

**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**

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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