

AGREEMENT

___ **THIS AGREEMENT** is made and entered into this ___ day of January, 2016 (“Effective Date”) between the City of Coral Gables, a Florida municipal corporation (hereinafter referred to as "City" or “Owner”), having its principal address at: City of Coral Gables Finance Department/ Procurement Division, 405 Biltmore Way, Coral Gables, Florida 33134, and Ric-Man International, Inc., a Florida corporation (hereinafter referred to as "Construction Manager") (License # CGC1506008), having its place of business at 2601 Wiles Road, Pompano Beach, Florida 33073. The City and Construction Manager are sometimes collectively referred to herein as the “Parties” and each, individually, as a “Party.”

RECITALS

WHEREAS, the City issued a Request for Qualifications No. 2014.12.05 (the “RFQ”) seeking qualifications from contractors to provide certain preconstruction services and service, labor and materials as a construction manager at risk for the Miracle Mile and Giralda Avenue Streetscape (the “Project”);

WHEREAS, Construction Manager submitted its qualifications (“Construction Manager’s Qualifications”) in response to the City’s RFQ outlining Construction Manager’s extensive experience and expertise in projects similar to the Project;

WHEREAS, the City selected Construction Manager to perform certain preconstruction services for the Project as set forth in the Preconstruction Services Agreement dated _____ (the “Preconstruction Services”) pursuant to Sections 255.103 and 287.055, Florida Statutes and Section 2-768 of the City of Coral Gables Code of Ordinances;

WHEREAS, Construction Manager has been performing Preconstruction Services for the Project pursuant to the Preconstruction Services Agreement. The City now desires to contract with Construction Manager for the construction of the Project;

WHEREAS, the Construction Manager agrees to serve as Construction Manager at Risk and general contractor for this Project and to construct the Project as provided herein this Agreement in accordance with terms and conditions of this Agreement; –

WHEREAS, the Construction Manager agrees to accept this Agreement upon the terms and conditions hereinafter set forth; and

WHEREAS, the City, through action of the City of Coral Gables City Commission, by Resolution No. _____, has authorized the City of Coral Gables City Manager to execute this Agreement on behalf of the City.

WITNESSETH, the City and Construction Manager, for good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, hereby agree as follows:

ARTICLE 1
THE CONTRACT DOCUMENTS
& DEFINITIONS

1.1 Recitals. The above recitals are true and correct and are incorporated herein by this reference.

1.2 The following documents shall comprise the Contract Documents ("Contract Documents"):

- 1) This Agreement;
- 2) RFQ attached as **Exhibit "A"**;
- 3) The Project Plans, Drawings & Specifications attached hereto as **Exhibit "B"** ("Plans");
- 4) The Construction Manager's Certificates of Insurance and Additional Insured Endorsements, attached hereto as **Exhibit "C"**;
- 5) The Construction Manager's Payment and Performance Bonds, attached hereto as **Exhibit "D"**; and
- 6) The Certificate of Substantial Completion, attached hereto as **Exhibit "E"**;
- 7) The Certificate of Final Completion, attached hereto as **Exhibit "F"**;
- 8) Schedule of Values, attached hereto as **Exhibit "G"**;
- 9) Construction Manager's Statement of Qualifications attached hereto as **Exhibit "H"**
- 10) Construction Manager's Key Personnel attached hereto as **Exhibit "I"**
- 11) Schedule, attached hereto as **Exhibit "J"**
- 12) Existing surveys and reports attached hereto as **Composite Exhibit "K"**
- 13) Allowances attached hereto as **Exhibit "L"**
- 14) Construction Manager's General Conditions Breakdown attached hereto as **Exhibit "M"**

- 15) Construction Manager's, Subcontractors' and Manufacturers' warranties attached hereto as **Composite Exhibit "N"**
- 16) Submittal Schedule attached hereto as **Exhibit "O"**

1.3 Any of the Contract Documents listed above but not attached hereto are hereby incorporated by reference and shall be deemed to be of the same force and effect as if actually attached hereto. This Agreement incorporates all prior negotiations, agreements, and understandings applicable to the matters contained in this Agreement. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written. The Contract Documents shall be interpreted together and in harmony with one another. However, in the case of conflict between this Agreement and the other Contract Documents, this Agreement shall control. The Construction Manager must call any known conflict or discrepancy to the City's attention, in writing, prior to executing this Agreement. In the case of any conflict between the Contract Documents regarding the obligations or responsibilities of Construction Manager, whichever document imposes the greater obligation on the Construction Manager shall be controlling.

1.4 The Construction Manager shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings and the Product Data and shall give written notice to the City of any inconsistency, ambiguity, error or omission which the Construction Manager may discover with respect to these documents before proceeding with the affected Work. The issuance or the express approval by the City, or the Architect of the Contract Documents, Shop Drawings or Product Data shall not relieve the Construction Manager of the continuing duties imposed hereby, nor shall any such approval be evidence of the Construction Manager's compliance with this Agreement. The City has requested the Architect to prepare documents for the Project, including the Plans for the Project attached as **Exhibit "B."**

1.5 By the execution of this Agreement, the Construction Manager acknowledges and represents that it has received, reviewed and carefully examined the Contract Documents, has found them to be complete, adequate, consistent, coordinated and sufficient for construction, and that the Construction Manager has not, does not, and will not rely upon any representation or warranties by the City concerning such Contract Documents as no such representation or warranties have been or are hereby made. The Construction Manager further acknowledges and represents that it has made a thorough and careful examination and inspection of existing conditions on the Project site including, but not limited to, through performance of its Preconstruction Services, inspection and investigation of both surface and subsurface conditions, site logistics, access, traffic and other factors impacting construction, and the Construction Manager expressly acknowledges and agrees that it shall make no claim for additional compensation due to existing site conditions including, but not limited to, rock, surface and subsurface water, existing structures, and deficient soil, provided said conditions could be determined or ascertained from a thorough and careful examination and inspection of the site, subject to Section 11.3. Further, as part of Preconstruction Services, Construction Manager has participated in the review, development and revisions of the Plans along with the City and Architect and has sufficient opportunity to review such plans for coordination issues.

1.6 "Architect" means the architect for the Project, Cooper, Robertson & Partners,

LLP, a New York limited liability partnership.

1.7 “City Commission” means the legislative body of City of Coral Gables.

1.8 The “City” means the City of Coral Gables, Florida, a Florida municipal corporation, the public agency which is a party hereto and for which this Agreement is to be performed. In all respects hereunder, the City’s performance is pursuant to the City’s position as the owner of the Project. In the event the City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, codes, laws and ordinances shall be deemed to have occurred pursuant to the City’s authority as a governmental body and shall not be attributable in any manner to the City as a Party to this Agreement. For the purposes of this Agreement, the “City” without modification shall mean City Manager or Public Works Director, as applicable.

1.9 “Project Manager” means the representative of the City’s Public Work’s department who will be responsible for administrating the Project.

1.10 “Subcontractor” means any person who has a written agreement with Construction Manager to perform a portion of the Work or to furnish materials or equipment for incorporation into the Project.

ARTICLE 2 **SCOPE OF WORK**

2.1 The Construction Manager will provide all materials, supervision, labor, tools and equipment necessary to complete the work to be performed pursuant to this Agreement (the “Work”) in strict accordance with the Contract Documents, and perform all Work that is reasonably inferable therefrom as being necessary to accomplish the intent of the Contract Documents, and as required by all applicable laws, ordinances and rules and regulations of any governing authority including but not limited to the provisions of the Florida Building Code, and any amendments thereto, including all Applicable Laws defined in Paragraph 12.8 of this Agreement.

2.2 The term "Work" shall mean whatever is done by or required of the Construction Manager to perform and complete its duties under this Agreement, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, administration, management, supervision, testing, services, materials, supplies, equipment, fixtures, facilities, tools, transportation, storage, power, permits and licenses required of the Construction Manager, fuel, heat, light, cooling and all other utilities as required by this Agreement. The Work to be performed by the Construction Manager is generally described as follows:

Miracle Mile and Giralda Avenue Streetscape consists of construction of a cohesive pedestrian-friendly experience including but not limited to infrastructure work, landscaping, street and sidewalk improvements, lighting and signage.

2.3 Unless expressly permitted or allowed by the Contract Documents or otherwise approved in writing by the City, substitutions of materials, articles, systems, equipment, or other components of the Work will not be considered. Where substitutions are expressly permitted or allowed by the Contract Documents, the Construction Manager must demonstrate to both the Architect and the City that a proposed substitution is equal in substance, quality and function to the material, article, or piece of equipment identified in the Contract Documents. The City shall have no obligation to accept a proposed substitution and no substitution shall be allowed without the prior written approval from both the Architect and the City, and in such event Construction Manager shall have no obligation to incorporate such proposed substitution into the Work. All information regarding the costs and costs savings, if any, of proposed substitutions shall be provided to the Architect and the City. If the substitution results in a savings to the Construction Manager, the City shall be entitled to a credit for the amount saved as a result of the substitution.

ARTICLE 3 **CONTRACT TIME.**

3.1 Date of Commencement. The Work to be performed under this Agreement shall be commenced upon the later of the execution of this Agreement or the issuance by the City of a notice to proceed (“Date of Commencement”).

3.2 Contract Time. Project shall reach Substantial Completion as defined in Article 6, no later than _____calendar days from the Date of Commencement and Final Completion no later than 60 days from the delivery of the Punch List as outlined in Paragraph 6.2, subject to any authorized extensions of time as set forth in Article 11 of this Agreement. All Work shall be performed in an expeditious manner.

3.3 Construction Manager is responsible for securing all necessary permits from the City of Coral Gables, Miami-Dade County, Florida Department of Transportation and any other authority having jurisdiction over the Work. If Construction Manager is unable to secure permits timely due to no fault of Construction Manager so as to maintain the Schedule, the Construction Manager shall notify the City in writing detailing the reason for the delay and request a time extension to secure permits. The Construction Manager shall use commercially reasonable best efforts in furtherance of pursuing the satisfaction of all necessary governmental entities' requests in obtaining information relevant to securing all necessary permits. **TIME IS OF THE ESSENCE IN THIS AGREEMENT.**

ARTICLE 4 **CONTRACT SUM/GUARANTEED MAXIMUM PRICE**

4.1 Contract Sum. The City shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager’s performance of its obligations and responsibilities under this Agreement. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager’s Fee, and subject to the Guaranteed Maximum Price as provided in Section 4.2.1.

4.1.1 The Construction Manager's Fee: The Construction Manager's Fee for overhead and profit is _____ of the Cost of the Work (the "Fee" or "Construction Manager's Fee"). The Cost of the Work, for purposes of calculating the Construction Manager's Fee, is the Cost of the Work as defined in Article 7 (excluding Payment and Performance Bond Premiums, Contingency, and Insurance Premiums).

4.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Construction Manager shall charge no Fee on the first \$200,000.00 of changes in the aggregate (accounting for deductive changes, other than City Furnished Materials, and increase changes). Thereafter, Construction Manager's Fee, inclusive of all overhead, profit, and fee, shall be _____% of the additional Cost of the Work, subject to the limitations set forth in this Agreement.

4.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Subcontractor's overhead and profit shall be limited to 15% for changes in the Work (inclusive of all overhead and profit on sub-subcontractors and supplier change orders).

4.1.4 Rental rates for Construction Manager-owned equipment shall not exceed the standard rate paid at the place of the Project and shall not include a Construction Manager's Fee. Rental rates shall be submitted in writing by Construction Manager to Owner for approval.

4.1.5 Unit prices, if any:

Item	Units	and	Price Per Unit (\$0.00)
	Limitations		
_____	_____		_____

4.2 Guaranteed Maximum Price ("GMP"). The Contract Sum is guaranteed by the Construction Manager not to exceed Twenty One Million Six Hundred Thousand and 00/100 _____ (\$21,600,000.00), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the City. The GMP includes all permits, taxes, licenses, fees, bonds, performance tests, and governmental inspection fees (excluding those imposed by the City), unless otherwise set forth in this Agreement.

4.2.2 Allowances included in the Guaranteed Maximum Price are attached as **Exhibit “L”**.

4.2.3 The Guaranteed Maximum Price includes a fixed amount for General Conditions of \$ _____ as detailed in **Exhibit “M”**. Construction Manager’s General Conditions are fixed and shall not be subject to increase or decrease unless authorized by written Change Order or unless otherwise set forth in this Agreement.

4.2.4 **Owner’s Contingency.** The GMP includes an Owner’s Contingency in the amount of _____ available for Owner’s use at Owner’s sole discretion for any reason including but not limited to costs for Changes in the Project. When Owner directs an Owner’s Contingency expenditure, Construction Manager shall reflect the Owner’s Contingency amount and transfers through the monthly requisition process. Transfers shall reflect a zero sum adjustment to the GMP, by subtraction from the Owner’s Contingency for every addition to line items being increased or creation of new line items. Nothing provided herein shall cause the GMP to be construed as a "line item GMP." The Owner’s Contingency shall not be considered a Cost of the Work and Construction Manager shall not be entitled to any Fee on the Owner Contingency unless and until a particular portion of the Owner Contingency is authorized by Owner to be transferred pursuant to a Change Order; it being understood that Construction Manager shall not be entitled to any Fee on any unused portion of the Owner Contingency. Any unused Owner Contingency shall inure 100% to the Owner and a deductive Change Order shall be issued reducing the GMP.

4.2.5 It is the intent and understanding of Construction Manager in providing a GMP for this Work, that the Plans attached as **Exhibit “B”** provide for the construction of completed Work by the Construction Manager, including all devices, fasteners, materials or other work not shown in the Drawings and Specifications but which are reasonably inferable therefrom and any and all incidental accessories necessary to make the Work complete and operable in all respects (even if not specified in the description of the Work, but necessary for proper installation and operation of the Work under the Drawings and Specifications), all of which shall be included as part of the Cost of the Work. The expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a construction manager and general contractor familiar with the Project and exercising the care, skill and diligence of the Construction Manager by the Contract Documents. Notwithstanding, the foregoing shall not be construed to impose any design responsibility or liability on Construction Manager except where such design responsibility is an existing requirement of Florida law or the Contract Documents.

4.3 For Unit Price Work, if any, listed in **Exhibit “A”**, the Construction Manager shall not be entitled to payment for the performance of Unit Price Work listed unless prior to performing same it is approved and the quantities are verified by the Architect and Project Manager. The City has the right to delete any of the items of the Unit Price Work and shall have no liability for payment for any items deleted except for the costs Construction Manager actually incurs in handling and re-stocking such deleted items. In addition, Construction Manager shall not be entitled to payment for the performance of any Unit Price Work exceeding the quantities

estimated in the Construction Manager's bid for any unit price bid item unless prior to performing such excess Unit Price Work it is approved by the Architect and Project Manager and a Change Order is executed by the City in accordance with Article 21 of this Agreement. If the Construction Manager proceeds with any Unit Price Work exceeding an estimated quantity without first obtaining the prior approval of the City and by a written Change Order, the Construction Manager shall not be entitled to any payment for the performance of such Unit Price Work.

ARTICLE 5 **PAYMENTS OF THE CONTRACT SUM**

5.1 Schedule of Values. The Schedule of Values allocating the Contract Sum to the various portions of the Work is attached as **Exhibit "G"**. The Construction Manager shall not imbalance its Schedule of Values nor artificially inflate any element thereof. Any violation of this provision by the Construction Manager shall constitute a material breach of this Agreement. The Schedule of Values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The Schedule of Values shall be used only as a basis for the Construction Manager's Applications for Payment.

5.2 Payments shall be made in accordance with the provisions of this Article 5 and Article 6. As an express condition precedent to payment, the Construction Manager must provide a Payment and Performance Bond in accordance with Section 255.05, Florida Statutes, and Article 18 of this Agreement, unless the Construction Manager is exempt from providing such bonds pursuant to the RFQ.

5.2.1 Progress Payments. Every month after the Date of Commencement, on the twenty-fifth (25th) day of the month, the Construction Manager shall submit an itemized draft Application for Payment to the Architect and the City for the amounts due for the preceding month including estimated Work to be completed through the end of the month, using AIA Document G-702 and G-703 based on the approved Schedule of Values ("Pencil Draw"). Within five (5) days of receipt, Architect and Project Manager shall meet with Construction Manager to review the Pencil Draw and thereafter, Construction Manager shall submit its Application for Payment to Architect and City on or before the 10th day of the following month. Each Application for Payment shall be based on the most recent Schedule of Values submitted by the Construction Manager in accordance with the Contract Documents.

The Construction Manager shall submit payrolls, petty cash accounts, receipted invoices, and any other evidence required by the City or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment. Such Application for Payment shall be sworn to by the Construction Manager and notarized and supported by such data substantiating the Construction Manager's right to payment as the City may require. The Construction Manager shall include with each Application for Payment: (1) Waivers of Right to Claim Against Bond from each Construction Manager, Subcontractor, sub-

subcontractor, materialman, supplier and all others performing Work for Construction Manager with each Application for Payment in accordance with Section 255.05, Florida Statutes; and (2) copies of Subcontractor requisitions reflecting retainage as set forth in this Agreement. The Application for Payment shall be stamped as "received" upon receipt and shall commence the time periods hereunder. The Construction Manager's compliance with Applicable Laws, as set forth in Paragraph 12.8 of this Agreement, shall include, without limitation, attesting that during the period covered by the Application for Payment, all claimants as defined in Section 255.05 F.S. and laborers, and apprentices, employed or working on the site of the Project, have been paid at wage rates, and that the wage rates of payments, contributions, or costs for fringe benefits have not been less than those required by the applicable conditions of the Agreement. Such Application for Payment shall also constitute the Construction Manager's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full accordance with this Agreement, and that the Construction Manager knows of no reason why payment should not be made as requested. The Construction Manager shall execute all Consents and Statements of Compliance required by the City to show compliance with Applicable Laws at any time requested by the Project Manager prior to any payment. The Construction Manager shall also submit with its Application for Payment evidence of proof of payment of any indebtedness incurred with respect to the Work of Construction Manager as may be required by Project Manager, including any original release of lien forms and Construction Manager's Affidavit forms, evidence that all Work has been fully performed and inspected as required pursuant to the Contract Documents up to the time of the request for payment, and the Work has been inspected by the Architect and any governmental authorities required to inspect the Work. Thereafter, the Architect will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the percentage and quality of the Work is as represented in the Application for Payment and is as required by this Agreement. The Project Manager, in its sole discretion, may review the Work and the Application for Payment prior to any certification by the Architect and the Project Manager may, in its sole discretion, require the Architect and the Construction Manager to meet and confer with the Project Manager with respect to said Application for Payment prior to any certification of same. If fully satisfied with the documentation submitted, the Architect shall issue a certificate of authorization of payment to the City for the amount approved, less ten percent (10%) retainage, and payment shall be due twenty-five (25) business days after received by the City. The amount of each partial payment shall be the amount certified for payment by the Architect less such amounts, if any, otherwise owing by the Construction Manager to the City or which the City shall have the right to withhold as authorized by paragraph 5.4 below. If an Application for Payment does not meet the requirements of this Agreement, the Architect or the City shall reject the payment request within seven (7) business days after the date on which the Application for Payment is stamped as received. The rejection shall be written and shall specify the deficiency and the action necessary to make the Application for Payment proper. If the Construction Manager then submits an Application for Payment request that corrects the deficiency, as certified by the Architect, the corrected and certified Application for Payment shall be paid seven (7) business days after the date the

corrected payment request is stamped as received; or (b) if the City is required by ordinance, charter, or other law to approve or reject the corrected payment request, the first business day after the next regularly scheduled meeting of the City held after the corrected payment request is stamped as received. The Architect's certification of the Construction Manager's Application for Payment shall not preclude the City from the exercise of any of its rights as set forth in this Agreement.

5.2.2 Prompt Payment Laws. The provisions of Florida's prompt payment laws and the provisions of Section 218.74(4), Florida Statutes, as such relates to the payment of interest, shall apply to proper and valid invoices, and shall govern in the event of any inconsistencies with this Agreement. The Construction Manager shall promptly pay each Subcontractor and Material Supplier out of the amount previously paid to the Construction Manager on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled.

5.2.3 Stored Materials. Payment for stored materials and equipment which are included in an Application for Payment shall be conditioned upon the Construction Manager providing satisfactory documentation to the City that the City has title to such materials and equipment and shall submit proof of required insurance sufficient to protect the City from any loss should the materials and equipment be lost, stolen or otherwise destroyed or damaged. The Construction Manager warrants that title to all materials incorporated into the Work and stored materials covered by an Application for Payment will pass to the City no later than the time of payment.

5.2.4 Deposits. With the City's prior approval, Construction Manager may include amounts in its Application for Payment for deposits required for materials or equipment required by the Contract Documents, subject to proper documentation and insurance.

5.3 Retainage. The City shall retain 10% of all sums due in any pay period as Retainage. If applicable under Section 218.735, Florida Statutes, after 50% completion of the Work under this Agreement, the City shall reduce to 5% the amount of retainage withheld from each subsequent progress payment made to the Construction Manager. The City is not obligated to reduce the retainage for any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to sSection 218.735, Florida Statutes, Section 255.05, Florida Statutes, or for any amounts that are otherwise the subject of a claim or demand by the City against the Construction Manager under this Agreement. After 50% completion of the Work, the Construction Manager may submit to the City a payment application for up to 50% of the retainage withheld by the City through the date of the application for payment. The City shall promptly make such payment to the Construction Manager unless the City has grounds to withhold payment for amounts that are the subject of a good faith dispute, the subject of a claim pursuant to Section 218.735, Florida Statutes, Section 255.05, Florida Statutes, or are otherwise the subject of a claim or demand by the City against the Construction Manager. If the City makes payment of retainage to the Construction Manager which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the Construction Manager shall

timely remit payment of such retainage to those subcontractors and suppliers.

5.3.1 The City may, but shall not be obligated to, upon the issuance of a notice of non-payment by a subcontractor, supplier or materialmen, or any other lienor, or claimant as defined by §255.05, Florida Statutes, make all or any portion of any progress payment by check payable jointly to the order of Construction Manager and any lienor giving timely notice, or may make such payment directly to such lienor and deduct said sum from the balance then due Construction Manager. However, such payment, if made, shall not create any third party beneficiary or other rights in such lienor or claimant. In making such payments to lienors or claimant, the City shall require such lienor or claimant to execute the applicable release of lien or the Waiver of Right to Claim Against Bond form in accordance with §255.05, Florida Statutes.

5.4 Payments may be withheld on account of (1) defective Work not remedied; (2) claims or liens filed; (3) failure of Construction Manager to make payments properly to subcontractors or for labor, materials, or equipment; (4) failure to provide waivers of lien or Waivers of Right to Claim Against Bond for all lienors giving notices; (5) damage to the City's property and the property of any third parties, in which case a reasonable estimated amount of such damages shall be withheld from Construction Manager's payment until such damages are satisfactorily corrected; (6) failure of the Work to progress satisfactorily in a manner which would ensure that the Construction Manager completes the Work within the time stipulated or according to schedule; (7) failure to carry out the Work in accordance with the Contract Documents; or (8) failure of Construction Manager to maintain a 100% performance and payment bond.

5.5 No payments made under this Agreement shall be evidence of performance of this Agreement, either wholly or in part, and no payment including final payment shall be construed to be an acceptance of defective Work or improper materials, nor interpreted to constitute an acceptance of any Work not in strict accordance with this Agreement (except for City Furnished Materials and Work directly related thereto), nor shall use of the Work by the City constitute acceptance of the Work hereunder or any part thereof, or a waiver of any of City's rights or claims.

5.6 Applications for Payment may not include requests for payments of amounts Construction Manager does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

5.7 Construction Manager warrants that title to all Work covered by an Application for Payment shall pass to the City no later than the time of payment.

ARTICLE 6 **SUBSTANTIAL COMPLETION AND FINAL PAYMENT**

6.1 **Substantial Completion** Substantial Completion is the stage in the progress of the Work (or designated portion thereof), as determined by the Architect and the City, when the

Work (or designated portion thereof) is sufficiently complete in accordance with the Contract Documents so that the City can occupy or use the Work (or designated portion thereof) for its intended use and that the following requirements for the Work (or designated portion thereof) are met (as applicable):

- 6.1.1** The Work is complete, ready for use, and all persons or entities having jurisdiction over the Project have issued the appropriate permits, authorizations, temporary certificates of occupancy or certificate of completion for the Project, as applicable, and the Work has passed all necessary inspections;
- 6.1.2** Construction Manager has completed all construction of the Project, including the installation and commissioning of all Project equipment, such that the public can enjoy full, unrestricted and safe use and benefit of the Project;
- 6.1.3** Lanes of traffic are open for use as intended by the Contract Documents;
- 6.1.4** Landscaping, benches, pavers, trash bins, lighting, signage and other items have been installed in accordance with the Contract Documents;
- 6.1.5** The exterior elements, such as Site cleanup and restoration (including without limitation removal of all excess materials, rock, sand, paving, debris, supplies, equipment, temporary structures, and trailers), and all mechanical, electrical, plumbing and technical systems required by the Contract Documents, are complete and fully operational and are ready for occupancy, the Construction Manager has submitted its Punch List with respect to such items and they have been inspected and approved by the Architect and the City as to scope, number, and content; such that where the Punch List is limited to minor omissions and defects, the Architect shall indicate that the Work is substantially complete subject to completion of the Punch List and the requirements of this Paragraph.
- 6.1.6** The Architect has issued the “Certificate of Substantial Completion,” attached as **Exhibit “E”**. The Certificate of Substantial Completion shall set forth (1) the date of Substantial Completion of the Work, (2) responsibilities of the Construction Manager for security, maintenance, utilities, and insurance, and (3) the time within which the Construction Manager shall finish all items on the Punch List accompanying the Certificate. The Certificate shall be submitted to the Project Manager and Construction Manager through the Architect. The Construction Manager shall achieve Final Completion within Sixty (60) days after the delivery of the Punch List as set forth below, subject to extensions of time in accordance with the Contract Documents. In addition to the requirements of Paragraphs 6.1.2 and 6.1.3 above, as a condition precedent to the certification of Substantial Completion, the Construction Manager shall provide to the City three (3) bound hard-cover books and one (1) electronic copy of same containing the following information: (a) All three year Subcontractor and Sub-subcontractor warranties and supplier warranties fully executed in the form approved by the Project Manager; (b) All Extended Warranties from equipment or material manufacturers, as such Extended Warranties are defined in Article 15 (“Correction of Work and Warranty”); (c) A

list of all Subcontractors, Sub-subcontractors and suppliers who performed work on the Project or who furnished materials for use in the Project, such list to include the name, address, telephone number and responsible person at all such entities; and (d) All other close out documentation required by Project Manager or City including, but not limited to, As-Built Drawings in print format and electronic PDF format, warranties and manuals.

- 6.1.7 When the Work (or designated portion thereof) is deemed Substantially Complete in accordance with Article 6.1, the City shall be responsible for any loss, damage, theft or vandalism to the Work (or designated portion thereof) as Substantially Complete. Notwithstanding anything herein to the contrary, the parties agree that warranties for the Work (or designated portion thereof) other than the drainage shall commence on the date that Contractor achieves Substantial Completion of such respective designated portion of the Work. All warranties for drainage work for the Project shall commence at Final Completion of the Work.

6.2 **Punch List.** The Construction Manager must request issuance of the Certificate of Substantial Completion at least 60 days prior to submitting its application for Final Payment. The Construction Manager and Architect, in conjunction with the Project Manager, shall develop the Punch List, a single list of items limited to minor omissions and defects which are required to render the Work complete and satisfactory in accordance with this Agreement, and the Project Manager shall submit the Punch List in accordance with the time frames set forth herein. The Construction Manager and Architect, in conjunction with the Project Manager, shall develop the Punch List within 30 calendar days, or, if extended by Change Order, up to 60 calendar days after reaching Substantial Completion of each portion of the Project, and the Project Manager shall deliver the Punch List within five (5) days of the date of the development of the Punch List. The Final Completion date shall be sixty (60) days after the delivery of the Punch List. The failure to include any corrective work or pending items not yet completed on the Punch List does not alter the responsibility of the Construction Manager to complete all of the Work in accordance with this Agreement. Upon completion of all items on the Punch List, the Construction Manager may submit a payment request for all remaining retainage withheld by the City. If a good faith dispute exists as to whether one or more items identified on the Punch List have been completed pursuant to the Agreement, the City shall continue to withhold up to 150 percent of the total costs to complete such items. Within ten (10) days of written notification to the Architect and City that all punch list items have been completed, the Architect shall inspect the Punch List items. If the punch list items have not been completed to the reasonable satisfaction of the Architect and the City, and if it is necessary for the Architect to reinspect the completion of any punch list items, the Construction Manager shall be responsible for all fees and costs charged by the Architect for making any such reinspections. Once the Punch List has been fully completed to the reasonable satisfaction of the Architect and the City, the Architect shall issue a Certificate of Completion of Punch List.

6.3 **Delays in Achieving Substantial Completion** When the City reasonably believes that Substantial Completion of a portion of the Work will be inexcusably delayed for reasons beyond the reasonable control of Construction Manager, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays. If and when the Construction Manager overcomes the delay in achieving Substantial Completion, or

any part thereof, for which the City has withheld payment, the City shall promptly release to the Construction Manager those funds withheld, but no longer applicable as liquidated damage if any.

6.4 As used in the Contract Documents, “Final Completion” shall mean such time after Substantial Completion as: (i) all “Punch List” items have been fully completed to the reasonable satisfaction of the Project Manager and the Architect has issued a Certificate of Completion of Punch List; (ii) the final certificate of occupancy or completion, and all final governmental and utility authority permits have been issued; (iii) Construction Manager has delivered to City all previously undelivered manufacturer and subcontractor guarantees and warranties, instruction manuals for appliances and equipment, any and all operating manuals required by the Contract Documents, certification that all personal instruction or training required by the Contract Documents for the operation of any Project systems has been completed; and any and all manuals relating to Project materials or Project maintenance; (iv) Construction Manager has delivered to City the Construction Manager’s final Waiver of Right to Claim Against Bond complying with Florida Statutes, and such other affidavits, waivers and releases as the City may reasonably require in order to assure payment by Construction Manager to all of its Subcontractors, sub-subcontractors, materialmen and suppliers; (v) the Construction Manager has delivered to City and Architect all shop drawings, revised plans and final “as built” drawings for the Work detailing all changes or deviations from the original Contract Documents; (vi) Construction Manager has fully cleaned and restored the site with respect to all of the final Punch List work; (vii) all temporary utilities are disconnected; (viii) consent of Surety has been made to final payment; (ix) all landscaping, benches, pavers, trash bins, signage and other items have been installed in accordance with the Contract Documents; (x) Construction Manager has submitted its final accounting of the Cost of the Work to the City and Architect; (xi) Construction Manager has provided a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days’ prior written notice has been given to the City; (xii) Construction Manager has complied with all other requirements of the Contract Documents and all requirements of the City. When the Project has reached Final Completion, Construction Manager shall submit its final accounting of the Cost of the Work along with a draft final Application for Payment to the City and Architect. The City shall have 30 days to perform an audit as provided in § 6.10.2.

6.5 If a Subcontractor refuses to furnish a release or waiver required by the City, the Construction Manager must furnish a bond satisfactory to the City to indemnify the City against such claim. The City may, upon the issuance of a notice of non-payment by a subcontractor, supplier or materialman, or any other lienor or claimant as defined by Section 255.05, make all or any portion of any of the final payment by check payable jointly to the order of Construction Manager and any lienor or claimant giving timely notice, or may make such payment directly to such lienor and deduct said payment from the sum due Construction Manager. However, such payment, if made, shall not create any third party beneficiary or other rights in such lienor or claimant. In the event there are claims which exceed the final payment amount, no payment shall be made until Construction Manager deposits the amount of any such deficiency with the City.

6.6 Final payment may be withheld on account of (1) defective Work not remedied; (2) claims or liens filed; (3) failure of the Construction Manager to make payments properly due and owing to subcontractors or for labor, materials, or equipment; (4) failure to provide waivers of lien for all claimants or lienors serving Notices; (5) damage to the real or personal property of

City or the property of any third parties, in which case a reasonable estimated amount of such damages shall be withheld from Construction Manager's payment until such damages are satisfactorily corrected; (6) failure of the Construction Manager to comply with Article 6 of this Agreement; or (7) failure to carry out the Work in accordance with the Contract Documents.

6.7 Delay in Achieving Final Completion. When the City reasonably believes that Final Completion will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager an amount then believed by the City to be adequate to recover liquidated damages applicable to any and all delays. If and when the Construction Manager overcomes the delay in achieving substantial or final completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the Construction Manager those funds withheld, but no longer applicable, as liquidated damages.

6.8 The acceptance of final payment by the Construction Manager shall constitute a waiver of all claims against the City by the Construction Manager except for those claims previously made in writing against the City by the Construction Manager, and which are pending at the time of final payment, and identified in writing by the Construction Manager as unsettled at the time of its request for final payment.

6.9 The making of final payment or retention shall not constitute a waiver of any claims by the City.

6.10 Audit Requirements.

6.10.1 During the course of the Project the Construction Manager shall, when requested by the City, produce all documents reflecting the actual Cost of the Work for audit as a condition of each Progress and Final Payment. Construction Manager's General Conditions Costs as provided in **Exhibit "M"** shall not be subject to audit, but Construction Manager's General Conditions Costs for any Change Orders shall be subject to audit. Should the audit indicate that the City has overpaid the Construction Manager, then Construction Manager shall reimburse the City within 15 days of the results of the City's audit results showing the deficiency.

6.10.2 Final Payment Audit. Construction Manager shall submit its final accounting of the Cost of the Work and draft final Application for Payment, records and other documents of its Costs of the Work to the Architect, City and its auditors review to verify the Total Cost of the Work and the amount due to Construction Manager. The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the City by the Construction Manager. Based upon such Cost of the Work as the City's auditors report to be substantiated by the Construction Manager's final accounting, the City will notify the Construction Manager of the amounts the City's auditors confirm are due Construction Manager. Construction Manager shall prepare a final Application for Payment based on the amounts authorized by the Auditor's report to submit to the City and Architect. The City shall make payment to Construction Manager within 25 business days of receipt of the final Application for Payment as provided in this Paragraph and provided the other conditions of this

Article and the Contract Documents have been met.

6.10.3 If the City's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall submit its final Application for Payment in the amounts authorized by the City's auditors, but Construction Manager shall be entitled to request mediation of the disputed amount. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Auditors Report. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager.

6.11 Accounting Records. The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract Documents and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract Documents. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. Construction Manager shall require all of its Subcontractors and suppliers to maintain records as required by this Paragraph and make them available to the City for audit.

ARTICLE 7 **COST OF THE WORK**

7.1 Cost of the Work.

7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project. The Cost of the Work shall include only the items set forth in this Article 7. Unless otherwise agreed in writing between the Parties, all costs as defined herein shall be actual direct costs paid by the Construction Manager, less all discounts, rebates and salvages which shall be taken by the Construction Manager.

7.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost.

7.1.3 The Construction Manager shall use reasonable efforts to provide a minimum of three (3) bids/proposals for all Work included in Cost of the Work for the Owner's review and consideration prior to the Construction Manager procuring the Work for same. The recommendation of the bids, proposals, and Subcontractors for the Work included in the Cost of the Work shall be made solely by the Construction Manager, with the Owner promptly and timely providing notice of any objection.

7.2 Labor Costs, General Conditions & General Requirements

7.2.1. General Conditions Costs. The term General Conditions Costs shall mean the necessary and reasonable final negotiated and pre-approved costs incurred by the Construction Manager for the direct Project personnel used in the Work at the negotiated staff rates in the approved **Exhibit “M”** which are “all inclusive” and include the salaries, wages of all Employees, labor burden (“Labor Burden”) which includes but not limited to: employee benefits, profit, overhead, cost of contributions, assessments or taxes incurred during the performance of the Work for such items as unemployment compensation, social security, insurance, medical and health benefits, and pension and retirement contributions of all labor in the employ of Construction Manager (including the Project Executives and Managers, Project superintendent and assistants, foreman, engineers, safety personnel, Project Schedulers, timekeepers, clerks, cost accountants, secretaries, laborers and other tradesmen as required to perform the Work) when stationed, whether permanent or temporary, in the Field office at the site. Employee bonuses and incentive compensation are not a Reimbursable Cost of the Work. If any personnel are replaced or if the Construction Manager brings additional personnel to the Project site, the Construction Manager shall get written authorization from the Owner prior to those personnel being charged to the Project. The Construction Manager’s General Conditions Costs shall be a component in the Schedule of Values, and shall be stated as a guaranteed (not to exceed) maximum line item amount for actual general conditions costs through Final Completion. The General Conditions Costs include the following:

7.2.1.1 Actual costs of field Project Site office & Site Office Expenses.

- a. On-site temporary offices/trailers/Storage Units
- b. On-site temporary office furniture, equipment and Supplies.
- c. Job Site Computers with software, Copiers, Fax, Servers, etc.
- d. Job Site Communications (Monthly Cell Phone Expenses or radios, chargers, etc.
- e. Miscellaneous Job Office Supplies, stationery, Postage, overnight mail, etc.
- f. Messenger service
- g. Field Office Maintenance and Cleaning
- h. Parking Logistics & Parking Permits
- i. Drinking Water & Supplies (site and offices)
- j. As-built & Record Document Preparation

k. Printing Costs and general reproduction costs

7.2.1.2 Temporary Utilities as approved by Owner including but not limited to:

- a. Temporary Power Consumption (Offices & General Site Use)
- b. Temporary Water and Sewer Consumption, including temporary sewer and disposal costs
- c. Temporary Water Hookup including Distribution & Meters
- d. Temporary Electrical Hookup including Distribution & Meters
- e. Temporary Telephone, Internet & Network System Installation and Consumption Fees, Temporary Fire Protection

7.2.1.3 Temporary Site Requirements:

- a. Mobilization & Demobilization
- b. Traffic Control Measures
- c. Barricades & Signage
- d. Site Lighting
- e. Entries and Truck Washes, Street Cleaning
- f. Fencing;
- g. Toilets/Sanitary Measures
- h. Jobsite equipment
- i. Dumpsters (site and field offices), Trash Chutes & Rubbish Removal
- j. All costs for cleanup and removal of debris including Final Clean (general site, windows/glass, etc.)
- k. Pest Control Program
- l. Security System/Watchman
- m. Construction Photo Documentation

- n. Project signs including both legal and code required signage and appropriate signage to identify the Project, to be developed by and/or approved by Owner;
- o. Fuel and maintenance for all construction equipment used in connection with the Work (if the rental rates established for any vehicles owned by Construction Manager or a related entity do not include fuel and maintenance costs)
- p. Temporary Fire Protection
- q. Temporary Protection (in-place work/adjacent structures)
- r. Temporary Weather Protection/Enclosures
- s. Small Tools & Consumables

7.2.1.4 All Safety Requirements.

7.2.2 General Requirements Costs. The term General Requirements Costs shall mean the necessary and reasonable final negotiated and pre-approved in writing costs incurred by the Construction Manager directly as provided in **Exhibit "M"**. The Construction Manager's General Requirements Costs shall be a line item(s) component in the Schedule of Values. The Construction Manager's General Requirements Costs are subject to the same submittal, review and approval procedures as any other component of the Cost of The Work. There shall be no overlap between General Requirements and General Conditions costs.

7.3 Subcontract Costs.

7.3.1 Payments made by the Construction Manager to Subcontractors shall be in accordance with the requirements of the subcontracts.

7.4 Costs of Materials and Equipment Incorporated in the Completed Construction.

7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction. The Owner must approve all advance payments for Subcontractors deposits and advances for Work deemed "long lead items", or "special order items" or other selected items pertaining to the project Work.

7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

- 7.4.3** Costs of replacement material but only where replacement material is necessitated by causes other than the negligence of Construction Manager or their Subcontractors, suppliers or anyone for which they may be responsible.

7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items.

- 7.5.1** To the extent not already included in the Construction Manager's General Conditions, costs of transportation, 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 site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.
- 7.5.2** To the extent not already included in the Construction Manager's General Conditions, rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.
- 7.5.3** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

7.6 Miscellaneous Costs.

- 7.6.1** Premiums for that portion of insurance and Construction Manager's bonds (Construction Manager's Payment and Performance Bond) required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.
- 7.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.
- 7.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.
- 7.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded as set forth in this Agreement.

- 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.
- 7.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.
- 7.6.7 Deposits lost for causes other than the Construction Manager's or any Subcontractor's, supplier's, or vendor's negligence or failure to fulfill a specific responsibility in the Contract Documents.
- 7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld, but which shall not be subject to Construction Manager's Fee.

7.7 Other Costs and Emergencies.

- 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.
- 7.7.2 Costs incurred in taking reasonable action to prevent threatened damage, including hurricane damage, injury or loss in case of an emergency affecting the safety of persons and property.

7.8 Related Party Transactions.

- 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.
- 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party.

ARTICLE 8
COSTS NOT TO BE REIMBURSED

8.1 **Items that are not Reimbursable Costs of the Work.** The cost of the Work shall not include the following items:

- 8.1.1** Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project Site office except as expressly authorized by **Exhibit "M"**.
- 8.1.2** Expenses of the Construction Manager's principal office and offices other than the Project Site.
- 8.1.3** Home office overhead and general expenses.
- 8.1.4** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- 8.1.5** Rental costs of machinery and equipment, except as specifically provided in Article 7.
- 8.1.6** Procurement of capital equipment or other similar products of such nature shall not be construed as part of the Construction Manager's General Requirements; the costs associated with such procurements shall be the sole obligation of the Construction Manager and shall not be included in the Contract Sum.
- 8.1.7** Costs due to the fault or negligence of the Construction Manager, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs for the correction of damaged, defective or non-conforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.
- 8.1.8** Any cost not specifically and expressly described in Article 1.
- 8.1.9** Intentionally Deleted.
- 8.1.10** Damages assessed in favor of Owner against Construction Manager.
- 8.1.11** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 **DISCOUNTS, REBATES AND REFUNDS**

9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner; or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts

shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 **INSPECTIONS AND ADMINISTRATION OF THE AGREEMENT**

10.1 No inspector, including but not limited to, the Architect and the Project Manager, shall have authority to waive any requirements of the Agreement and the Contract Documents, unless Project Manager is so authorized in Section 10.3. . Any failure or omission on the part of any inspector, the Architect or Project Manager, to reject any defective work or material shall not release the Construction Manager from its obligations to install the Work free from faults and defects and to promptly remove and repair any defective or deficient work. The Construction Manager hereby acknowledges and agrees that only the Public Works Director or designee shall have authority to:

- (a) Authorize any deviation from the Contract Documents;
- (b) Undertake any of the responsibilities of the Construction Manager, subcontractors or Construction Manager's superintendent;
- (c) Expedite the Work for the Construction Manager;
- (d) Advise on or issue directions relative to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents;
- (e) Advise on or issue directions as to safety precautions and programs in connection with the Work. Provided however, this shall not preclude the City inspector from notifying the Construction Manager of any hazardous or dangerous condition;
- (f) Authorize specialized field or laboratory tests.

10.2 The Architect.

10.2.1 In the event the City should find it necessary or convenient to replace the Architect the City shall retain a replacement Architect and the status of the replacement Architect shall be that of the former Architect.

10.2.2 Architect's Administration. The Architect, unless otherwise directed by the City in writing, will perform those duties and discharge those responsibilities allocated to the Architect as set forth in this Agreement. The authority of the Architect shall commence on the effective date of this Agreement until final payment has been made. The Architect shall be authorized to act on behalf of the City only to the

extent provided in this Agreement. In the event the project has been delayed beyond the contractual final completion date, directly by the fault of the Construction Manager, the Construction Manager may be required to pay for additional engineering services until such time the project has been finalized.

- 10.2.3** The City and the Construction Manager shall communicate with each other in the first instance through the Project Manager. The Architect shall copy the City's Project Manager with any and all written communications by and between the parties.
- 10.2.4** The Architect of record shall be the initial interpreter of the requirements of the drawings and specifications and the initial judge of the performance thereunder by the Construction Manager. The Architect shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Construction Manager.
- 10.2.5** The Architect will review the Construction Manager's Applications for Payment and will certify to the City for payment to the Construction Manager, those amounts then due the Construction Manager as provided in this Agreement.
- 10.2.6** The Architect shall have authority to reject Work which is defective or does not conform to the requirements of this Agreement. If the Architect deems it necessary or advisable, the Architect shall have authority to require additional inspections or testing of the Work for compliance with the Agreement. The Architect will review and approve, or take other appropriate action as necessary, concerning the Construction Manager's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.
- 10.2.7** The Architect or Project Manager will prepare Change Orders and may authorize minor changes in the Work that do not cause Construction Manager to incur additional cost upon written approval from the Project Manager by Field Order.
- 10.2.8** The Architect shall, upon written request from the Construction Manager, conduct inspections to determine the date of Substantial Completion and the date of Final Completion, will receive and forward to the City for the City's review and records, written warranties and related documents required by this Agreement and will certify to the City the final Certificate for Payment upon compliance with the requirements of this Agreement.
- 10.2.9** The Construction Manager agrees, acknowledges and warrants that it has no third party beneficiary rights, or other rights, arising out of any Agreement by and between the City and the Architect and, in the event of any conflict between the terms and provisions of the Agreement by and between the City and the Architect and this Agreement, the terms of this Agreement shall control with respect to the Construction Manager.

10.2.10 If the Construction Manager fails any inspection or submittals and shop drawings are rejected due to form or omissions, which requires a re-inspection or additional review by the Architect or any of its design consultants, the Construction Manager shall bear the cost of such repeat inspection(s), which cost may be deducted by the City from any sums otherwise due the Construction Manager; *provided, however,* that additional review by Architect or its design consultants related to aesthetic aspects of the Work shall be at the City's sole cost and expense.

10.3 **Project Manager.** The City of Coral Gables Director of Public Works or designee may be designated by the City, at the City's sole discretion, to be the "Project Manager" and City's Representative during performance of the Work and until issuance of the final Certificate for Payment and Certificate of Completion of Punch List Work, and shall hereinafter be referred to as the "Project Manager".

10.3.1 The Project Manager shall at all times have access to the Work.

10.3.2 The Project Manager shall have authority to reject Work which does not conform to the Contract Document in which case, the Construction Manager shall commence to correct and to diligently proceed to complete such Work to the reasonable satisfaction of Project Manager.

10.3.3 To the extent permitted by the City Code, the Project Manager shall have authority to issue Change Orders as provided in Article 21.

ARTICLE 11 **CLAIMS BY THE CONSTRUCTION MANAGER**

11.1 Except as prohibited in Paragraph 11.7 herein below, all Construction Manager claims shall be initiated by written notice and claim to the Project Manager and the Architect. Such written notice and claim must be furnished within seven (7) business days after occurrence of the event or the first appearance of the condition giving rise to the claim.

11.2 Pending final resolution of any claim of the Construction Manager, the Construction Manager shall diligently proceed with performance of this Agreement and any work which is the subject of a claim and the City shall continue to make payments to the Construction Manager in accordance with this Agreement. The resolution of any claim under this Article 11 shall be reflected by a Change Order executed by the City, the Architect and the Construction Manager.

11.3 **Claims for Concealed and Unknown Conditions.** Construction Manager has conducted due diligence investigation of the Project, the site, including investigation of underground and ground conditions, the surrounding areas, logistics for the Work and as such, there shall be no compensation to Construction Manager for concealed or unknown conditions unless: (1) Construction Manager could not have discovered and as an experienced Construction Manager having had the benefit of Preconstruction Services, should not have discovered the unknown or concealed conditions; and (2) the conditions are of such an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in

Work of the character provided for in this Agreement, be encountered, the Contract Sum shall be equitably adjusted by Change Order upon the written notice and claim by Construction Manager made within seven (7) business days after the first observance of the condition. As a condition precedent to the City having any liability to the Construction Manager for concealed or unknown conditions, the Construction Manager must give the Project Manager and the Architect written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Construction Manager to make the written notice and claim within three days as provided in this Subparagraph shall constitute a waiver by the Construction Manager of any claim arising out of or relating to such concealed or unknown condition.

11.4 Claims for Additional Costs. Except as prohibited in Paragraph 11.7 herein below, if the Construction Manager wishes to make a claim for an increase in the Contract Sum, as a condition precedent to any liability of the City therefore, the Construction Manager shall give the Architect and the Project Manager written notice of such claim within seven (7) business days after the occurrence of the event or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Construction Manager before proceeding to execute any additional or changed Work unless a Work Directive is issued by the City. The failure by the Construction Manager to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

11.5 In connection with any claim by the Construction Manager against the City for compensation in excess of the Contract Sum, any liability of the City for the Construction Manager's cost shall be strictly limited to Direct costs incurred by the Construction Manager which are considered Costs of the Work under Article 7. Direct cost do not include the Construction Manager's home office overhead, costs excluded by Article 8, loss of efficiency, consequential damages or lost profits of the Construction Manager, or equipment costs in excess of actual equipment rental paid by the Construction Manager to a third party. All such damages are hereby waived by the Construction Manager.

11.6 Claims for Additional Time. If the Construction Manager is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of:

11.6.1 any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, then (a) the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Construction Manager to the City and the Architect for such reasonable time as the Architect and the City may determine, and (b) Construction Manager shall be entitled to additional General Conditions direct costs only for the duration of such delay; or

11.6.2. any unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or any causes beyond the Construction Manager's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Construction Manager to the City and the Architect for such reasonable time as the Architect and the City may determine, but Construction Manager shall not be entitled to any additional General Conditions Costs.

11.6.3. Any notice and claim in accordance with this section 11.6 by the

Construction Manager shall be made not more than seven (7) business days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Construction Manager's basis for such claim. Said claim shall specifically include, among other things, an adjusted critical path (CPM) schedule reflecting precisely the delay and its claimed impact upon the Construction Manager's future performance. In the event the delay to the Construction Manager is a continuing one, only one notice and claim shall be necessary. If the Construction Manager fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived.

11.7 Except as otherwise set forth herein, the Contract Sum shall not be increased for, nor shall the Construction Manager claim, recover, or receive payment for, any cost, expense, damages, or compensation of any kind by reason of any delay to the Project, whether critical or non-critical, and whether caused in whole or in part by the City. Except as otherwise set forth herein, the Construction Manager shall not be entitled to any direct, indirect, consequential, impact, or other costs, expenses, or damages, including but not limited to, lost profits, costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever, whether such delay, disruption, interference, or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Except as otherwise set forth herein, the Construction Manager's sole and exclusive remedy for delay, hindrance, and disruption shall be an extension of the Contract Time provided a claim for same is made and is allowable pursuant to the provisions of Paragraph 11.6 hereinabove.

11.8 Field Orders

11.8.1 The Architect after first obtaining approval from the Project Manager, shall have authority to order minor changes in the Work not involving a change in the Contract Sum or in Contract Time and not inconsistent with the intent of the Agreement. Such changes shall be effected by Field Order and shall be binding upon the Construction Manager. The Construction Manager shall carry out such Field Orders promptly.

11.9 Sovereign Immunity. Construction Manager acknowledges that the Florida Doctrine of Sovereign Immunity bars all claims by Construction Manager against the City other than claims arising out of this Agreement and as expressly provided in Section 768.28, Florida Statutes. Specifically, Construction Manager acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of this Agreement. Construction Manager acknowledges that it has no right and will not make a claim against the City based upon any of the following:

.1 an alleged breach by the City of implied warranties or representations not specifically set forth in this Agreement, as the Parties stipulate that there are no such implied warranties or representations by the City and all obligations of the City are only as set forth in this Agreement;

.2 negligence or any tort arising out of this Agreement, unless authorized pursuant to and in accordance with Section 768.28, Florida Statutes;

.3 alleged acts or inaction by any City employee or agent of the City, unless authorized pursuant to and in accordance with Section 768.28, Florida Statutes; or

.4 an alleged waiver of any of the terms of this Agreement unless such waiver is in writing and signed by the Parties.

ARTICLE 12 **CONSTRUCTION MANAGER**

12.1 The Construction Manager represents that it is a properly qualified and licensed Construction Manager in good standing with the State of Florida and is a corporation in good standing, organized and existing under the laws of the State of Florida. Prior to commencement of the Work, Construction Manager shall provide the City with copies of its current licenses. Construction Manager further represents that it has read, examined and understands the pertinent Contract Documents and that it is well qualified and able to perform this Work; that it has a sufficient number of qualified and skilled men to assure timely performance of this Work; that it has the proper tools and equipment to perform this Work; and is financially capable of performing this Agreement.

12.2 Construction Manager warrants and represents to the City that it has visited the site of the Work, examined the actual job conditions and that Construction Manager is familiar with local conditions and all things required that will have a bearing on performance of Construction Manager's Work and Construction Manager's costs, including but not limited to traffic (vehicular and pedestrian), maintenance, disposal, handling and storage of the materials, access roads to the site, the conditions of the Work area, and the character of the Work. Construction Manager, at his sole expense, shall be responsible to perform any reasonable inspections and conduct any reasonable tests as may be required to determine the suitability of the site conditions. Failure on the part of Construction Manager to completely or properly evaluate any factors of costs prior to signing this Agreement shall not form the basis for additional compensation. Execution of this Agreement shall be conclusive evidence that Construction Manager has investigated and is satisfied as to the site conditions to be encountered, as to the character, quality, and quantities of Work to be performed and materials to be furnished, and as to the requirements of the Contract Documents. Construction Manager shall verify all dimensions and quantities shown on the plans and specifications (on the plans) or other data received from the Architect, Project Manager, and/or City as part of the Contract Documents, and shall notify the Project Manager and City of all errors, omissions and discrepancies found therein within seven (7) calendar days of discovery.

12.3 Superintendence and Supervision. The Construction Manager shall supervise and direct the Work using its best skill and attention. The Construction Manager shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement. All Work shall be performed by craftsmen skilled in the trades and application of materials involved. Construction Manager shall employ and maintain on the Project only competent personnel including during the progress of the Work a full-time competent English speaking superintendent and any necessary assistants, all satisfactory to the Architect, Project Manager, and City. Absent written instruction from the Construction Manager to the contrary, the Victor G. Menocal shall be deemed the Construction

Manager's authorized representative (“CM’s Authorized Representative”) at the site and shall be authorized to receive and accept any and all communications from the Project Manager and the Architect. CM’s Authorized Representative shall not be changed except with the written consent of the Project Manager, unless CM’s Authorized Representative proves to be unsatisfactory to the Construction Manager and ceases to be in its employ. CM’s Authorized Representative shall represent the Construction Manager and all direction given to CM’s Authorized Representative shall be as binding as if given to Construction Manager. The Project Manager and City shall be provided telephone number(s) for CM’s Authorized Representative. The Construction Manager’s superintendent shall record, at a minimum, the following information in a bound log: the day; date; weather conditions and how any weather condition affected progress of the Work; time of commencement of Work for the day; the Work being performed; materials, labor, personnel, equipment and Subcontractors at the Project site(s); visitors to the Project, including representatives of the City, regulatory representatives; any special or unusual conditions or occurrences encountered; and the time of termination of Work for the day. All information shall be recorded in the daily log. The daily log shall be kept on the Project(s) site(s) and shall be available at all times for inspection and copying by the City and Project Manager.

12.4 Unless otherwise specifically noted, the Construction Manager shall provide and pay for all licenses, contractor permits, governmental charges, labor, materials (except for the payment of City Furnished Materials, which the City shall pay directly), equipment, tools, construction, equipment, machinery, transportation, other facilities and services necessary for the proper execution and completion of the Work. The Construction Manager shall supply water and sanitary facilities, and electrical outlets to run equipment necessary to perform the Work. The City shall designate an area in which Construction Manager may store a reasonable supply of materials and equipment. It shall be the Construction Manager's responsibility to maintain such storage area in a safe and orderly fashion. In no event shall City be liable or responsible for any damages to such materials or equipment, including but not limited to any damages arising from theft or vandalism of such materials or equipment.

12.5 The Construction Manager shall at all times enforce strict discipline and good order among its employees, and shall not employ any unfit person or anyone not skilled in the task assigned to him or her.

12.6 The Construction Manager warrants to the City, the Architect, and the Project Manager that all materials incorporated in the Work will be new, unless otherwise specified, and that all Work and materials will be of first and highest grade and quality, free from faults and defects and in conformance with the Contract Documents. All Work and materials not so conforming to these standards may be considered defective. Construction Manager shall not substitute any materials for those materials specified by the Contract Documents without the prior written consent of the Architect and City as stated within Section 2.3 herein and as otherwise required by the Contract Documents.

12.7 The Construction Manager shall pay all sales, consumer, use and other similar taxes required by law and shall secure all permits, fees and licenses necessary for the execution of the Work.

12.8 The Construction Manager shall give all notices, and warrants and represents that the Work when completed will comply with all laws, ordinances, rules, regulations, and orders of

any public authority, including but not limited to the Florida Building Code and all amendments thereto, and all other authorities having jurisdiction over the Work. The Construction Manager shall comply with all applicable State and Federal, municipal, county, and administrative laws, regulations, ordinances and codes, including without limitation the Americans with Disabilities Act, the Occupational Health and Safety Act and Workers' Compensation Laws applicable to the Work (the "Applicable Laws"). The Construction Manager shall execute any and all Statements of Compliance and Certificates required by the City to show compliance with Applicable Laws. The Construction Manager acknowledges that it is responsible for the performance of all duties, obligations and responsibilities as an employer of individuals hired or retained by Construction Manager to provide services to the City including, but not limited to, completion and maintenance of Immigration and Naturalization verifications, payment of wages and supervising and coordinating services of the employees. With respect to the Work under this Agreement, Construction Manager shall be liable for any deviation from any Applicable Laws even if in strict compliance with the Contract Documents. Construction Manager shall bear sole responsibility for and bear all costs necessary to insure full compliance with the representations contained herein, including, but not limited to, the cost of removing existing Work, the cost of replacing any Work with Work conforming to the applicable requirements and any attorney's fees or other expenses incurred by City in responding to any complaints, citations, court orders, administrative orders or similar governmental edicts or process. The provisions of this paragraph shall survive the termination of this Agreement.

12.9 The Construction Manager shall be responsible for the acts and omissions of all his employees and all subcontractors, their agents and employees and all other persons performing any of the Work under an agreement with the Construction Manager.

12.10 The Construction Manager at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work it shall remove, at Construction Manager's sole cost and expense, all his waste materials and rubbish from and about as well as his tools, materials, and equipment, shall clean all surfaces, and shall leave the Work "broom clean" or its equivalent, except as otherwise specified. Construction Manager agrees to immediately repair at its sole cost and expense all damages arising from or relating to Construction Manager's performance of the Work to the reasonable satisfaction of the City.

12.11 If the Construction Manager is found to be in default under any provision of this Agreement and fails within seven (7) working days of written notice from City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to other rights and remedies the City may have, complete Construction Manager's work, add manpower or correct deficiencies. The Construction Manager and Surety will be liable to the City for all damages, expenses, costs, and legal fees incurred as a result of such default.

12.12 Indemnification and Hold Harmless.

Construction Manager shall defend, indemnify and hold harmless the City and its consultants, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to fees and charges of attorneys and other professionals and court and arbitration costs) to the proportionate extent caused by (i) the negligent performance of the Work

(ii) any willful or negligent act or omission of Construction Manager, subcontractor, supplier, sub subcontractor, subconsultant, or any person or organization employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, or (iii) any reckless or intentionally wrongful act, omission or misconduct of the Construction Manager.

In any and all claims against the City or any of its consultants, agents, or employees by any employee of Construction Manager, its subcontractors any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligations in the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Construction Manager or any such subcontractor, supplier, sub-subcontractor, subconsultant or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts.

It is the specific intent of the parties hereto that the foregoing indemnification obligations comply with Section 725.06 (Chapter 725), Florida Statutes. Nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes, case law, or any other source of law.

12.13 The indemnification and hold harmless obligations of Article 12.12 shall include, but not be limited to, all of the following:

- a. Damages awarded to any person or party.
- b. Reasonable attorney's fees and costs incurred in defending such claims. The City may use the attorney or law firm of its choice in which event the Construction Manager will pay such firm the fees it charges the City, provided such fees are reasonable in light of the prevailing market rate for similar legal services. Such fees shall be deemed reasonable if they are no greater than the fees that City pays other counsel for representation in similar cases. If the City Attorney's Office provides the defense, Construction Manager will reimburse the City at the prevailing market rate for similar legal services.
- c. Reasonable attorney's fees and cost of any party that a court orders the City to pay.
- d. Reasonable expenses incurred by City in complying with any administrative or court order that may arise from such claims.
- f. Reasonable miscellaneous expenses relating to such claims including expenses of hotels and transportation in trips relating to such claims; and
- g. Any other direct or indirect expense that City would not have incurred but for a claim that arises out of this Agreement.

12.13.2 It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06 (Chapter 725), Florida Statutes.

12.14 **Schedule.** Attached hereto as **Exhibit "J"** is Construction Manager's Schedule for performance of the Work. The Construction Manager shall coordinate and provide the schedule in a manner to complete the project in the most expeditious and economical manner

possible. The construction schedule shall be in a detailed precedence style critical path management (“CPM”) format satisfactory to the City that shall also: (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as “Milestone Dates”). The Construction Manager shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the City of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions and as requested by the City. In the event any progress report indicates any delays, the Construction Manager shall propose an affirmative plan to correct the delay, subject to the terms of this Agreement. Any overtime and/or additional labor to correct the delay, including working additional shifts or overtime or adding additional manpower, equipment and facilities to accelerate the Work, shall be at the Construction Manager’s sole cost and expense if the delay is caused in whole or in part by the Construction Manager, its subcontractors, or anyone for whom the Construction Manager is responsible. By incorporating the Agreement into the Bond the Surety acknowledges the City’s right to require the Construction Manager to accelerate the Work and the Surety’s liability to the City for any resulting costs, expenses, fees and legal fees incurred by the City, and not compensated by the Construction Manager, for the Construction Manager’s failure to correct the delay, which shall be a Construction Manager default hereunder. The Surety’s responsibility under this Section is further governed by Article 18 (“Payment and Performance Bonds”) of this Agreement. In no event shall any progress report approval constitute an adjustment in the Contract Time, Milestone Dates, or the Contract Sum unless any such adjustment is agreed to by the City and authorized pursuant to written Change Order. The Construction Manager shall maintain such progress schedule on a current basis in accordance with the provisions of this paragraph and shall keep proper records to substantiate actual activity, duration and completion dates.

12.15 Construction Manager shall perform the Work between 7:30 a.m. to 6:00 p.m. (Monday – Friday); 9:00 a.m. to 5:00 p.m. (Saturday), and in conformity with the scheduling requirements of the City unless otherwise approved or directed by the City. Construction Manager shall have a permanent crew performing the Work at all times. Any changes in the working hours or days shall be subject to the prior written approval of the City. The Construction Manager shall perform the Work in the order directed by the Project Manager. The Work to be performed shall be done in such a manner so as not to interfere with the normal City operations of the Project site or facility. There shall be no obstruction of City services without the prior written approval of the City. All requests for such interruption or obstruction must be given in writing to the City and Project Manager 24 hours in advance of the interruption of City operations.

12.15.1 **Staging Plan.** A staging plan must be submitted to and approved by the Architect and Project Manager prior to the start of construction and issuance of the Notice to Proceed. Such staging plan shall be revised and resubmitted as necessary during construction. The City has approved the use of [ADDRESS] (“Staging Site”) for the staging area for the Project subject to the conditions below. Construction Manager’s use of the site shall be subject to the following: (1) use is only permitted during normal business hours and Construction Manager shall observe the City statutory limitations on times during weekends and after hours; (2) Construction Manager shall screen all of the activity from public view as street level and away from the residential area; (3) Construction Manager shall

not unreasonably delay construction at the Staging Site and shall maintain the Staging Site pursuant to the City of Coral Gables Code and otherwise keep the area safe, clean and properly fenced. Further, in the event any residents or the public have complaints regarding Construction Manager's use of the Staging Site, Construction Manager shall notify the City within two (2) days of receipt of such complaint(s) and shall work with the City to appropriately address the complaint(s). The City retains the right to alter, amend, modify and supplement the conditions for use of the Staging Site and/or revoke such permission at any time if in the City's sole but reasonable discretion, the Construction Manager has failed to adhere to the conditions of this Paragraph and/or if the use of the Staging Site is otherwise causing harm to the Staging Site, the residents, the City and/or the surrounding areas.

12.16 **Records/Audits.** The Construction Manager shall maintain and require subcontractors and suppliers to maintain complete and correct records, books, documents, papers and accounts pertaining to Work performed in connection with this Agreement including, without limitation, reasonable substantiation of all expenses incurred. Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Such records and books shall be available at reasonable times for examination and audit by the City or any authorized City representative with reasonable notice and, subject to Public Records Request pursuant to statute unless otherwise provided by Chapter 119, shall be kept for a period of four (4) years after the completion of the Work to be performed pursuant to this Agreement. Construction Manager acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. Construction Manager also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, Construction Manager agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein. Incomplete or incorrect entries in such records and books shall be grounds for disallowance by or reimbursement to the City of any fees or expenses based upon such entries. The Construction Manager shall remit promptly to the City the amount of any adjustment resulting from such audit.

12.17 **Project Meetings.** The Construction Manager shall conduct a weekly Project meeting which shall include the Construction Manager's administrative, managerial and supervisory personnel and representatives of each subcontractor working on the Project site. The meeting shall address, but shall not be limited to, the current status of the Work, including the current Schedule and the existence of any defective or deficient work as well as the appropriate action required to correct or replace such work. The City and the Architect shall have the right, but not the duty, to attend such weekly meetings. Further, Construction Manager shall attend all meetings requested by the City. The Construction Manager shall maintain detailed minutes of all such meetings and shall distribute typewritten copies of such minutes to the City and the Architect no later than the close of the next workday following completion of such meeting. The Construction Manager shall further require its General Superintendent to maintain a daily job diary, which shall include for each work day the daily weather conditions, the identity of each subcontractor working on the site, the manpower of each subcontractor and any other relevant information regarding the progress of the Work.

- (a) Construction Manager shall maintain an updated Request for Information (RFI), Proposed Change Order (PCO), and Submittal log for the City's use during the life

of the Project.

12.18 Work by Others. If any part of Construction Manager's Work depends for proper execution or results upon the work of any other persons, Construction Manager shall inspect and promptly report to Project Manager any visible defects that Construction Manager observes in such work that render it unsuitable for such proper execution and results. Construction Manager's failure to so inspect and report shall constitute an acceptance of the other person's work as fit and proper for the reception of Construction Manager's Work. Construction Manager shall conduct its operations and take all reasonable steps to coordinate the prosecution of the Work so as to create no interference or impact on any other contractor on the site. Should such interference or impact occur, Construction Manager shall be liable to the affected contractor for the cost of such interference or impact.

12.19 Record Project Documents. Construction Manager shall maintain in a safe place at the Project(s) site(s) a copy of the Agreement, one record copy and one permit set of the Contract Documents, including, but not limited to, all Drawings, Specifications, accepted shop drawings, amendments, Change Orders, RFIs, and Field Directives, field and performance test records, construction progress schedules, and as-built drawings, as well as all written interpretations and clarifications issued by the Architect and/or Project Manager, in good order and annotated to show all changes made during construction. The Record Project Documents shall be continuously updated by Construction Manager throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Construction Change Directives, and Field Directives as well as all written interpretations and clarifications, and all concealed and buried installations of piping, conduit and utility services. Construction Manager shall certify the accuracy of the updated Record Project Documents. As a condition precedent to City's obligation to pay Construction Manager, the Construction Manager shall provide evidence, satisfactory to the Architect and Project Manager, that Construction Manager is fulfilling its obligation to continuously update all Record Project Documents.

12.20 Requests for Information. In addition to the Construction Manager's obligations under Article 20 ("Shop Drawings"), should the Construction Manager request information, interpretations of Contract Documents, use of alternates, approval of samples (but not Shop Drawings) or make other similar requests (hereinafter "RFI" or "RFIs"), it shall do so in good faith, in writing, and in a reasonable time and fashion, by submitting Construction Manager's RFIs to the Architect and Project Manager. The Architect and Project Manager's response to RFIs will be made in writing and within five (5) business days or as quickly as possible so as not to delay the Construction Manager or Construction Schedule. Construction Manager cannot abuse this provision by submitting repeated RFIs which, in the cumulative, cause a burden and render the Architect and Project Manager's response within such five days difficult. Additionally, the period shall be extended if the Project Manager is not able to respond due to the failure of Construction Manager to provide adequate and accurate information to the Project Manager. Construction Manager will endeavor to only submit reasonable RFIs in terms of quantity and timing. Should the Architect and Project Manager require compensation to review any Construction Manager requests which are abusive and unreasonable in number or timing, the Architect and Project Manager shall expedite its review of the RFIs provided Construction Manager agrees in writing to reimburse the City for direct and actual fees, including project management, or engineering fees, necessitated in responding to such RFIs.

12.21 Stop Work Order. The City may, at any time, by written order to the Construction Manager, require the Construction Manager to stop all, or any part, of the Work for a period of up to ninety (90) days (or any lesser period), commencing no sooner than the date of the Notice to Proceed, and for any further period to which the parties may agree. Any such order shall be specifically identified as a “Stop Work Order” issued pursuant to this paragraph. Within the period of ninety (90) days (or the lesser period specified) after a Stop Work Order is delivered to the Construction Manager, or within any extension to which the parties have agreed the City shall either:

- a. Cancel the Stop Work Order; or
- b. Terminate the Work covered by such order as provided in Article 23.2 (“Termination for Convenience”). If a Stop Work Order issued under this Article is canceled or the period of the order or any extension thereof expires, the Construction Manager shall resume the Work with reasonable compensation to the Construction Manager for actual demobilization and remobilization costs as a result of such suspension in addition to an extension of the time for Substantial Completion to the extent that, in the opinion of the Project Manager, the Construction Manager may have been delayed by such suspension. However, in the event the Project Manager determines that the suspension of Work was necessary due to Construction Manager’s defective or incorrect Work, unsafe Work conditions caused by the Construction Manager or any other reason caused by Construction Manager’s fault or omission, the Construction Manager shall not be entitled to an extension of time or reasonable compensation as a result of the issuance of a Stop Work Order.

12.22 Direct Purchase of Materials and Equipment by the City. The Construction Manager shall comply with any direct purchase program of the City, such that the City may issue its purchase orders directly to the supplier(s); payment may be made directly to the supplier(s); and the Construction Manager and its supplier(s) shall comply with all requirements of the City as to such direct purchase(s) as set forth in this Article and Section 212.08, Florida Statutes.

12.22.1 The City reserves the right to require the Construction Manager to assign to the City any of the Construction Manager's subcontracts, purchase orders or other agreements for the procurement of material or equipment. Any material or equipment purchased by the City directly, including, without limitation, pavers, are hereinafter referred to as "City Furnished Materials" and the responsibilities of the City and the Construction Manager relating to such City Furnished Materials shall be governed and controlled by the terms and conditions of this Agreement.

12.22.2 Except for pavers and other items specifically authorized in writing by the City, material and equipment suppliers shall be selected by the Construction Manager using competitive bids, and material and equipment Agreements shall be awarded by the Construction Manager to the supplier whose bid is more advantageous to the City, price and all other relevant factors considered. The Construction Manager shall include the price of all construction materials and equipment in its bid unless the Contract Documents specifically state otherwise, and in the event the City elects to furnish any such material or equipment, an appropriate deductive Change

Order will be issued.

12.22.3 The Construction Manager shall provide the City a list of all intended suppliers, vendors, and materialmen for consideration with respect to City Furnished Materials. This list shall be submitted within ten (10) days after execution of this Agreement. The Construction Manager shall include price quotations from such suppliers, vendors, and materialmen as well as a specific description of the materials to be supplied and the estimated quantities of same.

12.22.4 Upon request by the City, and in a timely manner, the Construction Manager shall prepare Purchasing Requisition Request Forms which shall, in a form acceptable to the City, specifically identify the materials and equipment which the City may, in its discretion, elect to purchase directly. The Purchasing Requisition Request Form shall include the following:

- (a) The name, address, telephone number and contact person for the material supplier.
- (b) Manufacturer or brand, model or specification number of the item.
- (c) Quantity needed as estimated by the Construction Manager.
- (d) Any sales taxes associated with such quote.
- (e) Shipping and handling insurance cost.
- (f) 100% Performance Bond cost.
- (g) Delivery dates as established by the Construction Manager.
- (h) Any reduction in the Construction Manager's cost for both the Payment Bond and the Performance Bond.
- (i) Detail concerning bonds or letters of credit provided by the supplier if included in their proposal.

The Construction Manager shall include copies of vendors' quotations, and specifically reference any terms and conditions, which have been negotiated with the vendors concerning letter of credit, terms, discounts, or special payments.

12.22.5 After receipt of the Purchasing Requisition Request Form, the City shall prepare a Purchase Order for each item of material which the City chooses to purchase directly. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the Construction Manager, less any sales tax associated with such price. Promptly upon receipt of each Purchase Order, the Construction Manager shall implement its procedure for the purchase of the items in accordance with the

terms of the Purchase Order and in a manner to assure timely delivery of items. The City's Chief Procurement Officer shall be the approving authority for the City on Purchase Orders in conjunction with City Furnished Materials. The Purchase Order shall also provide for reimbursement of the cost to the supplier for providing required shipping and handling insurance and for providing a Performance Bond from the supplier to the City for full value of the Purchase Order, unless such insurance and bonding requirements were included in the quote provided by the supplier to the Construction Manager. The Purchase Order shall also require the delivery of the City Furnished Materials on the delivery dates provided by the Construction Manager in the Purchasing Requisition Request Form. In the event that the City Furnished Materials are received by the Construction Manager after the delivery dates in the Purchasing Requisition Request Form, Construction Manager shall be entitled to an extension of the Contract Time for the amount of time such City Furnished Materials were actually received by Construction Manager after such delivery dates.

- 12.22.6** In conjunction with the execution of the Purchase Orders by the suppliers, the Construction Manager shall execute and deliver to the City one or more deductive Change Orders, referencing the full value of all City Furnished Materials to be provided by each supplier from whom the City elected to purchase material directly, plus all sales taxes associated with such materials in the Construction Manager's bid to the City, plus any savings to the Construction Manager in the cost of Payment and Performance Bonds associated with such City Furnished Materials. The Agreement Administrator shall be the approving authority for the City on any deductive Change Order in conjunction with City Furnished Materials.
- 12.22.7** All shop drawings and submittals shall be made in accordance with Article 20 of this Agreement.
- 12.22.8** The Construction Manager shall be fully responsible for all matters relating to the procurement of materials furnished by the City in accordance with this Paragraph 12.22 including, but not limited to, assuring the correct quantities, placing the order in a timely manner, and assuring coordination of purchases, scheduling, installation, quality, compliance with the Contract Documents, providing and obtaining all warranties and guarantees required by the Agreement Documents, and inspection and acceptance of the goods at the time of delivery. The Construction Manager shall coordinate delivery schedules, sequence of delivery, loading, orientation, and other arrangements normally required by the Construction Manager for the particular materials furnished. The Construction Manager shall provide all services required for the unloading, handling and storage of materials through installation. The Construction Manager agrees to indemnify and hold harmless the City from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions of the Construction Manager.
- 12.22.9** As City Furnished Materials are delivered to the job site, the Construction Manager shall visually inspect all shipments from the suppliers, and approve

the vendor's invoice for material delivered. The Construction Manager shall assure that each delivery of City Furnished Materials is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order together with such additional information as the City may require. The Construction Manager will then forward the invoice to the City for payment.

- 12.22.10** The Construction Manager shall insure that City Furnished Materials conform to the Specifications, and determine prior to incorporation into the Work if such materials are patently defective, and whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Construction Manager discovers defects or non-conformities in City Furnished Materials upon such visual inspection, the Construction Manager shall not utilize such non-conforming or defective materials in the Work and instead shall promptly notify the City of the defective or nonconforming condition so that repair or replacement of those materials can occur without any undue delay or interruption to the Project. If the Construction Manager fails to perform such inspection and otherwise incorporates into the Work such defective or non-conforming City Furnished Materials, the condition of which it either knew or should have known by performance of an inspection, the Construction Manager shall be responsible for all damages to the City resulting from the Construction Manager's incorporation of such materials into the Project, including liquidated or delay damages.
- 12.22.11** The Construction Manager shall maintain records of all City Furnished Materials it incorporates into the Work from the stock of City Furnished Materials in its possession. The Construction Manager shall account monthly to the City for any City Furnished Materials delivered into the Construction Manager's possession, indicating portions of all such materials which have been incorporated into the Work.
- 12.22.12** Notwithstanding the transfer of City Furnished Materials by the City to the Construction Manager's possession, the City shall retain legal and equitable title to any and all City Furnished Materials. However, at the time of, and subsequent to the delivery of such City Furnished Materials, the City shall be liable for all loss or damage to such City Furnished Materials not caused by the acts, omissions or negligence of the Construction Manager.
- 12.22.13** The transfer of possession of City Furnished Materials from the City to the Construction Manager shall constitute a bailment for the mutual benefit of the City and the Construction Manager. The City shall be considered the bailor and the Construction Manager the bailee of the City Furnished Materials. The City Furnished Materials shall be considered returned to the City for purposes of their bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project.
- 12.22.14** The Construction Manager shall purchase and maintain for the City's benefit insurance sufficient to protect against any loss of or damage to the City

Furnished Materials. Such insurance shall cover the full value of any City Furnished Materials not yet incorporated into the Project during the period between the time the City first takes title to any of such City Furnished Materials and the time when the last of such City Furnished Materials is incorporated into the Project or consumed in the process of completing the Project.

12.22.15 The City shall in no way be liable for any interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs resulting from any delay in the delivery of, or defects in, the City Furnished Materials. The Construction Manager's sole or exclusive remedy shall be an extension of the Contract Time for such reasonable time as determined by the City.

12.22.16 On a monthly basis, the Construction Manager shall be required to review invoices submitted by all suppliers of City Furnished Materials delivered to the Project sites during that month and either concur or object to the City's issuance of payment to the suppliers, based upon the Construction Manager's records of materials delivered to the site and any defects detected in such materials.

12.22.17 In order to arrange for the prompt payment to the supplier of City Furnished Materials, the Construction Manager shall provide to the City a Requisition for Payment within fifteen (15) days from receipt and acceptance of the goods or materials. The requisition shall include a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the City. Upon receipt of the appropriate documentation, the City shall prepare a check drawn to the supplier based upon the requisition data provided. This check will be released, delivered and remitted directly to the supplier within forty-five (45) days from receipt by the City of the Requisition for Payment. The Construction Manager agrees to assist the City to immediately obtain partial or final release of waivers as appropriate.

12.22.18 At the end of the Project, the Construction Manager will be provided with a deductive Change Order for the cost plus applicable sales taxes of any City Furnished Material overruns and will be provided with an additive Change Order representing the unspent value plus applicable sales taxes of any City Furnished Material underruns. Excess City Furnished Material shall be removed from the site and disposed of by the Construction Manager as directed by the City.

12.23 The Construction Manager shall be responsible for obtaining and managing all warranties and guarantees for all materials and products as required by the Contract Documents. In addition, as a condition to final payment, the manufacture of any City Furnished Material must inspect and approve the installation in writing. All repair, maintenance or damage-repair calls shall be forwarded to the Construction Manager for resolution with the appropriate supplier, vendor, or subcontractor.

12.24 Subcontract & Other Agreements. Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials for the Work and shall deliver such bids to the Architect and City with the Construction Manager's recommendation on which subcontractor or supplier to select. The City shall raise any objection to any proposed Subcontractor or supplier in writing within five (5) days of receipt. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. Subcontractors shall be competitively bid and entered into on a lump-sum price basis. Except as expressly authorized by Owner in writing subcontracts shall not be on a cost plus basis.

12.24.1 The Construction shall not allow any Subcontractor to enter the Project site to perform work prior to executing an approved subcontract and delivering to the Owner the insurance certificate(s) required herein and in the subcontract.

12.25 Labor. Construction Manager shall not utilize any labor, materials or means whose employment or utilization during the course of this Agreement may tend to or in any way cause or result in strikes, work stoppages, delays, suspension of Work or similar trouble by workmen employed by its Subcontractors, or by any of the trades working in or about the Project and premises where Work is being performed under this Agreement, or by other contractors or their subcontractors pursuant to other contracts, or on any other project and project site or premises owned or operated by Owner.

ARTICLE 13 **CONSTRUCTION MANAGER DEFAULT**

13.1 If the Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within three (3) working days of written notice from City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to other rights and remedies the City may have, complete Construction Manager's work, add manpower, correct deficiencies or otherwise correct such neglect or default. The Surety, by incorporating this Agreement into its Performance Bond, specifically agrees that the City may complete Construction Manager's work, add manpower or correct deficiencies and make claim against Construction Manager and Surety for all costs expenses and damages it may incur. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Construction Manager the reasonable cost of correcting such defects, deficiencies or incomplete work, including City's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Construction Manager are not sufficient to cover such amounts, the Construction Manager and/or the Surety shall pay the difference to the City.

ARTICLE 14 **SUBCONTRACTS**

14.1 Construction Manager may subcontract portions of the Work contemplated under this Agreement upon submission and approval of the City of its proposed subcontractor. Construction Manager hereby assigns to City, upon termination of the Construction Manager, all

its Agreement rights with respect to subcontractors and material and equipment suppliers that provided work, materials and equipment to this Project in accordance with the Contract Documents, including but not limited to all Construction Manager's rights to make claims regarding quality of the work, merchantability of the materials and equipment, feasibility and fitness for the particular purpose of materials, equipment and workmanship described in this Agreement. It is further agreed that all sub-contracts and material and equipment purchase Agreements entered into by Construction Manager or its subcontractors or material suppliers, shall contain a provision or shall incorporate this Article by reference to allow the City to bring a claim directly against any subcontractor of Construction Manager and its surety for breach of Agreement, warranty rights, quality of workmanship, merchantability of equipment, feasibility and fitness for the particular purpose of materials and equipment and workmanship, and create third party beneficiary rights of City in said agreements, or such sub-contracts shall incorporate this Article by reference. It is further agreed and understood that such assignment(s) and third party beneficiary rights are part of the consideration to City for entering into this Agreement with Construction Manager and may not be withdrawn, and subcontractor or equipment and material suppliers shall be notified of the City's rights. The City shall be furnished with a copy of all subcontracts and purchase Agreements upon the City's request. The Construction Manager shall ensure that all subcontractors shall purchase and maintain insurance in the amounts and coverages set forth in Article 17 ("Construction Manager's Liability Insurance") for claims under Worker's Compensation acts and other employee benefit acts, from claims for damages because of bodily injury, including death, and from claims for damages to the City's property which may arise out of or result from the subcontractors' operations under this Agreement, unless a lesser limit is expressly agreed in writing by the City. Construction Manager hereby agrees that Construction Manager shall be responsible for, and shall indemnify City against, all losses, costs, claims, and damages resulting from the Construction Manager's failure to require its subcontractors to obtain such insurance. The City shall be named as an additional insured in all policies required to be maintained under this Article with the exception of the Worker's compensation insurance, and the subcontractors' Certificates of Insurance shall be provided to the City. Additionally, nothing contained in this Agreement shall constitute an assignment of Construction Manager's rights against City or create any third party beneficiary rights in any subcontractors or material and equipment suppliers of Construction Manager. The purpose of this provision is to allow the City, in addition to Construction Manager, to make claims for damages or indemnification against any subcontractors or material and equipment suppliers that may be ultimately responsible for defects or deficiencies in the Work or materials and equipment.

ARTICLE 15 **TIME & DELAYS**

15.1 All time limits stated in the Contract Documents are of the essence in this Agreement. The Construction Manager shall be responsible for the timely and successful inspection of the Work.

15.2 If the Construction Manager's critical path is delayed at any time in the progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in transportation, unavoidable casualties, rain beyond the historical norm, tornado, cyclone, hurricane, earthquake, causes otherwise beyond the Construction Manager's control, or by any cause which Architect and

Project Manager may determine justifies the delay, then the Contract Time shall be extended by written Change Order for such reasonable time as the Architect and Project Manager may determine. All requests for extensions of time other than those associated with changes in the Work, must be submitted in writing to Architect and Project Manager within three (3) business days of the event giving rise to the delay. Failure to so request an extension shall constitute a waiver of any right for an extension of time.

15.3 In the event that Construction Manager is delayed in the progress of the Work, and is granted an extension of time in which to perform the Work, except as provided in Article 21("Changes in the Work"), in no instance will Construction Manager be entitled to increased costs, compensation or damages as a result of delay, except as otherwise provided in this Agreement. Except as otherwise provided in this Agreement, all damages that may occur by reason of delay are hereby waived by the Construction Manager, and the Construction Manager waives all claims for consequential damages arising out of this Agreement or its performance. The Parties will not be entitled to, and expressly waive, consequential, special, and punitive damages against each other. This provision shall not preclude recovery of damages by Construction Manager for actual delays to the critical path of the construction schedule due solely to fraud, bad faith, or active interference on the part of the City or the Architect and Project Manager.

15.4 Liquidated Damages. The parties agree that time is of the essence in the performance of this Agreement. Substantial Completion of the Work under this Agreement shall be no later than the Substantial Completion Date set forth in Article 3.2, subject to authorized extensions of time as indicated by a written Change Order. In the event the Work is not substantially completed by the Substantial Completion Date and has not been extended by Change Order, the City shall be entitled to collect liquidated damages. Construction Manager and City agree that, because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay and the difficulty of determining these damages, the Construction Manager shall pay the City the sum of One Thousand Eight Hundred Dollars (\$1,800) per calendar day for delays in achieving Substantial Completion (subject to adjustments in the Schedule). Further, Construction Manager and City agree that, because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay and the difficulty of determining these damages, the Construction Manager shall pay the City the sum of 25% of the per diem rate set forth in the preceding sentence as liquidated damages for each and every calendar day of unexcused delay for failure to achieve final completion thirty (30) days after the delivery of the Punch List as described in 6.2. It is hereby agreed that the amount of the per diem assessment for liquidated damages for the Construction Manager's failure to achieve Substantial Completion and Final Completion within the time specified in this Agreement is not a penalty and not excessive in light of the circumstances known to the parties at the time this Agreement is executed. The City's exercise of its right to terminate this Agreement shall not release the Construction Manager from its obligation to pay liquidated damages in the amount set forth herein. Such assessments shall be immediately due and payable to the City or, at the City's option, may be deducted from future payments that may be due and owing to Construction Manager. Any sums due and payable hereunder by the Construction Manager shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Agreement.

ARTICLE 16
PROTECTION OF PERSONS
AND
PROPERTY

16.1 The Construction Manager shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work including, but not limited to the erection of barricades to minimize the risk of injury to persons or property and persons. The Construction Manager shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the Work and other persons who may be affected thereby; (2) all the Work and all materials and equipment to be incorporated therein; and (3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction, Specifically and without limitation, Construction Manager acknowledges and agrees that the Work will be performed in front of ongoing businesses including but not limited to restaurants and cafes and other retail and commercial establishments where pedestrians will be in close proximity to the Work. Construction Manager shall undertake all reasonable measures to protect and keep safe all pedestrians and other persons and to minimize the impact to the surrounding businesses and their customers, employees, and guests. Construction Manager shall comply with all OSHA regulations regarding job safety and all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or to protect them from damage, injury or loss. Construction Manager shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and businesses.

16.2 All damage or loss to any the City's property or the property of any third party, caused in whole or in part by the Construction Manager, any subcontractor, any sub-subcontractor or anyone directly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Construction Manager at his sole cost and expense.

ARTICLE 17
CONTRACTOR'S INSURANCE REQUIREMENTS

17.1 The Construction Manager, shall provide, maintain and pay for the insurance required by this Article, which shall be placed with such insurance company or companies and in such form and in such coverages as are acceptable to City. All of the insurance is to be placed with insurance companies with an A.M. Best or equivalent rating of "A-", "VI" or better, qualified to do business under laws of the State of Florida. Such programs and evidence of insurance shall be satisfactory to the City and shall be primary to and not contributing with any other insurance or self-insurance program maintained by the City. Certificates or other evidence of coverage shall be

delivered to:

City of Coral Gables Insurance Compliance PO
Box 12010
CE Hemet, CA 92546-8010

Such certificates or other evidence of coverage shall be delivered prior to commencing performance under this Agreement, specifically identify this Agreement, and contain the express condition that the City is to be given advance written notice by receipted delivery at least thirty (30) days in advance of any cancellation or non-renewal of the insurance policy. Construction Manager shall advise the City in writing of any material change to the insurance policy within ten (10) days of receipt of such notice from the insurance carrier.

17.2 Construction Manager shall provide the following minimum liability coverages:

- 17.2.1 **Commercial General Liability Insurance** protecting the Construction Manager, the City, and their respective servants, agents or employees against damages arising from bodily injury (including death) and from claims for property damage which may arise directly or indirectly out of the operations of the Construction Manager, its subcontractors, servants, agents or employees under this Agreement. Construction Manager shall maintain completed operations coverage for at least ten (10) years after completion of the Work. Such insurance shall have per Project limits in the amount acceptable to the City which shall in any event be not less than One Million (\$1,000,000.00) Dollars inclusive of any one Occurrence and Two Million (\$2,000,000.00) Dollar in the aggregate and also in the aggregate for Products & Completed Operations and shall include a standard form of cross liability clause. This coverage shall be endorsed to include the City of Coral Gables as an Additional Insured on a primary and non-contributory basis with a waiver of subrogation.
- 17.2.2 **Commercial Umbrella/Excess Liability**. Construction Manager agrees to provide and maintain either a Commercial Umbrella or Excess Liability Policy (Excess Following Form/True Excess Following Form/True Umbrella) at a limit of liability not less than Ten Million (\$10,000,000.00) Dollars each occurrence Ten Million (\$10,000,000.00) Dollars annual aggregate. The Construction Manager agrees any Self-Insured-Retention or deductible shall not exceed \$25,000. This coverage shall be endorsed to include the City of Coral Gables as an Additional Insured on a primary and non-contributory basis with a waiver of subrogation.
- 17.2.3 **Pollution Liability**. Construction Manager hereby agrees to maintain Pollution Legal & Remediation Liability coverage at a minimum limit not less than One Million (\$1,000,000) Dollars per occurrence and per annual

aggregate providing coverage for damages against, but not limited to, third party liability, environmental clean-up, corrective action including assessment, remediation and defense costs. In the event the policy includes a self-insured retention or deductible in excess of \$10,000, the City reserves the right to review and request a copy of the Construction Manager's most recent annual report or audited financial statements. This coverage shall be endorsed to include the City of Coral Gables as an Additional Insured on a primary and non-contributory basis with a waiver of subrogation.

17.2.4 **Automobile Liability Insurance** on the Construction Manager's owned, non-owned and hired vehicles, protecting the Construction Manager against damages arising from bodily injury (including death) and from claims for property damage arising out of their use or the operations of the Construction Manager, its subcontractors or of agents under this Agreement. This insurance shall be for an amount acceptable to the City and shall in any event be not less than One Million (\$1,000,000.00) Dollars Combined Single Limit per accident. This coverage shall be endorsed to include the City of Coral Gables as an Additional Insured on a primary and non-contributory basis with a waiver of subrogation.

17.2.5 **Professional Liability**. Construction Manager agrees to provide and maintain Professional Liability Insurance with a limit of liability not less than One Million (\$1,000,000.00) Dollars per claim, with a deductible per claim not to exceed 5% of the limit of liability providing for all sums which the Construction Manager shall become legally obligated to pay as damages for claims arising out of the services performed by the Construction Manager or any person employed in connection with this agreement. Construction Manager shall maintain Professional Liability coverage for at least ten (10) years after completion of the work.

17.3 The City (and such other parties designated by City) is to be evidenced as Additional Insured on the Commercial General Liability Policy and Excess/Umbrella Policy. The additional insured status shall be evidenced by the ISO form CG20101185 or via both of the following ISO forms: CG2010 and CG2037 (07/04 Editions), or broader. Construction Manager is to provide forty five (45) days' notice of cancellation or non-renewal of coverage and/or changes in limits of coverage on any policy. All policies of Construction Manager shall contain an endorsement whereby the insurance carriers agree that its insurance is primary and not contributory with or in excess of any coverage which the City has purchased. The Construction Manager shall be responsible for all deductibles under the Construction Manager's insurance policies. The Construction Manager shall be responsible for all loss or damage to the Work, including the Construction Manager's materials delivered to site for incorporation therein. All property issued to the Construction Manager by the City for use or incorporation in the Work shall be insured by the Builder's Risk policy required by 17.5. However, Construction Manager shall be responsible for any damage for City Furnished Materials by the acts or omissions of Construction Manager, its Subcontractors or anyone for which they are responsible. The Construction Manager shall waive all rights against the City for recovery of damages to the extent that these damages are covered by insurance maintained pursuant to the above requirements, and the Construction Manager shall provide all waivers of subrogation in the endorsements and forms

required by the City. The City shall be named as an Additional Insured and Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

17.4 **Workers Compensation and Employers Liability Insurance** Prior to commencing the Work and prior to receiving payment, the Construction Manager shall provide evidence of compliance with the requirements of the State of Florida with respect to workers' compensation insurance including payments due thereunder and including Employers Liability with minimum Limits of \$1,000,000.00 per each accident, per disease each employee and per disease policy limit. This policy shall include a Waiver of Subrogation endorsement in favor of the City.

17.5 **Builders Risk.** Construction Manager shall purchase and maintain, with a company or companies lawfully authorized to do business in the State of Florida, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied or installed by others, comprising of the total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained until final payment has been made or until no person or entity other than the City has an insurable interest in the property required by this Section to be covered, whichever is later. This insurance shall include interests of the City, Construction Manager and Subcontractors on the Project. Construction Manager shall be solely responsible for any deductibles under the builders risk insurance and under all other insurance required by Article 17. The policy must be endorsed to provide that the builder's risk will continue to apply until final acceptance of the Project. The policy must be endorsed to provide the City at least forty-five (45) days' notice of any cancellation or material alteration of the policy. City shall be endorsed as a Loss Payee.

17.6 Notwithstanding the availability of any insurance listed hereunder, the Construction Manager shall bear the risk of loss for its acts or omissions pursuant to this Agreement. The Construction Manager bears all liability for losses and damages arising from any acts, errors, omissions, or negligence on the part of the Construction Manager and its subcontractors, including without limitation damages for defective and nonconforming work, and the Construction Manager and all applicable Subcontractors shall bear the risk and pay for such losses regardless of whether the Construction Manager should be covered for such losses by the Construction Manager's general liability or other insurance policies stated in this Article 17. In the event Construction Manager should fail to pay the insurance premiums, the City, at its option, may pay the premiums and deduct said amount from the Contract Sum. The Construction Manager's failure to maintain the insurance required by this Article 17 shall be grounds for the termination of this Agreement, and Construction Manager shall be liable for all losses, damages, costs and expenses of every nature and kind associated with the failure to maintain the required insurance.

17.7 **Waiver of Subrogation.** The Construction Manager agrees by entering into this written Agreement to a Waiver of Subrogation in favor of the City, Construction Manager, sub-Construction Manager, Engineers, or engineers for each required policy providing coverage during the life of this Agreement. When required by the insurer, or should a policy condition not permit the Construction Manager to enter into a pre-loss agreement to waive subrogation without an endorsement, the Construction Manager agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent

endorsement. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition that specifically prohibits such an endorsement, or voids coverage should the Construction Manager enter into such an agreement on a pre-loss basis.

17.8 **Right to Revise or Reject.** The Construction Manager agrees the City reserves the right, but not the obligation, to review or revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, the City reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein, or any insurer(s) providing coverage due of its poor financial condition or failure to operating legally in the State of Florida. In such events, City shall provide Construction Manager written notice of such revisions or rejections.

17.9 **No Representation of Coverage Adequacy.** The coverages, limits or endorsements required herein protect the primary interests of the City, and the Construction Manager agrees in no way should these coverages, limits or endorsements that are required be entirely relied upon when assessing the extent or determining appropriate types and limits of coverage to protect the Construction Manager against any loss exposures, whether as a result of the Project or otherwise.

17.10 **Certificate of Insurance.** The Construction Manager agrees to provide City with Certificate(s) of Insurance that clearly evidence the Construction Manager's insurance contains the minimum coverages, limits, and endorsements set forth herein. A minimum thirty (30) day notice of cancellation or non-renewal of coverage shall be identified on each Certificate(s) of Insurance.

17.11 In the event the City is notified that a required insurance coverage will cancel or expire during the period of this Agreement, the Construction Manager agrees to furnish City prior to the expiration of such insurance, a new Certificate of Insurance evidencing replacement coverage. When notified by City, the Construction Manager agrees not continue work pursuant to this Agreement, unless all required insurance remains in effect.

17.12 The City shall have the right, but not the obligation, of prohibiting Construction Manager from entering the Project site until a new Certificate of Insurance is provided to the City evidencing the replacement coverage. The Construction Manager agrees the City reserves the right to withhold payment to Construction Manager until evidence of reinstated or replacement coverage is provided to the City. If the Construction Manager fails to maintain the insurance as set forth herein, the Construction Manager agrees the City shall have the right, but not the obligation, to purchase replacement insurance, which the Construction Manager agrees to reimburse any premiums or expenses incurred by the City.

17.13 The Construction Manager agrees the Certificate(s) of Insurance shall include but is not limited to:

1. Clearly indicate the City has been endorsed on the Commercial General Liability with an Additional Insured - Owners, Lessees, or Contractors, or

similar endorsement providing equal or greater Additional Insured coverage.

2. Clearly indicate the City is endorsed as an Additional Insured on the Commercial Umbrella/Excess Liability.
3. Clearly indicate the City is endorsed as an Additional Insured on the Auto Liability.
4. Clearly indicate the City is endorsed as an Additional Insured on the Pollution Liability.
5. Clearly indicate the City is endorsed as an Additional Insured on the Builder's Risk.
6. Clearly indicate the project name and project number.
7. Clearly identify each policy's limits, flat & percentage deductibles, sub-limits, or self-insured retentions, which exceed the amounts or percentages set forth herein.
8. Clearly indicate a minimum thirty (30) day endeavor to notify requirement in the event of cancellation or non-renewal of coverage.
9. Clearly indicated Certificate Holder(s) as follows:

Original to:

Copy

to:

City of Coral Gables
Procurement Division
Division Attn: Chief Procurement Officer
405 Biltmore Way
Coral Gables, FL 33134

City of Coral Gables
Risk Management
Attn: Risk Manager
405 Biltmore Way
Coral Gables, FL 33134

10. Clearly indicate a Waiver of Subrogation for Commercial General Liability, Commercial Umbrella/Excess Liability, Pollution Liability and Auto Liability.
11. Clearly indicate that the following coverages are Primary and Non-

contributory: Commercial General Liability, Pollution Liability and Auto Liability.

17.13 Failure on the part of the Construction Manager to obtain and maintain all required insurance coverage is a material breach upon which the City may, in its sole discretion, immediately suspend Construction Manager's performance or terminate this Agreement after 30 days' written notice.

17.14 The City and its Risk Management Division reserves the right to require modifications, increases, or changes in the required insurance requirements, coverage, deductibles or other insurance obligations by providing a thirty (30) day advance written notice to Construction Manager as long as coverage is available at commercially reasonable rates. Construction Manager shall comply with such requests unless the insurance coverage is not then readily available in the national market, and shall be entitled to additional compensation for reimbursement of any additional costs from the City.

ARTICLE 18

PAYMENT AND PERFORMANCE BONDS

18.1 Construction Manager shall provide Payment and Performance Bonds in compliance with Florida Statute §255.05 in the full amount of the Contract Sum, plus adjustments thereto, which bonds shall guarantee to the City the full completion and performance of the Work as well as full payment of all suppliers, laborers, and subcontractors pursuant to this Agreement. It is specifically understood and agreed that the Construction Manager will properly and promptly pay all claimants and other parties, as specified in the Florida Statute §255.05. Each Bond shall be with a surety company that is qualified pursuant to the requirements set forth in Exhibit "A", authorized to do business in the State of Florida as surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years (the "Surety"). The Payment and Performance Bonds shall be in the forms included in the RFQ. Both Payment and Performance Bonds will be active for the duration of this Agreement; actions must be instituted by claimants under the Payment Bond in accordance with the notice and time limitations of Section 255.02, Florida Statutes; and the Performance Bond shall remain in effect during the warranty period(s) covered by this Agreement. The Construction Manager has incorporated all costs for complying with the Payment and Performance Bond requirements of this Agreement in the Contract Sum. The City must be listed as an Obligee. Pursuant to the requirements of Section 255.05, Florida Statutes, as may be amended from time to time, the Construction Manager shall ensure that the bonds referenced above shall be recorded in the public records of Miami-Dade County and shall provide the City with evidence of such recording.

18.2 Not Used.

18.3 **Surety responsibility for Warranty and Other Construction Manager Obligations Pursuant to this Agreement.** The Surety has incorporated this Agreement into its

performance bond. By doing so, the Surety consents to the provisions of this Agreement wherein the Surety's obligations are mentioned and further agrees that if the Construction Manager or any party for whom the Construction Manager is responsible fails to perform any of its obligations pursuant to this Agreement, then the Surety will be liable to the City for all damages, expenses, costs, and legal fees for which Construction Manager is liable to City pursuant to this Agreement regarding any default by the Construction Manager of the provisions of its Agreement. The City shall give the Surety the same notices that City is required to give to Construction Manager pursuant to this Agreement. Notwithstanding any provision in the performance bond to the contrary, Surety will be liable to City for all damages and remedies against the Construction Manager that the City is entitled to pursuant to this Agreement and by law, including, but not limited to, all damages to correct defects or deficiencies in Construction Manager's Work, to cure other defaults and breaches of the Agreement, to pay for the cost to carry out the Construction Manager's Work, to add manpower, and liability for all delay damages including Liquidated Damages and any other damages that the City may be entitled to. The provisions in this Paragraph 18.3 shall apply with the same force and effect to all Paragraphs addressing the Surety's responsibility and the City's rights in the event of Construction Manager's default, including without limitation the Construction Manager's neglect to carry out the Work in accordance with the Contract Documents, failure to promptly make payment due the City, failure to correct defective or nonconforming Work, failure to honor the Construction Manager's Warranty obligations or failure to fulfill any of the Construction Manager's obligations under the Agreement.

ARTICLE 19

CORRECTION OF WORK AND WARRANTY

19.1 The Construction Manager shall, within seven (7) working days of written notice from City, proceed to commence and diligently proceed to complete the correction of any Work that fails to conform to the requirements of the Contract Documents, including defects or damage from whatever cause, and unconditionally guarantees and warrants that it shall correct any defects due to faulty materials, equipment, and/or workmanship and provide warranties of merchantability and fitness of all of the materials for the particular purpose for a period of one (1) year from Final Completion of the Work, or such longer time required by the Contract Documents for particular items (the "Extended Warranties"). Construction Manager and Subcontractor warranties expressly also include all statutory warranties, all of which are specifically and expressly incorporated herein by reference. The Construction Manager shall also provide warranties from manufacturers for the specified items and systems within the Contract Documents (the "Manufacturers' Warranties"), which Manufacturers' Warranties shall be attached as **Exhibit "N"** to this Agreement and which Manufacturers' Warranties may include Extended Warranties. Those items covered by the Manufacturer's Warranties shall in no way be deemed to limit Construction Manager's responsibility to do all things necessary to obtain and keep the Manufacturer's Warranties in full force and effect. The Manufacturer's Warranties, and the Subcontractors' and suppliers' warranties, shall in no way limit the Construction Manager's Warranty herein and are in addition to and not in lieu of the Construction Manager's Warranty. This warranty provision is not in lieu of any other warranties, express or implied, which may be provided by law.

19.2 The Construction Manager shall bear all costs of correcting such defective Work, of if Construction Manager shall fail in its obligation, then the Surety shall be liable for such costs. This obligation shall survive termination of this Agreement. If the Construction Manager fails to commence to correct defective or nonconforming Work within seven (7) business days from written Notice to Construction Manager and Surety, the City may correct such defective or nonconforming Work. The City may deduct such costs from any monies due, or if the defective or nonconforming Work is discovered after final payment, then Construction Manager shall pay such cost and expense, including attorney's fees incurred, within twenty (20) days of receipt of a written demand from the City for reimbursement. Should the Construction Manager fail in its obligation and the Surety fails to respond promptly to the City's notice of defective Work, then the Surety shall be responsible for all damages, costs, and fees, whether direct, indirect, or consequential, resulting from its failure to timely respond and correct such defective Work. The Surety's responsibility under this Section is further governed by Paragraph 18.3 of this Agreement.

19.3 Nothing contained in this Article 19 shall be construed to establish a period of limitation with respect to any other obligation which the Construction Manager might have under the Contract Documents or law. The establishment of the time periods set forth in Paragraph 19.1 above relates only to the specific obligation of the Construction Manager and the Surety to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Construction Manager's liability with respect to his obligations and any damages caused by the Construction Manager, including but not limited to any action commenced by the City for negligence, strict liability, breach of Agreement or warranties.

ARTICLE 20 **SHOP DRAWINGS, PRODUCT DATA, SAMPLES**

20.1 The Construction Manager shall review, approve and submit to Architect and Project Manager, who may work in coordination with another consultant of the City, such as an Architect or engineer, for review and approval drawings, product data, samples and similar submittals, with reasonable promptness and in such sequence as to cause no delay in the Work.

20.1.1 The submittal schedule which is attached as **Exhibit "O"** to the Agreement has been approved by City and Architect, and establishes the submittal and response times for all submittals including, but not limited shop drawings, and submittals. The submittal schedule shall be coordinated with the Construction Manager's construction Schedule. Notwithstanding the foregoing, for any submittals not included in the submittal schedule, the Construction Manager shall submit Shop Drawings and Product Data to the Architect/Project Manager so that no delays will result in delivery of materials and equipment, advising the Architect/Project Manager of priority for checking Shop Drawings and Product Data, but a minimum of two weeks shall be provided for this purpose.

20.1.2 The Construction Manager shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect/Architect on previous Submittals.20.1.3 The Construction

Manager represent and warrants that all Shop Drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the Shop Drawing is prepared and, if required by the Architect/ or Applicable Laws, by a licensed engineer or other design professional.

20.2 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Construction Manager represents that he has determined and verified materials, estimated field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

20.3 The Construction Manager shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect and Project Manager's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Construction Manager has specifically informed the Project Manager in writing of such deviation at the time of submittal and the City's Architect or Project Manager has given written approval to the specific deviation. The Construction Manager shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the City's approval thereof.

20.4 The Construction Manager shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Project Manager. Such Work shall be in accordance with approved submittals.

20.5 The Construction Manager shall ensure that all Submittals and Shop Drawings are complete and submitted properly to the Architect/Project Manager and the City's representative. If Shop Drawings or Submittals are reviewed by the Architect/Project Manager on more than one occasion as result of missing information, inadequate information, misleading information, or Shop Drawings or Submittals are incomplete in any way, the Construction Manager shall pay the Architect's/Project Manager's expense for reviews. The City may withhold payment or reduce the Contract sum by an amount equal to the cost of the Architect's/Project Manager's review.

ARTICLE 21 **CHANGES IN THE WORK**

21.1 As Construction Manager, Construction Manager has been working extensively with the City and Architect as Preconstruction Manager. Construction Manager has participated in value-engineering, reviewed the Plans for conflicts, reviewed all information provided by the City regarding the Project attached as **Composite Exhibit "K"**, and investigated the Project site. Further, Construction Manager has conducted due diligence investigation of the Project, the site, including investigation of underground and ground conditions, the surrounding areas, logistics for the Work. As such, it is the parties intention that Construction Manager shall not be entitled to a Change Order or Claim based on conflicts and coordination within/among the Plans, existing conditions of the Project, (except as provided in Article 11.3), and other matters which Construction Manager should have anticipated based on its role as Preconstruction Manager.

21.2 **Change Orders.** A Change Order is a written order signed by the City, the City's Project Manager and the Construction Manager authorizing a change in the Work or adjustment in the Contract Sum or Contract Time. The Contract Sum and Contract Time may be changed only by Change Order. Construction Manager shall have no obligation to perform a change in the work unless the City issues a written directive, including a Change Order or Extra Work Directive, to Construction Manager to do so. For Change Orders the value of which do not exceed the contingency amount, the Project Manager may sign the Change Order without the additional signature of the City Manager or his designee. The Construction shall prepare Change Order proposals ("Construction Manager's Change Proposal Request") must be submitted with detailed backup documentation, as reasonably required by the City, setting forth the price breakdown, time impact, if any, and basis for the proposed change in the Work. In furtherance of this obligation, the City may require that the Construction Manager submit any or all of the following: a cost breakdown of the Cost of the Work including, but not limited to a breakdown of material costs, labor costs, labor rates by trade, and Work classification and overhead rates in support of Construction Manager's Change Proposal Request. The Construction Manager's Change Proposal Request must include any schedule revisions and an explanation of the cost and schedule impact of the extra work on the Project. Construction Manager's Fee for overhead and profit on Change Orders shall be as provided and subject to Article 4. Subcontractor's overhead and profit on Change Orders shall be as provided in Article 4. The Change Proposal Request may be accepted or modified by negotiations between the Construction Manager and the City. Subject to 21.2 below, if the Construction Manager proceeds with such Work without obtaining a written Change Order it shall be assumed that Construction Manager has performed such Work at no additional charge. The requirement for written Change Orders under this Article cannot be waived.

21.3 **Extra Work Directives.** An "Extra Work Directive" is a written order prepared by the Architect and signed by the Project Manager, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The City may by Extra Work Directive, without invalidating the Agreement, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly via Change Order. An Extra Work Directive shall be used in the absence of total agreement on the terms of a Change Order. Immediately upon receipt of the Extra Work Directive, the Construction Manager shall be obligated to proceed with the Work set forth in that directive and shall advise the Project Manager of the Construction Manager's agreement or disagreement with the method, if any, provided in the Extra Work Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

21.3.1 An Extra Work Directive signed by the Construction Manager indicates the Construction Manager's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

21.3.2 If the Construction Manager does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Project Manager shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, as calculated below in subparagraph 21.2.3.

- 21.3.3 Compensation for the proposed changed work (the “Extra Work”) in the Extra Work Directive in the event of the parties’ inability to agree upon a mutually satisfactory price shall be as follows:
- 21.3.3.1 No payment will be made to the Construction Manager for Extra Work in excess of "Actual and Necessary Cost" which is to say labor and materials as set forth in Paragraph 21.2.3.2 below plus Construction Manager’s Fee as stipulated in Article 4. This will not vary, whether the Extra Work is performed by the Construction Manager or its Subcontractor. Any exceptions must be approved by the Project Manager.
- 21.3.3.2 “Actual and Necessary Net Cost” shall be deemed to include the actual and necessary cost of the Extra Work for (i) labor, which includes wages, payroll deductions, if any, made by the Construction Manager as employer pursuant to bona fide collective bargaining labor agreements applicable to the Work which are otherwise deemed to be Costs of the Work pursuant to Article 7; (ii) contributions to the State Unemployment Insurance Law which are otherwise deemed to be Costs of the Work pursuant to Article 7, (iii) excise taxes pursuant to Federal Social Security Act which are otherwise deemed to be Costs of the Work pursuant to Article 7; (iv) any increases in insurance or performance and payment bonds occasioned solely by the Extra Work which are otherwise deemed to be Costs of the Work pursuant to Article 7, (v) the actual and necessary operating expenses (except the expense of supplies and small tools not operated by mechanical or electrical power) for equipment and a reasonable rental for the same (including small power tools), if any, as determined by the Project Manager which are otherwise deemed to be Costs of the Work pursuant to Article 7; and (vi) any additional materials necessary for the performance of the Extra Work which are otherwise deemed to be Costs of the Work pursuant to Article 7.
- 21.3.4 In case any Extra Work shall be required to be done or furnished under the provisions of this Article 21.2, the Construction Manager shall within seven (7) days furnish to the City such documentation as the City may require to support all the costs of the Extra Work. If payments on account are desired as the Extra Work progresses, the Construction Manager shall render an itemized statement showing the total amount expended for each class of labor and for each kind of material on account of each item of Work as a condition precedent to the inclusion of such payment in a partial estimate. Upon the request of the City, the Construction Manager shall produce for audit by the City, books, vouchers, collective bargaining labor agreements, records or other documents showing the actual cost for labor and materials. Such documents shall not be binding on the City. The Project Manager shall determine any questions or dispute as to the correct cost of such labor or materials or equipment. Payment of any amount under this Article shall be subject to subsequent audit and approval, disapproval, modification or revision by representatives of the City.
- 21.3.5 Pending final determination of the total cost of an Extra Work Directive to the City, the Construction Manager may request payment for Extra Work completed under the Extra Work Directive in Applications for Payment. The

Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 22 ("Resolution of Disputes").

ARTICLE 22

TERMINATION BY THE CONSTRUCTION MANAGER

22.1 If the Architect fails to issue a Certificate of Payment for a period of thirty (30) days through no fault of the Construction Manager and there are no deficiencies with the Application for Payment, or if the City fails to make undisputed payment for a period of twenty-five business days from the date that the Architect has certified payment, the Construction Manager may, after fourteen (14) calendar days' written notice to the City and the Project Manager in which time the City shall have the opportunity to cure, terminate this Agreement and recover from the City payment for actual and documented expenditures for the Cost of the Work plus Construction Manager's Fee, but which sum shall never exceed the Contract Sum, as may be adjusted, less payments made, less the cost to complete any remaining Work, less the cost to correct any damaged, defective, or non-conforming Work, and any setoffs to which the City is entitled under this Agreement. This sum shall be Construction Manager's sole remedy under this Agreement.

ARTICLE 3

TERMINATION BY THE CITY

23.1 **Termination for Cause.** If the Construction Manager breaches the conditions and obligations imposed by the Contract Documents, or if Construction Manager makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of its insolvency, or if Construction Manager persistently or repeatedly refuses or fails, except in cases for which an extension of time is granted, to supply properly skilled workers, or proper materials in accordance with the Contract Documents, or if Construction Manager fails to make prompt payment to subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of any provision of the Contract Documents, then the City may, without prejudice to any right or remedy and after giving the Construction Manager five calendar days' written notice, terminate this Agreement and take possession of the site and all of Construction Manager's equipment, tools and materials and finish the Work by whatever method the City deems expedient. In such case, if applicable, the Construction Manager shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work (which costs of finishing the Work include compensation for the Project Manager's services and expenses made necessary thereby and all other damages incurred by the City), such excess shall be paid to the Construction Manager. If such costs and damages exceed the unpaid balance, the Construction Manager and/or Surety shall promptly pay the difference to the City. This provision shall in no way limit City's right to claims for any additional damages, including but not limited to, liquidated damages, damages

for defective or nonconforming Work, and all damages and setoffs allowable to the City in accordance with this Agreement, for which the Construction Manager, and the Surety shall be liable. If, after notice of termination for cause, it is determined for any reason that the Construction Manager was not in default, the rights and obligations of the City and Construction Manager shall be the same as though the termination had been a Termination for Convenience, as set forth in Paragraph 23.2 below.

23.2 **Termination for Convenience.** The City may also terminate this Agreement for the City's convenience and without cause upon twenty (20) calendar days' written notice to the Construction Manager; except where the Construction Manager anticipatorily repudiates the Agreement, the City may immediately, without prior notice, terminate this Agreement for the City's convenience and without cause. If the Construction Manager is terminated for convenience, the Construction Manager shall be paid for actual and documented expenditures for Costs of the Work, plus Construction Manager's Fee on the Cost of the Work, plus reasonable and documented demobilization costs, less payments made and damages for any defective or non-conforming Work, and less any amounts that the City is entitled to withhold pursuant to the terms of this Agreement and by law. The City shall not be liable to the Construction Manager for lost profits on any Work not performed, home office overhead, or any other type of consequential, special or indirect damages and Construction Manager hereby waives same. All costs must be fully supported by the Construction Manager's invoices and other documentation acceptable to the City, and shall be subject to the City's audit.

ARTICLE 24 **WAIVER OF CONSEQUENTIAL DAMAGES**

24.1 Construction Manager waives claims against the City for consequential damages arising out of or related to this Agreement or its performance including but not limited to damages for lost income, profit, lost bonding capacity, financing, business and reputation, or for loss of management or labor productivity, damages incurred for principal office expenses, including the compensation of personnel stationed there, and for anticipated profit on any Work not performed under this Agreement.

ARTICLE 25 **RESOLUTION OF DISPUTES: GOVERNING LAW AND VENUE**

25.1 Construction Manager understands and agrees that all claims by Construction Manager against the City based upon an alleged violation of the terms of this Agreement by the City shall be submitted for resolution in the following manner. Any claims by Construction Manager arising under this Agreement shall be submitted in writing, with all supporting documentation, to the City Manager as identified in Article 33 ("Written Notice") with a copy to the Project Manager. Upon receipt of said notification City Manager or designee shall review the issues relative to the dispute or Claim, and issue a written finding within ninety (90) calendar days from the date of submission of the dispute or Claim consistent with Section 2-953 of the City of Coral Gables Code of Ordinances, unless City Manager or designee requires additional time to gather information or allow the parties to provide additional information. During the pendency of any dispute and after a determination thereof, the Construction Manager, Project

Manager, City Manager and City shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction. The decision of City Manager shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not be supported by substantial evidence. A party may seek judicial relief pursuant to the Florida Rules of Appellate Procedure, provided that the claimant shall not be entitled to such judicial relief if they have not followed the procedure outlined herein.

25.2 The Contract Documents shall be construed under and in accordance with the laws of the State of Florida. Any legal proceeding arising from the Contract Documents shall be brought only in a court of competent jurisdiction in Miami-Dade County, Florida.

25.3 **Attorneys' Fees.** In connection with any litigation including appellate proceedings arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

ARTICLE 26 **WAIVER OF TRIAL BY JURY**

26.1 The parties to this Agreement hereby agree to exhaust all administrative remedies before filing a lawsuit in civil court to resolve the dispute. **CITY AND CONTRACTOR HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THE CONTRACT DOCUMENTS, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THE CONSTRUCTION OF THE WORK, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY.**

ARTICLE 27 **SUCCESSORS AND ASSIGNS**

27.1 The City and the Construction Manager each binds itself, its partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to this Agreement shall assign the Agreement or sublet it as a whole without the written consent of the other, nor shall the Construction Manager assign any monies due or to become due to it hereunder, without the prior written consent of the City.

ARTICLE 28 **MODIFICATION**

28.1 No change or modification of this Agreement shall be valid unless in writing and signed by all parties hereto. No waiver of any of the provisions of this Agreement shall be valid

unless in writing and signed by the party against whom it is sought to be enforced.

ARTICLE 29
RIGHTS AND REMEDIES

29.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

ARTICLE 30
SEVERABILITY AND WAIVER

30.1 The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

ARTICLE 31
INDEPENDENT CONTRACTOR & COMPLIANCE WITH LAWS

31.1 The Construction Manager acknowledges entering into this Agreement as an independent contractor, and that as such, Construction Manager shall therefore be responsible for the deposit and payment of any Federal Income Taxes, FICA, Unemployment Taxes or any similar fees or taxes that become due, and shall be responsible for the collection and payment of all withholdings, contributions and payroll taxes relating to Construction Manager's services, or those of employees of the Construction Manager. The City shall not withhold from sums payable to the Construction Manager, any amount whatsoever for Federal Income Taxes, FICA, Unemployment Insurance Taxes or any similar fees or taxes. Construction Manager, its employees or agents, will not be considered an employee of the City or entitled to participate in plans, distributions, arrangements or other benefits extended to City employees.

31.2 Nothing herein shall imply or shall be deemed to imply an agency relationship between the City and Construction Manager. Construction Manager, moreover, warrants that it fully complies with all Federal statutes and regulations regarding the employment of undocumented workers and others and that all employees performing work under this Agreement meet the citizenship or immigration status requirements set forth in Federal statutes and regulations. Construction Manager shall indemnify, defend, and hold harmless City, its commissioners, officers, and employees from and against any sanctions and any other liability which may be assessed against Construction Manager or City in connection with any alleged violation of any Federal statutes or regulations pertaining to the eligibility for employment of any persons performing work hereunder. Additionally, Construction Manager agrees and warrants that it shall comply with any and all applicable federal and state laws and regulations.

ARTICLE 32
ENTIRETY OF AGREEMENT

32.1 The City and Construction Manager agree that this Agreement (including the Contract Documents referenced herein) sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications between the City and Construction Manager pertaining to the Work, whether written or oral. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

ARTICLE 33
WRITTEN NOTICE

33.1 Written notice shall be deemed to have been duly served if delivered in person to the Construction Manager or the City or Project Manager, with a written receipt of acknowledgement of delivery, or shall be deemed to have been duly given on the date said notice was mailed by United States Certified or Registered Mail, Return Receipt Requested, postage prepaid, and addressed as follows (or to such other address as any party may specify by notice to all other parties as aforesaid):

For City:
City of Coral Gables
Personnel:
Michael P. Pounds
Chief Procurement Officer
2800 S.W. 72 Ave.
Miami, Florida 33155

For Project Manager:
Glenn Kephart
Director Public Works
City of Coral Gables
2800 S.W. 72nd Ave.
Miami, Florida 33155

For Architect:

WRITTEN NOTICE:

City Manager
City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134

With copies to:

City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134

For Construction
Manager; (Company
Qualifier)

SIGNATURE LINES TO FOLLOW ON SEPARATE PAGE

This Agreement is executed the day and year first above written in four (4) counterparts, each of which shall be deemed an original Agreement.

Approved as to Insurance:

Name: David Ruiz
Risk Management Division

CITY OF CORAL GABLES:

By: _____
Title: _____

Approved as to Insurance:

Name: David Ruiz
Risk Management Division

Approved as to form and
Legal sufficiency:

Name: Craig E. Leen
City Attorney

Approved by
Department Director or head of
Negotiations team as to
The negotiated business terms:

Name: Glen Kephart
Public Works Director

Approved as to Funds Appropriation:

Name: Diana Gomez
Financial Officer

Approved as to compliance with
Procurement Code:

Name: Michael P. Pounds
Chief Procurement Officer

ATTEST:

CONTRACTOR:

WITNESSES (2)

Print Name:

By: _____

Print Name:

Title: _____

EXHIBIT "A"

**3RFQ. No.
DATED**

,

EXHIBIT "B"

PROJECT DRAWINGS AND PLANS

EXHIBIT "C"

CONTRACTOR'S CERTIFICATE OF INSURANCE AND ENDORSEMENTS

EXHIBIT "D"

CONSTRUCTION MANAGER'S PAYMENT AND PERFORMANCE BONDS

BOND NO: _____

FORM OF PAYMENT BOND

BY THIS BOND, We _____,
as Principal ("Construction Manager"), and _____, as
Surety, are bound to the City of Coral Gables, Florida, as Obligee, (hereinafter "City"); in the
amount of _____ Dollars (\$
) for the payment whereof CONSTRUCTION MANAGER and Surety bind themselves, their
heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Construction Manager has by written agreement entered into a Construction
Contract, Bid/Contract No.: _____ awarded the _____ day of
,
20____, with the City which is by reference incorporated herein and made a part hereof, and
specifically includes provision for liquidated damages and other damages;

THE CONDITION OF THIS BOND is that if Construction Manager:

1. Pays City all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that City sustains because of default by Construction Manager under the Construction Contract; and
2. Promptly makes payments to all claimants as defined by Florida Statute 255.05(1) for all labor, materials and supplies used directly or indirectly by Construction Manager in the performance of the Construction Contract;

THEN CONSTRUCTION MANAGER'S OBLIGATION SHALL BE VOID;
OTHERWISE, IT SHALL REMAIN IN FULL FORCE AND EFFECT SUBJECT,
HOWEVER, TO THE FOLLOWING CONDITIONS:

- 2.1. A claimant, except a laborer, who is not in privity with Construction Manager and who has not received payment for its labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish to Construction Manager a notice that he intends to look to the bond for protection.

- 2.2. A claimant who is not in privity with Construction Manager and who has not received payment for its labor, materials, or supplies shall, within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, deliver to Construction Manager and to the Surety, written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment.
- 2.3. No action for the labor, materials, or supplies may be instituted against Construction Manager or the Surety unless the notices stated under the preceding conditions (2.1) and (2.2) have been given.
- 2.4. Any action under this Bond must be instituted in accordance with the Notice and Time Limitations provisions prescribed in Section 255.05(2), Florida Statutes.

Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Construction Contract or the changes does not affect the Surety's obligation under this Bond.

DEFINITIONS

Construction Contract: For purposes of this Bond, the Construction Contract is the entire integrated agreement between the City and the Construction Manager, which includes the Agreement and other documents incorporated therein and all Contract Documents and the changes thereto.

Signed and sealed this ____ day of _____, 20__.

ATTEST:

(Secretary)

CONSTRUCTION MANAGER

(Name of Corporation)

By: _____
(Signature)

CORPORATE SEAL

(Print Name and Title)

_____ day of _____, 20__.

IN THE PRESENCE OF:

Address: _____

INSURANCE COMPANY:

By: _____

Print Name: _____

(Street)

(City, State and Zip Code)

Telephone No: _____

PERFORMANCE BOND

BOND NO: _____

AMOUNT: _____

KNOW ALL MEN BY THESE PRESENTS, that we, _____ a Corporation, as Principal (hereinafter called Construction Manager), whose principal business address and telephone number is _____ organized and existing under and virtue of the laws of the State of Florida, as Surety (hereinafter called Surety), and authorized to transact business within the State of Florida, whose principal business address and telephone number is _____, are held and firmly bound unto the City of Coral Gables, a Municipality of the State of Florida, as OBLIGEE (hereinafter called the City), in the sum of _____ Dollars (\$ _____), lawful money of the United States of America, for the payment of which, well and truly be made to the City, the Construction Manager and the Surety bind themselves and each of their heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents as follows:

WHEREAS, the Construction Manager has executed and entered into a Construction Contract, Bid/Contract No: _____, awarded the _____ day of _____, 20____, with City, which is by reference incorporated herein and made a part of this Bond as fully and completely as if set forth herein;

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT IF CONSTRUCTION MANAGER:

1. In all respects fully, promptly and faithfully complies with the terms and conditions of the Construction Contract for the construction of _____; and
2. Indemnifies and saves harmless the above City against and from all costs, expenses, damages including liquidated damages, attorney's fees, including appellate proceedings, injury, or loss to which said City may be subject by reason of any wrong doing, misconduct, want of care or skill, negligence, failure to complete within the prescribed time, failure to petition within the prescribed time, or default, including patent infringements, on the part of said Construction Manager, its agents or employees, in the execution or performance of said Construction Contract; and
3. Performs the guarantee and warranty of all work and materials furnished under the Construction Contract for the time specified in the Construction Contract;

THEN THIS BOND IS VOID; OTHERWISE IT WILL REMAIN IN FULL FORCE AND EFFECT for the term of the Construction Contract, including any and all warranty periods as specifically mentioned in said Construction Contract.

By incorporating the Construction Contract into its Performance Bond, the Surety consents to the

provisions of the Construction Contract wherein Construction Manager's and Surety's obligations are mentioned and further agrees that if the Construction Manager or any party for whom the Construction Manager is responsible fails to perform any of its obligations pursuant to the Construction Contract, then Surety will be liable to City for all damages City may sustain and be entitled to in law and pursuant to the Construction Contract including, but not limited to, all damages to correct defects or deficiencies in Construction Manager's Work, to cure defaults and breaches of the Construction Contract, to add manpower, for all delay damages including Liquidated Damages, to perform the Construction Manager's warranty or guarantee obligations pursuant to the Construction Contract, and pay City all damages City may be entitled to. The City shall simply give the Surety the same notices that City shall be required to give to Construction Manager pursuant to the Construction Contract to trigger Surety's liability.

The Surety is also obligated to the City without duplication for:

1. The responsibilities of the Construction Manager for correction of defective or deficient work, materials, and completion of the Construction Contract, including all Punch List work, the performance of all warranty and guarantee obligations, including those which arise subsequent to substantial and final completion of the Construction Contract,
2. Additional legal, design professional and delay costs resulting from the Construction Manager's Default, and resulting from the actions or failure to act pursuant to this Bond, and
3. Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance by the Construction Manager.

After notice of a default or breach from the City, the Surety shall be deemed to be in default on this Bond if the Surety fails to take appropriate action to cure the Construction Manager's default or breach thirty (30) days after receipt of the written default notice from the City to the Surety demanding that the Surety perform Construction Manager's obligations. Should the Surety not take reasonable action to cure the default or correct the breach within thirty (30) days the City shall be entitled to all damages as set forth herein or in the Construction Contract and enforce any other remedy available to the City.

The Surety shall indemnify, save harmless and pay the City after fifteen (15) days' additional notice from the City of the amount due.

The Surety shall be bound by any administrative decision made in accordance with the procedure for dispute resolution set forth in the Construction Contract.

Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within four (4) years after Construction Manager Default, or within four (4) years after the Construction Manager ceased working, or within four (4) years after the Surety refuses or fails to perform its obligations under this Bond, or within four (4) years after Surety is notified by City to correct Construction Manager's work, or within four (4) years after City has knowledge of a breach of any construction deficiency or breach of any contractor Warranty, or answer in

damages, whichever occurs later. However, in such event the statute of limitation on such action by City against Construction Manager, and against Surety, shall not begin to

run until knowledge by the City of the Construction Manager Breach. The statute of limitations for all claims arising under the Construction Contract except for claims for latent defects which are available to City, shall be governed by Section 95.11(2)(b), Florida Statutes. The statute of limitations for post- completion latent defects or deficiencies in materials or workmanship shall be governed by Section 95.11(3)(c), Florida Statutes.

The Surety for value received hereby stipulates and specifically agrees that no change involving any extension of time, or alteration or addition to the terms of the Construction Contract or to the Work to be performed, or materials, equipment or supplies to be furnished thereunder, or in the Plans, Drawings and Specifications accompanying the said Construction Contract shall affect the said Surety's obligation under this Bond and the said Surety does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Construction Contract or to the Work, or to the Plans, Drawings and Specifications or any other changes, compliance or noncompliance to the terms of the Construction Contract or to the work or to the Specifications.

DEFINITIONS

Construction Contract: For purposes of this Bond, the Construction Contract is the entire integrated agreement between the City and the Construction Manager, which includes the Agreement and other documents incorporated therein and all Contract Documents and the changes thereto.

Construction Manager Default: Failure of the Construction Manager, which has not been remedied, to perform or otherwise to comply with the Construction Contract.

IN WITNESS WHEREOF, the above parties bound together have executed this instrument this ___ day of _____, 20___, with the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to the authority of its governing body.

CONSTRUCTION MANAGER (Principal)

(Typed Name of Construction Manager)

By:

(Signature of Officer)

ATTEST:

(SEAL)

(Typed Name and Title)

SURETY

(Typed Name of Surety)

(Florida Resident Agent)

By: _____
(Signature of Attorney-in-fact. Attach
Power of Attorney)

STATE OF FLORIDA
_____ COUNTY

The foregoing instrument was acknowledged before me _____ day of _____, this _____, 20____ by _____ who is personally known to me or who has _____ produced as identification who has executed this Bond on _____ behalf of Surety and who did (did not) take an oath.

Notary Public, State of Florida

My commission expires

Stamp

IMPORTANT: Surety companies executing this Bond must appear on and have sufficient bonding capacity per the Treasury Department's most current list (circular 570 as amended) and be authorized to transact business in the State of Florida.

EXHIBIT "E"

CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT: _____

ENGINEER : _____

CITY OF CORAL GABLES

BID/AGREEMENT

NO.: _____

Attention: _____

CONSTRUCTION MANAGER: _____

NOTICE TO PROCEED DATE: _____

DATE OF ISSUANCE: _____

THE PROJECT (OR DESIGNATED PORTION) SHALL INCLUDE:

The Work performed under this Agreement has been reviewed and found to be Substantially Complete, and all documents required to be submitted by the Construction Manager under the Contract Documents for the achievement of Substantial Completion have been received and accepted. The Date of Substantial Completion of the Project or portion thereof designated above is hereby established as _____ (date), which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

DEFINITION OF DATE OF SUBSTANTIAL COMPLETION

The Date of Substantial Completion of the Work or portion thereof designated by the City is the date certified herein, when all conditions and requirements and permits and regulatory agencies have been satisfied and the Work is sufficiently complete in accordance with the Contract Documents that all requirements for Substantial Completion have been met and the Project is available for beneficial occupancy by the City.

An initial list of items to be completed or corrected (the "Punch List") is attached hereto. The failure to include any items on such list does not alter the responsibility of Construction Manager to complete all Work in accordance with the Contract Documents. The date of commencement of warranties for items on the attached list will be the date of final payment, unless otherwise agreed in writing.

Architect

Date

In accordance with Article 6.4 of the Agreement, the Construction Manager shall achieve final completion within thirty (30) days from the date of the delivery of the final Punch List to the Construction Manager.

The responsibilities of the City and Construction Manager for security, maintenance, heat, utilities, and insurance shall be as follows:

The initial Punch List of minor omissions and defects, as submitted by the Construction Manager, is as follows:

Project Manager

Date

EXHIBIT "F"
CERTIFICATE OF FINAL COMPLETION

Owner's Project No.
Project
Owner:
Construction Manager:

Architect:

Agreement Date:
Notice to Proceed Date:
Contractual Substantial Completion Date as modified by Change Orders:
Actual Substantial Completion Date:
Contractual Final Completion Date as modified by Change Orders:

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Construction Manager, Architect and COCG, the Punch List has been completed and the Work of the Contract is hereby declared to be Finally Complete in accordance with the Contract Documents on:

Date of Final Completion

This Certificate does not constitute an acceptance of any Work not in accordance with the Contract Documents nor is it a release of Construction Manager's obligation to complete the Work in accordance with the Contract Documents. The Warranty for all Work completed subsequent to the date of Substantial Completion expires one year from the date of this Final Acceptance.

Executed by Architect on: _____

By: _____

Construction Manager accepts this Certificate of Final Completion on: _____

By: _____

PM accepts this Certificate of Final Completion on: _____

By: _____

COCG accepts this Certificate of Final Completion on: _____

By: _____