

THIS DEVELOPMENT MANAGEMENT AGREEMENT (hereinafter, the "Agreement"), made and entered into this \_ day of \_\_\_\_\_, 2025 by and between the City of Coral Gables, Florida, a Florida municipal corporation (hereinafter, the "City"), and Ponce Park Residences, LLC, a Delaware limited liability company doing business in the State of Florida, (hereinafter, "Development Manager" or "AMCO").

**WITNESSETH:**

**WHEREAS**, the City desires to enter into an Agreement for the enhancements to: (i) portions of Ponce de Leon Boulevard from Almeria Avenue to University Drive (the "Boulevard Improvements"); and (ii) Ponce Circle Park (the "Park Enhancements") (collectively, the "Ponce Park Project"), and

**WHEREAS**, Development Manager is the developer/Owner of a 57-unit, luxury condominium project with accessory retail uses located on an assemblage bonded by Catalonia Avenue on the north, Ponce de Leon Boulevard and University Drive on the East, and Malaga Avenue on the South (the "AMCO Project"), which Development Manager intends to construct concurrently with the Ponce Park Project; and

**WHEREAS**, as proffered by Development Manager and incorporated into the conditions of approval listed in Resolution 2024-107, Development Manager agreed to design, construct, and complete the Ponce Park Project with an estimated cost of \$8.9 million (the "Ponce Park Project Cost"). The City has agreed to tender up to \$5.3 million (the "City Contribution") towards the Ponce Park Project Costs. Development Manager has agreed to pay all Ponce Park Project Costs which exceed the City Contribution so as to complete the Ponce Park Project (the "AMCO Contribution"); and

**WHEREAS**, the City wishes to enlist the services of the Development Manager to complete the Ponce Park Project and Development Manager represents that it possesses the requisite expertise to execute the Ponce Park Project and to act as the development manager for the City as set forth herein; and

**WHEREAS**, this Agreement serves a municipal purpose and primarily effectuates a public purpose furthering the general health, safety and welfare of the City as it enhances, improves and embellishes the public infrastructure and rights-of-way, and thoroughfares in the "Arts & Crafts" section of the City which has undergone a recent renaissance; and

**WHEREAS**, pursuant to Resolution No. 24-\_\_\_\_\_, passed on \_\_\_\_\_, 2025, the City Commission allocated the required City Contribution to secure the AMCO Contribution offered by the Development Manager to complete the Park Improvements and approve this Agreement; and

**WHEREAS**, this Agreement contemplates a maximum City Contribution of \$5.3 million from the City's Capital Improvements Program, and no other charge against the general funds or accounts of the City; and

**WHEREAS**, Development Manager has agreed to retain qualified professionals to

perform the scope of work comprising the Ponce Park Project, as described herein below, within the available funds and cover the costs of any funding shortfalls to complete the desired improvements; and

**WHEREAS**, the City Commission has authorized the City Manager to execute and enter into this Agreement by its adoption of Resolution No. 24-\_\_\_\_\_ on \_\_\_\_\_, 2024;

**NOW THEREFORE**, in consideration of the mutual covenants set forth herein the City and Development Manager, agree as follows:

## **SECTION 1 - TERMS AND CONDITIONS**

### **1. INCORPORATION BY REFERENCE; OVERVIEW**

The foregoing recitals, the Exhibits to this Agreement, ordinances and resolutions referenced in this Agreement are all deemed as being incorporated by reference herein as if set forth in full in this Section of the Agreement. This Agreement covers the services of Development Manager for the design, permitting, and installation of improvements comprising the Ponce Park Project. The Work under this Agreement will be solely performed over areas which are owned and maintained by a public agency (e.g. City, County or State). No work under this Agreement will be performed on privately owned property. The Development Manager, through appropriately licensed contractors and/or design professionals retained by the Development Manager, shall: (i) execute the construction of the permitted Boulevard Improvements; (ii) develop and permit final design plans for the improvements comprising the Park Enhancements (the “Final Park Design Plans”); and (iii) construct the Park Enhancements in accordance with the Final Park Design Plans. The Final Park Design Plans shall be developed in accordance with the process in Article 5 hereinbelow and approved by the City Commission and any other City departments. The City shall have certain approval rights related to the Ponce Park Project, including but not limited to the approval of the Final Park Design and approval of reimbursements of costs related to the Ponce Park Project all as set forth herein, but Development Manager shall be responsible for engaging all consultants, contractors and other persons necessary to complete the Ponce Park Project, consistent with this Agreement.

### **2. INTENTION OF CITY**

It is the intent of City to have the Ponce Park Project constructed in accordance with the Ponce Park Project Plans and in accordance with all codes and regulations governing construction of the Ponce Park Project. Any work, materials or equipment that may reasonably be inferred from the Ponce Park Project Plans as being required to produce the intended result shall be supplied by Development Manager, through its Contractor(s), whether or not specifically called for. When words, which have a well-known technical or trade meaning, are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of contract approval and Development Manager shall require that Contractor

comply therewith. City shall have no duties other than those duties and obligations expressly set forth herein. It is the intent of the City that Development Manager engage the necessary A/E, Contractor(s) and others for the full performance of the Ponce Park Project, manage and administer such contracts, and make payment of amounts due to all persons providing such labor, services and materials. The City retains certain rights and approvals pursuant to this Agreement and the City has agreed to contribute payment up to the City Contribution, but the City's retained rights and approvals shall not relieve Development Manager of its obligations and/or create rights by the A/E, Contractor or other persons engaged by Development Manager against the City.

### **3. DEFINITIONS**

- i. **AMCO Contribution** shall have such meaning set forth in the recitals hereinabove.
- ii. **AMCO Project** refers to the 57-unit luxury condominium project with accessory retail described in the recitals hereinabove.
- iii. **AMCO Project TCO** shall have the meaning ascribed to such term in Article 7 hereinbelow.
- iv. **Architect/Engineer** means the Architectural and/or Engineering firm(s) retained by the Development Manager for the preparation of the Park Enhancement Plans in connection with the Ponce Park Project. Development Manager's selection of any architectural or engineering firm shall be approved by the City in writing. The Architectural and/or Engineering firms are referred to herein as the A/E.
- v. **Bond** shall have such meaning ascribed to such term in Article 14 hereinbelow.
- vi. **Boulevard Improvements** means the improvements to portions of the Ponce de Leon Boulevard right-of-way between Almeida Avenue to University Drive designed and permitted by the City.
- vii. **City** means the City of Coral Gables, Florida, a Florida municipal corporation. In all respects hereunder, City's performance is pursuant to the City's capacity as 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 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, "City" without modification shall mean the City Manager or Director, or their designee(s), as applicable. City sometimes referred to herein as "Owner."
- viii. **City Commission** means the legislative body of the City of Coral Gables.
- ix. **City Contribution** means a maximum amount of Five Million Three Hundred Thousand and No/100 Dollars (\$5,300,000.00) contribution provided by the City to underwrite a portion of the Ponce Park Project Cost.

- x. **City Manager** means the duly appointed chief administrative officer of the City of Coral Gables.
- xi. **Construction Change Directive** means a written directive to effect changes to the Ponce Park Project, prepared by the A/E and or Development Manager and executed by the City.
- xii. **Contract Documents** means the documents described in Section 1, Article 7 of this Agreement.
- xiii. **Contractor** means the entity responsible, pursuant to its Construction Agreement with Development Manager or its related companies for performing the Construction Work and who is licensed, bonded, and insured to perform the Ponce Park Project in accordance with the terms of the Agreement(s) between the Development Manager or its affiliates and the Contractor. The Contractor under this Agreement shall be a licensed general contractor selected by the Development Manager and approved by the City in writing, which approval shall not be unreasonably withheld, conditioned or delayed. The Contractor's means and methods of construction shall be performed by it under applicable laws, rules, regulations, codes and construction practices. If more than one entity is engaged for the Construction Work, references to "Contractor" shall mean all such entities.
- xiv. **Construction Agreement** means the agreement between Development Manager and the Contractor for all or portion of the Ponce Park Project.
- xv. **Construction Work** means all of the construction elements of the Ponce Park Project required by this Agreement, but excludes any professional services of any architect, professional engineer, landscape architect, or registered surveyor and mapper, or design criteria professional.
- xvi. **Contract Time** means the time period defined in this Agreement for the Development Manager to complete the Ponce Park Project.
- xvii. **Cure** means the action taken by the Development Manager, either directly or through its Contractor, promptly after receipt of written notice from the City of a breach of the Agreement for the Ponce Park Project, which shall be performed at no cost to the City, to repair, replace, correct, or remedy all material, equipment, or other elements of the Project or the Agreement affected by such breach, or to otherwise make good and eliminate such breach, including, without limitation, repairing, replacing or correcting any portion of the Ponce Park Project site disturbed in performing such cure.
- xviii. **Cure Period** means the period of time in which the Development Manager is required to remedy deficiencies in the Work or compliance with the Contract Documents after receipt of written notice to Cure from the City identifying the deficiencies and the time to Cure.
- xix. **Design Documents** means the construction plans and specification prepared by A/E(s)

for the Park Enhancements under separate agreement(s) with the Development Manager or Contractor, as applicable, and the permitted set of plans for the Boulevard Improvements prepared by the City.

- xx. **Development Manager** is the entity who provides development services for the City as Project Manager for the Design and Construction Phases of the Ponce Park Project covered by this Agreement. The Development Manager possesses the requisite training and experience to make decisions on behalf of the City and give advice on the time and cost consequences of design and construction decisions, scheduling, cost control, coordination of contract negotiations and awards, timely purchasing of critical materials and long-lead items, and coordination of development activities. The Development Manager under this Agreement is RC Acquisitions, LLC. The Development Manager is responsible for supervising and directing the Contractor for the work funded by this Agreement. Development Project Manager means the person designated by Development Manager as its lead representative to the City. The person is an agent of the Development Manager and his or her actions bind the Development Manager. The Development Manager shall have the authority to obligate and bind Development Manager and to act on all matters on behalf of Development Manager except for revisions to the Contract Documents.
- xxi. **Director** means the Director of the Department of Capital Improvements or his/her designee, who has the authority and responsibility for managing the Ponce Park Project under this Agreement.
- xxii. **Drawings** means the graphic and pictorial portions of the Ponce Park Project Plans which show the design, location and dimensions of the Construction Work to be performed, including, without limitation, all notes, schedules and legends on such Drawings as prepared by the A/E(s).
- xxiii. **Field Directive** means a written approval for the Development Manager to proceed with Work requested by the City or the A/E(s), which is minor in nature and should not involve additional cost.
- xxiv. **Final Completion** means the date subsequent to the date of Substantial Completion at which time the Development Manager, through its Contractor, has completed all the Ponce Park Project in accordance with the Agreement as certified by the A/E or the City and submitted all documentation required by the Agreement.
- xxv. **Final Park Design Plans** means the design plans for the Park Enhancements developed by the A/E for the Development Manager and approved by the City Commission.
- xxvi. **Notice To Proceed** means a written letter or directive issued by the Director or City's Project Manager acknowledging that all conditions precedent have been met and directing that the Development Manager, through its Contractor, may begin the Ponce Park Project or a specific task of the Ponce Park Project.

- xxvii. **Ponce Park Project** means a two-part public improvement project consisting of: (i) the construction of the permitted Boulevard Improvements; and (ii) the design, permitting, and installation of the Park Enhancements.
- xxviii. **Ponce Park Project Cost** means the total cost of the Work, which amount is estimated at Eight Million Nine Hundred Thousand and No/100 Dollars (\$8,900,000.00).
- xxix. **Ponce Park Project Plans** means the Final Park Design Plans and permitted plans for the Boulevard Improvements which comprise both phases of the Ponce Park Project.
- xxx. **Project Manager** means an employee or representative of the City assigned by the Director to monitor the Ponce Park Project to be performed under this Agreement and the design and construction of the Ponce Park Project which has not been delegated to the Development Manager.
- xxxi. **Punch List** means a compilation of items of Construction Work required to be performed by, or through the Development Manager prior to or after the Substantial Completion inspection and prior to Final Completion and payment.
- xxxii. **Record Set** means the copy of the Drawings, Specifications, and other modifications of the Agreement to be maintained at the Project site by the Contractor, in good order and marked currently to record changes and shall include additions, revisions, modifications, change orders, approved substitutions, shop drawings and accurate dimensioned locations for items recorded, including but not limited to, all underground utilities.
- xxxiii. **Request For Information (RFI)** means a request from the Contractor seeking an interpretation or clarification by the A/E(s) relative to the Agreement and/or the Drawings. The RFI, which shall be clearly marked RFI, shall clearly and concisely set forth the issue(s) or item(s) requiring clarification or interpretation and why the response is needed. The RFI must forth the Contractor's interpretation or understanding of the document(s) in question, along with the reason for such understanding.
- xxxiv. **Risk Administrator** means the City's Risk Management Administrator, or designee, or the individual named by the City Manager to administer matters relating to insurance and risk of loss for the City.
- xxxv. **Schedule of Values** means a written schedule setting forth the detailed and itemized cost breakdown, inclusive of labor, material, and taxes of all elements of the Ponce Park Project. The schedule of values shall be used to bill against monthly based on a percentage of completion.
- xxxvi. **Specifications** as used herein means the portion of the Contract Documents which are the written requirements for the materials, equipment, systems, standards and workmanship for completion of the Ponce Park Project and performance of related services.

**Sub-Contractor(s)** means a person or entity other than material person or laborer that has a direct contract with the Contractor to perform or supply a portion of the Construction Work. Development Manager, through its Contractor, shall be solely responsible for and have control over the Sub-Contractors.

- xxxvii. **Submittals** mean documents prepared by the Development Manager, Contractor or those working on their behalf to show a particular aspect of the Construction Work is to be fabricated and installed. Such submittals include shop drawings, product data, samples, mark-ups, test results, warranties, maintenance agreements, Project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and any other information described in the Agreement.
- xxxviii. **Substantial Completion** means that point at which the Construction Work is at a level of completion in substantial compliance with the Agreement such that the City and members of the general public can use, occupy, and/or operate the facility in all respects to its intended purpose. Substantial Compliance shall not be deemed to have occurred until any and all governmental entities, which regulate or have jurisdiction over the Project, have inspected, and approved the Ponce Park Project.
- xxxix. **Work** as used herein refers to all pre-construction, construction and other services required by the Contract Documents, including all design, engineering, labor, materials, equipment, procurement and services needed to complete the Ponce Park Project.

#### **4. SCOPE OF WORK**

Development Manager, either itself or through its Contractor, shall provide all management, supervision, manpower, equipment, tools, and all other necessary goods and services for the design, approval and construction of the fully completed Ponce Park Project.

#### **5. FINAL PARK DESIGN PLAN DEVELOPMENT**

It is the express intent of the City and Development Manager that the Final Park Design Plans be developed in consultation with the City and neighborhood stakeholders. The Development Manager will work with the City to coordinate three (3) public meetings. The Final Park Design Plans will be approved by the City Commission following a public hearing. Approval of the Final Park Design Plan shall not be considered approval or acceptance of any design error or omission in the Final Park Design Plan. The anticipated design and construction schedule is attached hereto as **Exhibit “\_\_”**.

#### **6. CONTRACT VALUE AND PROJECT COST**

The Development Manager shall comply with the terms of this Agreement for no monetary compensation, but Development Manager acknowledges the receipt and sufficiency of the consideration set forth herein. Payments shall be made for elements of the Ponce Park Project performed and accepted by the City up to the City Contribution in accordance with this Agreement. Total cost to complete the Ponce Park Project is estimated at approximately \$8.9 million funded

under this Agreement by the City Contribution and the AMCO Contribution. The Development Manager shall cover all cost overruns necessary to complete the Ponce Park Project. The parties expressly agree that no portion of the City Contribution shall be utilized to compensate any person or entity which would be subject to the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes. Development Manager, through the AMCO Contribution or otherwise, shall be full responsible to compensate for such services for the Ponce Park Project. Further, in no event shall the City be obligated to pay for any cost of the Ponce Park Project which is due to the act, error or omission of Development Manager, its Contractor, subcontractors, A/E or others engaged by or through Development Manager.

For the avoidance of doubt and notwithstanding any other provision of this Agreement, the City's maximum contribution for the Ponce Park Project Costs and any other labor, materials, services, and other costs in any way related to the Ponce Park Project shall be capped at the City's Contribution. No change order, field directive or other action or inaction by the City shall cause the City's Contribution to be exceeded. Further, notwithstanding any other provision of the Agreement, the parties acknowledge that the City's review of Applications for Payment, payment of any portion of the City's Contribution, or exercise of any right pursuant to this Agreement or applicable law shall be deemed to be an acceptance of any defective, deficient, or non-compliant Construction Work or other deviation from the requirements of this Agreement, any Construction Agreement, design obligation, or applicable laws, codes or ordinances.

#### **7. TIME IS OF THE ESSENCE; TIME FOR COMPLETION; TERM**

Time is of the essence in the performance of this Agreement. Development Manager, either itself or through its Contractor, will promptly perform its duties under the Contract Documents including, but not limited to the schedule attached hereto as Exhibit “\_\_\_”, which may be amended from time to time by agreement of the Parties for Excusable Delay, and will give the completion of the Ponce Park Project as much priority as is necessary to cause the Ponce Park Project to be completed on a timely basis in accordance with the Agreement and Contract Documents.

Development Manager shall ensure that all elements of the Ponce Park Project under this Agreement are substantially completed, as evidenced by certificate of occupancy or completion for the Boulevard Improvements and Park Improvements in accordance with the schedule attached hereto as Exhibit “\_\_\_”, which may be amended from time to time by agreement of the Parties for Excusable Delay (“Time for Completion”). In the event that less than 75% of the Ponce Park Project (such percentage to be set forth in the Schedule of Values) is completed prior to Development Manager's request for the issuance of a Temporary Certificate of Occupancy or its equivalent for the AMCO Project (the “AMCO Project TCO”), the City Manager shall only issue such AMCO Project TCO upon: (i) an assignment of the contract between Development Manager and Contractor for the completion of the Ponce Park Project; and (ii) Development Manager has provided a cash bond to the City in the total amount equal to the Ponce Park Project Cost, as the same may be increased by an approved Change Order, less any expended or unexpended portions of the City Contribution and AMCO Contribution previously paid to or presently held by the City.

Unless the City elects to complete the Ponce Park Project pursuant to the assignment provided by Development Manager described hereinabove, the Ponce Park Project shall achieve



Final Completion by no later than the date of the issuance of a final certificate of occupancy for the AMCO Project (the “Completion Date”). In no event shall the AMCO Project be issued a final certificate of occupancy prior to Final Completion. Notwithstanding the foregoing, the parties intend that the Ponce Park Project will be substantially completed concurrent with the issuance of a Temporary Certificate of Occupancy for the AMCO Project and as such, compliance with the schedule attached hereto as Exhibit “ ”, which may be amended from time to time by agreement of the Parties for Excusable Delay, shall be a material term of this Agreement.

## **8. CONTRACT DOCUMENTS**

The Contract Documents shall consist of this Agreement, the Drawings and Specifications, approved written interpretations and clarifications, Field Directives, Construction Change Directives, and any modifications. Any modification to this Agreement shall only be effective if it is reduced to writing, and duly executed by both parties, except a Field Directive or Constructive Change Directive shall be effective after approval and execution by Director or designee. The general intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Ponce Park Project by the Development Manager and its Contractor.

## **9. PRIORITY OF PROVISIONS**

If there is a conflict or inconsistency between any term, statement requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, the specifications and plans prepared by the A/E, or provision of this Agreement the following order of precedence shall apply:

In respect to the responsibilities of the City, this Agreement shall govern in all regards.

In the event of conflicts in the Contract Documents the priorities stated below shall govern:

- Revisions to the Contract Documents shall govern over the Contract Documents
- No section of the specifications or plans shall govern over the Contract Terms and Conditions

Final Park Design Plans and Specifications shall govern over plans and drawings. In the event of conflicts with the plans the priorities stated below shall govern:

- Schedules, when identified as such shall govern over all other portions of the plans
- Specific notes shall govern over all other notes, and all other portions of the plans, unless specifically stated otherwise
- Larger scale drawings shall govern over smaller scale drawings
- Figured or numerical dimensions shall govern over dimensions obtained by scaling

- Where provisions of codes, manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality shall govern

## **10. PAYMENT REQUESTS**

Development Manager may make application for payment to the City for Construction Work completed during the Ponce Park Project and designated engineering costs from Urban Robot related to the Boulevard Enhancements only at intervals of not more than once a-month (the "Application for Payment"). Development Manager's Application for Payment shall be accompanied by the Contractor's applicable for payment, invoices, receipts and other documentation required by this Agreement supporting the amounts requisition, along with a conditional partial release of liens relative to the Construction Work, which is the subject of the Application for Payment, and any other information reasonably required by the City. Each Application for Payment shall be submitted in triplicate to City's Project Manager for review.

City may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

- Defective Construction Work not remedied.
- Claims filed by other parties against Development Manager, Contractor or City because of Development Manager and/or Contractor's negligent performance of the Work.
- Failure to timely prosecute the Work, except when such failure to timely advance the Work is due to an Excusable Delay.
- Failure of Development Manager to make payments properly to its Contractor or Sub-Contractors or for material or labor arising out of the Work.
- Failure of Development Manager to provide any and all documents required by the Contract Documents.
- Failure of Development Manager to comply with this Agreement.
- In no case will the City make payments for any architect, professional engineer, landscape architect, or registered surveyor and mapper, or design criteria professional, except as expressly set forth above.
- In no case will the City make payments for any travel, transportation, or invoices not directly related to the Work.

Prior to submission to the City for approval, each Application for Payment must be reviewed, approved and certified by Development Manager and the A/E as follows: (1) as to Development Manager, that the Development Manager certifies that to the best of the Development Manager's knowledge, information, and believe the Work covered by the Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Development Manager and the Contractor for Work through the

date of the prior Application for Payment for which payment was received (whether payment was from City and/or the AMCO Contribution), and that the current payment shown is now due; (2) as to Development Manager, that all costs for which payment of or reimbursement of which are sought constitute valid, reasonable costs in accordance with the Construction Agreement and this Agreement; and (3) as to the A/E, that based on the on-site observations and the data comprising the Application for Payment, the A/E certifies to the City that to the best of the A/E's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents and all applicable laws, codes and regulations, and the Development Manager and/or Contractor is entitled to payment of the amount certified. No payment by the City of any amount pursuant to this Agreement shall be considered acceptance of defective, deficient or non-compliant work.

## **11. PAYMENT**

Payment by the City of an approved Application for Payment approved by the A/E shall be made within twenty-five (25) days after receipt of Development Manager's Application for Payment to the City, which shall be accompanied by reasonably sufficient supporting documentation and contain sufficient detail, to allow a proper audit of expenditures, should the City require one to be performed. All payment applications shall be sufficiently detailed so as to meet the definition of a "payment request" for construction services as said term is defined in §218.72, Fla Stat., the Definitions section of the "Local Government Prompt Payment Act." City acknowledges that payment will not be unreasonably withheld or delayed. No interest shall accrue on late payments.

Development Manager acknowledges that the City Contribution represents approximately fifty-nine and one-half percent (59.5%) of the Ponce Park Project Cost, while AMCO Contribution represents forty and one-half percent (40.5%) of the Ponce Park Project Cost, respectively. Payments made by the City in connection with each Application for Payment shall be for not more than 59.5% of the amount of the Application for Payment request with the balance payable from the AMCO Contribution. City's maximum responsibility shall be capped at the City Contribution. Development Manager is responsible for making payment to Contractor, A/E and any other persons engaged by or through Development Manager in accordance with their respective agreements with such persons and the Local Government Prompt Payment Act. Development Manager shall keep the City informed of all costs incurred with respect to the Ponce Park Project even if the City is not making payment of such amounts and/or when the City Contribution has been exhausted. Development Manager shall defend, indemnify and hold harmless the City from any and all claims, liabilities or damages for claims of non-payment by the Contractors, their subcontractors, consultants, and any person or entity working through or under the Contractors for the Ponce Park Project.

## **12. PROGRESS MEETINGS**

Development Manager and the City's Project Manager shall hold progress meetings as deemed necessary to ensure compliance with the schedule and the timely completion of the Work, but during construction, such meetings shall not occur more often than once a month, unless requested by City.

### **13. DEVELOPMENT MANAGER INDEMNITY**

Development Manager and Contractor, by contract or rider , addendum or amendment to its Construction Agreement with Development Manager, shall jointly and severally indemnify, defend, save and hold harmless City, its officers, agents, directors, and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, and costs to the extent caused by the negligence, recklessness or intentional wrongful misconduct of Development Manager and persons employed or utilized by Development Manager including, but not limited to Contractor, its Subcontractors, and A/E, in the performance of this Agreement and/or from any acts or omissions relative to the permitted work and/or to the services being performed by the Development Manager and/or the Contractor arising out of or related to this Agreement and/or the failure of either the Development Manager or the Contractor to perform their respective work in accordance with the terms of this Agreement, the design documents, the Construction Agreement between the Contractor and the Development Manager or the failure of either of them to perform their respective work in accordance with applicable laws, codes, rules and regulations. These indemnifications shall survive the term or cancellation of this Agreement. In the event that any action or proceeding is brought against City by reason of any such claim or demand, Development Manager shall, upon written notice from City, resist and defend such action or proceeding by counsel satisfactory to City. Notwithstanding anything to the contrary herein, Development Manager and Contractor shall not be required to provide an indemnification obligations beyond what is provided for in Florida Statutes, Sections 725.06 and 725.08, if (and as) applicable under Florida law.

The indemnification provided above shall obligate Development Manager to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense against any and all claims of liability and all suits and actions of every name and description arising by, through or related to this Agreement or related to any work, materials or equipment performed which is funded in whole or in part by this Agreement above which may be brought against City whether performed by Development Manager, or persons employed or utilized by the Development Manager.

This indemnity will survive the cancellation or expiration of this Agreement. This indemnity will be interpreted under and construed to conform to the laws of the State of Florida, including without limitation and interpretation §725.06 and/or §725.08, Fla. Statutes, if applicable. Notwithstanding anything to the contrary herein, Development Manager shall not be required to provide any indemnification obligations beyond what is provided for in §725.06(2) and (3), Fla. Statutes., if applicable under Florida law. Additionally, Development Manager shall not be required to indemnify the City for the City's own negligence.

Development Manager shall require all construction agreements it has with the Contractor include a provision that they will indemnify the City consistent with the obligations sent forth herein and shall require the Contractor(s) to include such indemnification obligations in its subcontract agreements.

The Development Manager agrees and recognizes that the City shall not be held liable or responsible for any claims which may result from any actions or omissions of the Development Manager in which the City participated either through review or concurrence of the Development

Manager's actions. **In reviewing, approving or rejecting any submissions by the Development Manager or Contractor or other acts of the Contractor, the City in no way assumes or shares any responsibility or liability of the Development Manager, Contractor or Subcontractor under this Agreement. Further, no action by the City shall be construed to be acceptance of any defective, deficient or non-compliant Work or services.**

No Waiver of Sovereign Immunity. Nothing contained in this Paragraph 13 or in this Agreement shall be construed to be a waiver of the Sovereign Immunity of the City or otherwise modify any provision of Section 768.28, Florida Statutes.

#### **14. INSURANCE/BONDING**

The Development Manager shall not authorize the initiation of any element of the Ponce Park Project under this Agreement until the Development Manager has obtained, or required its Contractor to obtain: (i) the insurance required; and (ii) the City's Risk Management Director has approved such insurance. The insurance listed on **Exhibit** attached to this Agreement will be the required insurance for this Agreement.

On or before the commencement of any Work funded by this Agreement, Development Manager shall require its Contractor to obtain a Payment and Performance Bond in the minimum amount of Eight Million and Nine Hundred Thousand (\$8,900,000.00) Dollars or the full value of the Construction Agreement such that the full cost of the Construction Work for the Ponce Park Project is covered by a Payment and Performance Bond, whichever is greater, in substantially the form prescribed by § 255.05, Fla. Stat., naming the City of Coral Gables as the obligee of such bond guaranteeing to the City the full completion of the Ponce Park Project as well as full payment of all suppliers, laborers, contractors, and subcontractors who performed work on or provided materials for the Ponce Park Project (hereinafter, the "Bond"). The City shall have all rights to enforce the bonds, but City shall not be obligated to pay any amounts beyond the City's Contribution and Development Manager shall be obligated whether to the City or the Surety which exceed the City's Contribution. The Bond(s) shall be subject to the City's prior approval. Such Bond will provide that the contractor named in the bond will properly and timely pay all legal debts arising from the construction work and will perform the any portion of the Ponce Park Project referenced in this Agreement in accordance with the terms of this Agreement, all applicable laws, codes and regulations, and its Construction Agreement with the Development Manager. The Bond will be furnished to the Director prior to the commencement of any element of the Ponce Park Project under this Agreement. The Bond will be issued by a surety licensed to do business in the State of Florida and rated AV or better per A.M. Best's Key Rating Guide, latest edition. Both Payment and Performance Bonds will be active for the duration of this Agreement and the Performance Bond shall remain in effect during the Warranty Period provided in this Agreement.

Further, Development Manager shall provide a cash bond as required by City of Coral Gables, Florida Resolution No. 2024-107 pursuant to a cash bond agreement in a form acceptable to and approved by the City Attorney. The cash bond agreement shall be executed, and the cash bond shall be posted, prior to the issuance of the first City permit for vertical construction of the AMCO Project.

**15. MODIFICATIONS TO COVERAGE AND OWNER'S CONTROLLED INSURANCE PROGRAM**

The City through its Risk Management Director or authorized designee reserves the right to require modifications, increases, or changes in the required insurance requirements, coverage, deductibles or other insurance obligations and shall provide a thirty (30) day written notice to the Development Manager. In that event Contractor shall comply with such request unless the insurance coverage is not then readily available in the national market and may request additional consideration from City accompanied by justification. All additional cost will be borne by the Development Manager or Contractor, as applicable.

Notwithstanding the insurance requirements required by the City in this Agreement, the City acknowledges that Development Manager may elect to implement an Owner Controlled Insurance Program ("OCIP") for the Ponce Park Project the details of which are consistent with policy attached hereto as Exhibit " ". To the extent there is any conflict between the City's insurance requirements of this Agreement and the Development Manager's OCIP, the City's insurance requirements shall control unless expressly agreed by the City in writing. The parties shall reasonably cooperate with each other to coordinate the City's insurance requirements with those of the OCIP.

**16. DISCRETION OF DIRECTOR**

Any matter not expressly provided for herein dealing with the City or decisions of the City shall be within the exercise of the reasonable professional discretion of the Director or the Director's authorized designee.

**17. AUTHORITY OF THE CITY PROJECT MANAGER**

The Project Manager shall have authority to act on behalf of the City to the extent provided by the Agreement, unless otherwise delegated to the Development Manager or modified in writing by the City. All instructions to the Development Manager shall be issued in writing. All instructions to the Development Manager shall be issued through the Director or Project Manager.

The Project Manager shall have access to the Ponce Park Project Site. The Development Manager shall provide safe facilities for such access so the Project Manager may perform their functions under the Agreement. The Project Manager may make periodic visits to the Project Site.

The Project Manager will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Construction Work, and will not be responsible for the Development Manager's (through its Contractor) failure to carry out the Construction Work in accordance with the Agreement.

The Project Manager will have authority to reasonably reject Construction Work that does not conform to the Contract Documents requirements. Whenever, in his or her opinion, it is considered necessary or advisable to ensure the proper implementation of the Contract Documents, the Project Manager will have authority to require special inspections or testing of the Construction Work, whether or not such Construction Work is fabricated, installed or completed. Neither the Project Manager's authority to act under this Article, nor any decision made by him/her in good

faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Project Manager to the Development Manager, Contractor any Sub- Contractor, supplier or any of their agents, employees, or any other person performing any of the Construction Work. All interpretations and recommendations of the Project Manager shall be consistent with the intent of the Contract Documents.

The Project Manager will not be responsible for the acts or omissions of the Development Manager, its Contractor, or anyone employed or contracted directly or indirectly by the Development Manager, including any Sub-Contractor, or any of their agents or employees, or any other persons performing any of the Work.

#### **18. OWNERSHIP & USE OF DOCUMENTS**

The Drawings, Specifications and other documents prepared by the A/E(s), and copies thereof furnished to the Development Manager and/or its Contractor, are for use solely with respect to this Agreement. Development Manager shall ensure that the City has the right or license to utilize the Drawings, Specifications and other documents in all manners necessary for the Ponce Park Project and the maintenance thereof.

#### **19. CONTINUING THE WORK**

Development Manager through its Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with City, including, without limitation, disputes or disagreements concerning the Contract timeframe for completion of the Work. The Work shall not be delayed or postponed pending resolution of any disputes or disagreements. All disputes shall be resolved in accordance with Article 46 Mediation- Waiver of Jury Trial.

#### **20. CONSTRUCTION AGREEMENT**

- a. Development Manager shall require that the Construction Agreement comply with all terms of this Agreement and execution by the Development Manager of the Construction Agreement is a representation to the City as follows: i) The Contractor is financially capable of performing the Ponce Park Project Work; (ii) the Contractor has sufficient equipment, workers, and work experience in performing sewer improvements similar to the Ponce Park Project Work; (iii) the Contractor has not been declared in default or terminated on any project with any other municipality, county or other governmental entity in the state of Florida; and (iv) the Contractor has demonstrated management competency, labor compliance, and safety record required for the completion of the Ponce Project Work.
- b. The Construction Agreement shall provide that the City has third party beneficiary rights in the Construction Agreement. However, the City has no direct obligations to the Contractors under the Construction Agreement or this Agreement. The Construction Agreement shall incorporate the provisions of this Agreement applicable to the Contractors including but not limited to insurance, indemnity and warranty. Further, the Construction Agreement shall provide that upon the default of Development Manger under this Agreement, the City, at its sole discretion, may

take assignment of the Construction Agreements and the Contractors shall be obligated to continue performance for the City.

- c. The Construction Agreements shall contain a provision requiring the Contractor to provide written notice to the City of any defaults of Development Manager under the terms of the Construction Agreement, not cured after proper notice. In the event the Contractor declares Development Manager to be in default under the terms of the Construction Agreement, and Development Manager fails to remedy the default within the notice and cure period provided in the Construction Agreements, then the City, in its sole discretion, shall have the right to take an assignment of Development Manager's rights and obligations under the Construction Agreement. Development Manager shall be solely responsible for all costs incurred by the City in completing the Ponce Project Work beyond the City's Contribution. All such costs shall be immediately due and payable upon demand.

Nothing in the foregoing paragraphs shall require the City to take an assignment of the Construction Agreement. Furthermore, should the City elect to take an assignment, Development Manager shall be liable to the City for all damages the City may sustain as result of either a default by Development Manager or by the Contractor under the Construction Agreement as a result of the acts of omissions of Contractor or Development Manager.

## **21. PUBLIC ENTITY CRIMES**

In accordance with the Public Crimes Act, Section 287.133, Florida Statutes, a person or affiliate who is a contractor, consultant or other provider, who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the City, may not submit a bid on a contract with the City for the construction or repair of a public building or public work, may not submit bids on leases of real property to the City, may not be awarded or perform work as a contractor, supplier, or subcontractor, under a contract with the City, and may not transact any business with the City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section by Development Manager shall result in cancellation of the City purchase and may result in Development Manager's debarment.

## **22. NON-DISCRIMINATION: EQUAL EMPLOYMENT OPPORTUNITY & AMERICANS WITH DISABILITIES ACT**

Development Manager warrants and represents that it does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with Development Manager or its Contractor's performance under this Agreement on account of race, color, sex, religion, age, handicap, marital status or national origin. Development Manager further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status or national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Agreement.



Development Manager and its Contractor shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Development Manager shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

## **23. AUDIT RIGHTS**

At any time during normal business hours and after reasonable notice has been provided, there shall be made available to the City and/or representatives of the City to audit, examine, and make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other reasonable data in Development Manager's possession and relating to this Agreement or the Work. It is further understood that all records and supporting documents pertaining to this Agreement and the Work shall be maintained for a minimum period of four (4) years. The retention and access period starts from the date of the submission of the annual performance and evaluation report in which the specific activity is reported for the final time.

Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept in accordance with such statute. Otherwise, for the purpose of such audits, inspections, examinations and evaluations, the City's agent or authorized representative shall have access to said records from the effective date of this Agreement, for the duration of the Work, and until 4 years after the date of final payment by the City to Construction pursuant to this Agreement.

The City's agent or its authorized representative shall have access to the Development Manager's facilities, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this provision. The City or its authorized representative shall give auditees reasonable advance notice of intended audits.

If an audit inspection or examination in accordance with this Article discloses overcharges in excess of two percent (2%) except negotiated fees by the Development Manager to the City, fifty percent (50%) of the actual cost of the City's audit shall be paid by the Development Manager. If the audit discloses contract billing or charges to which Development Manager is not contractually entitled, Development Manager shall pay over to the City said sum within 20 days of receipt of a written demand unless otherwise agreed to by both parties in writing.

If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the four (4) year period, the records must be retained until completion of the action and resolution of all issues which arise from it or until the end of the four (4) year period, whichever is later. During the course of an audit, if the City determines that any payment made to the Development Manager does constitute an allowable expenditure, then the City will have the right to deduct or reduce those amounts from the related invoices. The Development Manager must maintain records necessary to document compliance with the provisions of the Agreement. The Development Manager acknowledges that additionally the City has the audit and inspection rights set forth in s. 2-793, City Code, as amended.

## **24. OSHA COMPLIANCE & SAFETY PRECAUTIONS**

The Development Manager warrants and shall require that its Contractor warrant that it will comply with all safety precautions as required by federal, state or local laws, rules, regulations and ordinances.

Development Manager, either itself or through its Contractor, shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Development Manager through its Contractor shall notify owners of adjacent property and utilities when prosecution of the Construction Work may affect them. All damage, injury or loss to any property, caused directly or indirectly, in whole or in part, by Development Manager, Contractor, any Sub-Contractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Development Manager.

Development Manager's duties and responsibilities for the safety and protection of the Construction Work shall continue until such time as all the Construction Work is completed and City has issued to Development Manager a notice of Final Acceptance, said notice shall not be unreasonably withheld or delayed.

Development Manager must adhere to the applicable environmental protection guidelines for the duration of the Ponce Park Project. If hazardous waste materials are used, detected or generated at any time, the City's Project Manager must be immediately notified of each and every occurrence. The Development Manager shall comply with all codes, ordinances, rules, orders and other legal requirements of public authorities (including, without limitation, OSHA, EPA, DERM, the City, Miami-Dade County, State of Florida, and Florida Building Code) which bear on the performance of the Construction Work.

Development Manager shall require that Contractor ensure that all Work is performed using adequate safeguards, including but not limited to: proper safe rigging, safety nets, fencing, scaffolding, barricades, chain link fencing, railings, barricades, steel plates, safety lights, and ladders that are necessary for the protection of its employees, as well as the public and City employees. All riggings and scaffolding shall be constructed with good sound materials, of adequate dimensions for their intended use, and substantially braced, tied or secured to insure absolute safety for those required to use it, as well as those in the vicinity. All riggings, scaffolding, platforms, equipment guards, trenching, shoring, ladders and similar actions or equipment shall be OSHA approved, as applicable, and in accordance with all federal state and local regulations.

If an emergency condition should develop during the Ponce Park Project, the Development Manager must immediately notify the City's Project Manager of each and every occurrence. The Development Manager should also recommend any appropriate course(s) of action to the City's Project Manager.

## **25. PERMITS & LICENSES**

Except as otherwise provided within the Agreement, all permits and licenses required by federal, state or local laws, rules and regulations necessary for the prosecution of the Construction

Work undertaken by Development Manager pursuant to this Agreement shall be secured by Development Manager with each party paying such permit costs allocable to improvements related to its portion of the Ponce Park Project. It is Contractor's responsibility to have and maintain appropriate Certificate(s) of Competency, valid for the Construction Work to be performed and valid for the jurisdiction in which the Construction Work is to be performed for all persons working on the Ponce Park Project for whom a Certificate of Competency is required.

**26. COMPLIANCE WITH LAWS**

Development Manager, A/E, and its Contractor(s) shall comply with all applicable laws, codes, ordinances, rules, regulations and resolutions and all applicable guidelines and standards in performing its duties, responsibilities, and obligations related to this Agreement.

**27. DEFECTIVE WORK**

The City's Project Manager shall have the authority to reject or disapprove Construction Work which it finds to be defective. If required by the City, Development Manager, through its Contractor, shall promptly either correct all defective work or remove such defective Construction Work and replace it with non-defective Work. Development Manager shall bear all direct and indirect costs of such removal or corrections including cost of testing laboratories and personnel.

Should Development Manager, through its Contractor, fail or refuse to remove or correct any defective Work or to make any necessary repairs in accordance with the requirements of the Contract Documents within a reasonable time after notice in writing provided by the City, the City shall have the authority to cause the defective work to be removed or corrected, or make such repairs as may be reasonably necessary at Development Manager's expense. Any reasonable expense incurred by City in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to Development Manager. In the event of failure of Development Manager to make all necessary repairs promptly and fully, which is not cured in the Cure Period, the City may declare Development Manager in default.

If, within two (2) years after the date of Substantial Completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, or by any specific provision of the Contract Documents, any of the Construction Work is found to be defective or not in accordance with the Contract Documents, Development Manager, after receipt of written notice from City, shall promptly correct such defective or nonconforming Construction Work within the time specified by City without cost to the City. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Development Manager might have under the Contract Documents including but not limited to any claim regarding latent defects.

**28. WARRANTIES**

**a. MATERIALS AND EQUIPMENT**

Development Manager and Contractor warrant to City that all materials and equipment furnished under this Agreement will be new unless otherwise specified

and that all of the Construction Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All equipment and materials not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by City, Development Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by any other provisions within the Contract Documents. Development Manager shall require that the Contractor provide the same warranty directly in favor of City in its written agreement with Development Manager and further, directly provide to the City the obligation to correct defective and non-conforming Work as set forth in Article 27 above.

b. **WARRANTY OF CONSTRUCTION**

The Development Manager and Contractor shall warrant that the Construction Work conforms to the Agreement and is free of any patent and/or latent defect of the workmanship for a minimum period of two (2) years from the date of Substantial Completion. Development Manager shall require that the Contractor provide the same warranty directly in favor of City in its written agreement with Development Manager.

The Development Manager's obligation under this warranty shall be at its own cost and expense, to promptly repair or replace (including cost of removal and installation), that item (or part or component thereof) which proves defective or fails to comply with the Agreement within the warranty period such that it complies with the Agreement.

c. **MANUFACTURER'S WARRANTY**

Development Manager through the Contractor shall provide to City all manufacturers' warranties. All warranties, expressed and/or implied, shall be given to the City for all material and equipment covered by this Agreement. All material and equipment furnished shall be fully guaranteed by the Development Manager, through the Contractor, against factory defects and workmanship at time of installation. At no expense to the City, the Development Manager shall correct any and all apparent and latent defects. The Contract Documents may supersede the manufacturer's standard warranty.

- d. Development Manager and Contractor each respectively warrant that upon completion of construction and conveyance of the Ponce Park Project to the City and Acceptance of the Ponce Park Project Work by the City, the City will own such free and clear of any construction or other liens. All warranties shall survive termination of this Agreement.

29. **NO DAMAGES FOR DELAY**

In no event shall City have any obligation to pay for any costs or expenses of any Contractor or of Development Manager for delays to the Ponce Park Project. The Development Manager and Contractor's sole remedy in the event of a delay shall be to seek an extension of time in accordance with the terms of the Agreement. The City shall not be liable for any delay damages or damages attributable to performing Construction Work out of sequence, acceleration claims or other similar type claims, incurred by Contractor arising out of or in any way associated with the performance under *this* Agreement and/or the Construction Agreement. No claim for damages or any claim, other than for an extension of time, shall be made or asserted against the City by reason of any delays. Neither Development Manager nor its Contractor shall be entitled to any payment or compensation of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to 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. Development Manager and/or Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

**30. EXCUSABLE DELAY**

"Excusable Delay" is caused by circumstances beyond the control of Development Manager and beyond the control of Contractor and its Sub-Contractors, suppliers and vendors. Development Manager is entitled to a time extension of the Construction Work Time for Completion for each day the critical path of the Construction Work is delayed due to Excusable Delay. Development Manager shall document its claim for any time extension as provided in Article 31 hereof. Development Manager nor Contractor shall have any claim whatsoever for payment of cost due to a delay.

**31. NOTIFICATION AND CLAIM FOR CHANGE OF CONSTRUCTION WORK TIME**

Any claim for a change in the Time for Completion, shall be made by written notice by Development Manager to the Project Manager within fifteen (15) calendar days of the commencement of the event giving rise to the claim and stating the general nature and cause of the claim. Thereafter, within twenty (20) calendar days of the termination of the event giving rise to the claim, written notice of the extent of the claim with supporting information and documentation shall be provided unless City allows an additional period of time to ascertain more accurate data in support of the claim and such notice shall be accompanied by Development Manager's written notarized statement that the adjustment claimed is the entire adjustment to which the Development Manager has reason to believe it is entitled as a result of the occurrence of said event.

The Time for Completion will be extended in an amount equal to time lost on critical Construction Work items due to delays beyond the control of and through no fault or negligence of Development Manager if a claim is made therefore as herein. Such delays shall include, but not be limited to, acts or neglect by any separate contractor employed by City, fires, floods, epidemics, abnormal weather conditions or acts of God. Development Manager shall require that Contractor use commercially reasonable efforts to mitigate all delays to the Work which efforts may include, but are not limited to, resequencing of the Work, additional manpower, and/or additional work

hours, at no additional cost to City or Development Manager.

**32. CHANGES IN THE WORK OR TERMS OF CONTRACT DOCUMENTS**

Without invalidating the Agreement and without notice to any Surety, City reserves and shall have the right, from time to time to make such increases, decreases or other changes in the character or quantity of the Construction Work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any extra or additional work within the scope of this Ponce Park Project must be issued in writing in accordance with the requirements of this Agreement and City's responsibility for such costs shall not exceed the City Contribution.

Any changes to the terms of the Contract Documents must be contained in a written document, executed by the parties hereto, with the same formality and of equal dignity prior to the initiation of any Construction Work reflecting such change. This Article shall not prohibit the issuance of Change Orders executed only by City as hereinafter provided.

Changes to the Construction Contract require the prior approval of City. All change orders increasing the value of the Agreement by \$50,000 or more shall be approved in advance by the City Commission. All change orders increasing the value of the Agreement by less than \$50,000 shall be approved in advance by the City Manager or his designee. Notwithstanding, City shall have no obligation to pay for any change orders beyond the City Contribution. The value of any Work to be covered by a change order shall be addressed in Development Manager's Construction Agreement with Contractor(s).

**33. FORCE MAJEURE**

Should any failure to perform on the part of Development Manager be due to a condition of force majeure as that term is interpreted under Florida law, then the City shall allow an extension of time reasonably commensurate with the cause of such failure to perform or cure.

If the Development Manager is delayed in performing any obligation under this Agreement due to a force majeure condition, the Development Manager shall request a time extension from the City within seven (7) working days of said force majeure occurrence. Any time extension shall be subject to mutual agreement and shall not be cause for any claim by the Development Manager for extra compensation. Events of Force Majeure include unusual and adverse weather except as permitted by Florida law and may not include the acts or omissions of the general contractor or any Sub-Contractors.

**34. FIELD DIRECTIVES**

The City's Project Manager may at times issue Field Directives to the Development Manager based on visits to the Ponce Park Project site necessary for compliance with the Ponce Park Project Plans. Such Field Directives shall be issued in writing and the Development Manager shall be required to comply with such reasonable directives. Where the Development Manager believes that the directive is outside the scope of the Construction Work or unreasonable, the Development Manager shall, within 48 hours, advise the City's Project Manager that the Field

Directive is either unreasonable and/or outside the scope of the Work. At that time the Field Directive may be rescinded, or the Development Manager may be required to submit a request for a change order proposal. Where the Development Manager is notified of the City's position that the Field Directive is within the scope and/or reasonable and the Development Manager disagrees, the Development Manager shall notify the City's Project Manager that the Development Manager reserves the right to make a claim for the time and monies based on the Field Directive, subject to the City's Contribution. At no time shall the Development Manager unreasonably refuse to comply with the directive. Failure to reasonably comply with the directive may result in a determination that the Development Manager is in default of the Agreement.

### **35. INSPECTION OF WORK**

The City shall at all times have access to the Construction Work during normal work hours. Inspectors shall have no authority to permit deviations from, or to relax any of the provisions of the Contract Documents or to delay the Construction Work by failure to inspect the materials and Construction Work with reasonable promptness without the written permission or instruction of City.

The payment of any compensation, whatever may be its character or form, or the giving of any gratuity or the granting of any favor by Development Manager to any inspector, directly or indirectly, is strictly prohibited, and any such act on the part of Development Manager will constitute a breach of this Agreement.

### **36. SUBMITTALS**

All submittals for the Work shall be completed and/or approved by the Architect/Engineer ("A/E"). City shall not be obligated to make payment for any materials, fabrication of products or Construction Work commenced that requires submittals until the City has returned approved submittals to the Contractor. The process for review and approval of submittals shall be subsequently agreed to in writing among City, Development Manager, Contractor and A/E.. City's review shall only be for conformance with design concepts and shall not be approval as to compliance with the Contract Documents, applicable laws, or otherwise.

Approval of any submittal shall not relieve the Development Manager and Contractor of any responsibility for any deviations from the requirements of the Contract Documents unless the Development Manager has given written notice to the City of the specific deviations and the City has issued written approval of such deviations, but in no event shall any approval by the City be an acceptance of deficient, defective, non-compliant or otherwise faulty materials, equipment, workmanship or design. Development Manager shall be responsible for the distribution of all shop drawings, copies of product data and samples, which bear the A/E and City's stamp of approval. Distribution shall include, but not be limited to: job site file, record documents file, sub-contractors, suppliers, and other affected contractors or entities that require the information.

### **37. SUBSTITUTIONS**

Development Manager shall submit all requests for substitutions to the City for review and approval. Such substitutions shall be approved by the A/E and the Development Manager before

submission to the City. All such requests shall include sufficient documentation to support such request. City may request additional information as deemed necessary to properly review such requests. Development Manager shall not permit substitutions without the City's prior written approval. Approved substitutions shall be incorporated into the Contract Documents by the A/E.

### **38. SHOP DRAWINGS**

Development Manager, through the Contractor shall submit Shop Drawings as required by the Contract Documents. The process for review and approval of shop drawings shall be subsequently agreed to in writing among City, Development Manager, Contractor and A/E.

If the Shop Drawings show or indicate departures from the Contract Documents' requirements, Development Manager, through the Contractor shall make specific mention thereof in its letter of transmittal. Failure to point out such departures shall not relieve Development Manager from its responsibility to comply with the Contract Documents.

Before Shop Drawings shall be reviewed by the City, they shall bear the approval of the A/E, Contractor and Development Manager. City's review of Shop Drawings will be general and shall not relieve Development Manager, through the Contractor of any responsibility whatsoever including but not limited to responsibility for the accuracy of such Shop Drawings, nor for the proper fitting and construction of the work, nor for the furnishing of materials or work required by the Contract Documents and not indicated on the Shop Drawings. No work called for by Shop Drawings shall be performed until the said Shop Drawings have been approved by the A/E and reviewed by the City. Approval shall not relieve Development Manager from responsibility for errors or omissions of any sort on the Shop Drawings. If catalog sheets or prints of manufacturers' standard drawings are submitted as Shop Drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink. Development Manager shall keep one set of Shop Drawings marked with A/E's approval and City's acknowledgement at the job site at all times.

### **39. PRODUCT DATA**

Development Manager, through the Contractor shall submit a copy of product data. Copies must be marked to identify applicable products, models, options and other data. Development Manager, through the Contractor shall supplement manufacturer's standard data to provide information unique to the Construction Work.

Development Manager, through the Contractor shall only submit pages that are pertinent. Submittals shall be marked to identify pertinent products, with references to the specifications and the Contract Documents. Identify reference standards, performance characteristics and capacities, wiring and piping diagrams and controls, component parts, finishes, dimensions and required clearances.

### **40. AS-BUILT DRAWINGS**

During the Construction Work, Development Manager, through the Contractor shall maintain records of all deviations from the Drawings and Specifications as approved by the City and prepare As-Built Record Drawings showing correctly and accurately all changes and



deviations made during construction to reflect the work as it was actually constructed. It is the responsibility of the Development Manager, through the Contractor to check the As-Built Drawings for errors and omissions prior to submittal to the City and certify in writing that the As-Built Drawings are correct and accurate, including the actual location of all internal piping, electrical/signal conduits in or below the concrete floor.

#### **41. CITY'S RIGHT TO TERMINATE**

The City Manager has the right to terminate this Agreement for any reason or no reason, upon fourteen (14) days Written Notice. Such Written Notice shall state the date upon which Development Manager shall cease all Construction Work and other obligations under this Agreement and vacate the Ponce Park Project site. Upon termination of this Agreement, all charts, sketches, studies, drawings, reports and other documents, including electronic documents, subcontracts, contracts and other information related to Construction Work authorized under this Agreement, whether finished or not, must be turned over to the City. The Development Manager shall be paid for Construction Work performed and accepted by the City, less any costs or damages due the City, up to and not to exceed the City Contribution and pursuant to the allocation and limitations set forth in Paragraph 11 above, provided that said documentation is turned over to City within twenty (20) business days of termination.

Failure to timely deliver the documentation shall be cause to withhold any payments due without recourse by Development Manager until all documentation is delivered to the City. In such event, the City shall pay to Development Manager Compensation for Services rendered and approved expenses incurred prior to the effective date of termination, not to exceed the City Contribution and pursuant to the allocation and limitations set forth in Paragraph 11 above. In no event shall the City be liable Development Manager for any additional compensation and expenses incurred, other than that provided herein, and in no event shall the City be liable for any consequential or incidental damages.

#### **42. TERMINATION BY DEFAULT**

If Development Manager fails to comply with any material term or condition of this Agreement, or fails to perform any of its obligations hereunder, or if Development Manager is in material breach of any agreement with any Contractor for the Ponce Park Project, then Development Manager shall be in default hereunder. Upon the occurrence of a default which is not cured within the seven (7) days, in addition to all remedies available to it by law, the City may immediately, upon written notice to Development Manager, terminate this Agreement. The City may also suspend any payment or part thereof or order a Work stoppage until such time as the issues concerning compliance are resolved. Development Manager understands and agrees that termination of this Agreement under this Article shall not release Development Manager from any obligation accruing prior to the effective date of termination.

In the event of termination due to default, in addition to the foregoing Development Manager shall be liable for all costs and expenses incurred by the City in the re-procurement of the Construction Work under this Agreement. In the event of Default, the City may also issue a Notice to Cure and suspend or withhold payments to Development Manager until such time as the

actions giving rise to default have been cured. In no event shall the Development Manager be liable to the City for consequential or incidental damages.

A finding of default and subsequent termination for cause may include, without limitation, any of the following:

- Development Manager fails to obtain the insurance herein required.
- Development Manager fails to comply with any of its duties under this Agreement, with any terms or conditions set forth in this Agreement beyond the specified period allowed to cure such default.
- Development Manager fails to commence the Work within the timeframes provided or contemplated herein, or fails to complete the Work in a timely manner as required by this Agreement.
- Any material breach of any agreement with any Contractor for the Ponce Park Project.

The City shall provide Written Notice to Cure to Development Manager as to a finding of default, and Development Manager shall take all necessary action to Cure said default within such time as stipulated in the Written Notice. Such Written Notice shall provide a minimum of 15 days to Cure any alleged default. Such time to Cure shall be at the sole discretion of the City but be no less than 15 days. The City may extend the Cure Period at its sole discretion or terminate the Agreement upon failure of the Development Manager to cure such default in the specified timeframe. In such event, the City shall have the right to take assignment of the contract between Development Manager and Contractor for the completion of the Ponce Park Project and any other contract designed in writing by City and related to the Ponce Park Project; and (ii) Development Manager shall provide a cash bond to the City in the total amount equal to the Ponce Park Project Cost, as the same may be increased by an approved Change Order, less any expended or unexpended portions of the City Contribution and AMCO Contribution previously paid to or presently held by the City. The City shall have the right to access the cash bond required by (ii) and the cash bond required by Resolution No. 2024-107 for its use to complete the Ponce Park Project. City shall provide an accounting of the amounts paid to complete the Ponce Park Project to Development Manager and the City shall release any amounts remaining in such cash bonds upon final completion of the Ponce Park Project and reconciliation of all costs to complete the Ponce Park Project and amounts due City pursuant to this Agreement.

#### **43. DEVELOPMENT MANAGER'S RIGHT TO TERMINATE**

The Development Manager shall have the right to terminate this Agreement, in writing, following material breach by the City, if breach of contract has not been corrected within thirty (30) days from the date of the City's receipt of a written notice from Development Manager specifying the City's breach of its duties under this Agreement. The City shall only be responsible for payment of Development Manager compensation for Services rendered and approved expenses incurred prior to the effective date of termination, limited to the City Contribution and pursuant to

the allocation and limitations set forth in Paragraph 11 above. In no event shall the City be liable to Development Manager for any additional compensation and expenses incurred, other than that provided herein, and in no event shall the City be liable for any consequential or incidental damages.

**44. MATERIALITY AND WAIVER OF BREACH**

City and Development Manager agree that each requirement, duty, and obligation set forth in these Contract Documents is substantial and important to the formation of this Agreement. The parties' failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**45. ACCEPTANCE AND FINAL PAYMENT**

Upon receipt of written notice from Development Manager that the Construction Work is ready for final inspection and acceptance, the City shall, within ten (10) calendar days, make an inspection thereof. If City's Project Manager find the Work acceptable, the requisite documents have been submitted and the requirements of the Contract Documents fully satisfied, and all conditions of the permits and regulatory agencies have been met, a Final Certificate for Payment (Attachment E) shall be issued by the A/E, over its signature, stating that the requirements of the Contract Documents have been performed and the Work is ready for acceptance under the terms and conditions thereof for the City's acceptance of the Ponce Park Project.

Before issuance of the Final Certificate for Payment, Development Manager shall deliver to City's Project Manager a conditional release of all liens arising out of this Agreement, or receipts in full in lieu thereof; an affidavit certifying that all suppliers, Sub-Contractors, and Contractor have been or will be (out of the final payment) paid in full and that all other indebtedness connected with the Construction Work has been or will be paid; the final corrected As-Built Drawings; the Record Set; consent of surety to final payment, and the final bill of materials, if required, and Application for Payment. Development Manager shall deliver the written Contractor's and all Manufacturer's warranties prior to issuance of the Final Certificate for Payment.

The making of and acceptance of final payment shall constitute a waiver of all claims by Development Manager, except those previously made in strict accordance with the provisions of the Agreement and identified by Development Manager as unsettled at the time of the application for final payment.

**46. MEDIATION – WAIVER OF JURY TRIAL**

In an effort to engage in a cooperative effort to resolve conflict which may arise during the course of the design and/or construction of the Ponce Park Project, and/or following the completion

of the Ponce Park Project, the parties to this Agreement agree all unresolved disputes between them shall be submitted to non-binding mediation prior to the initiation of litigation, unless otherwise agreed in writing by the parties. A certified Mediator, who the parties find mutually acceptable, will conduct any Mediation Proceedings in Miami-Dade County, State of Florida. The parties will share the costs of the certified Mediator equally.

In an effort to expedite the conclusion of any litigation, the parties voluntarily waive their right to jury trial in any action arising under this Agreement.

**47. SUBSTANTIAL COMPLETION, PUNCH LIST AND FINAL-COMPLETION**

The Construction Work shall be substantially complete when the A/E determines that the Construction Work is complete and there are no material and/or substantial variations from the Agreement and the Construction Work is fit for its intended purpose and such is confirmed by the City's Project Manager. City's Project Manager shall not unreasonably withhold or delay its approval. Upon Substantial Completion, City's Project Manager, A/E and the Development Manager shall sign the Substantial Completion Inspection Form. The signing of this form shall not relieve the Development Manager from its obligation to complete the Ponce Park Project or otherwise relieve Development Manager of its obligations hereunder. The parties, along with the A/E, shall mutually agree to an acceptable punch list procedure for Substantial Completion and Final Completion of the Construction Work.

The A/E will prepare a Certificate of Substantial Completion in the form attached hereto as **Attachment D** which shall establish the Date of Substantial Completion. Once substantial completion is achieved the City shall be responsible for security, maintenance, heat, utilities, damage to the Project site, and insurance; and shall list all Construction Work yet to be completed to satisfy the requirements of the Contract Documents for Final Completion. The failure to include any items of corrective work on such list does not alter the responsibility of Development Manager to complete all of the Construction Work in accordance with the Contract Documents, Warranties required by the Contract Documents shall commence on the date of Substantial completion of the Construction Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**48. APPLICABLE LAW AND VENUE OF LITIGATION**

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any suit or action brought by any party, concerning this Agreement, or arising out of this Agreement, shall be brought in Miami-Dade County, Florida. Each party shall bear its own attorney's fees except in actions arising out of Development Manager's duties to indemnify the City under this Agreement where Development Manager shall pay the City's reasonable attorney's fees.

**49. INDEPENDENT CONTRACTOR**

Development Manager is an independent contractor under this Agreement. Services

provided by Development Manager pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such services, neither Development Manager nor its agents shall act as officers, employees, or agents of the City. Development Manager further understands that Florida Workers' Compensation benefits available to employees of the City are not available to Development Manager, and agrees to provide workers' compensation insurance for any employee, or entity working for the Development Manager rendering services to the City under this Agreement. This Agreement shall not constitute or make the parties a partnership or joint venture.

**50. SUCCESSORS AND ASSIGNS**

The performance of this Agreement shall not be transferred pledged, sold, delegated or assigned, in whole or in part, by the Development Manager without the written consent of the City. It is understood that a sale of the majority of the stock or partnership shares of the Development Manager, a merger or bulk sale, an assignment for the benefit of creditors shall each be deemed transactions that would constitute an assignment or sale hereunder requiring prior City approval.

The Development Manger's services are unique in nature and any transference without City Commission approval shall be cause for the City to nullify this Agreement. Any assignment without the City's consent shall be null and void. The Development Manager shall have no recourse from such cancellation. The City may require bonding, other security, certified financial statements and tax returns from any proposed assignee and the execution of an assignment/assumption agreement in a form satisfactory to the City Attorney as a condition precedent to considering approval of an assignment.

**51. THIRD PARTY BENEFICIARIES**

Neither Development Manager nor the City intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement. However, the City shall be expressly identified as a third party beneficiary of the Construction Agreement.

**52. JOINT PREPARATION- INTERPRETATION**

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, article, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the

subsections of such Section or Article, unless the reference is made to a particular subsection.

**53. AMENDMENTS**

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City Manager and Development Manager.

**54. SEVERABILITY**

In the event that any provision of this Agreement is determined by a Court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Agreement, and the remainder of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision will materially and adversely affect the rights of either party, such party may elect, at its option, to terminate this Agreement in its entirety. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

**55. ENTIRE AGREEMENT**

This Agreement, as it may be amended from time to time, represents the entire and integrated agreement between the City and the Development Manager and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed with the same formality and equal dignity herewith. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach.

**56. CONFLICT OF INTEREST**

Development Manager covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interests, direct or indirect, with the Contractor. Development Manager further covenants that, in the performance of the Agreement, no person having such conflicting interest shall be employed. Any such interest on the part of the Contractor or its employees must be disclosed in writing to the City.

Development Manager is aware of the conflict of interest laws of the City, Coral Gables City Code Secs. 2-285 – 2-304., Miami-Dade County, Florida, Miami-Dade County Code Sec. 2-11.1; and the State of Florida, Chapt. 112, Part III, Florida Statutes, as amended, and agrees that it shall fully comply in all respects with the terms of said laws.

**57. PUBLIC RECORDS**

Development Manager shall comply with Chapter 119, Florida Statutes, as may be applicable, shall additionally comply with Section 119.0701, Florida Statutes, including without

limitation: (1) keep and maintain public records that ordinarily and necessarily would be required by the City to perform this service; (2) provide the public with access to public records on the terms and conditions as the City would at the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from disclosure are not disclosed except as authorized by law; (4) meet all requirements for retaining public records and transfer, at no cost, to the City all public records that are exempt or confidential and exempt from disclosure requirements; (5) all electronically stored public records must be provided to the City in a format compatible with the City's information technology systems.

**58. FURTHER DOCUMENTATION**

The parties expressly agree to execute any further documentation necessary to effectuate the intent of this Agreement and to otherwise comply with any applicable laws, codes or ordinances.

**59. NOTICES**

All notices or other communications required under this Agreement shall be in writing and shall be given by hand-delivery or by registered or certified U.S. mail, return receipt requested, addressed to the other party at the address indicated herein or to such other address as a party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

For the City of Coral Gables:

City Manager  
405 Biltmore Way  
Coral Gables, FL 33134

With a copy to:

Director of Public Works  
2800 S.W. 72<sup>nd</sup> Avenue  
Miami, FL 33155

For Development Manager:

Ponce Park Residences, LLC  
Attn: W. Spencer Morris  
121 Alhambra Plaza, Ste. 1600  
Coral Gables, FL 33134  
Telephone: (305) 443-1000  
Email: [WASM@allenmorris.com](mailto:WASM@allenmorris.com)

**60. EXHIBITS**

- a. EXHIBIT "A" PRELIMINARY SCHEDULE OF MILESTONE DATES
- b. EXHIBIT "B" INSURANCE REQUIREMENTS
- c. NEED TO ADD REMAINING EXHIBITS

[SIGNATURE PAGES TO FOLLOW]



IN WITNESS WHEREOF, the parties have set their hands and seals on the day and year first shown above:

**CITY**

**City of Coral Gables, Florida**, a municipal Corporation

ATTEST:

By: \_\_\_\_\_  
Billy Urquia, City Clerk

By: \_\_\_\_\_  
City Manager

APPROVED AS TO LEGAL FORM  
AND CORRECTNESS:

\_\_\_\_\_  
Christina M. Suárez, Esq.  
City Attorney

**DEVELOPMENT MANAGER**

**RC Acquisitions, LLC**, a Delaware limited liability company

ATTEST:

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

By: \_\_\_\_\_  
W. Spencer Morris  
Authorized Signatory