SURETY:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name of Corporation

\_\_\_\_\_  
Printed Name

By: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this \_\_\_\_\_ day of \_\_\_\_\_ 202\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary)

Name: \_\_\_\_\_

(AFFIX OFFICIAL SEAL)

Notary Public, State of Florida

Serial No., If Any: \_\_\_\_\_

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced

## **WARRANTY BOND**

**BOND NO.:** \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS** that [**CONTRACTOR NAME**] [**Address, Phone No.**], as Principal, and [**SURETY NAME**], [**Address, Phone No.**], as Surety, are held and firmly bound to Seminole County, Florida, [**Address, Phone No.**], as Oblige, in the sum of \_\_\_\_\_ **and 00/100 Dollars (\$ \_\_\_\_\_ .00)**, for the payment of which Principal and Surety do bind themselves, their heirs, executors, personal representatives, administrators, successors, and assigns, jointly and severally.

**WHEREAS**, Principal has agreed to perform construction services for the construction project titled \_\_\_\_\_, located at \_\_\_\_\_, which involves [**general description of the project**] (“Project”); and

**WHEREAS**, Principal entered into Contract No.: \_\_\_\_\_ with Oblige (“Contract”), which is hereby incorporated by reference and made a part hereof; and

**WHEREAS**, Principal completed the construction of the Project and a certificate of final completion for the Project was issued on \_\_\_\_\_ (“Final Completion”).

**THE CONDITION OF THIS BOND** is that if Principal:

a. Promptly, fully, and completely maintains the Project and corrects any defective work; and  
b. Pays Oblige for all losses, damages, expenses, costs and fees, including direct, indirect, and consequential damages, that Oblige sustains as a result of any Principal Default,  
then the obligation of this Bond is void, otherwise it remains in full force.

1. This Bond shall commence on the Final Completion date and shall continue for a period of **one (1)** year (“Term of Bond”).
2. Oblige shall notify Principal, in writing, of any defective work for which Principal is responsible and shall specify in said notice a reasonable period of time within which Principal shall have to correct said defect. If Principal fails to perform within the time specified in said notice, then Oblige shall provide written notice to Principal and Surety of Oblige’s intent to declare a Principal Default. If Principal fails to remedy the Principal Default, to Oblige’s complete satisfaction, within thirty (30) days (unless extended further by Oblige) of Oblige’s notice of intent to declare a Principal Default, then Oblige may provide written notice to Principal and Surety declaring a Principal Default. Surety’s obligations under this Bond are triggered upon Surety’s receipt of Oblige’s written notice declaring a Principal Default.
3. Oblige’s failure to comply with the notice provisions in Paragraph 2 shall not constitute a failure to comply with conditions precedents or release Surety from liability, except to the extent Surety establishes actual prejudice.

4. Within thirty (30) days of Surety's receipt of Obligor's written notice declaring a Principal Default, Surety shall, at its sole expense, remedy the Principal Default. Surety may only use the defaulted Principal to remedy the Principal Default if the Obligor consents.
5. If Surety fails to proceed as provided in Paragraph 4, Obligor shall send written correspondence demanding that the Surety perform its obligations under the Bond ("Breach Correspondence"). If Surety fails to perform within seven (7) days of receipt of the Breach Correspondence:
  - a. Obligor shall be entitled to correct the defective work through an alternative contractor and Principal and Surety, jointly and severally, shall pay Obligor all costs incurred in correcting the defective work; and
  - b. Surety shall be deemed in default under the Bond and Obligor shall be entitled to enforce any remedy available to it in law or in equity.
6. Surety's obligations to Obligor shall not be greater than Principal's obligations to Obligor under the Contract. Obligor's obligations to Surety shall not be greater than the Obligor's obligations to Principal under the Contract.
7. Pursuant to this Bond, Surety is responsible for the following:
  - a. Principal's obligation to correct or replace defective work as set forth in the Contract; and
  - b. Payment to Obligor of costs, expenses, losses, and direct, indirect, and consequential damages, including but not limited to attorney's fees and costs and design and engineering costs, incurred as a result of a Principal Default or the actions or inactions of Surety pursuant to Paragraph 5.

Obligor, Principal, and Surety agree that costs to correct or replace defective work are not consequential damages.

8. Obligor may request an extension of this Bond. If Surety chooses to extend the Bond, it shall be considered one continuous bond. If Surety chooses not to extend the Bond, Surety shall notify Obligor within seven (7) days of Obligor's request. Surety's failure to extend this Bond shall not constitute a breach or default under this Bond.
9. Surety's liability under this Bond shall be limited to the amount of the Bond stated on page 1.
10. No right of action on this Bond shall accrue to any person or corporation other than the Obligor named herein or its heirs, executors, administrators, successors, and assigns.
11. Any suit or action pursuant to this Bond shall be instituted in the courts of Seminole County, Florida and shall be instituted within two (2) years after a declaration of a Principal Default.
12. In the event any provision of this Bond conflicts with applicable legal or statutory authority, the provision shall be deemed deleted and a conforming provision shall be deemed incorporated herein.
13. If at any time during the Term of this Bond, Obligor notifies Principal and Surety, in writing, of any defective work for which Principal is responsible, then this Bond shall continue in full force and effect until such defective work is corrected.



14. Any changes in or under the Contract, including changes to time or price, are binding on Surety and will not affect Surety's obligation under this Bond. Surety hereby waives its right to notice of any change to the Contract.
15. Written notice to any party shall be delivered to the party's address identified on page one (1) of this Bond.
16. The phrase "Principal Default" shall mean the failure of the Principal to comply with the warranties in the Contract.
17. The date of the Bond must not be prior to date of the Contract. If Principal is a joint venture, all venturers shall execute the Bond. If Principal is a partnership, all partners shall execute the Bond. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State of Florida, unless otherwise specifically approved in writing by Obligee. All bonds shall be originals and issued or countersigned by a local producing agent who is authorized to operate in the State of Florida. Attorneys-in-fact who sign bonds must file with such bond a certified copy of their Power of Attorney to sign such bond. Agents of surety companies must list their name, address, and telephone number on all bonds.

*[Signatures on Following Pages]*

IN WITNESS WHEREOF, the Principal and Surety have caused this Bond to be executed by their duly authorized officers this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**PRINCIPAL:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name of Corporation

\_\_\_\_\_  
Printed Name

By: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this \_\_\_\_\_ day of \_\_\_\_\_ 202\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary)

Name: \_\_\_\_\_

(AFFIX OFFICIAL SEAL)

Notary Public, State of Florida

Serial No., If Any: \_\_\_\_\_

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced

**SURETY:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name of Corporation

\_\_\_\_\_  
Printed Name

By: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

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My Commission Expires:

\_\_\_\_\_  
(Signature of Notary)

Name: \_\_\_\_\_

(AFFIX OFFICIAL SEAL)

Notary Public, State of Florida

Serial No., If Any: \_\_\_\_\_

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced

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**APPENDIX I  
AUTHORIZATION FOR CONSTRUCTION**

<b>EXHIBIT 1</b>	<b>INDEX OF PLANS AND SPECIFICATIONS</b>
<b>EXHIBIT 2</b>	<b>CONSTRUCTION SCHEDULE</b>
<b>EXHIBIT 3</b>	<b>CONSTRUCTION MANAGER’S PROJECT</b>
<b>TEAM EXHIBIT 4</b>	<b>SCHEDULE OF VALUES</b>
<b>EXHIBIT 5</b>	<b>UNIT PRICES</b>
<b>EXHIBIT 6</b>	<b>CONSTRUCTION MANAGER’S SUBCONTRACTORS AND SUPPLIERS CHART</b>
<b>EXHIBIT 7</b>	<b>QUALIFICATIONS AND ASSUMPTIONS AS REQUIRED BY Chapter 2, Article 2, Section 2.7.5.6</b>
<b>EXHIBIT 8</b>	<b>SCHEDULE OF ALLOWANCES</b>



**APPENDIX I  
AUTHORIZATION FOR CONSTRUCTION**

Pursuant to Chapter 1, Article 3 and Chapter 2, Article 2 of the Agreement for Construction Management between **Seminole County, Florida**, a political subdivision of the State of Florida (“OWNER”) and [REDACTED] (“CONSTRUCTION MANAGER”), the OWNER and the CONSTRUCTION MANAGER hereby execute this Appendix K and further agree as set forth below.

1. **Guaranteed Maximum Price Proposal Acceptance:** The CONSTRUCTION MANAGER’s Guaranteed Maximum Price (“GMP”) proposal, including general conditions costs dated \_\_, attached hereto and incorporated herein, is accepted by the OWNER.

2. **Construction Management Fee:** The Construction Management Fee is \_\_percent (\_\_%) of the Cost of the Work and is inclusive of the Preconstruction Services Fee, as defined in Chapter 2, Article 2, Section 2.7.2.3. This Management Fee shall not exceed the applicable fee in the attached bid sheet. The Management Fee shall be paid as follows:

- ☐ Percentage of the Cost of the Work; or

- 
- ☐ Fixed Sum (Upon Owner's sole discretion pursuant to Chapter 2, Article 2, Section 2.7.2.3).

3. **Subcontracts Costs:** The Subcontracts Cost is \_\_\_\_(\$\_\_\_\_).

4. **Estimated OWNER's Costs:** The Estimated OWNER's Costs, as defined in Chapter 2, Article 2, Subsection 2.7.3, shall be \_\_\_\_\_(\$\_\_\_\_).

5. **Guaranteed Maximum Price:** The Guaranteed Maximum Price is (\$\_\_\_\_).

6. **Substantial Completion Date:** The Date of Substantial Completion shall be\_\_\_\_\_.

7. **Final Completion Date:** The Date of Final Completion shall be either: (1) 30-days after date of substantial completion; or if applicable, (2) 30-days after receipt of OWNER's statutorily required list of items required to be rendered complete, satisfactory, and acceptable, pursuant to section 218.735, Florida Statutes.

8. **Authorization to Proceed:** The OWNER hereby issues this Authorization for Construction. A separate formal Notice to Proceed (NTP) will be issued after the execution of this Appendix and upon satisfaction of all preconditions stated herein. The estimated date for the commencement of construction activities is \_\_\_\_\_. The CONSTRUCTION MANAGER is authorized to commence construction activities only upon receipt of the formal Notice to Proceed.

9. **Conditions Precedent:** The following conditions must be met before the commencement of construction:



- All necessary permits and approvals
- Required insurance documentation must be submitted and approved
- [Any other conditions]

10. **Exhibits:** This Appendix K shall include the following Exhibits:

**Exhibit 1:** Index of Plans and Specifications

**Exhibit 2:** Construction Schedule

**Exhibit 3:** CONSTRUCTION MANAGER's Project Team

**Exhibit 4:** Schedule of Values

**Exhibit 5:** Unit Prices

**Exhibit 6:** CONSTRUCTION MANAGER's Subcontractors and Suppliers Chart

**Exhibit 7:** Qualifications and Assumptions as required in Chapter 2, Article 2, Section 2.7.5.6

**Exhibit 8:** Schedule of Allowances

ATTEST:

(insert legal entity name)

\_\_\_\_\_  
\_\_\_\_\_, Secretary  
  
(CORPORATE SEAL)  
\_\_\_\_\_

By: \_\_\_\_\_  
(insert name, title)

Date: \_\_\_\_\_

ATTEST

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

\_\_\_\_\_  
GRANT MALOY  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

By: \_\_\_\_\_  
JAY ZEMBOWER, Chairman

Date: \_\_\_\_\_

For the use and reliance  
of Seminole County only.



As authorized for execution by the Board of  
County Commissioners at its \_\_\_\_\_  
20\_\_\_\_, regular meeting.

Approved as to form and  
legal sufficiency.

\_\_\_\_\_  
County Attorney  
CMP

---

## APPENDIX J PROPOSED PRICING SCHEDULE

[insert]

