



Procurement Division  
352-318-7240

REQUEST FOR QUALIFICATIONS  
FPUR-230010-GD

**CONTINUING CONSTRUCTION MANAGEMENT  
PROFESSIONAL SERVICES FOR MINOR PROJECTS**

**PROJECT SUMMARY:**

The City of Gainesville (CITY) and Gainesville Regional Utilities (GRU), going forward identified as OWNER(S), are interested in entering continuing service contracts with several companies to obtain a pool of Construction Management firms which will provide construction management services for Minor Projects. As per Consultants' Competitive Negotiation Act "CCNA", a Minor Project is defined as a project with an estimated construction cost of less than \$4,000,000.

**PROJECT TIME TABLE:**

The anticipated time table for this RFQ and contract approval is as follows, (all times are EDT):

Activity	Tentative Date	TIME	LOCATION
ITN on DemandStar	09/27/23	8:00am	<i>Cone of Silence Begins</i>
Non Mandatory Pre-Bid Meeting	10/09/23	1:00pm	Zoom
Deadline for receipt of vendor questions	10/16/23	3:00pm	email
Deadline for receipt of replies	10/30/23	3:00pm	Demandstar
Evaluation Meeting	11/06/23	1:00-2:30	IN PERSON, CH 332
Oral presentations	11/14/23	9:00	Zoom
Oral presentations	11/15/23	10:00	Zoom
Oral presentations	11/22/23	9:30am-11:30am	Zoom
Oral presentations	11/27/23	1:00pm-3:00pm	Zoom
Oral presentations	12/04/23	1:00pm-3:00pm	Zoom
Final Eval Meeting	12/06/23	10:00am	IN PERSON, CH 17
5-Day Protest Period Posting	12/7/23-12/14/23		
Recommendation of Award to City Commission	01/04/24	10:00am	<i>Cone of Silence Ends</i>
Contract Finalization Period	1/4/24-2/15/24		
Purchase Order issued	2/15/24		
Projected contract start date	2/15/24		

All dates are subject to change. Respondents will be notified via Addendum in DemandStar.com in event of any schedule changes.

CMAR Pre-Bid Meeting; Oct 9, 2023 01:00 PM Eastern Time (US and Canada)

<https://us06web.zoom.us/j/7769614233?pwd=QVZSV2pnaDZITzRmVEt1OFNiQlBrUT09>

Meeting ID: 776 961 4233

Passcode: zTrjn4

**QUESTIONS REGARDING THIS SOLICITATION:**

All questions relating to this solicitation must be directed to: Gayle Dykeman, Procurement Specialist 3:

[dykemangb@gainesvillefl.gov](mailto:dykemangb@gainesvillefl.gov)

# PART I

## CONTINUING CONSTRUCTION MANAGEMENT PROFESSIONAL SERVICES FOR MINOR PROJECTS

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**NOTES:**

1. The terms “Bidder” and “Respondent” and “Proposer” are used interchangeably throughout this document.
2. City of Gainesville will be referred to as CITY or OWNER
3. Gainesville Regional Utilities will be referred to as GRU or OWNER

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# SECTION 1 – REQUEST FOR QUALIFICATIONS INFORMATION

## 1.1 DISTRIBUTION OF INFORMATION

The CITY posts and distributes information pertaining to its procurement solicitations on DemandStar ([www.demandstar.com](http://www.demandstar.com)). In order to submit a response to this solicitation the Respondent must be registered with DemandStar. There is no cost for using Demandstar, however, when registering, select “City of Gainesville – Procurement Division” as the agency of choice, to assure there is no cost to use the product.

Properly registered vendors can expect to receive automatic notification of solicitations for bids and proposals, by participating purchasing entities. Respondent failure to retrieve available, required procurement information from DemandStar and include the appropriate documentation and information in solicitation responses may result in disqualification.

## 1.2 PRE-PROPOSAL MEETING/QUESTIONS/CLARIFICATIONS AND BID OPENING

If scheduled (refer to Bid Cover Page), attending a pre-proposal meeting is strongly recommended as the project’s scope of work, procedures, and specifications will be discussed at this time. It is the only time during this open-bid process that Respondent may ask questions directly of the end user.

If special accommodations are needed in order to attend a pre-proposal meeting or a bid opening, please contact the Procurement Division at least 72 hours in advance.

All questions that occur outside of the pre-proposal meeting must be submitted to Procurement only, and must be received by the date indicated on the RFQ Cover Page to be considered. Technical and/or specification questions will not be answered over the phone; they must be submitted by email directed to the Procurement Specialist conducting the solicitation (refer to RFQ Cover Page). All questions will be answered via Addendum which will be posted on DemandStar.com for vendor access. All addenda must be acknowledged by the Respondent on **Required Form A RESPONDENT VERIFICATION FORM**.

## 1.3 PROHIBITION OF LOBBYING

To ensure fair consideration, consistent and accurate dissemination of information for all Respondents, the CITY prohibits communication to or with any department, employee, or agent evaluating or considering proposals during the submission process, except as authorized by the Procurement Division representative.

**The CITY prohibits communication initiated by a Respondent to any CITY official or employee evaluating or considering the proposals (up to and including the CITY Commissioners) before the time an award decision has been made.** Any communication between Respondent and the CITY required to obtain information or clarification for preparing a bid or to enable a proper, accurate evaluation of a proposal will be handled solely through the Procurement Division staff.

**Any communications initiated between the Respondent and the CITY outside these parameters may be grounds for disqualifying the offending Respondent from consideration for award of the proposal and/or any future proposal.**

## 1.4 CONE OF SILENCE

During the Cone of Silence as defined in the next paragraph, except as pursuant to an authorized appeal, no person may lobby (as defined in section 1.4), on behalf of a competing party in a particular procurement process, CITY officials or employees except the Procurement designated staff contact in the Procurement division. Violation of this provision shall result in disqualification of the party on whose behalf the lobbying occurred.

The Cone of Silence is the period between the issue date of the RFQ, and the time the CITY awards the contract.

## 1.5 DETERMINATION OF RESPONSIBILITY OF RESPONDENT

The specific qualifications of Respondent for this specific Request for Qualifications are included in Part 3, 3.2 Consultant Qualifications. Respondent must also demonstrate that it is responsible as defined in the CITY of Gainesville’s [Financial Services Procedures Manual](#)

, Section 41-522, as may be amended.

As a part of the proposal evaluation process, CITY reserves the right to conduct a background investigation of Respondent, including a record check by the Gainesville Police Department if the qualifications require it. Respondent’s submission of a proposal constitutes acknowledgment of the process and consent to such investigation.

No contract will be awarded to, any proposer who is in arrears to CITY upon any debt, fee, tax or contract, or who is a defaulter, as surety or otherwise, upon any obligation to CITY, or who is otherwise determined to be not responsible by CITY pursuant to Section 41-522, [Financial Services Procedures Manual](#), following:

These criteria consider the Respondent's capability by assessing:

- a. The ability to successfully carry out a proposed contract.
- b. Past performance (including reference check), experience, business and financial capabilities, skills, technical organization, legal eligibility and reliability.
- c. Current litigation pending between the Respondent and the CITY.
- d. Respondent has paid all debts owed to the CITY.
- e. Respondent possesses all required licenses.

If it is determined that the Respondent is not responsible, CITY will notify Respondent of its finding, including evidence used, and allow Respondent the opportunity to come into compliance within three (3) business days of notification.

Successful Respondent must update or complete CITY's supplier application, pay business tax (if applicable), and register with the State of Florida (Sunbiz.org).

## **1.6 RESPONSIVENESS OF PROPOSAL**

Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in the RFQ. A responsive proposal is one which follows the requirements of the RFQ, includes all required documentation, is submitted in the format outlined in the RFQ, is of timely submission (via upload to DemandStar.com), and has the appropriate signatures as required on each document. Failure to comply with these requirements may deem the proposal non-responsive (see Section 41-444 of the [Financial Services Procedures Manual](#)).

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## SECTION 2 – SCOPE OF WORK

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### 2.1 BACKGROUND

Gainesville is the largest city and county seat of Alachua County. It serves as the cultural, educational and commercial center for the north central Florida region. The city provides a full range of municipal services, including police and fire protection; comprehensive land use planning and zoning services; code enforcement and neighborhood improvement; streets and drainage construction and maintenance; traffic engineering services; refuse and recycling services through a franchised operator; recreation and parks; cultural and nature services; and necessary administrative services to support these activities. Additionally, the city owns a [Regional Transit System](#), a [regional airport](#), a 72-par championship golf course and a [utility](#). Gainesville is home to Florida's oldest university, and is one of the state's centers of education, medicine, cultural events and athletics. Known for its preservation of historic buildings and the beauty of its natural surroundings, Gainesville's numerous parks, museums and lakes provide entertainment to thousands of visitors. Because of its beautiful landscape and urban "forest," Gainesville is one of the most attractive cities in Florida. For more information, visit the City website at <https://www.gainesvillefl.gov/Home>. To review City of Gainesville's ongoing projects visit this site: <https://www.gainesvillefl.gov/Government-Pages/Government/Departments/Financial-Services/Bid-on-a-City-Project>

Gainesville Regional Utilities, known as GRU, is a multi-service utility owned by the City of Gainesville. GRU owns and operates administrative office facilities, electric generation facilities, electric substations, electric transmission and distribution system, natural gas pipelines and stations, communications data centers, communications network, water treatment facilities and pump stations, water distribution system, wastewater collection system, lift stations, water reclamation facilities, reclaimed water system, and environmental wetland sites. For more information, visit the Gainesville Regional Utilities website at [www.gru.com](http://www.gru.com). To review GRU's ongoing projects visit this site <https://apps.gru.com/WorkWithGRU/>.

The City of Gainesville (CITY) and Gainesville Regional Utilities (GRU), are interested in entering continuing service contracts with several companies to obtain a pool of Construction Management firms which will provide construction management services for Minor Projects. As per Consultants' Competitive Negotiation Act "CCNA", a Minor Project is defined as a project with an estimated construction cost of less than \$4,000,000.

Firms should generally have the following qualifications: three (3) years in business and staff must have at least three (3) years of progressive construction management experience, experience with other municipalities of similar size as Gainesville and/or larger cities. For further detail on minimum qualifications, selection factors, and submittal instructions see 2.3.

The term of the contract will commence upon final execution and will continue for four (4) years, subject to funding in subsequent fiscal years. At the end of the contract period, upon satisfactory performance, the OWNERS, may at their option, negotiate and extend the contract for one (1) additional one (1) year period. The initial base contract shall set a not-to-exceed percentage fee for overhead and profit. Alternately, a lump sum amount which will vary according to type and quantity of services to be rendered may be agreed to prior to commencement of each individual job.

### 2.2 SCOPE AND RELATED SERVICES

The OWNERS are seeking professional services in the area of Construction Management (CM) for Projects that have a construction budget of less than \$4,000,000. Typical projects include, but are not limited to, roadway, storm water, streetscapes, lighting, creek and/or wetland restoration, structures, solid waste projects, infrastructure improvements, water, wastewater and reclaimed water underground piping as well as water treatment and water reclamation plant equipment, structure rehabilitation or new construction, remodeling, park improvements, commercial buildings, Model Block homes, Historic rehabilitation and/or adaptive reuse, and more. Engineering Professional Services are performed by OWNER-retained design professionals, or completed in-house.

A not-to-exceed percentage fee for overhead and profit will be negotiated and established upon award of contract. This fee will be effective for the life of the contract. When an individual Project arises, the Construction Manager will be provided a detailed description of the Project Scope (plans and specifications when applicable) and will be asked to provide a Guaranteed Maximum Price (GMP) cost proposal for completing the work to the applicable OWNER Project Manager or other OWNER Designee.

The cost of the work will include all costs related to completing the work, including a proposed percentage fee for overhead and profit, which will be negotiated within the not-to-exceed percentage for each individual Project. For all Subcontracted work, the Construction Manager will be required to seek competitive bids from at least three firms where competition is available and feasible, which will be included as part of the GMP.

Applicants shall be capable of providing performance and payment bonds for up to \$4 million per project (See 2.5). Failure to negotiate an acceptable management fee for an assigned project, or failure to arrive at an acceptable GMP may result in non-execution of the project's agreement.

## **2.3 MINIMUM QUALIFICATIONS**

At the time of submittal, the applicant must be licensed to practice as a general contractor or building contractor in the State of Florida and, if the applicant is a Corporation, Limited Liability Company, or Partnership, must hold a certificate of authority to transact business in Florida. A copy of current licensing and certificate shall be included in the proposal.

The firm should demonstrate through their response to this RFQ that they meet the following qualification requirements:

- a. A minimum of three (3) years in business as a Construction Management firm or Building Contractor. Firm staff must have at least three (3) years of experience as a Construction Manager or Building Contractor in providing pre-construction and construction phase services.
- b. Experience with at least three (3) projects in acting as a CM at Risk with a Guaranteed Maximum Price: soliciting bids, contracting with and managing multiple trade contractors.
- c. Demonstrated experience in cost estimating during pre-construction and cost control during construction.
- d. Demonstrated experience in Project Tracking and Reporting
- e. Firm shall demonstrate it possess or has access to personnel and equipment support necessary for completion of tasks assigned throughout the term of the contract.
- f. Firm shall demonstrate that it complies with all applicable State and Federal professional licensing laws.

By submitting the Statement of Qualifications, the firm certifies that it has fully read and understands the RFQ and has full knowledge of general scope, nature, and quality of the work to be performed, the general requirements of the services to be provided, and the conditions under which the services are to be performed.

## **2.4 INSURANCE REQUIREMENTS**

Construction Manager shall provide proof of insurance in a form acceptable to the OWNERS, which gives the OWNERS 30 days' written notice (except the OWNERS will accept ten (10) days' written notice for non-payment) prior to cancellation or material change in coverage, in the amounts as noted below:

- a. Worker's Compensation Insurance to the extent required by Florida Statute 440.
- b. Professional Liability Insurance in the amount of \$1,000,000 per occurrence (combined single limit for bodily injury and property damage).
- c. Public Liability Insurance (other than automobile) consisting of broad form comprehensive general liability insurance including contractual coverage \$1,000,000 per occurrence (combined single limit for bodily injury and property damage).
- d. The OWNERS shall be an additional insured on such Public Liability Insurance and the Construction Manager shall provide copies of endorsements naming the each of the OWNERS as additional insured.
- e. Automobile Liability Insurance
- f. Property Damage \$500,000 per occurrence (combined single limit for bodily injury and property damage).

## **2.5. PERFORMANCE AND PAYMENT BOND REQUIREMENTS**

- a. Construction Manager shall furnish performance and payment Bonds as required by Section 255.05, Florida Statutes, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Construction Manager's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Law or Regulations.
- b. All Bonds shall be executed by such sureties as are named in the current list of "Companies Holding Certifications of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- c. If the surety on any Bond furnished by Construction Manager is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the

requirements as stated above in paragraph B, Construction Manager shall within 20 days thereafter substitute another Bond and surety.

All Bonds and insurance required are to be purchased and maintained by the Construction Manager shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required.

If notice of any change affecting the general scope of the work or the provisions of the contract (including, but not limited to, contract price or contract service period) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be the Construction Manager's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

## **2.6 CITY RESPONSIBILITY**

The CITY will be responsible to the selected consultant(s) for the following tasks:

- a. Definition of scope of work for specific projects.
- b. Monitoring consultant's progress for contract compliance.
- c. Provide information concerning project which is available in CITY files.
- d. Inform the Consultant of any known CITY design parameters or requirements.

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## SECTION 3 – HOW TO SUBMIT A PROPOSAL

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**Instructions to Respondents:** Proposals must contain each of the documents listed below; each fully completed and signed, as required. Required signatures for proposal forms may be applied using electronic signature software (i.e., DocuSign, Adobe Sign, etc.). Proposals submitted which do not include the following items may be deemed non-responsive and may not be considered for contract award.

### 3.1 STATEMENT OF QUALIFICATIONS FORMAT

- a. Project Understanding and Approach: Describe your understanding of the objectives and scope of the requested services and your general approach to such. Include a general time frame for being able to respond to OWNER'S requests for specific project proposals.
- b. Proposed Project Staff: Identify the key personnel who will be directly assigned to projects throughout the term of the contract. Provide resumes/CVs for each.
- c. Qualifications of Firm: In addition, the firm should provide at least three project references for work completed within the past three (3) years. Use "Required Form D -Contact Information for Project History" to complete this task.

### 3.2 CONTENT OF PROPOSAL-REQUIRED DOCUMENTS

The following documents are required to be included in the Respondent's submission:

- a. Required Form A - Respondent Verification Form
- b. Required Form B - Drug-Free Workplace Form
- c. Required Form C - E-Verify Certification Form
- d. Required Form D - Contact Information for Project History
- e. Address each Minimum Qualification (Section 2.3)
- f. Provide a Statement of all Qualifications that will communicate the capabilities of the Respondent to successfully complete assigned construction projects throughout the contract period, see Section 4
- g. Respondent's W-9
- h. Copy of any applicable, current licenses and/or certifications required by CITY/County/State
- i. Exceptions to the RFQ (refer to Part 3, 3.5 Exception to the RFQ)
- j. Investigation of Alleged Wrongdoings, Litigation/Settlements/Fines/Penalties

### 3.3 PROPOSAL SUBMISSION INSTRUCTIONS

The bid response, containing all required documents, with authorized signatures, must be received by 3:00 p.m. on the due date indicated on the Bid Cover Page for this project. The Respondent's complete pdf response must be uploaded into DemandStar.com prior to the 3:00 p.m. deadline. DemandStar technology will not permit submittals after the deadline. OWNER will not accept submittals by any other method after the deadline.

Upload bid response as a pdf formatted document only, unless the solicitation states otherwise. The pdf document should be titled with Respondent's name, bid number, and, if the response is submitted in parts, include "Part # of x".

Modifications to or withdrawal of a Respondent's submittal can be made up to the deadline date. Modifications and withdrawals must be documented in DemandStar.com in order to be recognized by the OWNER. Any bid not withdrawn will constitute an irrevocable offer, for a period of one hundred twenty (120) days, to provide the OWNER adequate time to award the Contract for the services specified in this solicitation.

The response must be signed by an officer of the business who is legally authorized to enter into a contractual relationship in the name of the Respondent. An authorized representative who is not an officer may sign the proposal, but must attach a corporate resolution granting authorization to the representative to execute on behalf of the business.

The submittal of a proposal by a Respondent will be considered by the OWNER as constituting an offer by the Respondent to perform the required services at the stated fees.



### 3.4 DISCLOSURE AND CONFIDENTIALITY

Florida's Public Records Law, Chapter 119, Florida Statutes, includes numerous exemptions to the general requirement to disclose information to the public in response to a public record's request. Exemptions are found in various provisions of the Florida Statutes, including but not limited to Section 119.071, Florida Statutes (General exemptions from inspection or copying of public records), and Section 119.0713, Florida Statutes (Local government agency exemptions from inspection or copying of public records). Section 815.045, Florida Statutes (Trade secret information), provides that trade secret information as defined in Section 812.081, Florida Statutes (Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty) is confidential and exempt from disclosure because it is a felony to disclose such records. The Parties understand and agree that Florida's Public Records Law is very broad and that documents claimed by a Party to be confidential and exempt from public disclosure pursuant to the Public Records Law may in fact not be deemed such by a court of law. Accordingly, the following provisions shall apply:

- a. Identifying Trade Secret or Otherwise Confidential and Exempt Information. For any records or portions thereof that Bidder claims to be Trade Secret or otherwise confidential and exempt from public disclosure under the Public Records Law, Bidder shall:
  1. Specifically identify the records or specific portions thereof that are confidential and exempt and reference the particular Florida Statute that grants such status. Provide one redacted copy of the record and one copy of the record with the confidential and exempt information highlighted as outlined in items 1 and 2 on the following page. Bidder shall take care to redact only the confidential and exempt information within a record.
  2. Provide an affidavit or similar type of evidence that describes and supports the basis for Contractor's claim that the information is confidential and exempt from public disclosure.
- b. Request for Trade Secret or Otherwise Confidential and Exempt Information.
  1. In the event OWNER receives a public records request for a record with information labeled by Bidder as Trade Secret or otherwise as confidential and exempt, OWNER will provide the public record requester with the redacted copy of the record and will notify Bidder of the public records request.
  2. However and notwithstanding the above, in the event that OWNER in its sole discretion finds no basis for Bidder's claim that certain information is Trade Secret or otherwise confidential and exempt under Florida's Public Records Law, then OWNER shall notify Bidder in writing of such conclusion and provide Bidder a reasonable amount of time to file for declaratory action requesting a court of law to deem the requested information as Trade Secret or otherwise as confidential and exempt under Florida's Public Records Law. If Bidder fails to file for declaratory action within the reasonable amount of time provided, then OWNER will disclose the information requested.
  3. If a public records lawsuit is filed against OWNER requesting public disclosure of the information labeled by Bidder as Trade Secret or otherwise as confidential and exempt, OWNER shall notify Bidder and Bidder shall intervene in the lawsuit to defend the nondisclosure of such information under Florida's Public Records Law.
  4. Bidder hereby indemnifies and holds OWNER, its officers and employees harmless from any and all liabilities, damages, losses, and costs of any kind and nature, including but not limited to attorney's fees, that arise from or are in any way connected with Bidder's claim that any information it provided to OWNER is Trade Secret or otherwise confidential and exempt from public disclosure under Florida's Public Records Law.
- c. How to Designate Trade Secret or Otherwise Confidential and Exempt Information

If a Bidder believes that its response contains trade secret or otherwise confidential and exempt information (as defined by Florida or Federal law) and should be withheld from disclosure to the public, in such cases the Bidder must provide a redacted copy of the proposal for public access.

- Redacted means that the confidential/proprietary information in the proposal has been obscured so that it cannot be read.
  - Unredacted means that the entire document, including the confidential/proprietary information, has not been obscured and is visible for the evaluation team to use in their evaluation process.
1. Upload a pdf version response of the complete UNREDACTED proposal. Include "UNREDACTED, CONFIDENTIAL" in document title. This is the version that will be used by the evaluators when they are reviewing your proposal. It is essential that the items that will be redacted are highlighted in yellow to prevent the evaluation team from discussing these items after the award. The first page of the document for the **unredacted** document should provide a general description of the information Bidder has designated as

confidential and/or exempt, and provide a reference to the appropriate Florida or Federal statute supporting the confidential and/or exempt classification.

2. Upload a pdf version response of the REDACTED copy of the proposal. Include "REDACTED" in the document title. This copy will be used to support any public records requests that may arise from this solicitation.
3. How the OWNER will Handle Material Identified as Trade Secret or Otherwise Confidential and Exempt Information

The OWNER's evaluators will be provided with the complete unredacted proposal, including any trade secret or otherwise confidential and exempt information. The OWNER evaluators will maintain the confidentiality of the information through the evaluation process, including any recorded evaluation team meetings.

In the event a public record request is made to view the information which Bidder claims is confidential and/or exempt, the OWNER will notify the Bidder and give the Bidder a reasonable opportunity (generally 2 business days) to institute appropriate legal action to prevent the disclosure of the information claimed as confidential and/or exempt.

All public records submitted to the OWNER, including those claimed as confidential and/or exempt, will be retained by the OWNER and will not be returned to a Bidder at the conclusion of the bidding process.

### **3.5 EXCEPTION TO THE RFQ**

Bidders may take exceptions to any of the terms of this RFQ unless the RFQ specifically states where exceptions may not be taken. Should a Respondent take exception where none is permitted, the proposal will be rejected as non-responsive. All exceptions taken must be specific to allow the OWNER a meaningful opportunity to evaluate and rank proposals.

Where exceptions are permitted, the OWNER shall determine the acceptability of the proposed exceptions and the proposals will be evaluated based on the proposals as submitted. The OWNER, after completing evaluations, may accept or reject the exceptions. Where exceptions are rejected, the OWNER may request that the Respondent furnish the services or goods described herein, or negotiate an acceptable alternative.

### **3.6 ONLY ONE BID**

Only one bid from any individual, firm, corporation, organization or agency under the same or different name shall be considered. Should it appear to the OWNER that any Respondent has a financial interest in more than one submission under this bid, all bids in which such Respondent has a financial interest will be rejected. A subcontractor is permitted to appear in more than one submittal for the same bid, as long as the subcontractor is not a lead Respondent in any of the submittals. The OWNER considers a financial interest to include, but not be limited, to joint ventures and/or partnerships.

### **3.7 FULLY INFORMED BIDDER**

A Bidder is expected to fully inform itself as to the requirements of the Specifications and Contract terms and conditions; failure to do so will be at its own risk. A Bidder shall not expect to secure relief on the plea of error.

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## SECTION 4 – EVALUATION CRITERIA

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### 4.1 SELECTION CRITERIA

Applicants will be evaluated on the basis of their past performance, experience, personnel, references, bonding capacity, workload, and responses to questions posed both in the shortlist and interview phases.

Responses will be evaluated in accordance with the procedures described in the [Evaluation Handbook](#).

The following criteria will be utilized by the OWNER'S staff to evaluate and select pool of firms. Staff will submit its recommendation to the City Commission.

Scores will be based on the following non-prioritized criteria as illustrated in the three (3) past project examples listed in the Project History. Additional criteria may be outlined for short-listed applicants.

- a. Satisfactory completion of roadway projects including milling & resurfacing, reconstruction, sidewalks, signalization, brickwork, lighting, landscaping, and utility installation/relocation.
- b. Satisfactory completion of recreation and parks projects including site work, drainage, sidewalks, milling & resurfacing, playground equipment installation, building renovations, hardscape, lighting, landscaping and utility installation/relocation.
- c. Satisfactory completion of storm water pond and/or other large earthwork construction, experience with NPDES compliance, successful dewatering plan, OSHA compliance.
- d. Satisfactory completion of utility installation and/or relocation including restoration, trenching, utility bypassing, dewatering, and maintenance of traffic.
- e. Satisfactory completion of water treatment or water reclamation plant equipment, building, and/or structure rehabilitation or new construction.
- f. Satisfactory completion of commercial and/or residential new construction, remodeling, rehabilitation, and/or adaptive reuse.
- g. Construction Manager's approach to, and experience with creating and executing complex Maintenance of Traffic Plans and ensuring access is maintained for businesses, residents and transit routes.
- h. Construction Manager's approach to, and experience with coordinating and executing complex utility work schedules. Also include examples of in-field resolution of utility conflicts.
- i. Construction Manager's approach to, and experience with controlling cost, schedule and scope when the unforeseen arises during construction and/or in a tight timeframe.
- j. Construction Manager's approach to, and experience with, trade subcontractor procurement and management, cost control & estimating, quality control, schedule management for "fast track" projects, safety, independent total building commissioning, owner direct purchasing and sustainable design & construction.
- k. Satisfactory delivery of projects with limited or no laydown area and/or remote contractor parking.
- l. Construction Manager's understanding of sustainable construction and the USGBC's LEED or equal rating system and its implications in the construction process.
- m. Satisfactory performance of work in a heavily occupied building or urban setting requiring continued operation without interruption.
- n. Construction Manager's approach to meeting the requirements of the OWNER's Apprentice Program.
- o. Commitment to comply with the OWNER of Gainesville's Local Small Business Procurement Program, as described in Section 42-400 of the OWNER of Gainesville's Purchasing Procedures, in the selection of Sub consultants and Subcontractors.
- p. Construction Manager's approach to, and experience with, complying with federal or other agency requirements, including experience with grant reporting criteria.
- q. Scores from the shortlist phase are not additive with scores from the presentation phase, but the Committee reserves the right to consider information provided in the RFQ submittal during the interview/oral presentation phase.

## SECTION 5 – SELECTION PROCESS

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The firm or firms will be selected from qualified businesses submitting statements as further described in Part 3, 3.1, “Statement of Qualifications Format” of this RFQ. A copy of the consultant’s current Florida Professional Registration Certificate must be provided. If the consultant is a corporation, it must be chartered to conduct business in Florida.

Evaluation and selection of the consulting firm will be in accordance with the requirements of the Consultants’ Competitive Negotiations Act (CCNA) and the OWNER’s RFQ procedure as stated herein. A brief description of this process follows:

- 1 Evaluators consisting of CITY staff will review the proposals. The evaluation process described in the CITY’s [Evaluation Handbook](#) provides a structured means for consideration of all proposals.
- 2 Upon review and evaluation the CITY will select no less than three (3) firms for further discussion or presentations based on ranking. The firms shall then further detail their qualifications, approach to the project and ability to furnish the required services during the presentation. Firms selected for further presentations must provide one (1) electronic copy of materials submitted via email attachment to the Procurement Specialist.
- 3 The CITY shall then select and rank no less than three (3) firms in order of preference who are deemed to be the most highly qualified to perform the required services, in accordance with the procedures described in the CITY’s [Evaluation Handbook](#). The City Commission, if applicable, will then be requested to approve the ranking and authorize contract negotiation and execution as per CCNA.
- 4 The CITY will negotiate a contract with the top ranked firm or firms for professional services. Should the CITY be unable to negotiate a satisfactory contract, negotiations will be terminated and negotiations will be initiated with the second most qualified firm. Should the CITY be unable to negotiate a satisfactory contract with any of the selected firms, then the CITY shall reject the bid and may seek to re-solicit responses in the future.

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## SECTION 6 – AWARD

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### 6.1 TIE BIDS

NOTE: The tie bid process would not come into play for this solicitation, as the OWNER is seeking multiple qualified bidders. If two or more bidders are equal in every respect, and they have met the qualifying criteria of this solicitation, they would both be accepted to move forward in the evaluation process. ~~Whenever two or more bids which are equal with respect to price, quality and service are received, preference shall be given in the following order: (1) Respondents submitting the attached Drug-Free Workplace form with their bid/proposal certifying they have a drug free workplace in accordance with Section 287.087, Florida Statutes; (2) Respondents located within the CITY of Gainesville, if not subject to the Local Preference Ordinance; (3) Respondents located within Alachua County; (4) Respondents located within the State of Florida; and (5) coin toss.~~

### 6.2 DRUG-FREE WORKPLACE

Preference shall be given to submitters providing a certification with their qualifications certifying they have a drug-free workplace whenever two or more bids which are equal with respect to price, quality, and service are received in accordance with Section 287.087, Florida Statutes. The attached form should be filled out and returned with the qualifications in order to qualify for this preference.

### 6.3 CONTRACT TERMS AND CONDITIONS

The OWNER may award a contract on the basis of initial offers received, without discussions. A sample contract is attached to the bid.

The OWNER's goal is to enter into a contract with multiple Contractors and will select and rank no less than three (3) firms in order of preference who are deemed to be the most highly qualified to perform the required services, in accordance with the procedures described in the OWNER's [Evaluation Handbook](#).

### 6.4 CONTRACT AWARD

The award(s), if any, shall be made to the Bidder(s) whose proposal(s) shall be deemed by the OWNER to be in the best interest of the OWNER. The decision of the OWNER of whether to make the award(s) and which proposal is in the best interest of the OWNER shall be final.

### 6.5 CONTRACT

The Contract to be entered into will designate the successful Bidder(s) as the OWNER's Contractor. The successful Bidder will be required to execute an agreement with the OWNER.

### 6.6 BID PROTEST

Participants in this solicitation may protest the RFQ specifications or award in accordance with Section 41-580 of the [Financial Services Procedures Manual](#).

### 6.7 RFQ POSTPONEMENT/CANCELLATION/WAIVER OF IRREGULARITIES

The OWNER may, at its sole and absolute discretion, reject any and all, or parts of any and all, proposals; re-advertise this RFQ; postpone or cancel, at any time, this RFQ process; or waive any irregularities in this RFQ or in the proposals received as a result of this RFQ. See Section 41-444 [Financial Services Procedures Manual](#).

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## SECTION 7 – GENERAL INFORMATION

### 7.1 REIMBURSABLES

If travel is involved in the execution of an awarded contract for this solicitation, should any air travel be required the OWNER's travel policy allows for Coach air travel only. All other travel will be billed in accordance with the Federal General Services Administration rates which can be found at: <https://www.gsa.gov/travel/plan-book/per-diem-rates>. In addition, long distance phone calls, printing, and other administrative costs may be billed at cost only -no mark-up. Evidence of these expenditures will be submitted when invoicing the OWNER.

### 7.2 LOCAL PREFERENCE

In bidding of, or letting contracts for procurement of, supplies, materials, equipment and services, as described in the purchasing policies, the City Commission, or other purchasing authority, may give a preference to local businesses in making such purchase or awarding such contract in an amount not to exceed five percent of the local business' total bid price, and in any event the cost differential should not exceed \$25,000.00. Total bid price shall include not only the base bid price but also all alterations to that base bid price resulting from alternates which were both part of the bid and actually purchased and awarded by the City Commission or other authority. In the case of requests for proposals, letter of interest, best evaluated bids, qualifications or other solicitations and competitive negotiation and selection in which objective factors are used to evaluate the responses. Local Businesses are assigned five (5) percent of the total points of the total evaluation points.

Local business means the vendor has a valid business tax receipt, issued by the City of Gainesville at least six months prior to bid or proposal opening date, to do business in said locality that authorizes the business to provide the goods, services, or construction to be purchased, and a physical business address located within the limits of said locality, in an area zoned for the conduct of such business, from which the vendor operates or performs business on a day-to-day basis. Post office boxes are not verifiable and shall not be used for the purpose of establishing said physical address. In order to be eligible for local preference, in the Bid or RFQ evaluation, the vendor must provide a copy of the business tax receipt and Zoning Compliance Permit. For more information on OWNER's Local Preference Policy: [Municipal Code Article X Local Preference Policy](#).

### 7.3 SMALL AND SERVICE-DISABLED VETERAN BUSINESS PARTICIPATION

Small or Service-Disabled Veteran's Business Enterprise Definition: A Small Business or a Service-Disabled Veteran's Business, which is duly licensed and authorized to engage in business and maintains a permanent principal place of operation with full time personnel within Alachua, Bradford, Columbia, Gilchrist, Levy, Putnam, or Union County and possess a current CITY business tax receipt as required, and is so certified by the Small and Service-Disabled Veteran's Business Program Coordinator.

It is the policy of the City of Gainesville that small and service-disabled veteran businesses as defined in the Small and Service-Disabled Veteran Business Program, have the maximum practical opportunity to participate in contracting opportunities provided by the CITY. In keeping with this policy, each Bidder is asked to state whether it will utilize small and service-disabled veteran businesses that are eligible for assistance to perform work on the project(s) being advertised.

For Bidders not yet certified by the OWNER, a small and service-disabled veteran application may be accessed via the [Diversity Business Management System](#) website. To be considered as a certified small and/or service-disabled veteran business, a Bidder must have a current certificate at the time of the solicitation submittal due date. For more information on certified small and service-disabled veteran businesses, please visit the [Office of Equity and Inclusion](#) website.

### 7.4 LIVING WAGE REQUIREMENTS

Living Wage requirements, Ordinance 020663, as amended in Ordinance 030168, in Ordinance No. 180999: <https://www.gainesvillefl.gov/files/assets/public/v/1/budget-amp-finance/documents/living-wage-ordinance-original-and-modified-oct-2022.pdf>, Section 2-619 – Living Wage Requirements, and as shown on the CITY's web page, applies to contracts solicited by the CITY after midnight on March 31, 2021

a. The following are requirements of each service contractor/subcontractor:

1. A service contract or/subcontractor shall pay a living wage to each of its covered employees during the time they are providing the covered services.
2. A copy of the living wage rate shall be posted by the service contractor/subcontractor in a prominent place where it can easily be seen by the covered employees and shall be supplied to any covered employee upon request.
3. Each service contractor shall make all of its service subcontractors aware of the requirements of this division and shall include the contract provisions listed in the **Agreement for Construction Management for Minor**

**Projects (Part II, Exhibit A) and General Terms and Conditions for Agreement for Continuing Construction Management for Minor Projects (Part II, Exhibit B)** under the *Living Wage* paragraph in each of its service subcontracts to ensure compliance with this article. The OWNER shall not be deemed a necessary or indispensable party in any litigation between the service contractor and a subcontractor.

4. A service contractor/subcontractor shall not discharge, reduce the compensation of, or otherwise retaliate against any covered employee for filing a complaint, participating in any proceedings or otherwise asserting the requirement to pay a living wage under this division. A covered employee who claims their employer has not paid them a living wage as required by this division may file a written complaint with the OWNER.
5. Each service contractor/subcontractor shall produce payroll records, and any other requested documentation to the OWNER as necessary for the OWNER to audit or investigate compliance with or a reported violation of this division.
6. The adjusted Living Wage for this contract will begin at \$15.00 per hour (Living Wage with Health Benefits) or \$17.25 per hour if Health Benefits are not provided. The living wage will increase annually on the anniversary date of the contract at the OWNER's prevailing living wage rate, which is updated October 1 each year.

#### **7.5 APPRENTICE AND DISADVANTAGE WORKER REQUIREMENTS**

In accordance with CITY Ordinance Number 200586, Article XI, "Purchasing Requirements for Certain CITY Construction Projects", ([Office of Equity and Inclusion](#)) at least 10 percent of the all labor hours performed on a construction project shall be performed by apprentices and at least 10 percent of all labor hours performed on a construction project shall be performed by disadvantaged workers. Labor hours worked by a person who is both an apprentice and a disadvantaged worker shall count toward meeting both requirements. The apprentices and disadvantaged workers may be employed by the prime contract and/or subcontractor. Reference the ordinance to obtain additional details and reporting requirements.

#### **7.6 TAXES, CHARGES AND FEES**

The Bidder agrees that any applicable Federal, State and Local sales and use taxes, which are to be paid by CITY of Gainesville, are included in the stated bid prices. Since the CITY of Gainesville is often exempt from taxes for equipment, materials and services, it is the responsibility of the Contractor to determine whether sales taxes are applicable. The Contractor is liable for any applicable taxes which are not included in the stated bid prices.

#### **7.7 COSTS INCURRED BY BIDDERS**

All expenses involved with the preparation and submission of proposals to the OWNER, or any work performed in connection therewith shall be borne by the Bidder(s). No payment will be made for any responses received, nor for any other effort required of or made by the Bidder(s) prior to commencement of work as defined by a contract approved by the CITY Commission (if so required).

#### **7.8 RULES; REGULATIONS; LICENSING REQUIREMENT**

The Bidder shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including those applicable to conflict of interest and collusion. Bidders are presumed to be familiar with all Federal, State and local laws, ordinances, codes and regulations that may in any way affect the services offered.

#### **7.9 RECORDS/AUDIT**

Contractor shall maintain records sufficient to document their completion of the scope of services established by this Contract. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by the CITY. These records shall be kept for a minimum of three (3) years after completion of the Contract. Records which relate to any litigation, appeals or settlements of claims arising from performance under this Order shall be made available until a final disposition has been made of such litigation, appeals, or claims.

#### **7.10 DEBARMENT, SUSPENSION, OTHERWISE EXCLUDED**

By submitting this proposal, Bidder agrees that it:

- a. Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Has not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements or receiving stolen property;
- c. Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission or any of the offenses enumerated in paragraph (2) of this certification; and

- d. Has not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

**7.11 PUBLIC ENTITY CRIME INFORMATION STATEMENT**

Section 287.133 (2)(a), Florida Statutes, contains the following provisions: “A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity, in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.”

**7.12 INVESTIGATION OF ALLEGED WRONGDOINGS, LITIGATION/SETTLEMENTS/FINES/PENALTIES**

The City Commission specifically requests that responders to this document indicate in writing any investigations of wrongdoings, litigation and/or settlements, and fines or penalties (anywhere in the U.S.) involving the Bidder and specific contractors listed as projected to provide services to the OWNER. You may be required to respond to questions on this subject matter.

**7.13 NON-DISCRIMINATION POLICY AND COMMERCIAL NON-DISCRIMINATION REQUIREMENT**

As a condition of entering into this agreement, the company represents and warrants that it will comply with Title VI and Title VII of the Civil Rights Act of 1964 and all other federal, state or local laws prohibiting discrimination. The company shall not discriminate on the basis of race, color, religion, gender, national origin, marital status, sexual orientation, age, disability or gender identity, or other unlawful forms of discrimination in the solicitation, selection, hiring, commercial treatment of subcontractors, vendors, suppliers or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination.

The OWNER reserves the right to investigate any claims of illegal discrimination by the Contractor and in the event a finding of discrimination is made and upon written notification thereof, the Contractor shall take all necessary steps to cure and rectify such action to the reasonable satisfaction of the OWNER. The company understands and agrees that a violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in OWNER contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

For more information on this policy and requirement, please visit the [Office of Equity and Inclusion](#)

**7.14 USE OF RFQ REPLY IDEAS**

The OWNER has the right to use any or all information presented in any response to the RFQ, whether amended or not, except as prohibited by law. Selection or rejection of the submittal does not affect this right.

**7.15 e-VERIFY REQUIREMENT**

Section 448.095, Florida Statute states the statute shall be construed in a manner so as to be fully consistent with any applicable federal laws or regulations. The Contractor shall (1) utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract; and (2) shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. Alternatively, Contractor shall provide proof that one of the exceptions to the E-Verify federal contractor rule applies.

**7.16 PROHIBITION AGAINST CONSIDERATION OF SOCIAL, POLITICAL, OR IDEOLOGICAL INTERESTS IN GOVERNMENT CONTRACTING**

In accordance with Section 287.05701(2)(a), F.S. (2023), the OWNER may not request documentation of or consider a vendor’s social, political, or ideological interests when determining if the vendor is a responsible vendor, and may not give preference to a vendor based on the vendor’s social, political, or ideological interests.

**7.17 INTERNATIONAL PROPOSER REQUIREMENTS**

The OWNER is unable to send ACH payments to international banks. Therefore, ACH payments will only be made to U.S.A. banks. Additionally, the international company must be from a country that has a tax treaty with the U.S.A. International proposers must agree to these requirements and provide proof of same should they receive an award recommendation.



**7.18 SPECIALTY FUNDING, IF APPLICABLE**

SPECIALTY FUNDING SOURCES FOR SOME PROJECTS MAY OVERRIDE THE OWNER'S POLICIES WHICH OFFER SMALL AND SERVICE DISABLED VETERAN BUSINESS PREFERENCES, LOCAL PREFERENCE or APPRENTICESHIP REQUIREMENTS. If a specific project under the Qualifying Agreement is exempt from the these programs, the specific Project Task will identify the exception.

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## **SECTION 8 – REQUIRED FORMS**

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The following documents/forms are included in this section:

REQUIRED FORM A – Respondent Verification Form

REQUIRED FORM B – Drug-Free Workplace Form

REQUIRED FORM C – E-Verify Certification Form

REQUIRED FORM D – Customer Project History Form

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**REQUIRED FORM A**

(Page 1 of 2)

**RESPONDENT VERIFICATION FORM**

**REQUEST FOR QUALIFICATIONS  
FPUR-230010-GD  
Continuing Construction Management Professional Services for Minor Projects**

**1. RESPONDENT CONTACT INFORMATION**

Legal Name of Respondent's Company (as reported to IRS): \_\_\_\_\_

DBA: \_\_\_\_\_

Authorized Representative Name/Title: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Mailing Address (if different): \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_\_) \_\_\_\_\_

**2. DECLARATIONS OF DEBT AND DEFAULT**

a. Respondent is not in arrears to City upon any debt, fee, tax or contract:

Respondent is NOT in arrears

Respondent IS in arrears

b. Respondent is not a defaulter, as surety or otherwise, upon any obligation to City:

Respondent is NOT in default

Respondent IS in default

**3. ACKNOWLEDGEMENT OF ADDENDA**

Respondents who receive this bid from sources other than City of Gainesville Procurement Division or DemandStar.com MUST contact the Procurement Division prior to the due date to ensure any addenda are received in order to submit a responsible and responsive offer. Uploading an incomplete document may deem the offer non-responsive, causing rejection.

ADDENDA ACKNOWLEDGMENT: Prior to submitting this offer, I have verified that all addenda issued to date are considered as part of my offer.

Addenda received (list all) # \_\_\_\_\_

## REQUIRED FORM A

(Page 2 of 2)

### 4. LOCAL PREFERENCE (Refer to 8.2 for qualifying information)

Local Preference requested:

YES

NO

A copy of your *Business Tax Receipt* should be included in your submission if you are requesting Local Preference:

### 5. QUALIFIED SMALL BUSINESS AND/OR SERVICE DISABLED VETERAN BUSINESS STATUS

(Refer to 8.3 for qualifying information)

a. Is your business qualified, in accordance with the City of Gainesville's Small Business Procurement Program, as a local Small Business?  YES  NO

b. Is your business qualified, in accordance with the City of Gainesville's Small Business Procurement Program, as a local Service-Disabled Veteran Business?  YES  NO

### 6. FEDERAL EMPLOYMENT IDENTIFICATION NUMBER

FEIN: \_\_\_\_\_

### 7. REGISTERED TO DO BUSINESS IN THE STATE OF FLORIDA

Is Respondent registered with Florida Department of State's, Division of Corporations, to do business in the State of Florida?  YES  NO (refer to Part 1, 1.6, last paragraph)

If the answer is "YES", provide a copy of SunBiz registration or SunBiz Document Number (# \_\_\_\_\_)

If the answer is "NO", please state reason why:

\_\_\_\_\_

### 8. DIVERSITY AND INCLUSION

Does your company have a policy on diversity and inclusion?  YES  NO

If yes, please attach a copy of the policy to your submittal.

*Note: Possessing a diversity and inclusion policy will have no effect on the OWNER's consideration of your submittal, but is simply being requested for information gathering purposes.*

By signing this form, I acknowledge I have read and understand, and my firm complies with all General Conditions and requirements set forth herein; and,

Proposal is in full compliance with the Specifications.

Proposal is in full compliance with the Specifications except as specifically stated and attached hereto.

SIGNATURE OF AUTHORIZED REPRESENTATIVE: \_\_\_\_\_

SIGNER'S PRINTED NAME: \_\_\_\_\_

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

**REQUIRED FORM B  
DRUG-FREE WORKPLACE**

The undersigned respondent in accordance with Florida Statute 287.087 hereby certifies that

\_\_\_\_\_ does:  
Name of Respondent

- 1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2. Inform employees about the dangers of drug abuse in the workplace, the business’s policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for the drug abuse violations.
- 3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- 4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee’s community, by any employee who is so convicted.
- 6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

\_\_\_\_\_  
Respondent’s Signature

\_\_\_\_\_  
Date

**REQUIRED FORM C  
E-VERIFY CERTIFICATION FORM**

If awarded:

The Contractor shall comply with all applicable requirements of Section 448.095, Florida Statutes, including but not limited to: 1) the Contractor shall register with and use the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees of the Contractor during the term of this Agreement; and 2) the Contractor shall expressly require any subcontractors performing work or providing services pursuant to this Agreement to likewise register with and use the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees of the subcontractor during the term of this Agreement. Section 448.095, Florida Statutes, states the statute must be construed in a manner that is fully consistent with any applicable federal laws or regulations, and therefore this section does not apply to this Agreement to the extent that this section would be inconsistent with any federal laws or regulations that are applicable to this Agreement.

As the person authorized to sign the statement, I certify that this bidder complies fully with the above requirement.

\_\_\_\_\_  
Bidder's Name

\_\_\_\_\_  
Printed Name/Title of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

## REQUIRED FORM D CUSTOMER PROJECT HISTORY

NAME OF RESPONDENT: \_\_\_\_\_

Provide information for three projects of similar scope performed within the past three (3) years. You may include photos or other pertinent information. Please verify that the contact information you are providing is current and correct.

Customer Name:			
Address:			
City, State, Zip			
Point of Contact:		Phone Number:	
E-mail:			
Project Description:			
Project Cost:			
Project Start Date:		Project Finish Date:	

Customer Name:			
Address:			
City, State, Zip			
Point of Contact:		Phone Number:	
E-mail:			
Project Description:			
Project Cost:			
Project Start Date:		Project Finish Date:	

Customer Name:			
Address:			
City, State, Zip			
Point of Contact:		Phone Number:	
E-mail:			
Project Description:			
Project Cost:			
Project Start Date:		Project Finish Date:	

## SECTION 9 – NO RESPONSE SURVEY

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**RFQ #:** FPUR-230010-GD

**DUE DATE:**

**RFQ TITLE:** Continuing Construction Management Professional Services for Minor Projects

**IF YOUR COMPANY DID NOT SUBMIT A RESPONSE::**

If you choose to not bid, please complete this form, and either upload it into DemandStar.com or email to the procurement specialist. Your reply will assist the City in developing future solicitations, your reply will remain anonymous and will be aggregated into a spreadsheet for analysis purposes only.

Check the appropriate reasons and provide additional information that may help the City develop future solicitations.

- The solicitation time-frame was too short
  - My company did not learn of this solicitation until it was too late to develop a reply
  - My company's work load did not allow time to develop a submittal
  - If awarded, my company's work load could not support this project
  - Specifications were not clear
  - My company does not handle this type of work
  - My company does not submit replies to Municipalities
  - Have experienced delays in payments from Government agencies in the past
  - Is there anything the City could have done differently in the solicitation package to prompt your company to submit a proposal?  
Explain: \_\_\_\_\_
  - If the City were to rebid this solicitation, would your company be interested in responding?
  - Please provide any additional information regarding this solicitation that may help us develop our next steps in fulfilling the City's needs for this project. \_\_\_\_\_
- 

Respondent Company Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Email Address: \_\_\_\_\_

Is your company a certified City of Gainesville small business?  YES  NO  
(Refer to 7.2 for certification requirements)

Is your company a certified City of Gainesville service-disabled veteran business?  YES  NO  
(Refer to 7.3 for certification requirements)



**PART II**  
**EXHIBITS: CONTRACTS AND FORMS**

**CONTINUING CONSTRUCTION MANAGEMENT**  
**PROFESSIONAL SERVICES FOR MINOR PROJECTS**

EXHIBIT A – Contract For Continuing Construction Management For Minor Projects

EXHIBIT B – Continuing Construction Management For Minor Projects General Terms And Conditions

EXHIBIT C – GMP Template

EXHIBIT D – Preconstruction Agreement Template

EXHIBIT E – Notice to Proceed

## EXHIBIT A

# CONTRACT FOR CONTINUING CONSTRUCTION MANAGEMENT FOR MINOR PROJECTS

This Contract for Construction Management Services for Minor Projects (“Contract”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_ by and between the City of Gainesville, a Florida municipal corporation doing business in its own name and as Gainesville Regional Utilities (hereinafter “Owner”) and, [\_\_\_\_], a [state of incorporation] [type of entity, exactly per sunbiz.org] [if not incorporated in Florida, say “authorized to do business in Florida” if confirmed in Sunbiz] “Construction Manager”).

### WITNESSETH:

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

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

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

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

**WHEREAS**, the projects to be performed under this Contract may include new construction, renovation, remodeling, building maintenance, equipment installation, and other miscellaneous projects. Properties may be owned by the City, or others, and Construction Costs for each project (hereinafter defined) shall not exceed the applicable amount in Section 287.055, Florida Statutes (currently \$4,000,000).

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

### **ARTICLE 1. SCOPE OF CONTRACT; CONTRACT DOCUMENTS**

---

1.1 This is a contract for continuing services. Services will be provided upon request of Owner on a per project basis. Construction Manager shall provide construction management services to Owner in accordance with the following contract documents, whether attached hereto or incorporated by reference:

- a. Executed Change Orders and Field Orders;
- b. This Contract, as amended;
- c. General Terms and Conditions revised February, 2023 attached hereto and incorporated as **Exhibit B**;
- d. Executed Project specific GMP Agreement, **Exhibit C**;
- e. Executed Project specific Preconstruction Agreement **Exhibit D**
- f. Request for Qualifications (RFQ-FPUR-230010-GD) issued \_\_\_\_\_, and all addenda; and
- g. Construction Manager’s Response to RFQ-FPUR-230010-GD dated \_\_\_\_\_.

Documents not included or expressly contemplated in this section do not, and shall not, form any part of this Contract. Without limiting the generality of the foregoing, shop drawings and other submittals from the Construction Manager or its subcontractors and suppliers do not constitute a part of this Contract. In the event of conflict or inconsistency among or between the documents that comprise this Contract, the order of precedence is the order in which the documents are listed above. Conflict or inconsistency within a particular contract document shall be resolved by having the more specific reference to the matter prevail.

## **ARTICLE 2. TERM OF CONTRACT**

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- 2.1 This Contract shall become effective upon execution and remain in force for an initial period of four (4) years, unless earlier terminated.
- 2.2 This Contract may be renewed at the Owner's option for one (1) additional one (1) year period, based upon satisfactory performance of the Construction Manager as determined by Owner in its sole and absolute discretion. To renew this Contract Owner shall so notify Construction Manager at least thirty (30) days prior to the date the original term or renewal term terminates, as applicable.

## **ARTICLE 3. INDIVIDUAL PROJECTS**

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### **3.1 Project Scope**

The Construction Manager's services may include pre-construction and/or construction services and will be initiated by Owner when Owner desires to procure such services from Construction Manager under this Contract. When the Owner identifies a Project, the Owner will provide the Construction Manager with a detailed description of the Project Scope.

### **3.2 Preconstruction Services Proposal and Agreement**

3.2.1 Construction Manager shall provide a Preconstruction Services Proposal for services to be provided during the design development phase, with a copy to the Professional. The Preconstruction Services Proposal shall include:

- (i) Scope of Services, with assumptions, clarifications, and site specific requirements;
- (ii) Fee Proposal;
- (iii) Preconstruction Services Schedule;
- (iv) List of Preconstruction Services Personnel;
- (v) Additional documents required by the Owner or Construction Manager to support the proposal;

### **3.3 Guaranteed Maximum Price Proposal and Agreement**

3.3.1 Construction Manager shall provide to Owner, with a copy to the Professional a Guaranteed Maximum Price Proposal for completing the Project. The GMP Proposal shall include:

- (i) a recital of the specific Construction Documents, including drawings, specifications, and all addenda thereto, used in preparation of the GMP proposal;
- (ii) the five (5) elements of the GMP:
  - a. the Cost of the Work (hereinafter defined), detailed by each subcontract, trade, or bid division;
  - b. the Construction Manager's Contingency for the Work;
  - c. the Construction Manager's Staffing Cost (hereinafter defined in 6.2.3), detailed by expense category;
  - d. the General Conditions Cost (hereinafter defined in 6.2.4), including bond & insurance costs, detailed by expense category; and
  - e. the Construction Manager's Overhead and Profit.
- (iii) a draft schedule of values;
- (iv) a description of all other inclusions to, or exclusions from, the GMP;
- (v) all assumptions and clarifications; and
- (vi) construction schedule.

3.3.2 The Construction Manager acknowledges that the Construction Documents may be incomplete at the time the Construction Manager delivers the GMP Proposal, and that the Construction Documents may not be completed until after commencement of the Work. Nevertheless, the GMP Proposal shall include all costs for the Work required by the completed Construction Documents, and if the GMP Proposal is accepted by the Owner, the Construction Manager shall be entitled to no increase in the GMP if the work required by the completed Construction Documents (i) is required by this Contract, (ii) is reasonably inferable from the incomplete documents, (iii) is consistent with the Owner's programmatic goals and

objectives, (iv) is consistent with the Owner's Design and Construction Standards and the general industry standards for completion of the work, (v) is not a substantial enlargement of the scope of work or (vi) substantially conforms to the nature, type, kind or quality of work depicted in the incomplete documents.

3.3.3 If the GMP Proposal is unacceptable to the Owner, the Owner shall promptly notify the Construction Manager. Within fourteen (14) calendar days of such notification, the Owner, Professional and Construction Manager shall meet to discuss and resolve any differences, inconsistencies, or misunderstandings and negotiate recommended adjustments to the Work and/or to the GMP.

3.3.4 The Owner may, at its sole discretion and based upon its sole judgment: (i) reject a GMP Proposal; (ii) terminate the Project; and/or (iii) proceed to construct the Project using a party or parties other than the Construction Manager. If the Owner rejects a GMP Proposal, neither party shall have any further obligation under this Contract.

3.3.5 If the Owner wishes to accept a GMP Proposal, it shall be in the form of a completed and executed GMP Agreement as shown in **Exhibit C**. Owner shall cause a Purchase Order to be initiated and issue a written Notice to Proceed, **Exhibit E** to the Construction Manager, completion of the latter of which will establish the date construction is to commence (the "Commencement Date"). The Construction Manager shall not expend any monies for construction prior to receipt of (1) an executed GMP Agreement; (2) a signed Purchase Order; and (3) a signed Notice to Proceed.

#### 3.4 **Project Team.**

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

#### 3.5 **Project Schedule.**

The preliminary schedule in the GMP Proposal shall serve as the framework for the subsequent development of all detailed construction schedules for the Project. The Construction Manager shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Project schedule, subject to delays in the schedule not the fault of Construction Manager or its subcontractors. Time is of the essence in the performance of this Contract and the GMP Agreement, and Construction Manager shall commence performance of Construction Services within ten (10) days after receipt from the Owner of the executed GMP Agreement and signed Purchase Order and Notice to Proceed, and shall complete the Project within the time frames specified in the GMP Agreement, or as extended by signed amendment or Change Order. The parties acknowledge that (i) the Owner may determine not to proceed with Construction Services, (ii) performance of Pre-Construction Services, if required, may overlap performance of Construction Services, and (iii) categories of Work performed during Construction Services may be performed in separate phases.

### **ARTICLE 4. OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES**

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#### 4.1 **Project Information.**

When an individual Project arises, the Construction Manager will be provided a detailed description of the Project Scope (plans and specifications when applicable) and asked to provide a Guaranteed Maximum Price (GMP) cost proposal for completing the work to the applicable OWNER Project Manager or other OWNER Designee.

Construction Manager acknowledges that Owner has provided Construction Manager with information regarding Owner's requirements for the Project as set forth in the Project Scope.

#### 4.2 **Owner's Budget.**

The Owner shall establish and update a budget for the Project, including the amount allocated for construction, the Owner's other costs, and reasonable contingencies related to these costs as appropriate.

#### 4.3 **Owner's Representative.**

The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project.



#### **4.4 Professional**

Hired directly by the Owner for design services, may also provide construction related professional services. See definition in Article 1 of the General Terms and Conditions.

#### **4.5 Time for Performance.**

The Owner or Owner's Representative shall review and approve or take other appropriate action on all design submittals within the timeframes set forth in the Project Schedule form in the GMP Agreement.

#### **4.6 Purpose of Owner's Review.**

Owner's review, inspection, or approval of any Work, Applications for Payment, or other submittals shall be solely for the purpose of determining whether the same are generally consistent with Owner's Project Scope and requirements. No review, inspection, or approval by Owner of such Work or documents shall relieve Construction Manager of its responsibility for the performance of its obligations under this Contract or the accuracy, adequacy, fitness, suitability, or coordination of the Work. Approval by any governmental or other regulatory agency or other governing body of any Work, Design Document, or Construction Documents shall not relieve Construction Manager of responsibility for the performance of its obligations under this Contract. Payment by Owner pursuant to the Contract for Construction shall not constitute a waiver of any of Owner's rights under this Contract or at law, and Construction Manager expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner. Notwithstanding the foregoing, prompt written notice shall be given by the Owner or Professional to the Construction Manager if the Owner becomes aware of any fault or defect in the Project or non-conformance with this Contract.

#### **4.7 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.

#### **4.8 Owner's Utilities.**

The Construction Manager shall be responsible to provide and pay for consumption of, and connections to, utilities required for temporary service and construction unless otherwise directed by the Owner.

### **ARTICLE 5. CONSTRUCTION MANAGER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES**

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#### **5.1 General**

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

#### **5.2 Preparation/Sufficiency of Site.**

The Construction Manager shall, among other things, (i) visit and thoroughly inspect the Project Site and any structure(s) or other manmade features to be modified and become familiar with local conditions under which the Project will be constructed and operated; (ii) if applicable, familiarize itself with the survey, including the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on the Project; (iii) familiarize itself with the Owner's layout and design requirements, conceptual design objectives, and budget for the Project; (iv) familiarize itself with pertinent Project dates, including the Project schedule, (v) review and analyze all Project geotechnical, Hazardous Substances, structural, chemical, electrical, mechanical, and construction materials tests, investigations and recommendations; and (vi) gather any other information necessary for a thorough understanding of the Project. If the Project involves modifications to any existing structure(s) or other man-made feature(s) on the Project

Site, the Construction Manager shall also review all as-built and record drawings, plans and specifications of which Construction Manager has been informed by Owner about and thoroughly inspect the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components. Claims by Construction Manager resulting from Construction Manager's failure to familiarize itself with the Project Site or pertinent documents shall be deemed waived.

### 5.3 General Project Services.

The Construction Manager agrees to:

- 5.3.1 Provide all services required to professionally complete the Work in an expeditious and economical manner consistent with this Contract for Construction and the best interests of the Owner.
- 5.3.2 Endeavor to develop, implement and maintain, in consultation with the Owner, Professional, and the Subcontractors, a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.
- 5.3.3 Perform its services in accordance with schedule requirements.
- 5.3.4 Work with Owner and Professional to pursue Owner's goal of obtaining Leadership in Energy and Environmental Design (LEED) certification or other similar type certification for the Project, at the level set forth on Project Specific Requirements in the GMP Agreement.
- 5.3.5 Participate in, and cooperate with, design phase, construction phase, and post-occupancy commissioning, validation, and other quality assurance and quality control processes.
- 5.3.6 Complete the Work by the required dates for Substantial Completion and Final Completion. The Construction Manager shall submit a Construction Schedule with each GMP Price Proposal; and revised Construction Schedules in accordance with the General Terms and Conditions. The Construction Schedule shall complement, and shall not conflict with, the design schedule.
- 5.3.7 Comply with Owner's policies, project management guides, and General Terms and Conditions incorporated in this Contract.

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

- 5.4.1 The Construction Manager shall familiarize itself with the approved Scope for the Project and actively and jointly participate with the Owner and the Professional in formation of the final Project design. The phasing of, and schedule for, design for each Project shall be set forth in the Project Schedule in the GMP Agreement.
- 5.4.2 Submit for Owner review within thirty (30) calendar days of the Owner's execution of this Contract:
  - (i) Project reporting procedures;
  - (ii) Quality Control and Testing Program; and
  - (iii) Safety Program.
- 5.4.3 The Professional is required, in accordance with schedule requirements, to provide design concepts, narratives, and drawings. At each phase of design, in keeping with the Owner's goals for the Project, the Construction Manager shall familiarize itself with these design documents and, in accordance with the Project Schedule in the GMP Agreement, provide the Owner and Professional with a report detailing construction issues and concerns relating to the design, with detail appropriate to the phase of design. Without limitation of the foregoing, each construction report shall:
  - (i) include a Construction Manager's estimate of overall construction cost, with Construction Manager's contingency associated with the Cost of the Work at no greater percentages than the percentages set forth in the Project Specific Requirements in the GMP Agreement, including a comparison of the estimate to Owner's budget for construction;
  - (ii) identify conceptual decisions necessary to prepare accurate cost reports with the fewest assumptions, qualifications and exclusions;
  - (iii) include an analysis and evaluation of jobsite management, site logistics, and schedule considerations;





- (iv) include an analysis and evaluation of the constructability of the design concepts, narratives, or drawings;
  - (v) include an analysis and evaluation of the design concepts, narratives, or drawings in regard to the completeness of intended bid categories, conflicts or overlaps in the divisions of the Work, design details affecting construction including, without limitation, unusual or custom materials, value analysis, identification of long-lead materials affecting the Construction Schedule, availability of labor, and other factors affecting construction and, in the report provided during the Construction Documents Phase, suggestions for alternatives for matters which may delay the construction schedule;
  - (vi) address problems, conflicts, defects or deficiencies in the design concepts and offer resolutions of same; and
  - (vii) identify any other issues which Construction Manager reasonably believes may have a negative impact on the Project schedule, budget or performance.
- 5.4.4 The Construction Manager and the Professional shall jointly schedule and attend regular meetings with the Owner and evaluate the preliminary design drawings. The Professional shall prepare and distribute minutes of these meetings, and the Construction Manager shall verify the accuracy and completeness of the minutes.
- 5.4.5 The Construction Manager shall develop a comprehensive jobsite management and logistics plan for the Owner's review. This plan shall be submitted no later than the date set forth the Project Specific Requirements in the GMP Agreement.
- 5.4.6 The Construction Manager shall, in accordance with schedule requirements, assist the Professional with the resolution of all problems, conflicts, defects or deficiencies identified during the review and evaluation of the Construction Documents.
- 5.4.7 At each phase of design, the Construction Manager shall work with the Professional and/or the Owner's cost consultant to reconcile, and make recommendations on, the differences between the estimates each has prepared at that phase of design. If the final estimates of the Construction Cost by the Construction Manager and the Professional and/or the Owner's cost consultant differ materially, the Construction Manager and Professional and/or the Owner's cost consultant shall meet promptly to reconcile the discrepancies between their estimates so as to permit submission to the Owner of a final estimate of Construction Cost on which both the Professional and the Construction Manager agree.
- 5.4.8 If the Owner elects to phase and/or "fast track" portions of the construction of the Project-multiple GMP agreements may be required.
- 5.4.9 The Construction Manager understands and acknowledges the Owner's intent that the Project will be completed within the budget set by Owner for the Project. Accordingly, throughout the Pre-Construction Services phase, the Construction Manager shall keep Owner informed if it believes that the Project may not be completed within Owner's budget, the reasons why it cannot be, and the Construction Manager's proposed solutions therefor.

## 5.5 Construction Services

### 5.5.1 Trade Contractor Selection Bidding and Negotiation

- 5.5.1.1 In accordance with Owner's policies on the subject in effect at the time Construction Manager commences construction, the Construction Manager shall prepare and assemble document packets for use in bidding subcontracts. Such packaging of the Work shall be broken down to maximize both competition and the involvement of local, small and diverse businesses.
- 5.5.1.2 The Construction Manager shall develop subcontractor and supplier interest, including local, small and diverse businesses, for each division of the Work. The Construction Manager shall pre-qualify proposed subcontractors using a pre-qualification process approved by the Owner, which shall include, at a minimum, proof of licensure where applicable.
- 5.5.1.3 For trade packages with a value of less than:\$5,000, the Construction Manager, may negotiate with trade contractors to perform such Work by whatever means it deems appropriate, in its reasonable discretion. For trade packages with a value between \$5,000 and \$49,999, the Construction Manager shall, obtain three (3) written quotes. For trade packages with a value

between \$50,000 and larger, the Construction Manager shall implement a bidding process consistent with the Owner's policies. For trade packages with a value of \$200,000 or more, the Construction Manager shall be required to advertise the trade package in the newspaper or other form of notice as permitted by law, at least twenty one (21) calendar days prior to the published due date, and accept sealed written bids/proposals to meet State Statute requirements. All trade packages in excess of \$50,000 shall be procured in accordance herewith under a competitive process approved by the Owner's Representative. While a sealed bid or proposal process is generally desired and anticipated for such trade packages to ensure the Construction Manager is receiving the lowest price for such trade packages, there may be situations in which such process is not appropriate. Therefore, the Construction Manager may, with the approval of the Owner's Representative, utilize an alternative competitive process to procure trade contractors.

- 5.5.1.4 The Construction Manager shall use its best efforts to obtain bids which are less than the final GMP agreement.
- 5.5.1.5 The Construction Manager shall conduct bid openings in the presence of the Owner's Representative. The Construction Manager shall provide the Owner with a copy of its preliminary bid tabulation and copies of all bids.
- 5.5.1.6 The Construction Manager shall, for each subcontract, trade or bid division:
  - (i) determine the final bid amounts, having reviewed and clarified the scope of work in detail with bidders to determine which bids are the lowest bids and are complete but do not include duplicate scope items;
  - (ii) prepare and furnish to the Owner a final bid tabulation summary which includes by subcontract, trade and/or bid division, the applicable final GMP estimate and the related final bid amount and the details of all scope clarifications for Owner's review and approval;
  - (iii) if requested by Owner, provide a list of all potential Direct Purchase Materials (hereinafter defined);
  - (iv) identify to the Owner in writing the subcontractors to which the Construction Manager recommends award of subcontracts; and
  - (v) award and enter into a subcontract between itself and each subcontractor which it has recommended in accordance with this Contract unless otherwise notified by the Owner.
- 5.5.1.7 Construction Manager Self-Performing Trade Work: The CM may identify portions of the work to request Owner's permission to self-perform. CM must submit a proposal for the self-performance of work in the same manner as all other trade contractors, but prior to the solicitation of the other trade contractors. Owner will determine, in its sole discretion, whether the CM's proposal provides the best value for the Owner. CM Shall perform approved self-performance work in accordance with the same terms and conditions as other trade contractors and shall be paid the lump sum stated in the CM's work proposal for such work.
- 5.5.1.8 The Construction Manager shall award Trade Contracts within the timeframe specified in the GMP Agreement.
- 5.5.1.9 The Construction Manager shall promptly, but no later than ten (10) calendar days, inform the Owner in writing of any proposed replacements to the list of subcontractors and suppliers in the final bid tabulation sheet provided to Owner, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right, in its reasonable discretion, to reject any proposed replacement if such proposed replacement fails to meet any criteria or requirements established for subcontractors performing such portion of, or for, the Work.

## 5.5.2 Construction Supervision

- 5.5.2.1 Commencing with the award of the first subcontract and terminating on the date of Final Completion, the Construction Manager shall provide the services described herein.



5.5.2.2 The Construction Manager shall, as a construction representative for the Owner during construction, advise and consult with the Owner and the Professional, and provide administration of the Construction Documents.

5.5.2.3 The Construction Manager shall supervise and direct the work at the Project Site. The Construction Manager shall, at a minimum, staff the Project with personnel who shall:

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

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

### 5.5.3 **Direct Purchase Program.**

The Owner may elect to implement a direct purchase program whereby it may purchase materials and

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

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

**5.5.4 Reporting.**

The Construction Manager shall provide a monthly report in searchable PDF format summarizing the progress of the Project to the Owner, Professional, and Owner's user group representatives, including information on the subcontractors' work, percentage of completion of the Work, current estimating, subcontract buyouts, updated monthly Critical Path Method scheduling and Project accounting reports, including projected time to completion and estimated cost to complete the Work, LEED status, digital progress photographs, Project directory, logs for Requests for Information, submittals and shop drawings, Change Orders, cost change proposals, field directives, safety meetings, deficiencies, weather conditions and meeting minutes. Critical path method schedules and changes thereto must be approved by the Owner.

**5.5.5 Energy Rebate Program.**

Construction Manager shall gather product data and other information as needed to assist Owner with its application for energy rebates based on the materials and products installed in the facility.

**5.5.6 Warranties.**

Construction Manager warrants that the goods and services supplied to the Owner pursuant to this Contract shall at all times fully conform to the specifications set forth in the GMP and be of the highest quality.

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**ARTICLE 6. COMPENSATION OF CONSTRUCTION MANAGER**

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**6.1 Payment for Pre-Construction Services**

Should the need for Pre-Construction services be desired, the Owner agrees to pay the Construction Manager, and the Construction Manager shall accept as complete payment for performance of Pre-Construction Services, the fee set forth in the Project Specific Requirements in the Preconstruction Services Agreement, payable pursuant to the schedule set forth thereon. Preconstruction Services fees shall not be subject to CM Fee, but should include costs and labor rates with overhead and profit included.

**6.2 Payment for Construction Services**

**6.2.1 Price Guarantees.**

Upon execution of a GMP Agreement, the Construction Manager guarantees and certifies that:

- (i) the sum of (a) the actual Cost of the Work, (b) Construction Manager's Contingency, (c) Construction Manager's Staffing Costs, (d) General Conditions Cost, (e) Construction Manager's Overhead and Profit, and (f) bonds and insurance, shall not exceed the amount set forth in the agreed upon GMP.
- (ii) the actual Cost of the Work, Construction Manager's Staffing Costs, General Conditions Cost and Construction Manager's Overhead and Profit shall not exceed the guaranteed maximum for each such category and that all costs or expenses that would cause any of these individual categories to exceed the guaranteed maximum for each such category in the agreed upon GMP shall be borne by the Construction Manager unless adjusted by Owner approved change order.

*All costs or expenses that would cause the sums in 6.2.1(i) and/or 6.2.1(ii), above to be exceeded shall be borne by the Construction Manager unless adjusted by Owner approved change order.*

- (iii) all actual unit costs supporting the GMP proposal are accurate, complete and current at the time of

negotiations; and that any other factual unit costs that may be furnished to the Owner in the future to support any additional amounts that may be authorized will also be accurate and complete. Payments to the Construction Manager shall be reduced if the Owner determines such amounts were originally included due to materially inaccurate, incomplete, or non-current factual unit costs.

- (iv) to the extent the accepted GMP includes contingency, use of contingency shall be approved by the Owner's Representative by Contingency Use Authorization Form prior to expenditure by the Construction Manager.

6.2.2 The Owner shall pay, and the Construction Manager shall accept, as full and complete payment for the Construction Services, only the sum of the following items, which sum shall not exceed the GMP as described in Section 3.3 of this Contract:

- (i) the aggregate net cost directly paid by the Construction Manager to subcontractors pursuant to written subcontracts to perform the Cost of the Work, not to exceed the guaranteed maximum set forth in the GMP Agreement;
- (ii) the compensation for the Construction Manager's provision of management services (the "Construction Manager's Staffing Costs"), not to exceed the guaranteed maximum set forth in the GMP Agreement;
- (iii) the aggregate net cost of the Construction Manager's General Conditions (the "General Conditions Cost"), not to exceed the guaranteed maximum set forth in the Project Schedule in the GMP Agreement; and
- (iv) Construction Manager's Overhead and Profit, not to exceed that listed in this agreement or the fee negotiated in the GMP Agreement.

6.2.3 **Construction Manager's Staffing Costs.**

Construction Manager's Staffing Costs include and are limited to actual expenditures or negotiated amounts for the following items as authorized in the GMP Proposal approved by Owner:

- (i) The cost of its supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work on the Project Site;
- (ii) the cost of periodic site visits for supervisory, inspection, oversight, or management of the Project by specific "home office" personnel as agreed upon and identified in the GMP proposal;
- (iii) direct costs incurred in the Work with the exception of those specifically enumerated compensable as a General Conditions Cost or a Cost of the Work;
- (iv) expenses for transportation, meals, and lodging of principals and employees, when traveling in connection with services and duties specifically related to this Project and when authorized in writing by the Owner. Rates for transportation, meals and lodging are as set forth by the Owner, in accordance with state law;
- (v) expenses incurred for relocation and temporary living allowances of personnel required for the Work, if required by the Project; and
- (vi) any costs or expenses incurred by the Construction Manager, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with this Contract and the best interests of Owner.

The above-referenced staffing costs shall not include overhead and profit.

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

6.2.4 **General Conditions Costs.**

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

- (i) costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Construction Manager at the Project Site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value;
- (ii) costs incurred to provide site safety;
- (iii) costs of removal of debris from the site;
- (iv) costs of document reproduction including bid sets, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office;
- (v) that portion of insurance and bond premiums directly attributable to this Contract for Construction. Premiums shall be net of trade discounts, volume discounts, dividends and other adjustments;
- (vi) sales, use, or similar taxes imposed by a governmental authority and paid by the Construction Manager, and directly related to the Work;
- (vii) fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by this Contract to pay, including deposits lost for causes other than Construction Manager's fault;
- (viii) data processing costs directly related to the Work and as approved by Owner, in writing;
- (ix) the cost of obtaining and using all utility services required for the Work;
- (x) the cost of crossing or protecting any public utility, if required, and as directed by the Owner;
- (xi) all reasonable costs and expenditures necessary for the operation of the Project Site office, such as stationary, supplies, furniture, fixtures, office equipment and field computer services provided that quantity and rates are subject to Owner's prior written approval;
- (xii) the cost of secure off-site storage space or facilities approved in advance by Owner;
- (xiii) printing and reproduction of the Construction Documents;
- (xiv) rental charges for temporary facilities, and for machinery, equipment, and tools not customarily owned by construction workers; however any rental charge shall not exceed the purchase price of such facilities, machinery, equipment or tools;
- (xv) cost of surveys, measurements and layout work reasonably required for the execution of the Work or by the Construction Documents; and
- (xvi) other expenses or charges properly incurred and paid in the prosecution of the Work, with the prior written approval of the Owner, but specifically excluding legal costs and expenses, including, without limitation, attorneys' fees and court costs associated with the Project.

#### 6.2.5 **Construction Manager's Overhead and Profit.**

The Construction Manager's Overhead and Profit is a fixed percentage of the (i) Guaranteed Maximum Cost of the Work, (ii) Construction Manager's Contingency, (iii) Guaranteed Maximum Construction Manager Staffing Costs, and (iv) Guaranteed Maximum General Conditions Cost (excluding bond and insurance costs), as agreed upon in the GMP Agreement. Overhead and Profit covers the costs of all of Construction Manager's overhead and expenses related to the Work, including home or branch office employees or consultants not at the Project Site (except those staffing costs paid pursuant to Section 6.2.4 and general operating expenses of the Construction Manager's principal and branch offices related to the Work (non-field offices), such as telephone service and long-distance and zone telephone charges, postage, office supplies, expressage, and other similar expenses.

Construction Manager's Overhead and Profit shall be a Not-to-Exceed fee of 6% unless otherwise negotiated in the GMP Agreement.

**6.2.6 Construction manager's contingency.**

6.2.6.1 The construction manager's contingency, established in the GMP, may be utilized, with the owner's concurrence, for the following reasons:

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

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

**6.2.7 Buyout savings and owner's contingency.**

- (i) If Construction Manager receives bids for portions of the Work which are less than the amounts budgeted in the GMP proposal approved by Owner for such portions of the Work, such buyout savings shall first be utilized to offset shortfalls on other bid packages.
- (ii) If, after offsetting any shortfalls, buyout savings remain, at the time provided in the GMP Agreement for the award of subcontracts, all buyout savings shall be returned to the Owner via "no cost" change order or placed in Owner's contingency.
- (iii) Owner's contingency may be included in the GMP Agreement and used at the owner's discretion. This should be held separately without fee initially applied, until it is utilized and fee will be deducted at that time. Any remaining Owner's Contingency will be deducted from GMP upon completion of the project.

**6.2.8 Use of buyout savings/sales tax savings.**

The net amount of buyout savings and savings from owner's purchase of direct purchase materials may be utilized by the owner for the following or other reasons:

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

**6.2.9 Compensation for Change Orders.**

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

**6.2.9.1 Increase In Cost of Work.**

If the Cost of the Work is increased by change order, the Owner shall pay the Construction Manager the aggregate net cost directly paid by the Construction Manager to subcontractors



or suppliers for the performance of the Work and the Construction Manager shall receive Overhead and Profit on such amount, as a percentage as set forth in the Project Specific Requirements in the GMP Agreement, and an amount for any increased bond and insurance costs associated therewith.

**6.2.9.2 Decrease in Cost of Work.**

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

**6.2.9.3 Change Order Disputed.**

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

**6.2.10 Applications for Payment for the Work.**

Applications for payment shall be submitted in detail sufficient for an audit thereof in accordance with Owner's policies on the subject in effect at the time Construction Manager commences construction. Payments shall be made in accordance with the times established in , Florida Statute #715.12, including each resubmittal, Owner's Representative will either indicate in writing an approval of payment and process for payment, or return the Application to Contractor indicating in writing Owner's Representative's reasons for refusing to recommend payment. In the latter case, Contractor may make necessary corrections and resubmit the Application.

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**ARTICLE 7. LIQUIDATED DAMAGES FOR DELAY**

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7.1 Inasmuch as failure to Substantially Complete the Work or achieve Final Completion within the time fixed in the GMP Agreement will result in injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, it is agreed that if the Work is not Substantially Completed or ready for Final Completion within the time provided in the GMP Agreement, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the General Terms and Conditions, the Construction Manager shall pay to the Owner as liquidated damages for such delay, and not as a penalty, the amount set forth in the GMP Agreement for each calendar day elapsing between the date fixed for Substantial Completion and the date such Substantial Completion is fully accomplished and the date fixed for Final Completion and the date Final Completion is fully accomplished. The parties agree that said liquidated damages are reasonable given existing circumstances, including, without limitation, the range of harm that is foreseeable and the anticipation that proof of damages would be costly and impractical. Liquidated damages for failing to timely attain Substantial Completion and Final Completion are not additive and will not be imposed concurrently.

7.2 The liquidated damages shall be payable in addition to any excess expenses or costs payable by the Construction Manager to the Owner under the General Terms and Conditions, and shall not preclude the recovery of damages by the Owner under other provisions of this Contract, the General Terms and Conditions, and/or the GMP Agreement, except claims related to Construction Manager's delays in Substantial Completion. Owner's right to receive liquidated damages shall in no manner affect the Owner's right to terminate the GMP Contract, as provided in the General Terms and Conditions, elsewhere in the this Contract or the GMP Agreement. The Owner's exercise of the right to terminate shall not release the Construction Manager from the obligation to pay said liquidated damages.

7.3 When the Owner reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the Construction Manager will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager the daily amount specified for liquidated damages in this Article for each calendar day of the unexcused delay. Upon Final Completion, Owner shall release Final Payment, less any liquidated damages.

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**ARTICLE 8. INSURANCE AND BONDS**

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8.1 The Construction Manager shall carry the insurance and obtain the payment and performance bonds described in the General Terms and Conditions (Exhibit B).

## **ARTICLE 9. PUBLIC RECORDS**

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9.1. Florida has a very broad public records law. By entering into this Agreement with the Owner, the Construction Manager acknowledges they will comply with the Florida Public Records Act (Chapter 119, Florida Statutes). If Construction Manager is either a “contractor” as defined in Section 119.0701(1)(a), Florida Statutes, or an “agency” as defined in Section 119.011(2), Florida Statutes, Construction Manager shall:

- (i) Keep and maintain public records, as defined in Section 119.011(12) of the Florida Statutes, required by OWNER to perform the service.
- (ii) Upon request from Owner’s custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (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 for the duration of the contract term and following completion of the contract if the Construction Manager does not transfer the records to Owner.
- (iv) Upon completion of the contract, transfer, at no cost, to Owner all public records in possession of the Construction Manager or keep and maintain public records required by Owner to perform the service. If the Construction Manager transfers all public records to Owner upon completion of the contract, the Construction Manager shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Construction Manager keeps and maintains public records upon completion of the contract, the Construction Manager shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Owner, upon request from Owner’s custodian of public records, in a format that is compatible with the information technology systems of Owner.

**IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER 'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, [Add name, email, address\_\_\_\_\_].**

Failure to comply with the Florida Public Records Act, including failure to provide a public record upon request, is a breach of this Contract. Owner may pursue all remedies for breach of this Contract.

### **9.2 DISCLOSURE AND CONFIDENTIALITY**

Florida’s Public Records Law, Chapter 119, Florida Statutes, includes numerous exemptions to the general requirement to disclose information to the public in response to a public record’s request. Exemptions are found in various provisions of the Florida Statutes, including but not limited to Section 119.071, Florida Statutes (General exemptions from inspection or copying of public records), and Section 119.0713, Florida Statutes (Local government agency exemptions from inspection or copying of public records). Section 815.045, Florida Statutes (Trade secret information), provides that trade secret information as defined in Section 812.081, Florida Statutes (Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty) is confidential and exempt from disclosure because it is a felony to disclose such records. The Parties understand and agree that Florida’s Public Records Law is very broad and that documents claimed by a Party to be confidential and exempt from public disclosure pursuant to the Public Records Law may in fact not be deemed such by a court of law. Accordingly, the following provisions shall apply:

- (i) Identifying Trade Secret or Otherwise Confidential and Exempt Information. For any records or portions thereof that Construction Manager claims to be Trade Secret or otherwise confidential and exempt from public disclosure under the Public Records Law, Construction Manager shall:
  - a. Specifically identify the records or specific portions thereof that are confidential and exempt and reference the particular Florida Statute that grants such status. Provide one redacted copy of the record and one copy of the record with the confidential and exempt information highlighted.

Construction Manager shall take care to redact only the confidential and exempt information within a record.

- b. Provide an affidavit or similar type of evidence that describes and supports the basis for CONSTRUCTION MANAGER's claim that the information is confidential and exempt from public disclosure.
- (ii) Request for Trade Secret or Otherwise Confidential and Exempt Information.
- a. In the event OWNER receives a public records request for a record with information labeled by CONSTRUCTION MANAGER as Trade Secret or otherwise as confidential and exempt, OWNER will provide the public record requester with the redacted copy of the record and will notify CONSTRUCTION MANAGER of the public records request.
  - b. However and notwithstanding the above, in the event that OWNER in its sole discretion finds no basis for CONSTRUCTION MANAGER's claim that certain information is Trade Secret or otherwise confidential and exempt under Florida's Public Records Law, then OWNER shall notify CONSTRUCTION MANAGER in writing of such conclusion and provide CONSTRUCTION MANAGER a reasonable amount of time to file for declaratory action requesting a court of law to deem the requested information as Trade Secret or otherwise as confidential and exempt under Florida's Public Records Law. If CONSTRUCTION MANAGER fails to file for declaratory action within the reasonable amount of time provided, then OWNER will disclose the information requested.
  - c. If a public records lawsuit is filed against OWNER requesting public disclosure of the information labeled by CONSTRUCTION MANAGER as Trade Secret or otherwise as confidential and exempt, OWNER shall notify CONSTRUCTION MANAGER and CONSTRUCTION MANAGER shall intervene in the lawsuit to defend the nondisclosure of such information under Florida's Public Records Law.
  - d. CONSTRUCTION MANAGER hereby indemnifies and holds OWNER, its officers and employees harmless from any and all liabilities, damages, losses, and costs of any kind and nature, including but not limited to attorney's fees, that arise from or are in any way connected with CONSTRUCTION MANAGER's claim that any information it provided to OWNER is Trade Secret or otherwise confidential and exempt from public disclosure under Florida's Public Records Law.

"Work Product" may include creative work which may lead to programs, intellectual properties, computer software, computer programs, codes, text, hypertext, designs, and/or any other work products associated with or arising directly out of the performance of the Work.

## **ARTICLE 10. AUDIT RIGHTS**

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

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

- 10.5 Construction Manager shall ensure notice of Owner's audit rights is provided to its subcontractors, suppliers and any other vendor providing services or materials for the Project and shall ensure that each Contract it enters into pursuant hereto includes the provisions of this Article 10.

## **ARTICLE 11. TERMINATION OR SUSPENSION OF CONTRACT FOR CONSTRUCTION**

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### **11.1 Termination For Cause By Owner**

11.1.1 The Owner may terminate this Contract and/or the GMP Agreement for cause if the Construction Manager materially breaches the Contract/Agreement by:

- (i) refusing, failing or being unable to properly manage or perform on any Project;
- (ii) refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials to maintain applicable schedules;
- (iii) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;
- (iv) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Project;
- (v) refusing, failing or being unable to substantially perform in accordance with the terms of this Contract and/or GMP Agreement as determined by the Owner, or as otherwise defined elsewhere therein; or
- (vi) refusing, failing or being unable to substantially perform in accordance with the terms of any other contract between the Owner and Construction Manager.

11.1.2 Upon the occurrence of any of the events described in Paragraph 11.1.1, the Owner may give written notice to the Construction Manager setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. At any time thereafter, if the Construction Manager fails to initiate the cure or if the Construction Manager fails to expeditiously continue such cure until complete, the Owner may give written notice to the Construction Manager of immediate termination, and the Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:

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

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

11.1.4 If the Owner terminates the Contract and/or GMP Agreement for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Paragraph 11.3.

**11.2 Termination For Cause By Construction Manager.**

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

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

11.2.2 Upon the occurrence of any of the events described in Paragraph 11.2.1, the Construction Manager may give written notice to the Owner setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. If the Owner fails to cure the default within thirty calendar days, the Construction Manager, without prejudice to any rights or remedies, may give written notice to the Owner of immediate termination.

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

**11.3 Termination or Suspension For Convenience.**

The Owner may at any time give written notice to the Construction Manager terminating this Contract and/or GMP Agreement or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner suspends the Project for convenience, the Construction Manager shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.

**11.4 Construction Manager's Compensation When Construction Manager Terminates For Cause or Owner Terminates For Convenience.**

If the Contract and/or GMP Agreement is (i) terminated by the Construction Manager pursuant to Paragraph 11.2.1; (ii) terminated by the Owner pursuant to Paragraph 11.1; or (iii) suspended more than three months by the Owner pursuant to Paragraph 11.3, the Owner shall pay the Construction Manager specified amounts due for Work actually performed prior to the effective termination date and reasonable costs associated with termination. The Owner may agree to additional compensation, if any, due to the Construction Manager. Absent agreement on the additional amount due the Construction Manager, the Owner shall pay the Construction Manager:

- (i) reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the Construction Manager's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Construction Manager would not have profited or would have sustained a loss if the Work had been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rates of loss, if any; and
- (ii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or supplier orders. These costs shall not include amounts paid in accordance with other provisions hereof.

**11.5 Construction Manager's Compensation When Owner Terminates For Cause.**

If this Contract and/or GMP Agreement is terminated by the Owner for cause pursuant to Paragraph 11.1, no further payment shall be made to the Construction Manager until Final Completion of the Project. At such time, the Construction Manager shall be paid the remainder of the Construction Price less all costs and damages incurred by the Owner as a result of the default of the Construction Manager, including liquidated damages applicable thereto. The Construction Manager shall additionally reimburse the Owner for any additional **costs or expenses incurred.**

11.6 **Limitation on Termination Compensation.**

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

11.7 **Construction Manager's Responsibility Upon Termination.**

Irrespective of the reason for termination or the party terminating, if the Contract and/or GMP Agreement is terminated, the Construction Manager shall, unless notified otherwise by the Owner,

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

11.8 **Lack Of Duty To Terminate.**

The right to terminate or suspend the Work shall not give rise to a duty on the part of either the Owner or the Construction Manager to exercise that right for the benefit of the Owner, the Construction Manager or any other persons or entities.

11.9 **Limitation On Termination Claim.**

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

**ARTICLE 12. DISPUTE RESOLUTION**

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12.1 **Mutual Discussion.**

In case of any dispute, claim, question or dispute arising from or relating to the Project or arising out of the Contract and/or GMP Agreement or the breach thereof, the parties shall first attempt resolution through mutual discussion.

12.2 **Facilitative Mediation.**

If the parties cannot resolve any dispute, claim, question, or dispute arising from or relating to the Project or arising out of the Contract and/or GMP Agreement or the breach thereof through mutual discussion, as a condition precedent to any litigation or administrative action, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable solution satisfactory to all parties.

12.2.1 All parties to a mediation shall promptly provide all other parties to the mediation with copies of essential documentation relevant to the support or defense of the matter being mediated.

12.2.2 The parties shall not be required to mediate for a period greater than ninety-one calendar days unless otherwise agreed to in writing by the parties. The parties shall share equally any administrative costs and fees of such proceedings, but shall each be responsible for their own expenses otherwise incurred.

12.2.3 In the event that the statute of limitations would run during the required mediation period, either party may institute litigation so as to avoid the running of such statute upon the condition that such party immediately seek a stay of such litigation pending the conclusion of the mediation period.

12.2.4 During the course of mediation, any party to the mediation may apply for injunctive relief from any court of competent jurisdiction until the mediation period expires or the dispute is otherwise resolved.

12.2.5 The Owner, the Professional, the Construction Manager, and any other parties involved in any way in the design or construction of the Project are bound, each to each other, by this requirement to mediate prior to commencement of any litigation or administrative action, provided that they have signed the Contract and/or GMP Agreement or other agreement that incorporates the Contract/Agreement by reference or signed any other agreement which binds them to mediate.



Each such party agrees that it may be joined as an additional party to a mediation involving other parties under any such Contract/Agreement. In the case where more than one mediation is begun under any such Contract/Agreement and any party contends that the mediations are substantially related, the mediations may be conducted by the mediator selected in the first mediation which was commenced.

12.2.6 The mediation shall be conducted in Alachua County, Florida.

**12.3 Conflicting Dispute Resolution Provisions.**

Neither party to this Contract or the GMP Agreement 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.

**12.4 Arbitration Preclusion.**

In case of a dispute relating to the Project, or arising out of this Contract and/or the GMP Agreement, no party to the Contract/Agreement shall be required to participate in or be bound by, any arbitration proceedings.

**12.4.1 Performance During Dispute Resolution.**

The Owner and the Construction Manager agree that pending the resolution of any dispute, controversy, or question, the Owner and the Construction Manager shall each continue to perform their respective obligations without interruption or delay, and the Construction Manager shall not stop or delay the performance of the Work.

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**ARTICLE 13. DAMAGES AND REMEDIES**

**13.1 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 Contract, or any other applicable warranty or guarantee.

**13.2 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 Contract; (ii) deficiencies or conflicts in the Construction Documents attributable to the Construction Manager or of which the Construction Manager was or should have been aware; (iii) breach of the warranties and guarantees set forth in this Contract or any other applicable warranty or guarantee; or (iv) other acts or omissions of the Construction Manager.

**13.3 General Indemnity.**

Construction Manager agrees to indemnify and hold harmless the Owner, its officers and employees from liabilities, damages, losses and other costs, including but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Construction Manager and persons employed or utilized by the Construction Manager in the performance of this Contract and/or GMP Agreement.

**13.4 Intellectual Property**

Construction Manager asserts that it owns or has rights to use all intellectual property used for the scope of each project, including patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner or Professional(s) in writing, if the Construction Manager has reason to believe the use of a required design, process or product is an infringement or a patent, the Construction Manager shall promptly give Owner and Professional written notice of the infringement.

**13.5 Non-Exclusivity of Owner's Remedies.**

The Owner's selection of one or more remedies for breach of this Contract contained herein shall not limit the Owner's right to invoke any other remedy available to the Owner under this Contract or by law.

**13.6 Waiver of Damages.**

The Construction Manager shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, lost revenue, or other business interruption damages, including but not limited to, loss of use of equipment or facility, unabsorbed overhead, or any incidental, consequential, punitive, exemplary or indirect damages.



## **ARTICLE 14. MISCELLANEOUS PROVISIONS**

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- 14.1 The Owner and Construction Manager respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract, GMP Agreement, and the Preconstruction Agreement. Neither Owner nor Construction Manager shall assign this Contract or the GMP Agreement without the written consent of the other.
- 14.2 This Contract and the GMP Agreement shall be governed by, and construed under, the laws of the State of Florida, without regard to its choice of law provisions and venue shall lie in the courts in Alachua County, Florida.
- 14.3 The Construction Manager represents and warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Construction Manager) to solicit or secure this Contract or any GMP Agreement, and that it has not paid or agreed to pay any person, company, corporation individual or firm (other than a bona fide employee working solely for the Construction Manager) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract and/or GMP Agreement.
- 14.4 This Contract and/or the GMP Agreement may be unilaterally terminated by the Owner for refusal by the Construction Manager to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Construction Manager in conjunction herewith.
- 14.5 The obligations of the Owner as to any funding required pursuant to this Contract and/or the GMP Agreement shall be limited to an obligation in any given year to budget and appropriate from legally available funds, after monies for essential Owner services have been budgeted and appropriated, sufficient monies for that funding that is required during that year. Notwithstanding the foregoing, the Owner shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the Owner pursuant to this Contract and/or the GMP Agreement.
- 14.6 The Construction Manager warrants that it is not on the State of Florida convicted vendor list for a public entity crime committed within the past thirty six (36) months. The Construction Manager further warrants that it will neither utilize the services of, nor contract with, any supplier, subcontractor, or consultant for an amount in excess of \$15,000.00 in connection with this Project if the supplier, subcontractor or consultant has been placed on the convicted vendor list within the past thirty six (36) months.
- 14.7 All capitalized terms used herein but not defined herein shall have the meaning ascribed thereto in the General Terms and Conditions, Exhibit B.
- 14.8 Owner is an equal opportunity institution and, as such, encourages the use of small businesses, including women and minority-owned small businesses in the provision of construction related services. Small businesses should have a fair and equal opportunity to compete for dollars spent by the City to procure construction-related services. Competition ensures that prices are competitive and a broad vendor base is available. Construction Manager shall use good faith efforts to ensure opportunities are available to small businesses including women and minority-owned businesses on the Project.
- 14.9 Construction Manager shall not discriminate on the basis of race, color, religion, gender, national origin, marital status, sexual orientation, age, disability or gender identity, or other unlawful forms of discrimination in the performance of this Contract. Construction Manager understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of the Contract. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 14.10 Construction Manager shall (1) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Construction Manager during the term of the Contract; and (2) shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- 14.11 The definitions, terms and conditions of the City of Gainesville's living wage requirements set forth in Division 2 of Article IX of Chapter 2 of the City's Code of Ordinances shall apply to this Contract. These requirements include that the service consultant/subcontractor: shall pay a living wage to each covered

employee during the term of this Contract, including any extension(s) to this Contract; shall maintain records sufficient to demonstrate compliance with the living wage requirements; shall not discharge, reduce the compensation of, or otherwise retaliate against any covered employee for filing a complaint, participating in any proceedings or otherwise asserting the requirement to pay a living wage; shall cooperate with any City of Gainesville audit or investigation concerning compliance with or a reported violation of the living wage requirements, including providing all requested documentation. Failure to comply with the City of Gainesville's living wage requirements shall be a material breach of this Contract, enforceable by the Owner through all rights and remedies at law and equity.

- 14.12 This Contract and the GMP Agreement(s) represent the entire and integrated agreement between the Owner and the Construction Manager, and supersedes all prior negotiations, representations or other agreements, either written or oral, for the Project. This Contract and the GMP Agreement may be amended only by written instruments signed by both the Owner and the Construction Manager.
- 14.13 Construction Manager is an independent contractor to Owner.
- 14.14 All exhibits referenced herein are attached hereto and incorporated herein by reference.
- 14.15 If any provision of this Contract and/or the GMP Agreement, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.
- 14.16 No provision of this Contract or the GMP Agreement may be waived except by written agreement of the parties. A waiver of any provision on once occasions shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of the Contract or GMP Agreement.
- 14.17 No failure of the Owner to insist upon strict compliance by the Construction Manager with any provision of this Contract or GMP Agreement shall operate to release, discharge, modify, change or affect any of the Construction Manager's obligations.
- 14.18 This Contract and the GMP Agreement shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in the Contract/Agreement, nothing contained in the Contract/Agreement is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the Construction Manager.
- 14.19 In consideration for this Contract and/or the GMP Agreement, the Construction Manager conveys, sells, assigns and transfers to the Owner all of its right, title and interest in and to any and all causes of action it may now have or may hereafter acquire under the antitrust laws of the United States and the State of Florida for price fixing, relating to the goods and services purchased or acquired by the Owner under the Contract/Agreement.
- 14.20 If required pursuant to 440.102(15), Florida Statutes, Construction Manager shall implement, and cause its applicable subcontractors to implement, a drug-free workplace program.
- 14.21 All provisions of this Contract and the GMP Agreement which contain continuing obligations shall survive its expiration or termination.
- 14.22 Nothing in this Contract or the GMP Agreement shall be interpreted as a waiver of the Owner's sovereign immunity as set forth in Section 768.28, Florida Statutes.

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

**[Construction Manager's Name]**

By:

Date:

\_\_\_\_\_

\_\_\_\_\_

**City of Gainesville**

By:

\_\_\_\_\_

Cynthia W. Curry, City Manager

Date:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Approved as to Form and Legality

By:

\_\_\_\_\_

Assistant City Attorney

**Gainesville Regional Utilities**

By:

\_\_\_\_\_

Anthony Cunningham, Interim General Manager

\_\_\_\_\_

# **EXHIBIT B**

City of Gainesville

## **GENERAL TERMS AND CONDITIONS FOR CONTINUING CONSTRUCTION MANAGEMENT SERVICES FOR MINOR PROJECTS**

# ARTICLE 1

## DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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## ARTICLE 2

### CONTRACT DOCUMENTS

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

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## ARTICLE 3

### CONSTRUCTION MANAGER'S REVIEWS AND EVALUATIONS

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

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



## ARTICLE 4

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

- 4.1 **Performance of Work.** The Construction Manager shall perform and complete its obligations under the Contract for Continuing Construction Management Services for Minor Projects using its best skill and attention, and covenants with the Owner to furnish management, supervision, coordination, labor and services (i) which expeditiously, economically and properly completes the Work in the manner most consistent with the Owner's interests and objectives; (ii) which comply with the Contract for Continuing Construction Management Services for Minor Projects; and (iii) which are in accordance with the highest standards currently practiced by persons and entities performing or providing management, supervision, coordination, labor and services on projects similar in size, complexity and cost to the Project.
- 4.1.1 The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, unless provided in the Construction Documents and relating to those divisions of the Work for which it is appropriate for Construction Manager's subcontractors to engage or employ licensed engineers for design associated with the Work, such as trusses.
- 4.1.2 All services rendered by the Construction Manager for the Project shall be performed by or under the immediate supervision of persons possessing expertise in the service being rendered.
- 4.1.3 The Construction Manager shall, in the course of providing the Work, cooperate and communicate with the Owner and all other persons or entities as required for satisfactory completion of the Project.
- 4.1.4 The Construction Manager understands and acknowledges that the Work referred to in the Contract for Continuing Construction Management Services for Minor Projects may be only part of the Project and that the Project may include the construction of other structures or other construction activities on the same Site. The Construction Manager shall conduct all its activities so as not to interfere with the construction of, or operations within or from, other structures on the Site.
- 4.1.5 The Construction Manager shall not damage, endanger, compromise or destroy any part of the Project or the Site, including by way of example and not limitation, work being performed by others on the Site, monuments, stakes, benchmarks and other survey points, utility services, and existing features or structures on the Site. Should the Construction Manager damage, compromise or destroy any part of the Project or the Site, the Construction Manager shall be fully and exclusively responsible for and bear all costs associated therewith.
- 4.2 **Compliance with Governmental Requirements.** The Construction Manager shall:
- i. comply with all applicable laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project;
  - ii. prepare and file documents required to obtain, and shall obtain, all necessary approvals and permits, including building permit(s), of all governmental authorities having jurisdiction over the Work, provided Owner shall pay all building permit and state fire marshal inspection fees directly; and
  - iii. give all notices required of it by governmental authorities relating to the Project.
- 4.3 **Safety.** Safety shall be a prime concern of the Construction Manager at all times. The Construction Manager shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures for coordinating and constructing the Work, including Site safety and safety precautions and programs
- 4.4 **On Site Records.** The Construction Manager shall maintain at the Site one copy of all drawings, specifications, addenda, approved shop drawings, daily logs, change orders, submittals, other modifications and all other documents generated throughout the course of the project in good order and accurately marked depicting all changes as they occur during construction. These records may be hard

copy or electronic with the ability to print if needed. The as-built drawings shall be available at all times to the Owner, the Professional(s), the Owner's consultants, and quality control and testing agency personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction, and the Construction Manager shall include such supplementary notes and details necessary to clearly and accurately represent as-built construction. The daily logs shall contain detailed information regarding weather conditions, materials delivered, work performed, operating hours, subcontractors working on the Project and staffing of each subcontractor.

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

4.9.3 The Construction Manager shall afford the Owner's own forces, and other consultants, trade contractors, subcontractors and suppliers, access to the Site for performance of their activities, and shall coordinate its construction and operations with Owner's as required by the Construction Documents.

4.10 **Commissioning.** If the Work is to be commissioned through the use of a commissioning consultant, the Construction Manager shall, through the Owner or the Owner's commissioning consultant, as the case may be, schedule and coordinate all equipment and systems start-ups and Project commissioning within its scope of the Work.

4.10.1 The Construction Manager shall perform functional performance testing of items being commissioned under the supervision of the Owner's commissioning consultant, as directed by the Owner or Professional.

4.10.2 Owner training and all commissioning activities, including functional performance tests,

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## ARTICLE 5

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

- 5.1 **Project Staffing.** The Construction Manager shall staff the Project with qualified and designated individuals and entities responsible for its obligations and performance.
- 5.1.1 The Construction Manager shall name a representative (the "Construction Manager's Representative") to serve as its primary communication contact with the Owner and the Professional(s).
- 5.1.2 The Construction Manager's Representative, or another authorized representative of the Construction Manager, shall be present at all times when Work is being performed.
- 5.1.3 The Construction Manager shall employ persons skilled in the tasks assigned to them and shall contract with subcontractors and suppliers skilled in the tasks assigned to them and capable of working harmoniously with all trades, crafts and other individuals on the Project. The Construction Manager shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.
- 5.1.4 The Construction Manager shall immediately remove from the Site, for the duration of the Project, any person making an inappropriate comment, statement, or gesture involving religion, race, age, national origin, marital status, disability, gender, sexual orientation, or gender identity toward any other individual.
- 5.1.5 The Construction Manager shall immediately remove from the Site, for the duration of the Project, any person who is incompetent, careless, unsafe or disrupting the work environment.
- 5.1.6 The Construction Manager shall be responsible to the Owner for the acts and omissions of its agents and employees, consultants, subcontractors and suppliers.
- 5.2 **Subcontractor/Supplier Agreements.** The Construction Manager shall enter into written agreements with its subcontractors and suppliers, and those written agreements shall be consistent with the Contract for Continuing Construction Management Services for Minor Projects. It is the intent of the Owner and the Construction Manager that the obligations of the Construction Manager's subcontractors and suppliers inure to the benefit of the Owner and the Construction Manager, and that the Owner be a third-party beneficiary of the Construction Manager's agreements with its subcontractors and suppliers.
- 5.2.1 The Construction Manager shall make available to each subcontractor and supplier, prior to the execution of written agreements with any of them, a copy of the pertinent portions of the Contract for Continuing Construction Management Services for Minor Projects, including those portions of the Construction Documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractors and suppliers.
- 5.2.2 The Construction Manager shall include in its written agreements with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of the Contract for Continuing Construction Management Services for Minor Projects that are included by reference in its written agreement with the Construction Manager, and that it will abide by those terms, conditions and requirements.
- 5.2.3 The Construction Manager's written agreements with its subcontractors and suppliers shall preserve and protect the rights of the Owner and include the acknowledgment and agreement of each subcontractor or supplier that the Owner is a third-party beneficiary of the agreement. The Construction Manager's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, the Contract for Continuing Construction Management Services for Minor Projects, and upon request of the Owner, the Construction Manager's

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subcontractors and suppliers will perform the services for the Owner under the same terms and conditions.

5.2.4 Without limitation of the foregoing subsections, the Construction Manager's written agreements with its subcontractors and suppliers shall include the following provision: "When the Construction Manager receives payment from the Owner for labor, services or materials furnished by subcontractors and suppliers hired by the Construction Manager for the Project, the Construction Manager shall remit payment due to those subcontractors and suppliers, less the value of any item contested in accordance with the Contract for Continuing Construction Management Services for Minor Projects, within ten (10) days after the Construction Manager's receipt of payment from the Owner. When the payment due the subcontractor is for final payment, including retainage, the subcontractor must include with the invoice for final payment, a conditional release of lien and all required warranties and closeout documentation. When the subcontractor receives payment from the Construction Manager for labor, services, or materials furnished by the subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers, less the value of any item contested in accordance with the Contract for Continuing Construction Management Services for Minor Projects, within seven (7) days after the subcontractor's receipt of payment".

5.3 **Apprentice and Disadvantaged Worker Requirements.** In accordance with City Ordinance Number 200586, Article XI, "Purchasing Requirements for Certain City Construction Projects", at least 10 percent of the all labor hours performed on a construction project shall be performed by apprentices and at least 10 percent of all labor hours performed on a construction project shall be performed by disadvantaged workers. Labor hours worked by a person who is both an apprentice and a disadvantaged worker shall count toward meeting both requirements. The apprentices and disadvantaged workers may be employed by the prime contract and/or subcontractor. Reference the ordinance to obtain additional details and reporting requirements.

5.4 **Living Wage Requirements.** During the performance of the Contract for Continuing Construction Management Services for Minor Projects, the Construction Manager agrees to comply with City Ordinance No. 180999 as modified March 31, 2021, and:

- i. The Construction Manager shall comply with the provisions of the City of Gainesville's living wage requirements, as applicable. Failure to do so shall be deemed a breach of contract and shall authorize the city to withhold payment of funds until the living wage requirements have been met.
- ii. The Construction Manager will include the provision of (1) above in each subcontract for covered services with a service contractor/subcontractor, as defined herein, so that the provisions of (1) above will be binding upon each such service contractor/subcontractor. The Construction Manager will take such action with respect to any such subcontract as may be directed by the contract administrator as a means of enforcing such provisions; provided, however, the Owner shall not be deemed a necessary or indispensable party in any litigation between the Construction Manager and a subcontractor concerning compliance with living wage requirements.

#### 5.5 **NON-DISCRIMINATION POLICY AND COMMERCIAL NON-DISCRIMINATION REQUIREMENT**

As a condition of entering into this agreement, the company represents and warrants that it will comply with Title VI and Title VII of the Civil Rights Act of 1964 and all other federal, state or local laws prohibiting discrimination. The company shall not discriminate on the basis of race, color, religion, gender, national origin, marital status, sexual orientation, age, disability or gender identity, or other unlawful forms of discrimination in the solicitation, selection, hiring, commercial treatment of subcontractors, vendors, suppliers or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination.

The CITY reserves the right to investigate any claims of illegal discrimination by the Contractor and in the event a finding of discrimination is made and upon written notification thereof, the Contractor shall take all necessary steps to cure and rectify such action to the reasonable satisfaction of the CITY. The company understands and agrees that a violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

For more information on this policy and requirement, please visit the [Office of Equity and Inclusion](#)

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

## ARTICLE 6

### GOODS, PRODUCTS AND MATERIALS

- 6.1 **Quality of Materials.** The Construction Manager shall furnish goods, products, materials, equipment and systems which:
- i. comply with the Contract for Continuing Construction Management Services for Minor Projects;
  - ii. conform to applicable specifications, descriptions, instructions, drawings, data and samples;
  - iii. are new (unless otherwise specified or permitted) and without apparent damage;
  - iv. are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;
  - v. are merchantable;
  - vi. are free from defects; and
  - vii. are beyond and in addition to those required by manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.
- 6.2 **Installation and Use of Materials.** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case the Construction Manager shall so inform the Owner and Professional and shall proceed as directed by the Owner or Professional. Accordingly, there shall be no substitutions of materials and equipment except as otherwise expressly permitted herein. The Construction Manager shall coordinate and interrelate all trade agreements, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all warranties and guarantees, required by the Construction Documents for the Work.
- 6.3 **Unsuitable Materials.** The Construction Manager shall inform the Owner of goods, products, materials and equipment or systems which the Construction Manager knows are unsuitable or unavailable at the time of bid submission, and claims relating to or arising out of claims that goods, products, materials, equipment or systems are unsuitable or unavailable shall not be entertained by the Owner unless the Construction Manager, subcontractor, or supplier notified the Owner in writing at the time of bid submission, along with proposed alternatives. Approval by the Owner and a Professional does not mean or imply final acceptance by the Owner and Professional if such items should be defective or not as previously represented. Should the Construction Manager furnish any approved goods, products, materials, equipment or systems different from or in addition to those required by the Construction Documents which require supplemental materials or installation procedures different from or in addition to those required for specified items, the Construction Manager shall provide such at no increased cost to the Owner.
- 6.4 **Consistency with Overall Project.** Construction Manager shall also inform the Owner and Professional during the various stages of development of the design if proposed materials or equipment do not conform to the Project design concept and the Owner's construction budget.
- 6.5 **Security for the Project.** The Construction Manager shall provide security for the Project, including but not limited to security for its Work in progress and for the goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work.

## ARTICLE 7

### DOCUMENTS AND INFORMATION

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

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## **ARTICLE 8**

### **SUBMITTALS**

- 8.1 **Submittal Schedule.** The Construction Manager shall timely prepare and transmit to the Owner and Professional a schedule for provision of all anticipated submittals. The schedule shall (i) include submittals required by the specifications; (ii) be in a format acceptable to the Owner and Professional; (iii) be coordinated with the construction schedule; and (iv) set forth specific dates for submission of the listed submittals.
- 8.2 **Processing Of Submittals.** The Construction Manager shall in timely fashion review, approve or reject as necessary, and forward approved submittals to the Owner and Professional for review and approval along with such detail and information as the Owner and Professional require. No part of the Work dealt with by a submittal shall be fabricated or performed until such approval has been given.
- 8.2.1 A Professional is responsible to the Owner, but not to the Construction Manager, to verify that the submittals conform to the design concept and functional requirements of the plans and specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in submittals are of the quality specified and will function properly, and that the submittals comply with the Contract for Continuing Construction Management Services for Minor Projects.
- 8.2.2 All Work shall be performed in accordance with approved submittals. Approval of submittals by the Owner or Professional shall not relieve the Construction Manager from complying with the Contract for Continuing Construction Management Services for Minor Projects, including all plans and specifications, addenda thereto and approved Change Orders.
- 8.2.3 Re-submittals required to correct errors, omissions, or invalid substitutions by the Construction Manager or its subcontractors shall not constitute an excusable or compensable delay.

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## ARTICLE 9

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

- 9.1 **Rejection and Correction of Work In Progress.** During the course of Project, the Construction Manager shall inspect and promptly reject any Work (i) which does not conform to the Construction Documents; or (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- 9.1.1 The Construction Manager shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Construction Manager shall bear all costs of correcting such Work, including additional testing and inspections and compensation for all services and expenses necessitated by such correction.
- 9.1.2 The Construction Manager shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the Owner or other trade contractors or subcontractors caused by the Construction Manager's correction or removal of rejected Work.
- 9.2 **Covered or Concealed Work.** If a portion of the Work has been covered, the Construction Manager shall, if notified to do so by the Owner or a Professional, uncover the designated portion for observation and then replace it.
- 9.2.1 If the designated portion of the Work was covered contrary to the request of the Owner or the Professional, or to requirements specifically expressed in the Construction Documents, the Construction Manager shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule.
- 9.2.2 If the designated portion of the Work was covered prior to a specific request by the Owner or the Professional that it remain uncovered, the Construction Manager shall receive additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule(s) only if the designated portion of the Work was in conformance with the Construction Documents.

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## ARTICLE 10

### CHANGE ORDERS AND CHANGES TO THE WORK

- 10.1 **Change Order Requests.** Any party to the construction process may request changes to the Work, compensation or applicable schedules.
- 10.1.1 With respect to such requests for changes by the Construction Manager, the Construction Manager shall prepare and submit change order requests to the Professional, together with appropriate back-up documentation.
- 10.1.2 With respect to requests for changes by parties other than the Construction Manager, the Construction Manager shall promptly review and respond to change order requests submitted by a Professional.
- 10.1.3 When requested to do so, the Construction Manager shall prepare and submit to a Professional drawings, specifications or other data in support of a change order request.
- 10.1.4 Each change order request submitted by Construction Manager shall include any and all time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project, together with substantiating back-up documentation.
- 10.2 **Owner-Directed Changes.** The Owner may unilaterally direct the Construction Manager to implement changes in the Work so long as the Work the Owner is requiring is not outside of the general scope of the Contract for Continuing Construction Management Services for Minor Projects, and the Construction Manager, upon written direction from the Owner, shall proceed with such change.
- 10.3 **Professional-Directed Changes.** A Professional, without the Owner's prior approval, may authorize or direct the Construction Manager to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, scope, or approved design elements, and the Construction Manager shall promptly carry out such changes. Any such minor changes shall be implemented by written field order and executed by the Construction Manager.
- 10.4 **Administration of Changes.** The Professional will administer and manage all change order requests and will prepare required drawings, specifications and other supporting data as necessary in a timely fashion, in recognition of the Project schedule, in connection with minor changes, change order requests, including claims for additional compensation, time or both, and change orders. Change Order requests must be approved by the Owner.
- 10.5 **Compensation for Changes.** With respect to all change order requests involving credit to the Owner or additional compensation to the Construction Manager, the Construction Manager shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare an itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the proposed change; and (iv) provide a reasonable price quotation to the Owner and Professional.
- 10.5.1 If price quotations for change order requests are determined by the Owner and Professional to be unreasonable, the Construction Manager shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the Professional determines the quotation is unreasonable, the Owner may require the subject Work be performed on a time and material basis.
- 10.5.2 The Construction Manager and its subcontractors and suppliers shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by the Contract for Continuing Construction Management Services for Minor Projects, and shall not be entitled to additional reimbursement for home-office, other non-job-site or indirect overhead expenses, or tools necessary for construction.
- 10.5.3 It is the responsibility of the Construction Manager to review and approve all pricing of additional work required of its subcontractors and suppliers.

- 10.6 **Performance of Changes.** Upon receipt of an executed change order or approved change order request, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Construction Documents.
- 10.7 **Disputes Regarding Changes.**
- 10.7.1 Regardless if there is a dispute (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the change shall be carried out if the Owner so directs. No claim shall be prejudiced by performance of the Work so long as the Owner is notified of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the Owner recites the reasons for its dispute in the written notice. Failure to notify the Owner in writing seven (7) days after completion of work shall constitute a waiver of any claim resulting from the change.
- 10.7.2 In the event a change order request is approved by the Owner in the absence of an agreement as to cost, time, or both, the Professional will (i) receive and maintain all documentation pertaining thereto; (ii) examine such documentation on the Owner's behalf; (iii) take such other action as may be reasonably necessary or as the Owner may request; and (iv) make a written recommendation to the Owner concerning any appropriate adjustment in the Construction Price and/or time.
- 10.8 **Necessity for Signature Approval.** No act, omission or course of dealing shall alter the requirement that change orders shall be in writing and signed by the Owner, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. The Construction Manager understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order.

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# ARTICLE 11

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

- 11.1 **Owner's Designated Professional Representative.** Unless otherwise directed by the Owner, the Professional shall act as the Owner's representative.
- 11.1.1 The Professional will be the Owner's design representative during performance of the Work and will consult with and advise the Owner on all design and technical matters.
- 11.1.2 The Professional will act as an interpreter of the requirements of the Contract for Continuing Construction Management Services for Minor Projects and as the Owner's advisor on claims.
- 11.2 **Site Visits.** The Professional will visit the Site with sufficient frequency for familiarization with the progress and quality of the Work and to inspect the Work to determine compliance of the Work with (i) the Agreement for Construction Management Services, including approved shop drawings and other submittals; (ii) the Construction Schedule; and (iii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.
- 11.3 **Rejection of Work.** The Owner or Professional may disapprove or reject the work which does not comply with (i) the Contract for Continuing Construction Management Services for Minor Projects including approved shop drawings and other submittals; or (ii) applicable laws, statutes, building codes, rules or regulations of any governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.
- 11.4 **Evaluations.**
- 11.4.1 The Owner or Professional will review and evaluate the results of all inspections, tests and written reports required by the Contract for Continuing Construction Management Services for Minor Projects and by any governmental entity having or asserting jurisdiction over the Project. The Owner or Professional will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Owner or Professional. The Owner or Professional will promptly reject Work which does not conform to and comply with testing requirements.
- 11.4.2 The Owner or Professional may require inspection or testing of any Work in addition to that required by the Contract for Continuing Construction Management Services for Minor Projects or governmental entities having or asserting jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The Owner or Professional will take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Owner or Professional.
- 11.5 **Submittal Activities.** The Owner or Professional will review and approve, reject or take other appropriate action on submittals such as shop drawings, product data, samples and proposed equal materials or equipment and requested substitutions not more than fourteen (14) calendar days after receipt, and will not approve any submittals unless such submittals conform to the Construction Documents. An Owner or Professional's review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should be defective or not as represented by approved submittals or as otherwise required by the Construction Documents. The Construction Manager remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for selecting fabrication processes, for techniques of assembly, and for performance of the Work.
- 11.6 **Interpretations.** An Owner or Professional will, when requested to do so in writing by the Construction Manager, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the Work. An Owner or Professional's interpretations and decisions relating to artistic effect shall be final if not inconsistent with the Contract for Continuing Construction Management Services for Minor Projects.

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

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## ARTICLE 12

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

- 12.1 **Substantial Completion.** Substantial Completion of the Work shall be deemed to have occurred on the later of: (i) the dates that the Work or portion of the Work passes a Substantial Completion inspection, (ii) the date the required Substantial Completion documentation and items have been produced for the work or portion of the Work, or (iii) the date a certificate of occupancy is issued for the Work or portion of the Work.
- 12.1.1 When the Construction Manager believes that the Work is substantially complete, it shall notify the Owner and the Professional that it's Work is ready for a Substantial Completion inspection. The Construction Manager shall endeavor to give the Owner and Professional notice two (2) weeks prior to the predicted Substantial Completion inspection date.
- 12.1.2 The Construction Manager will coordinate with the Owner and the Professional on an inspection date to determine whether the work is substantially complete.
- 12.1.3 At inspection(s) to determine whether the Work is substantially complete, the Owner or Professional will:
- i. inspect the Work;
  - ii. list additional items to be completed or corrected; and
  - iii. determine, in consultation with the Owner, whether Substantial Completion of the Work has occurred.
- 12.1.4 If the Work is determined not to be substantially complete, the Work shall be prosecuted until the Work is substantially complete and the inspection process shall be repeated at no additional cost to the Owner until the Work is determined to be substantially complete. Construction Manager will be responsible for costs of the Professional associated with premature inspections.
- 12.1.5 On or prior to the required date of Substantial Completion, the Construction Manager shall deliver keys, permits, and other necessary and customary documents and items pre-requisite for the Owner's occupancy and use of the Work for its intended purpose. The Owner or Professional will obtain and review Substantial Completion documentation and items, and will inform the Construction Manager of any deficiencies.
- 12.1.6 When the Owner, the Construction Manager and the Professional agree that the Work has passed the Substantial Completion inspection and the Construction Manager has produced the required Substantial Completion documentation and items, they shall each sign the Owner's standard form Certificate of Substantial Completion declaring the Work substantially complete and establishing the actual date of Substantial Completion. The Certificate of Substantial Completion shall also include a list of and timeline for the completion of Work needing completion and correction developed by the Owner or Professional based upon the review and communications described in 12.1.5, within thirty (30) days thereof.
- 12.1.7 If the Work is commissioned through the services of a commissioning consultant, such commissioning shall be completed as a pre-requisite to the Work being declared Substantially Complete, provided Construction Manager shall not be responsible for delays in commissioning not the fault of Construction Manager.
- 12.1.8 The Construction Manager shall provide the Owner with operation and maintenance manuals and other operational documentation not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to allow adequate time for training prior to commissioning and the Owner's occupancy of the Project.
- 12.1.9 The Construction Manager shall meet with the Owner's personnel not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to familiarize and train them with

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

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

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

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

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

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

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

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

12.2.5 On or prior to the date of Final Completion, the Construction Manager shall deliver to the Professional the following Final Completion close-out documentation and items:

- i. Certificate of Final Completion - executed on Owner's standard form;
- ii. all operation and maintenance manuals not previously produced;
- iii. Owner maintenance or "attic" stock as prescribed in the technical specifications;
- iv. one (1) set of as-built plans and specifications;
- v. 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;
- vi. written consent of the surety(ies), if any, to final payment;
- vii. full, final and unconditional waivers of mechanics or construction liens, from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim;
- viii. full, final and unconditional certification and affidavit that all of the Construction Manager's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;



- ix. all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary;
  - x. affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;
  - xi. a list of any item(s) due but unable to be delivered and the reason for non-delivery;
  - xii. when requested, signed and sealed as built shall be submitted electronically to the owner in CADD as per the City's Engineering, Design and Construction Manual; and
  - xiii. any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.
- 12.2.6 The Professional will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Completion which are submitted by the Construction Manager, and will immediately inform the Construction Manager about any deficiencies and omissions.

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## ARTICLE 13

### CONSTRUCTION MANAGER'S WARRANTIES AND GUARANTEES

- 13.1 **One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in the Contract for Continuing Construction Management Services for Minor Projects, the Construction Manager, upon request by the Owner or the Professional, shall promptly correct all failures or defects in the Work for a period of one year after the actual date of Substantial Completion, or the date of acceptance by the Owner, whichever is later.
- 13.1.1 The Construction Manager shall schedule, coordinate and participate in a walk-through inspection of the Work one month prior to the expiration of the one-year correction period, and shall notify the Owner, the Professional, and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.
- 13.1.2 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:
- i. that the Work complies with (a) the Construction Documents; and (b) all applicable laws, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
  - ii. that all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of quality equal to or higher than that required by the Construction Documents; and (c) merchantable; and
  - iii. that all management, supervision, labor and services required for the Work shall comply with the Contract for Continuing Construction Management Services for Minor Projects and shall be and are performed in a workmanlike manner.
- 13.3 **Express Warranties And Guarantees - Subcontractors And Suppliers.** The Construction Manager shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the Owner and the Construction Manager in a form identical to the warranties, guarantees and other undertakings set forth in the Contract for Continuing Construction Management Services for Minor Projects, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of the Owner as well as the Construction Manager.
- 13.4 **Non-Exclusivity and Survival.** The warranties and guarantees set forth in this Article shall be in addition to all other warranties, express, implied or statutory, and shall survive the Owner's payment, acceptance, inspection of or failure to inspect the Work, and review of the Construction Documents.
- 13.5 **Non-Limitation.** Nothing contained in Paragraph 13.1, shall be construed to establish a period of limitation with respect to the Construction Manager's obligations under the Contract for Continuing Construction Management Services for Minor Projects. Paragraph 13.1 relates only to the Construction Manager's specific obligations with respect to the Work, and has no relationship to the time within which the Construction Manager's contractual obligations under the Contract for Continuing Construction Management Services for Minor Projects may be enforced, nor to the time within which proceedings may be commenced to establish the Construction Manager's liability with respect to any contractual obligations pursuant to Paragraph 13.1 or contained elsewhere herein.

- 13.6 **Commencement of Obligations.** Unless otherwise specified, all of the Construction Manager's warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by the Construction Documents, shall begin on the actual date of Substantial Completion or the date of acceptance by the Owner, whichever is later.

## ARTICLE 14

### OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

- 14.1 **Timely Compensation of Construction Manager.** The Owner shall timely compensate the Construction Manager in accordance with the Contract for Continuing Construction Management Services for Minor Projects and the requirements of Florida Statutes.
- 14.2 **Owner Review of Documents.** The Owner shall review documents prepared by the Construction Manager in a timely manner and in accordance with schedule requirements. Review by the Owner shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's intent. No review of such documents shall relieve the Construction Manager of any of its responsibilities. In addition, the Owner's review of documents for purposes of issuing a building permit shall not relieve the Construction Manager of any of its responsibilities.

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## ARTICLE 15

### CONSTRUCTION MANAGER'S COMPENSATION

- 15.1 **Unit Prices.** If any portion of the Construction Price is determined by the application of unit prices, the number of units contained in the Construction Manager's Compensation Schedule is an estimate only, and the compensation to the Construction Manager shall be determined by the actual number of units incorporated in, or required by, the Work provided that in any event the GMP shall not be exceeded.
- 15.2 **Schedule of Values.** The Construction Manager shall prepare and present to the Owner and the Professional the Construction Manager's schedule of values, apportioning the different elements of the Work for purposes of periodic and final payment. The Construction Manager's schedule of values shall be presented in the format, and with such detail and supporting information, requested by the Professional or Owner. The Construction Manager shall not imbalance or artificially inflate any element of its schedule of values. Upon the Professional and Owner's acceptance, the schedule of values shall be used to process and pay the Construction Manager's payment requests. The schedule of values shall not be changed without written approval authorized by the Owner.
- 15.3 **Trench Safety Act.** The Construction Manager shall comply with the Trench Safety Act (Chapter 553, Part VI, Florida Statutes) which requires that Construction Managers delineate in their Schedules of Values the cost of compliance with applicable trench safety standards.
- 15.4 **Invoicing.** The Construction Manager shall submit invoices to the Professional or Owner requesting payment for labor and services rendered during the preceding thirty calendar days. Each invoice shall contain such detail and be backed up with whatever supporting information the Owner or a Professional requests and shall at a minimum state:
- i. the total original Construction Price and total current Construction Price;
  - ii. the amount due for properly provided labor, materials and equipment properly incorporated into the Project; and with respect to amounts invoiced for materials or equipment necessary for the Project and properly stored at the Site (or elsewhere if offsite storage is approved in writing by the Owner), be accompanied by written proof that the Owner has title to such materials or equipment and that such material and equipment is fully insured against loss or damage;
  - iii. a breakdown of the various phases, bid packages, or parts of the Work as related to the Construction Price in accordance with standard Construction Specifications Institute (CSI) format;
  - iv. the value of the various phases, bid packages, or parts of the Work actually performed;
  - v. previously invoiced amounts and credit payments made;
  - vi. the total amount due, less any agreed retainage; and
  - vii. a summary of change orders to date;
  - viii. and shall also have attached such lien waiver and other documentation verifying the Construction Manager's payment to subcontractors and suppliers as the Owner or Professional may request.
- 15.5 **Payment Procedures.**
- 15.5.1 The City will execute payments in compliance with [§218.735 Timely payment for purchases of construction services](#)
- 15.5.2 In the case of unit price work, the Owner or Professional will make final determination of quantities and classifications of such work.
- 15.6 **Owner's Right to Refuse Payment.** A Professional's approval of the Construction Manager's invoice shall not preclude the Owner from exercising any of its remedies under the Contract for Continuing Construction Management Services for Minor Projects. In the event of a dispute, payment shall be made on or before the date provided in Section 15.7 for amounts not in dispute, subject to any setoffs claimed by the Owner. The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or the entire amount previously paid to the Construction Manager due to:

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

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

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

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

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

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

15.11 **Taxes.** The Construction Manager shall incorporate into the Construction Price, and pay, all sales, consumer, use and similar taxes for goods, products, materials, equipment and systems incorporated into the Work which were legally required at the time of execution of the Contract for Continuing Construction Management Services for Minor Projects, whether or not yet effective or merely scheduled to go into effect.

The Construction Manager shall cooperate with and assist the Owner in securing qualified refunds of any sales or use tax paid by the Owner or Construction Manager on goods, products, materials, equipment or systems. Any refund secured shall be paid to the Owner.

- 15.12 **Compensation of Construction Manager's Subcontractors and Suppliers.** Forty five (45) days after satisfactory completion of their portion of the Work, subcontractors may invoice Construction Manager for remaining unpaid Work, including the full value of the retainage related to such Work less the value of any contested item(s), and provided each such subcontractor has provided Construction Manager with all required close-out documentation. Construction Manager shall include subcontractor pay requests in the Construction Manager's application for payment. No later than ten (10) days after receipt of payment from the Owner, the Construction Manager shall pay each of its subcontractors and suppliers out of the amount received by the Construction Manager on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to the Construction Manager on account of such entity's portion of the Work, if any. The Owner shall have no obligation to pay, and shall not be responsible for payments to, the Construction Manager's subcontractors or suppliers. However, the Owner reserves the right, but has no duty, to make payment jointly to the Construction Manager and to any of its subcontractors or suppliers in the event that the Owner becomes aware that the Construction Manager fails to pay or unreasonably withholds payment from one or more of those entities. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.
- 15.13 **Retainage.** Subject to Section 15.6, retainage shall be withheld from each payment, in an amount not to exceed five percent (5%) of the approved payment amount or in accordance with §255.078 Public construction retainage. at the time of payment.
- 15.14 **Final Payment.** Prior to being entitled to receive final payment and as a condition precedent thereto, the Construction Manager must achieve Final Completion. The Owner shall, subject to its rights set forth above in this Article, make final payment of all sums due the Construction Manager within fourteen (14) calendar days of Owner's execution of a final approval for payment.

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## ARTICLE 16

### SCHEDULE REQUIREMENTS

- 16.1 **Construction Schedule.** The Construction Schedule shall include all pertinent dates and periods for timely completion of the Work.
- 16.1.1 Unless otherwise directed and approved by the Owner, the Construction Manager shall, within fourteen (14) calendar days of the Notice to Proceed, prepare a Critical Path Method schedule updated monthly with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion. When preparing the schedule Construction Manager shall consider and account for Owner's operational needs on the site and adjacent thereto, particularly with regard to utility interruptions and access restrictions.
- 16.1.2 The Construction Schedule shall depict all activities necessary for, or incidental to, performance of the Work, showing the logic (sequence, dependency), duration, and "float" of each activity, with the critical path highlighted and shall include (i) the required Commencement Date, the required dates of Substantial Completion and Final Completion; (ii) any guideline and milestone dates required by the Owner; (iii) any applicable subcontractor and supplier schedules; (iv) coordination with the submittal schedule which allows sufficient time for review of documents and submittals; (v) allowances for procurement, fabrication, and delivery of materials, especially "long lead" items; (vi) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; (vii) the time required for testing, inspections, and commissioning, if applicable; (viii) time for schedule constraints, such as holidays and events on Owner's property and adverse weather conditions which are normal and may be reasonably anticipated; and (ix) required decision dates.
- 16.1.3 By reviewing the Construction Schedule, the Owner and Professional do not assume any of the Construction Manager's responsibility (i) that the Construction Schedule be coordinated or complete; or (ii) for timely and orderly completion by the required dates of Substantial Completion, Final Completion and any milestone dates required by the Owner.
- 16.1.4 The Construction Manager shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. The Construction Manager shall discuss the status of the Work bi-weekly with the Professional and/or Owner, so that proper overall management may be provided.
- 16.1.5 The Construction Manager shall periodically and in all instances when the Construction Manager anticipates that performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare a revised Construction Schedule and show actual progress of the Work through the revision date, projected completion of each remaining activity, activities modified since previous submittal, major changes in scope, and other identifiable changes. The updated Construction Schedule shall be accompanied by a narrative report which (i) states and explains any modifications of the critical path schedule, including any changes in logic; (ii) defines problem areas and lists areas of anticipated delays; (iii) explains the anticipated impact the problems and delays will have on the schedule and scheduled activities; (iv) reports corrective action taken or proposed; and (v) states how problems anticipated by projections shown on the schedule will be resolved to avoid delay in delivering the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.
- 16.2 **Delay in Performance.** If at any time the Construction Manager anticipates that performance of the Work will be delayed or in fact has been delayed, the Construction Manager shall (i) immediately notify the Owner and Professional of the probable cause of and effect from the delay, and possible alternatives to minimize the delay; and (ii) take all corrective actions reasonably necessary to deliver the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

- 16.3 **Modifications of Time for Performance.** The Construction Manager may submit delay claims or otherwise propose modifications of the required dates of Substantial Completion or Final Completion, or other milestone dates required by the Owner, if any. However, such claims shall be submitted in writing and supported by evidence that the delay was excusable, critical, and compensable by modification of required dates. The Construction Manager shall determine and promptly notify the Owner and the Professional in writing when it believes such adjustments are necessary, but no such adjustments shall be effective unless approved in writing by the Owner and Professional.
- 16.3.1 Modification(s) of the required dates of Substantial Completion or Final Completion shall be accomplished only by duly authorized and accepted change order(s) stating the new date(s) with specificity and reciting that all references in the Contract for Continuing Construction Management Services for Minor Projects to the required dates of Substantial Completion or Final Completion shall thereafter refer to the date(s) as modified, and all rights and obligations, including the Construction Manager's liability for actual damages, delay damages and liquidated damages, shall be determined in relation to the date(s) as modified.
- 16.4 **Early Completion.** The Construction Manager may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the Construction Manager's sole convenience and shall not create any additional Construction Manager rights or Owner obligations under the Contract for Continuing Construction Management Services for Minor Projects, nor shall it change the required dates of Substantial Completion or Final Completion. The Owner shall not pay the Construction Manager any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates nor will the Owner owe the Construction Manager any compensation should the Owner cause the Construction Manager not to achieve Substantial Completion earlier than the required date of Substantial Completion or Final Completion earlier than the required date of Final Completion.
- 16.5 **Document Review.** The Construction Manager shall provide documents to the Owner and Professional(s) for review in accordance with schedule requirements and with sufficient lead time to allow the Owner and Professional reasonable time for review.

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# ARTICLE 17

## TIME OF PERFORMANCE

- 17.1 **Time of the Essence.** The parties hereto mutually understand and agree that time is of the essence in the performance of the Contract for Continuing Construction Management Services for Minor Projects and that the Owner will incur damages if the Work is not completed on time. The Construction Manager shall at all times carry out its duties and responsibilities as expeditiously as possible and shall begin, perform and complete its services so that (i) the Work progresses in accordance with the Construction Schedule; (ii) the Work is substantially completed by the required date of Substantial Completion; and (iii) the Work is finally complete by the date of Final Completion.
- 17.2 **Delay Claims.** The Construction Manager may submit delay claims or otherwise propose modifications of the required dates of Substantial Completion or Final Completion, or other milestone dates required by the Owner, if any. However, such claims shall be submitted in writing and supported by evidence that the delay was excusable, critical, and, if applicable, compensable. Extensions of time will be granted only to the extent that equitable time adjustments for the effected activity or activities exceed the total float along the network paths involved. Such claims shall include an estimate of cost, if any, and substantiate the projected impact on the overall critical path schedule of the Project. In the case of a continuing delay, only one claim is necessary.
- 17.2.1 If adverse weather conditions are the basis for a delay claim, the claim shall be documented by data substantiating that: the weather conditions were abnormal for the given location and period of time; the weather conditions could not have been reasonably anticipated; and that the weather conditions had an adverse effect on the overall critical path of the schedule. Delays caused by adverse weather conditions are not compensable by other than extensions of time.
- 17.3 **Compensable Delay.** If the Construction Manager is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or Professional, constituting active interference with the Construction Manager's performance of the Work, and only to the extent such acts continue after the Construction Manager furnishes the Owner or Professional with notice of such interference; or (iii) any other cause which the Owner determines may justify the compensation of the Construction Manager for the delay, the Construction Manager's compensation shall be equitably adjusted to cover the Construction Manager's actual and direct increased costs as described in Paragraph 4.2 of the Contract for Continuing Construction Management Services for Minor Projects. In no event shall the Construction Manager be entitled to collect consequential damages, lost opportunity costs, impact damages or other similar remuneration.
- 17.3.1 Construction Manager's compensation for changes in the work ordered by the Owner shall be calculated pursuant to Paragraph 4.2 of the Contract for Continuing Construction Management Services for Minor Projects and agreed to by written change order. Construction Manager shall not be entitled to compensable delay damages. In no event shall the Construction Manager be entitled to collect consequential damages, lost opportunity costs, impact damages or other similar remuneration.
- 17.4 **Force Majeure:** No Party shall hold the other responsible for damages or for delays in performance caused by force majeure, acts of God, or other acts or circumstances beyond the control of the other party or that could not have been reasonably foreseen and prevented. For this purpose, such acts or circumstances shall include, but not be limited to weather conditions affecting performance, floods, epidemics, war, riots, strikes, lockouts, or other industrial disturbances, or protest demonstrations. Should such acts or circumstances occur, the parties shall use their best efforts to overcome the difficulties arising therefrom and to resume the Work as soon as reasonably possible with the normal pursuit of the Work.
- Inclement weather, continuous rain for less than three (3) days or the acts or omissions of subcontractors, third-party contractors, materialmen, suppliers, or their subcontractors, shall not be considered acts of force majeure.
- No Party shall be liable for its failure to carry out its obligations under the Agreement during a period when such Party is rendered unable by force majeure to carry out its obligation, but the obligation of the Party or

Parties relying on such force majeure shall be suspended only during the continuance of the inability and for no longer period than the unexpected or uncontrollable event.

The Contractor further agrees and stipulates, that its right to excuse its failure to perform by reason of force majeure shall be conditioned upon giving written notice of its assertion that a Force Majeure delay has commenced within 96 hours after such an occurrence. The Contractor shall use its reasonable efforts to minimize such delays. The Contractor shall promptly provide an estimate of the anticipated additional time required to complete the Project.

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## ARTICLE 18

### CONCEALED AND UNFORESEEN CONDITIONS

- 18.1 **Notification Regarding Unusual Conditions.** If, notwithstanding Construction Manager's full compliance with Section 3.2, (i) the Construction Manager encounters concealed and unforeseen conditions of an unusual nature which affect the performance of the Work; or (ii) the conditions vary from those indicated by the Construction Documents; and (iii) such conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided by the Construction Manager, the Construction Manager shall promptly, but in no event later than three calendar days after first observance of the conditions, notify the Professional and the Owner before conditions are disturbed and give the Professional or the Owner opportunity to observe the condition in its undisturbed state.
- 18.1.1 The conditions will be promptly investigated and, if they differ substantially and cause a material increase or decrease in the Construction Manager's cost of, or time required for, performance of the Work, compensation or time for performance or both will be equitably adjusted.
- 18.1.2 All adjustments in compensation or extensions of time shall be by change order. Change order requests must be made within fourteen (14) calendar days from the date of observation of the changed conditions.
- 18.1.3 The Construction Manager's failure to notify the Professional and Owner as provided in this Article shall constitute a waiver of any claim arising out of or relating to such concealed or unknown condition.

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## ARTICLE 19

### PROPRIETARY DOCUMENTS

- 19.1 **Nature and Use of Information.** Even as otherwise provided by law, all information, documents, and electronic media furnished by the Owner to the Construction Manager (i) belong to the Owner; (ii) are proprietary; (iii) are furnished solely for use on the Owner's Project; and (iv) shall not be used by the Construction Manager on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance or is required by law. The Owner hereby grants to the Construction Manager a limited license to use and reproduce applicable portions of the Construction Documents necessary for execution of the Work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the documents.
- 19.2 **Ownership of Information.** All information, documents, and electronic media prepared by or on behalf of the Construction Manager for the Project are the sole property of the Owner free of any retention rights of the Construction Manager. The Construction Manager hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, any information, documents or electronic media prepared by or on behalf of the Construction Manager for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.
- 19.3 **Non-Publication.** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

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## **ARTICLE 20**

### **INSURANCE REQUIREMENTS**

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

20.1.1 **Liability Insurance.**

20.1.1.1. **Commercial General Liability Insurance.**

The Construction Manager shall provide a commercial general liability insurance policy which has liability limits of at least \$1,000,000.00 per occurrence for bodily injury, death and property damage. The Owner shall be named as additional insureds on such policy and the policy shall provide cross liability coverage. Such insurance policy shall protect Construction Manager from claims which may arise whether such claims may arise out of the operations of the Construction Manager or by anyone directly or indirectly employed by the Construction Manager. In addition, the policy shall contain the following endorsements (i) "XCU" (explosion, collapse, underground damage) for those classifications excluded under the policy. If Construction Manager is performing asbestos-related work, the policy shall also contain a pollution liability endorsement.

20.1.1.2. **Automobile Liability Insurance.**

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

20.1.1.3. **Deductibles**

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

20.1.2 **Worker's Compensation.**

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

20.1.3 **Builder's Risk Insurance.**

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

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

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

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

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

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## ARTICLE 21

### GENERAL BOND REQUIREMENTS

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

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## ARTICLE 22

### OWNER'S RIGHT TO STOP WORK

- 22.1 **Cease And Desist Order.** If the Construction Manager fails or refuses to perform or fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with the Contract for Continuing Construction Management Services for Minor Projects, the Owner may, by written notice, order the Construction Manager to cease and desist in performing the Work or any portion of the Work until the cause for the order has been eliminated to the satisfaction of the Owner. Upon receipt of such instruction, the Construction Manager shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's order has been corrected, no longer exists, or the Owner instructs that the Work may resume.
- 22.1.1 The Construction Manager shall not be entitled to an adjustment in the time for performance or the Construction Price under this clause since such stoppages are considered to be the fault of the Construction Manager.
- 22.1.2 The right of the Owner to stop Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Construction Manager or others.
- 22.1.3 In the event the Owner issues instructions to cease and desist, and in the further event that the Construction Manager fails and refuses with seven calendar days to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another Construction Manager, and the Construction Manager shall be responsible for the cost of performing such Work by the Owner.
- 22.1.4 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Construction Manager.

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**EXHIBIT C**  
**CONSTRUCTION MANAGEMENT FOR MINOR PROJECTS**  
**GUARANTEED MAXIMUM PRICE AGREEMENT**

Pursuant to the Contract for Construction Management for Minor Projects dated \_\_\_\_\_ [and amendments: \_\_\_\_] (“Contract for Construction Management for Minor Projects”), between the [City of Gainesville **OR** the City of Gainesville dba Gainesville Regional Utilities] (“Owner”) and \_\_\_\_\_ (“Construction Manager”), the Owner and the Construction Manager hereby execute this Guaranteed Maximum Price (“GMP”) Agreement for:

**Project Name:** \_\_\_\_\_

**Project Description:** \_\_\_\_\_

**Project Location:** \_\_\_\_\_

and further agree as set forth below.

1. This GMP Agreement shall become effective upon execution and shall continue in effect until all work has been completed, unless terminated in accordance with the Contract for Construction Management for Minor Projects.
2. **GMP Agreement Documents.**  
The Construction Manager shall perform the Work in accordance with this GMP Agreement, including the exhibits or documents listed below, whether attached hereto or incorporated by reference, and the Contract for Construction Management for Minor Projects dated \_\_\_\_\_, [and amendments: \_\_\_\_\_].

**ATTACHMENT LIST** (Attachments 1-4 must be included):

1. GMP Detailed Cost Breakdown
2. GMP Project Schedule
3. Project Specific Requirements, Assumptions, and Clarifications
4. CM Personnel list (including roles and contact info)
5. Notice to Proceed (upon issuance)
6. Other Documents provided by the Construction Manager to support the proposal
7. Other Documents provided by the Owner to support the proposal

In the event of conflict between Agreement documents, the order of precedence shall be as provided in the Contract for Construction Management for Minor Projects. The order of precedence *within* this GMP Agreement shall be as listed above.

3. Additional project requirements and provisions are attached and incorporated as Attachment 3.
4. Construction Manager’s personnel for the Project shall be as listed in Attachment 4, hereby incorporated.
5. Time is of the essence, and Construction Manager shall commence the Work within ten (10) calendar days after issuance of the Notice to Proceed, Exhibit 5. Substantial Completion for the Project shall be within \_\_\_\_\_ days of issuance of the Notice to Proceed. The date of Final Completion for the Project shall be within \_\_\_\_\_ days after the deadline for Substantial Completion. The detailed schedule is attached and incorporated as Attachment 2.

6. Construction Manager's Contingency shall be no greater, as a percentage of the estimated Cost of the Work, than the following at each of the following phases:
- (10 %) at (30 %) Construction Documents
  - ( 5 %) at (60 %) Construction Documents
  - ( 5 %) at the time the GMP proposal is submitted (trade package bids secured)
  - ( 2 %) at the time the GMP proposal is submitted (with trade package bids secured)
7. The Guaranteed Maximum Price is \_\_\_\_\_ Dollars and \_\_\_\_ Cents (\$\_\_\_\_\_.), as shown below.

<b>Summary of Costs</b>	<b>GMP</b>
Cost of the Work	\$
General Conditions	\$
Staffing	\$
Bonds and Insurance	\$
CM Contingency (per 6. Above)	\$
CM Fee %	__%
CM Fee/OH&P	\$
<b>GMP Total:</b>	<b>\$</b>

8. Liquidated Damages shall be
- \$\_\_\_\_\_ per day for each day of delay in meeting the Substantial Completion days
  - \$\_\_\_\_\_ per day for each day of delay in meeting the Final Completion days
- in accordance with the terms of the Contract for Construction Management for Minor Projects.
9. In accordance with Section 5.5.1.8 of the Contract for Construction Management for Minor Projects, the Construction Manager shall award Trade Contracts within \_\_\_\_\_ days of issuance of the GMP Agreement.

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**FOR THE OWNER:**

CITY OF GAINESVILLE **[OR]**

CITY OF GAINESVILLE DBA

GAINESVILLE REGIONAL UTILITIES

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**FOR THE CONSTRUCTION MANAGER:**

[COMPANY NAME: \_\_\_\_\_]

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BY:

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BY: NAME, TITLE

---

DATE:

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DATE:

Approved as to Form and Legality

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Assistant City Attorney

**EXHIBIT D**  
**CONSTRUCTION MANAGEMENT FOR MINOR PROJECTS**  
**PRECONSTRUCTION SERVICES AGREEMENT**

Pursuant to the Contract for Construction Management for Minor Projects dated \_\_\_\_\_ [and amendments:\_\_\_\_\_] between the City of Gainesville, Florida [or City of Gainesville dba Gainesville Regional Utilities if for GRU] (“Owner”) and \_\_\_\_\_ (“Construction Manager”), the Owner and the Construction Manager hereby execute this Preconstruction Services Agreement (“Precon”) Agreement for

**Project Name:** \_\_\_\_\_

**Project Description:** \_\_\_\_\_

**Project Location:** \_\_\_\_\_

and further agree as set forth below.

1. This Precon Agreement shall become effective upon execution and shall continue in effect until all work has been completed, unless terminated in accordance with the Contract for Construction Management for Minor Projects
2. Contract Documents. The Construction Manager shall perform the Work in accordance with this Preconstruction Agreement, including the attachments and/or documents listed below, whether attached hereto or incorporated by reference, and the Contract for Construction Management for Minor Projects dated \_\_\_\_\_, [as amended (if there are amendments)]: \_\_\_\_\_].

**ATTACHMENT LIST** (Attachments 1-4 must be included):

1. Preconstruction Scope of Services
2. Preconstruction Services Fee Proposal
3. Preconstruction Services Schedule
4. Preconstruction Services Personnel
5. Other Documents provided by the Owner to support the proposal
6. Other Documents provided by the Construction Manager to support the proposal

In the event of conflict between contract documents, the order of precedence shall be as provided in the Contract for Construction Management for Minor Projects. The order of precedence *within* this Precon Agreement shall be as listed above.

3. Time is of the essence, and Construction Manager shall meet the schedule provided with this Precon Agreement and work cooperatively with the Owner and Consultants. Construction Manager shall provide responses and deliverables within \_\_\_\_\_ days of receiving the information and request.
4. The Preconstruction Services Proposal price is \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$ \_\_\_\_\_), in accordance with the price breakdown in Attachment 2. Preconstruction services shall be provided at a billable rate without fee included.

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**FOR THE OWNER:**

CITY OF GAINESVILLE OR  
CITY OF GAINESVILLE DBA  
GAINESVILLE REGIONAL UTILITIES

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**FOR THE CONSTRUCTION MANAGER:**

[COMPANY NAME: \_\_\_\_\_]

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BY:

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BY: NAME, TITLE

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DATE:

---

DATE:

Approved as to Form and Legality

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Assistant City Attorney

**EXHIBIT E**  
**CONSTRUCTION MANAGEMENT FOR MINOR PROJECTS**

**NOTICE TO PROCEED**

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Pursuant to the Contract for Construction Management for Minor Projects dated \_\_\_\_\_, as amended, and the GMP Agreement dated \_\_\_\_\_, between the [City of Gainesville (“Owner”) **OR** City of Gainesville dba Gainesville Regional Utilities] and \_\_\_\_\_ (“Construction Manager”) for [project title: \_\_\_\_\_], the Owner hereby issues this Notice To Proceed.

The Notice to Proceed date \_\_\_\_\_

Construction Manager shall commence of the Work within ten (10) calendar days after issuance of this Notice to Proceed.

The date of Substantial Completion for the Project shall be \_\_\_\_\_. In accordance with the calendar days listed in the GMP Agreement.

The date of Final Completion for the Project shall be \_\_\_\_\_ days after the date of actual Substantial Completion or \_\_\_\_\_].

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**FOR THE OWNER:**

[CITY OF GAINESVILLE **OR**  
CITY OF GAINESVILLE DBA  
GAINESVILLE REGIONAL UTILITIES]

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**FOR THE CONSTRUCTION MANAGER:**

[COMPANY NAME: \_\_\_\_\_]

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BY:

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BY: NAME, TITLE

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DATE:

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DATE: