

## AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES (this “**Agreement**”) is made and entered into effective as of the date last signed below, (the “**Effective Date**”), by and between The University of Central Florida Board of Trustees (“**Owner**”) and (**Name of CM Firm, including legal status and FEIN**), (“**Construction Manager**”), which is authorized to do business in the State of Florida. Owner and Construction Manager shall from time to time hereinafter be referred to individually as a “**Party**” and together as the “**Parties.**”

### RECITALS

**WHEREAS**, Owner solicited statements of qualifications from interested construction managers in connection with performing construction manager “at-risk” services for the \_\_\_\_\_ (the “**Project**”), located at \_\_\_\_\_ (the “**Project Site**”); and

**WHEREAS**, based on Construction Manager’s interview, qualifications statement or qualifying bid/proposal, and related submissions, Owner has selected Construction Manager for the Project; and

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

**WHEREAS**, Owner intends to engage, or has engaged, one or more professionals to perform architectural , engineering or other design services for the Project hereinafter referred to individually and collectively as “**Professional.**”

### AGREEMENT

**NOW THEREFORE**, in consideration of the foregoing Recitals, which are incorporated herein by reference, the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency, of which is hereby acknowledged, the Parties agree as follows:

#### **ARTICLE 1    SERVICES, SCHEDULES, SITE INVESTIGATION, PERSONNEL**

**1.1    Services.** Construction Manager shall furnish the pre-construction and construction services, including the Work, set forth herein and required for completion of the Project on a Guaranteed Maximum Price (“**GMP**”) basis. The term “**Work**” means the construction and services required by the Contract Documents (hereinafter defined), whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Construction Manager to fulfill Construction Manager’s obligations during the construction phase.

**1.2    Project Schedule.** Construction Manager has provided Owner with a preliminary Project schedule covering the pre-construction and construction phases of the Project, including the planning and design approvals, construction, and Owner occupancy of the Project, which preliminary Project schedule is attached hereto as **EXHIBIT A**. This preliminary Project schedule shall serve as the framework for the subsequent development of detailed schedules described herein. The acceptance of the schedule by Owner and Professional in no way attests to the validity of the assumptions, logic constraints, dependency relationships, resource allocations, manpower and equipment, and any other aspect of the proposed schedule. Construction Manager is and shall remain solely responsible for the planning and execution of all Work in order to meet Project milestones or Contract completion dates. Construction Manager shall prepare periodic updates to the Project schedule for Professional’s review and Owner’s acceptance. The Project schedule shall coordinate and integrate Construction Manager’s services, Professional’s services, other Owner consultants’ services, and Owner’s responsibilities and identify

items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the GMP (as herein defined) proposal; components of the Work; times of commencement and completion required of each subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of Owner. If Project schedule updates indicate that previously approved schedules may not be met, Construction Manager shall: (a) make appropriate recommendations to Owner, and (b) update such schedules to incorporate such revisions as may be agreed to by Owner. Construction Manager shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Project schedule, subject to extension of time as may be permitted by this Agreement. Construction Manager's submittal of a satisfactory Project schedule and updates thereto and Owner's acceptance of same shall be a condition precedent to Owner's obligation to pay Construction Manager.

**1.3 Preparation/Sufficiency of Site.** Construction Manager shall, among other things Construction Manager needs to do to perform its obligations under this Agreement, as and when appropriate, (a) visit and thoroughly inspect the Project Site and any structure(s) or other man-made features to be modified and become familiar with local conditions under which the Project will be constructed and operated; (b) familiarize itself with the survey, including the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on the Project; (c) familiarize itself with Owner's layout and design requirements, conceptual design objectives, and budget for the Project; (d) familiarize itself with pertinent Project dates and programming needs, including Owner's schedule requirements, (e) review and analyze all Project geotechnical, Hazardous Substances (hereinafter defined), structural, chemical, electrical, mechanical, and construction materials tests, reports, investigations and recommendations; and (f) gather any other information necessary for a thorough understanding of the Project. If the Project involves modifications to any existing structure(s) or other man-made feature(s) on or at the Project Site, Construction Manager shall also review all as-built and record drawings, plans and specifications of which Construction Manager has been informed by Owner about and thoroughly inspect the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent components, including structural components. Claims by Construction Manager resulting from Construction Manager's failure to fully perform its obligations in this **Section 1.3** shall be deemed waived.

**1.4 Construction Manager's Team.** In the performance of Construction Manager's services under the Contract for Construction, Construction Manager will use the personnel identified on **EXHIBIT B**, attached hereto ("**Construction Manager's Team**"). The person identified in **EXHIBIT B** as Construction Manager's "Project Manager" shall have full authority to bind and obligate Construction Manager on all matters arising out of or relating to the Work or the Contract for Construction. Construction Manager shall ensure that the Project Manager devotes whatever time is required to satisfactorily manage the Work. Construction Manager will not remove or replace any members of Construction Manager's Team except with the written approval of Owner or as directed by Owner as provided hereunder, except in an instance when any member of Construction Manager's Team makes any inappropriate religious, racial, sexual or ethnic comment, statement or gesture towards any individual, at which time Construction Manager shall immediately remove said individual from the Contract for the duration of the Contract and provide immediate written notice of removal to Owner. Further, if any member of Construction Manager's Team discontinues service on the Project for any reason whatsoever, Construction Manager shall promptly replace such team member with a qualified individual approved by Owner, in writing, which approval will not be unreasonably withheld. Construction Manager further agrees, within fourteen (14) days of receipt of a written request from Owner, to promptly remove and replace Construction Manager's Project Manager, or any other personnel employed or retained by Construction Manager to perform services hereunder whom Owner shall request in writing to be removed, which request may be made by Owner with or without cause.

**1.5 Contract for Construction.** The "**Contract Documents**" consist of: (a) this Agreement and all exhibits hereto; (b) proposal(s) submitted by Construction Manager and accepted by Owner in writing, if any; (c) the plans, drawings and specifications for the Work ("**Construction Documents**") but only after said Construction Documents have been completed by Professional and approved in writing by Owner; (d) any amendments or addenda executed by Owner and Construction Manager hereafter; (e) Owner

approved Change Orders; and (f) (i) “UCF Design, Construction, and Renovation Standards”, (ii) “UCF Design and Professional Services Guide”, (iii) “UCF CS&T Standards” and (iv) “UCF Green Building Construction and Renovation Requirements” (items (f)(i)-(iv) as appearing on Owner’s website at [www.fp.ucf.edu](http://www.fp.ucf.edu)) and (v) “UCF Building Energy Systems Commissioning Procedure” (as appearing on Owner’s website at [www.energy.ucf.edu](http://www.energy.ucf.edu)). Upon Owner’s acceptance of Construction Manager’s GMP (hereinafter defined) proposal, the Contract for Construction shall also include the GMP Amendment (hereinafter defined) and all exhibits and attachments thereto. Documents not included or expressly contemplated in this **Section 1.5** do not, and shall not, form any part of the Contract for Construction. The above-described Contract Documents form the “**Contract for Construction**” or “**Contract**”, which Contract represents the entire and integrated agreement between Owner and Construction Manager, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by the Contract for Construction.

1.5.1 It is the intent of the Contract Documents to describe a functionally complete project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for in the Contract Documents. If the Contract Documents include words or terms that have a generally accepted technical or industry meaning, then such words or terms shall be interpreted to have such standard meaning unless otherwise expressly noted in the Contract Documents. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in effect at the time the Construction Documents are permitted, except as may be otherwise specifically stated in the Contract Documents.

1.5.2 If during the performance of the Work, Construction Manager discovers a conflict, error or discrepancy in the Contract Documents, Construction Manager immediately shall report same to Professional and Owner in writing, and before proceeding with the Work affected thereby, shall obtain a written interpretation or clarification from Professional. Prior to commencing each portion of the Work, Construction Manager shall first take all necessary field measurements and verify the applicable field conditions. After taking such measurements and verifying such conditions, Construction Manager shall carefully compare such measurements and conditions with the requirements of the Contract Documents, taking into consideration all other relevant information known to Construction Manager, for the purpose of identifying and bringing to Owner’s attention all conflicts or discrepancies with the Contract Documents.

1.5.3 Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications or other Contract Document provisions, Construction Manager shall be required to immediately notify Professional and Owner and, absent contrary instruction from Owner, comply with the provision which is the more restrictive or stringent requirement upon Construction Manager, as determined by Owner. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim and other parts required in connection with any portion of the Work to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the Work, whether or not called for by the Contract Documents.

1.5.4 In the event of conflicts or discrepancies among the Contract Documents, Construction Manager shall proceed with the Work that is unaffected by the conflict or discrepancy and interpretations of the conflict will be based upon the following Contract Documents, which are set forth and ranked in order of precedence:

1.5.4.1 Duly executed amendments and Change Orders, with those of a later date having precedence over those of an earlier date;

1.5.4.2 The Agreement, not including the Exhibits, which are addressed above and below;

1.5.4.3 The Exhibits to the Agreement; and

1.5.4.4 All other Contract Documents, if any.

1.5.5 The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than Owner and Construction Manager, with the exception of Owner's third party beneficiary rights under Construction Manager's agreements with its subcontractors and suppliers.

1.5.6 Professional shall furnish Construction Manager with one (1) sealed copy and one (1) electronic set of the Construction Documents. Any additional copies of Construction Documents, required by Construction Manager for execution of the Work, shall be made by Construction Manager from its electronic set at Construction Manager's sole cost and expense. Professional is furnishing Construction Manager an electronic set of Construction Documents for Construction Manager's convenience and such furnishing by Professional shall not be deemed to be a waiver by Owner or Professional of any copyright, patent or license they may have with respect to the Construction Documents. All such copyrights, patents and licenses hereby being expressly reserved by Owner and Professional.

**1.6 Relationship of the Parties.** This Agreement is entered into between Construction Manager and Owner contemplating a "Construction Manager-At-Risk" relationship. Notwithstanding anything to the contrary in the Contract for Construction, Construction Manager is fully responsible to Owner for all duties of Construction Manager under the Contract for Construction, including the construction means, methods, techniques, sequences and procedures in performing the Work, for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract for Construction despite Construction Manager's delegation of the responsibility therefor to any of its subcontractors. In addition, if the Work required under the Contract for Construction requires Construction Manager to subcontract with any party to provide any professional services constituting the practice of architecture, design, or engineering, Construction Manager shall be directly responsible to Owner for any portion of the Work so required. Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with Owner to cooperate with Professional and exercise Construction Manager's best skill and judgment in furthering the interests of Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with Owner's interests. Construction Manager is an independent contractor, and not an agent or employee, of Owner. Owner shall not in any manner be responsible or accountable for: (a) any violation by Construction Manager or Construction Manager's Personnel (hereinafter defined) of any Applicable Laws, or (b) for any injury, loss or damage arising from or out of any act or omission of Construction Manager or Construction Manager's Personnel. For the purposes of this Agreement, the term "**Applicable Laws**" shall mean all federal, state, local, municipal, judicial and quasi-governmental laws, statutes, ordinances, orders, decrees, judgments, directives, codes, rules and regulations, of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project, the Work or Construction Manager, governing or applicable to the Project, the Work or Construction Manager, as the same may be amended, interpreted or enforced from time to time. The term "Applicable Laws" also includes all rules and requirements of any utility company serving the Project Site.

**1.7 Representations and Warranties.** Construction Manager represents and warrants the following to Owner (in addition to any other representations and warranties contained in the Contract for Construction) as an inducement to Owner to execute this Agreement, which representations and

warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work: (a) that it is thoroughly familiar with and understands the requirements of the Project; (b) that it possesses a high level of experience and expertise in the administration and construction of building projects of the size, type, complexity, scope and nature contemplated by Owner's "Facilities Program" for the Project and that it will perform the Work with the care, skill and diligence of such a construction manager; (c) that it has all necessary construction education, skill, knowledge, and experience required for the Project and will maintain, at all times during the term of this Agreement, such personnel on its staff to provide the services contemplated hereby within the time periods required hereby; (d) that it has, and all of the subcontractors performing services under this Agreement will have, all applicable licenses required by the State of Florida to perform such services; (e) that it is and, to the best of its knowledge, its subcontractors, once engaged, will be, financially solvent and possessed of sufficient working capital to complete the Work and perform all obligations hereunder; (f) that it is authorized to do business in the State of Florida; (g) that its execution of this Agreement and its performance thereof is within its duly authorized power; and (h) that its duly authorized representative has visited the Project Site, is familiar with the local and special conditions under which the Work is to be performed and has correlated onsite observations with the requirements of the Contract for Construction.

**1.8 Building Information Modeling.** Building information modeling ("BIM") models may be made available to Construction Manager. BIM design and construction drawings shall be developed using BIM software – latest Owner approved version. Additional design and construction drawings such as civil, landscape and interiors shall be developed using AutoCAD or BIM software – latest Owner approved version. Any deviation from the use of the above software must be approved in writing by Owner's Director of Facilities Planning and Construction. The BIM models shall be used by the Professional and Construction Manager for design coordination, collision avoidance, and production of traditional two-dimensional drawings, and may be used for energy analysis, day lighting analysis, and other building or systems analysis. The implementation and use of BIM shall be discussed by Professional and Owner at a BIM kickoff meeting as early in design as possible, with the agreed-upon parameters captured by the Professional in a document to be entitled "**BIM Execution Plan.**" The BIM Execution Plan shall be updated and augmented by Professional, with concurrence and agreement by Owner, throughout design, and by Owner and Construction Manager throughout construction, as needed to solidify details regarding terminology, schedule, content, format, risk allocation, and use of the model(s). Professional shall provide the BIM model(s) to Construction Manager prior to and during construction, subject to the limitations outlined in the BIM Execution Plan, for scheduling, coordination, resource management, estimating, and other uses deemed beneficial to Owner for delivery of the Project. Construction Manager shall conduct BIM coordination meetings with its subcontractors and manage a central BIM model for all primary trades with the intent of detecting clashes of building systems prior to their final approval and fabrication. Professional shall update the BIM model(s) at the end of construction to reflect the actual "as-built" conditions. Final "Record Document" model(s) shall be delivered to Owner in the BIM format(s) as originally developed and as a fully integrated Revit-based model containing the architectural, structural, and mechanical, electrical and plumbing content.

## **ARTICLE 2 OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES**

**2.1 Project Information.** Construction Manager acknowledges that Owner has provided Construction Manager with sufficient information regarding Owner's requirements for the Project.

**2.2 Owner's Budget.** Owner shall establish and update a budget for the Project, which shall be shared with the Construction Manager at the beginning of the Project to ensure there is a clear understanding of the construction budget.

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

**2.4 Time for Performance.** Owner shall review and approve or take other appropriate action on all design submittals within the timeframes set forth in **EXHIBIT A**, attached hereto, or, if no timeframe is set forth, then within a reasonable time.

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

**2.6 Owner Disclaimer of Warranty.** Owner has requested that its Professional(s) prepare documents for the Project, including the plans and specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, Owner makes no representation or warranty of any nature whatsoever to Construction Manager concerning such documents. Construction Manager hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by Owner concerning such documents, as no such representations or warranties have been or are hereby made.

**2.7 Status of Owner.** In no event shall Owner be deemed to have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted Owner in the Contract for Construction.

**2.8 Owner's Utilities.** Construction Manager shall be responsible to provide and pay for consumption of, and connections to, utilities required for performance of the Work, including temporary service and construction.

### **ARTICLE 3 CONSTRUCTION MANAGER'S SERVICES**

**3.1 Categories of Services.** Construction Manager's services under this Agreement include General Project Services, Pre-Construction Services, and Construction Services (each as more fully described below).

**3.2 Acknowledgements.** The Parties acknowledge that (a) Owner may determine not to proceed with Construction Services, (b) at Owner's discretion and written direction, performance of Pre-Construction Services may overlap performance of Construction Services, (c) categories of Work performed during Construction Services may be performed in separate phases, and (d) payment of Construction Manager for Pre-Construction Services shall be separate from payment, if any, for Construction Services.

**3.3 General Project Services.** During all phases of the Project, Construction Manager shall perform the following services under the Contract for Construction, which shall collectively be referred to as the "**General Project Services**":

3.3.1 Provide all services required to complete its services and the Work in good and workmanlike, expeditious and economical manner, consistent with the Contract for Construction and the best interests of Owner.

3.3.2 Endeavor to develop, implement and maintain, in consultation with Owner, Professional, and the subcontractors, a spirit of cooperation, collegiality, and open communication among the Project team so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all Project team members.

3.3.3 Perform its services in accordance with Project schedule requirements.

3.3.4 Work with Owner and Professional to pursue Owner's goal of obtaining Leadership in Energy and Environmental Design (LEED) certification for the Project, at the GOLD level. Construction Manager shall also work with Owner and Professional to meet the UCF Green Building Construction and Renovation Requirements.

3.3.5 Participate in, and cooperate with, design phase, construction phase, and post-occupancy commissioning, validation, and other quality assurance and quality control processes.

3.3.6 Comply with Owner's policies and project management guides applicable to this Agreement as referenced herein.

3.3.7 Comply with Applicable Laws applicable to its performance under the Contract for Construction, including equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract for Construction. Construction Manager shall pay any expenses, including attorneys' fees, incurred by Owner as a result such failure to comply with Applicable Laws.

**3.4 Pre-Construction Services.** Upon the later of the execution of this Agreement and issuance of a written "Notice to Proceed (Pre-Construction Phase)" by Owner (the "**Pre-Construction Phase Commencement Date**"), Construction Manager shall commence performance of Pre-Construction Services. Any Work performed by Construction Manager prior to such date shall be at the sole risk and expense of Construction Manager. The timely completion of the pre-construction phase is critical to the timely completion of the construction phase and, therefore, completion of the entire Project. Accordingly, Construction Manager agrees to provide the Pre-Construction Services in accordance with the schedule approved by Owner in writing. The "**Pre-Construction Services**" include the following:

3.4.1 Construction Manager shall provide a preliminary evaluation of Owner's program, schedule and construction budget requirements, each in terms of the other. Construction Manager shall advise Owner on proposed site use and improvements, selection of materials, and building systems and equipment.

3.4.2 Construction Manager shall familiarize itself with the Project and actively and jointly participate with Owner and Professional in formation of the final Project design. The phasing of, and schedule for, design for this Project are set forth on **EXHIBIT A**, attached hereto. Any changes to the pre-construction schedule dates in **EXHIBIT A** or duration of the Pre-Construction Phase shall not entitle Construction Manager to additional Pre-Construction fees.

3.4.3 Construction Manager shall develop and implement a quality management program to ensure quality construction. Unless otherwise specified in the Contract for Construction, Construction Manager shall select the quality control and testing agencies, subject to Owner's written approval. Threshold inspection is specifically excluded from this provision. Owner shall contract for threshold inspection directly.

3.4.4 Submit for Owner review within thirty (30) days following the approved GMP proposal: (a) Project reporting procedures; (b) quality control and testing program; and (c) safety program.

3.4.5 At each phase of design for the Project, Construction Manager shall familiarize itself with the design documents provided by Professional and, in accordance with the Project schedule, provide Owner and Professional with a report detailing construction issues and concerns relating to the design, with detail appropriate to the phase of design. Without limitation of the foregoing, each construction report shall (a) include an estimate of overall construction cost, with Construction Manager's Contingency (hereinafter defined) associated with the Cost of the Work (hereinafter defined) at no greater percentages than the percentages set forth below, including a comparison of the estimate to Owner's budget for construction; (b) identify conceptual decisions necessary to prepare accurate cost reports with the fewest assumptions, qualifications and exclusions; (c) provide recommendations consistent with the Project requirements on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost, including costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions; (d) include an analysis and evaluation of jobsite management, site logistics, and schedule considerations; (e) include an analysis and evaluation of the constructability of the design concepts, narratives, or drawings; (f) include an analysis and evaluation of the design concepts, narratives, or drawings in regard to the completeness of intended bid categories, conflicts or overlaps in the divisions of the Work, design details affecting construction, including unusual or custom materials, value analysis, identification of long-lead materials affecting the Construction Schedule, availability of labor, and other factors affecting construction and, in the report provided during the Construction Documents Phase, suggestions for alternatives for matters which may delay the Construction Schedule (hereinafter defined); (g) address problems, conflicts, defects or deficiencies in the design concepts and offer resolutions of same; and (h) identify any other issues which Construction Manager reasonably believes may have a negative impact on the Project schedule, Owner's budget or performance of the Work.

Construction Manager's Contingency, as a percentage of the estimated Cost of the Work, shall be no greater than the following at each of the following phases:

- Fifteen percent (15%) at Conceptual Schematic Design
- Fifteen percent (15%) at Advanced Schematic Design
- Ten percent (10%) at Design Development
- Five percent (5%) at 50% Construction Documents
- Three percent (3%) at the time of the GMP

3.4.6 Construction Manager and Professional shall jointly schedule and attend regular meetings with Owner and evaluate the current design drawings. Professional shall prepare and distribute minutes of these meetings, and Construction Manager shall verify the accuracy and completeness of the minutes.

3.4.7 Construction Manager shall develop a comprehensive jobsite management and logistics plan for Owner's review. This plan shall be submitted with 100% Construction Documents.

3.4.8 Construction Manager shall, in accordance with Project schedule requirements, assist Professional with the resolution of all problems, conflicts, gaps, overlaps, construction feasibility and coordination issues, defects and deficiencies identified during the review and evaluation of the Construction Documents. Construction Manager shall facilitate and participate in BIM coordination meetings as necessary during the design and construction phases, as described in the BIM Execution Plan.

3.4.9 At each phase of design, Construction Manager shall work with Professional and Owner's cost consultant, if any, to reconcile, and make recommendations on, the differences between the



estimates each has prepared at that phase of design. If the final estimates of the Cost of the Work by Construction Manager and Professional and/or Owner's cost consultant differ materially, Construction Manager and Professional and Owner's cost consultant, if any, shall meet promptly to reconcile the discrepancies between their estimates so as to permit submission to Owner of a final estimate of Cost of the Work on which both Professional and Construction Manager agree. Construction Manager acknowledges that accurate construction cost estimates are critical to Owner's ability to establish and verify its budget for the Project and, therefore, Construction Manager shall work closely with Professional and use its best skill and judgment as a contractor familiar with the construction industry in the locality of the Project in preparing its construction cost estimates.

3.4.10 Construction Manager shall assist Owner and Professional in expediting the development of the final Construction Documents by furnishing recommendations to Owner and Professional for alternatives to construction means and methods of performing the Work as well as substitution of materials or equipment required for the Work. The purpose of value engineering is to assist in achieving all of Owner's objectives for the Project including the schedule, the budget, functional performance and aesthetic goals. Factors that Construction Manager shall consider in making such recommendations include site use, selection of building materials and systems, availability of labor, methods of construction and other similar items benefiting from evaluation prior to the completion of the Construction Documents. Particular attention shall be given to alternatives for materials, equipment and systems, possible economies and identification of options that will maximize the benefits that Owner will derive from the completion of the Work. When requested by Owner, Construction Manager as a contractor and not a Professional shall: (a) prepare a specific analysis of the cost-effectiveness and performance capabilities of any building system or component under consideration or specified for the Work and provide other relevant information; and (b) make recommendations on field logistics and any other studies that are required to complete the Work successfully. Owner is under no obligation to accept any pending or future value engineering proposal submitted by Construction Manager.

3.4.11 Construction Manager shall provide recommendations with regard to phased issuance of Construction Documents to facilitate phased construction of the Work, accelerated or fast-track scheduling, procurement, or phased construction. Construction Manager shall take into consideration cost reductions, cost information, constructability, availability of labor and materials, provisions for temporary facilities and procurement and construction scheduling issues.

3.4.12 Construction Manager shall review the Project design for the purpose of identifying long lead procurement items (such as machinery, equipment, materials and supplies) and consult with Professional concerning same. When each item is identified, Construction Manager shall notify the subcontractors, Owner and Professional of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. Construction Manager shall keep itself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items, and promptly advise Owner and Professional in writing of any problems or possible delays in delivery.

3.4.13 Construction Manager shall develop bidders' interest in the Project. Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate procurement of long lead items, the separate construction subcontractors and the general conditions items without duplication or overlap, and sequenced to maintain completion of all Work on schedule. Construction Manager shall give particular attention to provide that each bid package clearly identifies the Work included in that particular separate subcontract, its schedule for start and completion and its relationship to the other separate subcontractors.

3.4.14 Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Work. Construction Manager shall make an analysis as necessary to (a) determine and report on availability of labor, materials,

equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and (b) in light of such determination, make recommendations and take action as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of Work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the Contract Time.

3.4.15 Construction Manager shall be responsible for promoting and encouraging bid competition, and shall make every effort to acquire a minimum of three (3) bids for each CSI division of work.

3.4.16 Within fifteen (15) business days after the development of the Project program, Construction Manager shall submit a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, Construction Manager shall submit to Owner and Professional a list of potential bidders for their review and approval. Construction Manager shall be responsible for promoting and encouraging bid competition.

3.4.17 Construction Manager shall carry out an active program of stimulating interest of qualified subcontractors in bidding on the Work and of familiarizing those bidders with the requirements of this Project.

3.4.18 Construction Manager shall prepare invitations for bids and all other appropriate bid documents for all procurement of long lead items, materials and services, for subcontractor contracts and for site utilities. All such invitations for bids and bid packages shall be submitted to Professional and Owner for their review and approval prior to distribution to bidders.

3.4.19 Construction Manager understands and acknowledges Owner's intent that the Project will be completed within the budget set by Owner for the Project. Accordingly, throughout the Pre-Construction Services phase, Construction Manager shall help to ensure the Project stays on budget. Construction Manager shall keep Owner informed if it believes that the Project may not be completed within Owner's budget, the reasons why it cannot be, and Construction Manager's proposed solutions therefore. If Owner accepts the Construction Manager's Value Engineering solutions during design to keep the Project within the Owner's approved budget, and the final GMP comes in above the Owner's approved budget, then the preconstruction fee otherwise payable in accordance with **Section 5.1** will be deemed unearned and not payable to the Construction Manager to the extent that the GMP proposal exceeds the budget to make up for any budget shortfall between the Owner's budget and the final GMP.

3.4.20 Any and all cost incurred by Construction Manager in developing the GMP shall constitute a part of Pre-Construction Services.

### **3.5 Guaranteed Maximum Price (GMP) Proposal.**

3.5.1 Within 45 days after 100% Construction Documents, and prior to performance of Construction Services (unless otherwise directed by Owner in writing), Construction Manager shall prepare and deliver to Owner, with a copy to Professional, the GMP proposal (or, if required, multiple GMP proposals). Proposals will be presented to and reviewed with the Owner at an in-person meeting. Construction Manager shall, at a minimum, include in the GMP proposal(s):

- (i) a recital of the specific Construction Documents, including drawings, specifications, and all addenda thereto, used in preparation of the GMP proposal;
- (ii) the following five (5) elements of the GMP:

- a. Guaranteed maximum Cost of the Work, detailed by each subcontract, trade, or bid division and including copies of all bids, take-off quantities, quotes, and prices;
  - b. Construction Manager's contingency for the Work ("**Contingency**");
  - c. Guaranteed maximum Construction Manager's Staffing Cost (hereinafter defined), detailed by expense category;
  - d. Guaranteed maximum General Conditions Cost (hereinafter defined), including bond and insurance costs, detailed by expense category; and
  - e. Guaranteed maximum for Construction Manager's Overhead and Fee (hereinafter defined).
- (iii) a detailed schedule of values;
  - (iv) a description of all other inclusions to, or exclusions from, the GMP;
  - (v) all assumptions and clarifications;
  - (vi) a construction schedule (including the dates for achieving Substantial Completion and Final Completion of the Work) in the form required by the Contract Documents (the "**Construction Schedule**"); and
  - (vii) a list of allowances, if any, and a statement of their basis.

All of Construction Manager's books, records and files, with respect to its development of the GMP proposal, shall be open to Owner for review and copying.

3.5.2 Construction Manager acknowledges that the Construction Documents may be incomplete at the time Construction Manager delivers the GMP proposal, and that the Construction Documents may not be completed until after commencement of the Work. Nevertheless, the GMP proposal shall include all costs for the Work required by the completed Construction Documents, and if the GMP proposal is accepted by Owner, Construction Manager shall be entitled to no increase in the GMP if the Work required by the completed Construction Documents (a) is required by the Contract for Construction, (b) is reasonably inferable from the incomplete Construction Documents, (c) is consistent with Owner's programmatic goals and objectives, (d) is consistent with the "UCF Design, Construction, and Renovation Standards" and the general industry standards for completion of the Work, (e) is not a substantial enlargement of the scope of Work, or (f) substantially conforms to the nature, type, kind of quality of Work depicted in the incomplete Construction Documents.

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

3.5.4 Owner may, at its sole discretion and based upon its sole judgment, (a) indicate its acceptance of a GMP proposal; (b) reject a GMP proposal; (c) terminate the Project; or (d) proceed to construct the Project using a party or parties other than Construction Manager.

3.5.5 In the event Construction Manager and Owner fail to reach an agreement on the GMP for any reason(s) other than the GMP coming in above the Owner's approved budget, as set forth in **Section 3.4.19**, Owner may elect to terminate this Agreement. In the event of any such

termination, Construction Manager shall be entitled to receive compensation for the Pre-Construction Services earned through the date of termination plus that portion of any earned compensation associated with any construction phase services provided, to the extent such services were expressly approved in advance and in writing by Owner; but Construction Manager shall not be entitled to any further or additional compensation from Owner, including damages or lost profits on portions of the Work not performed. If Owner rejects a GMP proposal and terminates this Agreement, neither Party shall have any further obligation under the Contract for Construction, except for those obligations that by their terms survive the expiration or termination of this Agreement.

3.5.6 If Owner accepts a GMP proposal, Owner shall issue an amendment to this Agreement setting forth the GMP (the “**GMP Amendment**”) and a written “Notice to Proceed (Construction Phase)” to Construction Manager establishing the date construction is to commence (the “**Commencement Date**”). No portion of the Work, with respect to the construction phase to be provided hereunder, shall be performed prior to the construction phase Commencement Date, unless expressly approved in advance by Owner in writing, and Construction Manager shall not expend any monies for construction prior to receipt of such Notice to Proceed without the written approval of Owner and any monies so expended in violation of this requirement shall be at Construction Manager’s sole expense and Owner shall have no obligation or responsibility therefor. The total period of time beginning with the construction phase Commencement Date and ending on the date of Final Completion of the Work is referred to hereafter as the “**Contract Time**”.

3.5.7 AT THE TIME THE GMP IS MUTUALLY ESTABLISHED, EXCEPT ONLY AS TO SPECIFIC MATTERS AS MAY BE IDENTIFIED IN THE GMP AMENDMENT, CONSTRUCTION MANAGER SHALL BE DEEMED TO HAVE WARRANTED TO OWNER, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, EXCEPT AS MAY BE SPECIFICALLY ALLOCATED TO CONSTRUCTION MANAGER IN THE CONSTRUCTION DOCUMENTS THAT THE CONSTRUCTION DOCUMENTS ARE CONSISTENT WITH EACH OTHER, PRACTICAL, FEASIBLE AND CONSTRUCTABLE. FURTHER, CONSTRUCTION MANAGER SHALL BE DEEMED TO HAVE WARRANTED TO OWNER THAT THE WORK DESCRIBED IN THE CONSTRUCTION DOCUMENTS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTABLE WITHIN THE CONTRACT TIME AND WITHIN THE GMP. Further, upon Owner’s acceptance of the GMP, Construction Manager guarantees that:

- (i) the sum of (a) the actual Cost of the Work, (b) Construction Manager’s Contingency, (c) Construction Manager’s Staffing Costs, (d) General Conditions Cost, and (e) Construction Manager’s Overhead and Fee, shall not exceed the amount set forth in the agreed upon GMP therefor. All costs or expenses that would cause this sum to exceed the GMP shall be borne by Construction Manager unless adjusted by Owner approved Change Order.
- (ii) the actual Cost of the Work, Construction Manager’s Staffing Costs, General Conditions Cost and Construction Manager’s Overhead and Fee shall not exceed the guaranteed maximum for each such category set forth in the GMP and that all costs or expenses that would cause any of these individual categories to exceed the guaranteed maximum for each such category in the agreed upon GMP shall be borne by Construction Manager unless adjusted by Owner approved Change Order.
- (iii) all unit costs supporting the GMP are accurate, complete and current at the time of negotiations; and any other unit costs that may be furnished to Owner in the future to support any additional amounts that may be authorized will also be accurate and complete. Payments to Construction Manager shall be reduced if

Owner determines such amounts were originally included due to materially inaccurate, incomplete, or non-current unit costs.

- (iv) to the extent the accepted GMP includes Construction Manager Contingency, use of such Contingency shall only be expended by Construction Manager pursuant to Owner approved Construction Contingency Justification Form, as more particularly described in **Subsection 5.2.7** below.

3.5.8 Construction Manager shall include in the GMP all sales, consumer, use and similar taxes for the Work provided by Construction Manager that are legally enacted, whether or not yet effective, at the time the GMP Amendment is executed.

**3.6 Construction Services.** Contractor shall provide all of the services and work described in this **Section 3.6** (collectively, "**Construction Services**").

3.6.1 Construction. After the Construction Documents have been sufficiently completed by Professional and approved by Owner for all of the Work (or such portions thereof as may be designated by Owner in writing), and Owner and Construction Manager have agreed in writing upon the GMP to be paid Construction Manager and the Substantial Completion Date for the Work (or designated portions thereof), Construction Manager shall furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely and fully perform and complete in a good and workmanlike manner the construction of the Work (or designated portions thereof) in accordance with all of the terms and conditions of the Contract for Construction. For the avoidance of doubt, Construction Manager shall have the responsibility to perform the Work and build the entire Project in accordance with the Construction Documents, except any work as may specifically be stated in the Contract for Construction to be the responsibility of others. Notwithstanding anything herein to the contrary, as and to the extent expressly directed and authorized by Owner in writing, Construction Manager shall commence to construct those portions of the Work designated by Owner even though the GMP and/or Construction Schedule for the entire Work has not yet been agreed to by the Parties, so long as they have agreed in writing upon the compensation to be paid Construction Manager and the performance time for such portion of the Work. Construction Manager shall diligently prosecute the Work and shall achieve Final Completion of the entire Work within the Contract Time.

3.6.2 Investigation, Utilities and Unforeseen Conditions.

3.6.2.1 Construction Manager shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, legal disposal, handling and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the Project Site and the Project area as a whole; topography and ground surface conditions; nature and quantity of the surface materials to be encountered; subsurface conditions; equipment and facilities needed preliminary to and during performance of the Work; noise ordinances; work hours; surrounding building conditions and all other costs associated with such performance. If Construction Manager fails to perform the foregoing obligations, Construction Manager shall pay such costs and damages to Owner as would have been avoided if Construction Manager had performed such obligations. The failure of Construction Manager to acquaint itself with any applicable conditions shall not relieve Construction Manager from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.

3.6.2.2 Construction Manager shall locate all existing roadways, railways, drainage facilities and utility services above, upon, or under the Project Site, said roadways, railways, drainage facilities and utilities being referred to in this **Subsection 3.6.2.2** as the “**Utilities**”. Construction Manager shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Construction Manager shall schedule and coordinate its Work around any such relocation or temporary service interruption. Construction Manager shall be responsible for properly shoring, supporting and protecting all Utilities at all times during the course of the Work. If Construction Manager fails to perform the foregoing obligations of this **Subsection 3.6.2.2**, Construction Manager shall pay such costs and damages to Owner as would have been avoided if Construction Manager had performed such obligations. If during the performance of the Work, Construction Manager or any subcontractor, sub-subcontractor, agent, employee or anyone else for whom Construction Manager is legally liable, causes a disruption to any Utilities service to other facilities or customers within the Project area, Construction Manager shall take all actions necessary and required to immediately restore such Utilities service. If Construction Manager fails to take such immediate actions Owner shall have the right to take whatever actions it deems necessary and required to immediately restore the disrupted services, and all costs incurred by Owner as a result thereof shall be reimbursed to Owner by Construction Manager within five (5) business days of written demand for same from Owner.

If, notwithstanding Construction Manager’s performance of its obligations under the Contract Documents, including its investigatory obligations under this **Subsection 3.6.2**, conditions are encountered at the Project Site which are (a) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, and which reasonably should not have been discovered by Construction Manager as part of its scope of site investigative obligations required pursuant to the terms of the Contract Documents, then Construction Manager shall provide Owner with prompt written notice thereof before conditions are disturbed and in no event later than seven (7) days after first observance of such conditions. Owner and Professional shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Construction Manager’s cost of, or time required for, performance of any part of the Work, Owner will acknowledge and agree to an equitable adjustment to the Contract Price or Contract Time, or both, for such Work. If Owner determines that the conditions at the Project Site are not materially different from those indicated in the Contract Documents or not of an unusual nature or should have been discovered by Construction Manager as part of its investigative obligations, and that no change in the terms of the Contract is justified, Owner shall so notify Construction Manager in writing, stating its reasons. Claims by Construction Manager in opposition to such determination by Owner must be made pursuant to the claims procedure described in **Article 21**.

### 3.6.3 Construction Supervision.

3.6.3.1 Commencing with the award of the first subcontract and terminating on the date of Final Completion, Construction Manager shall provide all the services needed to complete the Work as required herein.

3.6.3.2 Construction Manager shall, as Owner’s construction representative during construction, advise and consult with Owner and Professional, and provide administration of the Construction Documents.

3.6.3.3 Construction Manager shall supervise and direct the Work at the Project Site. Construction Manager shall, at a minimum, staff the Project Site with personnel who shall:

- (i) supervise and coordinate Construction Manager's Personnel and act as its primary liaison with Owner and Professional;
- (ii) coordinate subcontractors and suppliers, and supervise jobsite construction management services;
- (iii) be familiar with all trade divisions and subcontractors' scopes of Work, all applicable building codes and standards, and the Contract for Construction;
- (iv) check, review, coordinate and distribute shop drawings and check and review materials delivered to the Project Site, regularly review the Work to determine its compliance with the Construction Documents and the Contract for Construction, confer with the appropriate Owner's consultant(s) as necessary to assure acceptable levels of quality;
- (v) prepare and maintain Project records, including process documents and daily logs;
- (vi) schedule and conduct weekly progress meetings with subcontractors to review such matters as jobsite safety, job procedures, construction progress, schedule, shop drawing status and other information as necessary and provide notification of, and minutes from, such meetings to Owner and Professional;
- (vii) schedule and conduct weekly progress meetings with Owner and Professional to review such matters as construction progress, schedule, shop drawing status, and other information as necessary;
- (viii) make provision for Project security to protect the Project Site and materials stored off-site against theft, vandalism, fire and accidents as required by the Contract Documents. Construction Manager must obtain approval from Owner 30 days in advance of storing Project material(s) off-site; such off-site premises must be bonded and insured;
- (ix) promptly reject any Work which does not conform to the Construction Documents or which does not comply with any Applicable Laws of which it is aware and immediately notify Professional and Owner in writing when it has rejected any Work;
- (x) comply with, and cause its subcontractors and suppliers to comply with, the Construction Schedule and applicable sub-schedules. Construction Manager shall obtain and review schedules from subcontractors and suppliers, coordinate sub-schedules with the Construction Schedule, and enforce compliance with the all applicable schedules to insure timely completion of the Work. If at any time the Project is delayed, Construction Manager shall immediately notify Owner and Professional of the cause(s) and possible alternatives and make recommendations to minimize expense and delay to Owner; and

- (xi) provide documentation necessary to Professional for, and otherwise assist Professional with, the preparation of the final “as-built” or record drawings.

3.6.3.4 In accordance with Owner’s agreement with Professional, Professional will visit the Project Site at intervals appropriate to the stage of construction to familiarize itself with the progress and quality of the Work and to inspect the Work. Construction Manager shall request that Professional visit the Project Site at additional times as Construction Manager deems necessary to attend meetings, inspect the Work, and render interpretations regarding the Work necessary for the proper execution of the Work. Professional’s interpretations and decisions shall be final regarding the Construction Documents and the Work if approved by Owner in writing.

3.6.4 Construction Schedule. Construction Manager shall submit a Construction Schedule with the GMP proposal and updates to the Construction Schedule in accordance with this Agreement. The Construction Schedule shall be integrated into the Project schedule. Construction Manager’s submittal of a satisfactory Construction Schedule and updates thereto and Owner’s acceptance of same shall be a condition precedent to Owner’s obligation to pay Construction Manager. Failure of Construction Manager to update, revise, and submit the Construction Schedule as aforesaid shall be sufficient grounds for Owner to find Construction Manager in substantial default hereunder and that sufficient cause exists to terminate the Contract or to withhold payment to Construction Manager until a schedule or schedule update acceptable to Owner is submitted.

3.6.4.1 Schedule Format. The Construction Schedule shall be planned and recorded with a Critical Path Method (“CPM”) schedule in the form of an activity-on-node diagram. All activity-on-node diagrams shall include the Activity Identification, Activity Description, and the type of relationship between activities, including any lead or lag time. No activity shall have duration greater than fifteen (15) business days. The Construction Schedule shall depict all activities necessary for, or incidental to, performance of the Work, showing the logic (sequence, dependency), duration, and “float” of each activity, with the critical path highlighted and shall include (a) the required Commencement Date, the required dates of Substantial Completion and Final Completion; (b) any guideline and milestone dates required by Owner; (c) any applicable subcontractor and supplier subschedules; (d) coordination with the submittal schedule which allows sufficient time for review of documents and submittals; (e) allowances for procurement, fabrication, and delivery of materials, especially “long lead” items, if applicable; (f) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; (g) the time required for testing, inspections, and commissioning, if applicable; and, (h) time for schedule constraints, such as holidays and events on Owner’s property and adverse weather conditions which are normal and may be reasonably anticipated; and (i) required decision dates. If requested by Owner or Professional, Construction Manager shall furnish any information needed to justify the reasonableness of activity duration. Such information shall include estimated activity manpower, anticipated quantities, and production rates. The construction time for the Work, or any milestone, shall not exceed the specified Contract Time. Logic or activity durations shall be revised in the event that any milestone or Contract completion date is exceeded in the schedule.

3.6.4.2 Float. Float is defined as the amount of time between when an activity “can start” (the early start) and when an activity “must start” (the late start). It is understood by Owner and Construction Manager that float is a shared commodity, not for the exclusive use or financial benefit of either Party. Either Party has the full use of the float until it is depleted.

3.6.4.3 Schedule Update Requirements. Following development and approval of the Construction Schedule, Construction Manager shall, at the end of each calendar month



occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update and/or revise the Construction Schedule which shall be submitted to Owner in duplicate. No additional compensation will be due Construction Manager for making such updates. Construction Manager shall update the schedules monthly to show actual, current progress. The schedule updates shall include:

3.6.4.3.1 Dates of activities' actual starts and completions.

3.6.4.3.2 Percent of Work remaining for activities started but not completed as of the update date.

3.6.4.3.3 Narrative report including a listing of monthly progress, the activities that define the critical path and any changes to the path of critical activities from the previous update, sources of delay, any potential problems, requested logic changes, and Work planned for the next month.

3.6.4.3.4 A bar chart comparison of the updated schedule to the initial schedule. This diagram shall show actual and planned performance dates for all completed activities.

3.6.4.3.5 All update information shall be an accurate representation of the actual Work progress.

3.6.4.4 Recovery Schedule. If the initial schedule or any current updates fail to reflect the Work's actual plan or method of operation, or a contractual milestone date is more than fifteen (15) days behind, Owner may require that a recovery schedule for completion of the remaining Work be submitted. The Recovery Schedule must be submitted within seven (7) days of Owner's request. The Recovery Schedule shall describe in detail Construction Manager's plan to complete the remaining Work by the required Contract milestone date. The Recovery Schedule submitted shall meet the same requirements as the original Construction Schedule. The narrative submitted with the Recovery Schedule should describe in detail all changes that have been made to meet the Contract milestone dates.

3.6.4.5 Change Orders. When a Change Order is proposed, Construction Manager must identify all logic changes as a result of the Change Order. Construction Manager shall include, as part of each Change Order proposal, information depicting all schedule logic revisions, duration changes, and the relationships to other activities in the approved Construction Schedule (the "**Information**"). Upon acceptance of the Information, Construction Manager will revise the Construction Schedule or current update. The logic changes required by the Change Order will be considered incidental to Construction Manager's work and no separate payment will be made therefor. The Owner's Change Order proposal form must be completed, certified by the Construction Manager and Professional, and submitted to Owner for consideration. Construction Manager shall not submit Payment Applications with Change Orders that have not been approved in writing by Owner.

### 3.6.5 Submittals and Substitutions.

3.6.5.1 Construction Manager shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules and samples. Construction Manager shall prepare a submittal schedule within thirty (30) days of issuance of the Notice to Proceed and shall submit the schedule(s) for Owner's and Professional's approval. The submittal schedule shall (a) be

coordinated with Construction Manager's Construction Schedule, (b) allow Professional and Owner reasonable time to review submittals, and (3) identify submittals which Owner has designated as requiring Owner's review and approval prior to acceptance. Construction Manager shall submit all such materials at its own expense and in such form and manner as required by the Contract Documents in accordance with the approved submittal schedule, or in the absence of an approved submittal schedule, in sufficient time to prevent any delay in the delivery of such materials and the installation thereof. Construction Manager shall also carefully review and certify for accuracy and completeness all shop drawings and other submittals and then forward the same to Professional for review and action. Professional will transmit them back to Construction Manager (and copy Owner for Owner reviewed submittals) who will then issue the submittals to the affected subcontractor for fabrication or revision. Construction Manager shall maintain a suspense control system to promote the expeditious handling of shop drawings and all other submittals. Construction Manager shall request Professional make interpretations of the drawings or specifications requested of it by the subcontractors. Construction Manager shall advise Professional in writing which submittals or requests for clarification have the greatest urgency; the purpose being to enable Professional to prioritize requests coming from Construction Manager. Construction Manager shall advise Owner and Professional in writing when timely response is not occurring on any of the above. Shop drawings and other submittals submitted in accordance with this **Subsection 3.6.5** are not Contract Documents. Their purpose is to demonstrate the way by which Construction Manager proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. By submitting shop drawings and other submittals, Construction Manager represents to Owner and Professional that Construction Manager has: (a) reviewed and approved them, (b) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (c) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals except that Construction Manager shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Professional's approval of submittals unless Construction Manager has specifically informed Professional in writing of such deviation at the time of submittal and a Change Order has been issued authorizing the deviation. Construction Manager shall not be relieved of responsibility for errors or omissions in submittals by Professional's approval thereof.

3.6.5.2 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by Owner and Professional if sufficient information is submitted by Construction Manager to allow Owner and Professional to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by Owner from anyone other than Construction Manager. All such requests, to the extent possible, should be submitted by Construction Manager to Professional prior to the setting of the GMP.

3.6.5.3 If Construction Manager wishes to furnish or use a substitute item of material or equipment, Construction Manager shall make application to Owner and Professional for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Construction Manager's achievement of Substantial Completion on time,

whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for the Project) to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Owner and Professional in evaluating the proposed substitute. Owner and Professional may require Construction Manager to furnish at Construction Manager's expense additional data about the proposed substitute.

3.6.5.4 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Construction Manager may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to Professional and Owner, if Construction Manager submits sufficient information to allow Professional and Owner to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by Professional and Owner shall be the same as those provided herein for substitute materials and equipment.

3.6.5.5 Professional and Owner be allowed a reasonable time within which to evaluate each proposed substitute. Professional and Owner shall be the sole judges of the acceptability of any substitute. Acceptance of a substitute shall be at Owner's sole discretion. No substitute shall be ordered, installed or utilized without Owner's and Professional's prior written acceptance, which shall be evidenced by either a Change Order or written approval of the submittal. Owner may require Construction Manager to furnish at Construction Manager's expense a special performance guarantee or other surety with respect to any substitute. If Owner rejects the proposed substitute, at Owner's discretion, Owner may require Construction Manager to reimburse Owner for the charges of Professional and Professional's consultants for evaluating the proposed substitute.

3.6.5.6 Re-submittals required to correct errors, omissions, or invalid substitutions by Construction Manager or its subcontractors shall not constitute an excusable or compensable delay.

### 3.6.6 Direct Owner Purchase (DOP) Program.

3.6.6.1 Owner has elected to participate in a direct purchase program whereby it purchases materials and equipment included in any subcontractor's bid for a portion of the Work costing \$5,000 and over directly from the supplier of such materials or equipment in order to achieve sales tax savings. Such materials and equipment purchased through this program are referred to as "**DOP.**" Owner shall prepare purchase orders to the supplier(s) of the DOP. Construction Manager shall allow three (3) weeks for execution of all such purchase orders by Owner. Construction Manager shall provide Owner a DOP matrix (including CSI division, description of materials, cost, lead time of material, potential tax savings, date DOP request will be submitted to Owner, date which purchase order must be issued in order not to cause delay) together with the GMP. Any delay caused by improper paperwork/documentation by the Construction Manager, or its subcontractors, vendors or suppliers, shall be the responsibility of Construction Manager. Construction Manager use its best efforts to maximize cost savings for the Project and to cooperate with Owner in utilizing its sales tax savings program. Within thirty (30) days after the GMP is established, Construction Manager will process one (1) or more deductive Change Orders under the Contract for the entire estimated amount of DOP, inclusive of sales taxes. Prior to the final payment, a final reconciliation of DOP against

the GMP will be performed and such deductive Change Order will be prepared for Owner's review and approval.

3.6.6.2 With respect to all DOP, Construction Manager shall remain responsible for coordinating, ordering, inspecting, accepting delivery, storing, handling, installing, warranting and quality control for all DOP, and such obligations shall remain subject to the Bonds (hereinafter defined). Notwithstanding anything herein to the contrary, Construction Manager expressly acknowledges and agrees that any materials or equipment directly purchased by Owner pursuant this **Subsection 3.6.6** shall be included within and covered to the same extent as all other warranties provided by Construction Manager pursuant to the terms of the Contract Documents. Construction Manager shall obtain Builder's Risk insurance on the Direct Purchase Materials naming Owner as additional insured. Construction Manager shall be responsible for safeguarding all DOP on the Project Site on Owner's behalf.

3.6.7 Reporting. Construction Manager shall prepare written reports as described hereunder. All reports shall be in searchable PDF format.

3.6.7.1 Monthly executive summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by any permitting authority.

3.6.7.2 Monthly cost narrative describing the current construction cost estimate status of the Project, including current estimates, estimated cost to complete the Work and subcontract buyouts.

3.6.7.3 A monthly scheduling narrative summarizing the current status of the overall Project schedule and an explanation of all variances from the schedule. This report shall include an analysis of the various Project sub-schedules, including the Construction Schedule, a description of the critical path, projected time to completion, and other analyses as necessary to compare planned performance with actual performance.

3.6.7.4 Monthly accounting narrative describing the current cost and payment status for the entire Project. This report shall relate current expenditures to the budget allocations. An explanation for all variances shall be provided.

3.6.7.5 A monthly construction progress report specifying the percentage of completion of the Work and summarizing the Work of the various subcontractors. This report shall include LEED status, digital progress photographs, Project directory, information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations, programs, permits, construction problems and recommendations, logs for requests for information, submittals and shop drawings, Change Orders, Change Order proposals, safety meetings, deficiencies, weather conditions and meeting minutes and plans for the succeeding month.

3.6.7.6 Daily construction diary during the construction phase describing events and conditions on the Project Site.

The reports outlined in this **Subsection 3.6.7** shall be bound by Construction Manager with applicable computer schedule reports and submitted monthly to Owner and Professional during the pre-construction and Construction Phases and shall be current through the end of the preceding month. Construction Manager shall submit a bound copy of the complete diary to Owner at the conclusion of the Project.

3.6.8 Cost Control. Construction Manager shall develop and implement a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. Construction Manager shall identify variances between actual and estimated costs and report the variances to Owner and Professional and shall provide this information in its monthly reports to Owner and Professional, in accordance with **Subsection 3.6.7** above.

3.6.9 Energy Rebate Program. Construction Manager shall gather product data and other information as needed to assist Owner with its application for energy rebates based on the materials and products installed in or at the Project.

3.6.10 Job Site Facilities. Construction Manager shall arrange for all job-site facilities (i.e. trailer) as required by Owner and necessary to enable Construction Manager and Professional to perform their respective duties and to accommodate any representatives of Owner which may be present on the job, the description of such facilities to be finalized prior to the establishment of the GMP.

3.6.11 Administration and Records. Construction Manager's administration of the Work shall include the following:

3.6.11.1 Maintain a log of daily activities, including but not limited to manpower records, weather, delays, major decisions.

3.6.11.2 Maintain a roster of companies on the Project with names and telephone numbers of key personnel.

3.6.11.3 Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.

3.6.11.4 Provide labor relations management for a harmonious, productive Project.

3.6.11.5 Provide job site administration functions during construction to assure proper documentation, including the following:

3.6.11.5.1 Job Meetings: Construction Manager shall arrange and conduct regular weekly Project status meetings with Professional and Owner. These meetings shall be referred to as Owner-Architect-Construction Manager meetings (**OAC**). During these meetings, Construction Manager shall identify the party or parties responsible for following up on any problems, delay items or questions, and Construction Manager shall note the action to be taken by such party or parties. Construction Manager shall revisit each pending item at each subsequent meeting until resolution is achieved. Construction Manager shall attempt to obtain from all present any problems or delaying event known to them for appropriate attention and resolution. Construction Manager shall prepare written minutes of job meetings described in this Subsection and deliver copies of such written minutes to Owner and Professional within three (3) days of each meeting.

3.6.11.5.2 Shop Drawing Submittals/Approvals: Provide staff to review and approve shop drawings and other submittals and to implement procedures for transmittal to Professional and Owner of such submittals for action, and closely monitor their review process.

3.6.11.5.3 Material and Equipment Expediting: Provide staff to closely monitor material and equipment deliveries, check and follow-up on supplier

commitments for all subcontractors and maintain a material and equipment expediting log.

3.6.11.5.4 Payments to Subcontractors: Develop and implement a procedure for the review, processing and payment of applications by subcontractors for progress and final payments.

3.6.11.5.5 Document Interpretation: Refer all questions for interpretation of the Contract Documents to Professional in writing. Monitor all such requests and implement procedures for timely follow-up on all such requests.

3.6.11.5.6 Reports and Project Site Documents: Record the progress of the Work. Submit written progress reports to Owner and Professional, including information on subcontractors' Work, and the percentage of completion. Keep a daily log available to Owner, Professional, and any permitting authority inspectors.

3.6.11.5.7 Subcontractors Progress: Prepare periodic deficiency logs and punch list logs for subcontractors' Work including unsatisfactory or incomplete items and schedules for their completion. The deficiency logs shall be maintained based off of any deficiencies identified by Professional, building department inspectors, material testing firms, manufacturers, threshold inspectors, and any other inspectors. These two (2) types of logs must be maintained and continually updated by Construction Manager and updated versions must be submitted by Construction Manager to Owner with Construction Manager's monthly payment application as an express condition precedent to Construction Manager's right to payment. The data on the logs submitted with Construction Manager's payment application must be current and the logs must be updated no more than seven (7) days prior to the submission of the payment application.

3.6.11.5.8 Substantial Completion: Ascertain when the Work or designated portions thereof are ready for Professional's and Owner's Substantial Completion inspections. From the punch lists of incomplete or unsatisfactory items prepared by Construction Manager and reviewed and supplemented by Professional, prepare a schedule for their completion indicating completion dates for Owner's review. Submit Owner's Substantial Completion Form/Checklist and all required backup documentation for Owner approval.

3.6.11.5.9 Final Completion: Monitor the subcontractors' performance on the completion of the Work and provide notice to Owner and Professional when the Work is ready for final inspection. Secure, review and certify compliance with the Contract Documents, then transmit to Owner, through Professional, and as an express condition precedent to final payment, all required guarantees, warranties, affidavits, releases, consent of surety to final payment, bonds, waivers, manuals, as-built drawings, and maintenance books. Submit Owner's Final Completion Form/Checklist and all required backup documentation for Owner approval.

3.6.11.5.10 Start-Up: With Owner's personnel, direct the check-out of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors. Additionally, Construction Manager shall coordinate, participate and, if directed by Owner, conduct an Owner system-wide commissioning process reasonably satisfactory to Owner in form and content as an express condition precedent to its entitlement to final payment.

3.6.11.5.11 As-Built Drawings: Construction Manager shall monitor the progress of its own forces and its subcontractors on marked up field prints which shall be developed by Construction Manager into the final as-built drawings.

3.6.11.5.12 Construction Manager shall maintain at the Project Site, originals or copies of, on a current basis, all Project files and records, including the following administrative records:

- (i) Subcontracts and Purchase Orders;
- (ii) Subcontractor Licenses;
- (iii) Shop Drawing Submittal/Approval Logs;
- (iv) Equipment Purchase/Delivery Logs;
- (v) Contract Drawings and Specifications with Addenda, RFIs;
- (vi) Warranties and Guarantees;
- (vii) Cost Accounting Records;
- (viii) Labor Costs;
- (ix) Material Costs;
- (x) Equipment Costs;
- (xi) Cost Proposal Requests;
- (xii) Payment Request Records;
- (xiii) Meeting Minutes;
- (xiv) Cost-Estimates;
- (xv) Bulletin Quotations;
- (xvi) Lab Test Reports;
- (xvii) Insurance Policies and/or Insurance Certificates, Additional Insured Endorsements and Bonds;
- (xviii) Contract Changes;
- (xix) Permits;
- (xx) Material Purchase Delivery Logs;
- (xxi) Technical Standards;
- (xxii) Design Handbooks;
- (xxiii) "As-Built" Marked Prints;
- (xxiv) Operating & Maintenance Instructions;
- (xxv) Daily Progress Reports;

- (xxvi) Monthly Progress Reports, Project Site meetings minutes;
- (xxvii) Correspondence Files;
- (xxviii) Transmittal Records;
- (xxix) Inspection Reports;
- (xxx) Bid/Award Information;
- (xxxi) Bid Analysis and Negotiations;
- (xxxii) Punch Lists;
- (xxxiii) Project and Construction Schedules and Updates;
- (xxxiv) Suspense (Tickler) Files of Outstanding Requirements;
- (xxxv) Policy and Procedure Manual;
- (xxxvi) Safety Procedures and Safety Logs;
- (xxxvii) Accident/Incident Reports;
- (xxxviii) Evacuation Route;
- (xxxix) Material Safety Data Sheets;
- (xl) Documentation related to sustainability;
- (xli) Environmental Reports;
- (xlii) Description of Environmental Issues, if any; and
- (xlili) Any other Project related items

The Project files and records shall be available at all times to Owner and Professional or their designees for reference, review or copying.

3.6.12 Logs, Reports and Schedules. Construction Manager shall prepare, maintain and submit to Professional and Owner, for their review and approval, the various logs, reports, and schedules set forth in the Contract Documents. Construction Manager's complete performance of its obligation to prepare, maintain and submit those logs, reports, and schedules is a condition precedent to Owner's obligation hereunder to make any payments to Construction Manager. These logs, reports and schedules shall not constitute nor take the place of any notice required to be given by Construction Manager to Owner or Professional pursuant to the Contract Documents.

3.6.13 Coordination, Transition and Start-Up Services. Construction Manager shall provide the following services with respect to the Work, to facilitate the smooth, successful and timely occupancy of the Project by Owner:

3.6.13.1 Construction Manager shall provide a milestone schedule for required deliverables to Owner.



3.6.13.2 Construction Manager shall provide consultation and Project management to facilitate Owner's occupancy of the Project and provide transitional services to place the Work "on line" in such conditions as will satisfy Owner's operations requirements. The services include Construction Manager's coordination of the delivery of Owner supplied furniture, fixtures and equipment for the Project.

3.6.13.3 Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to Owner in such a manner as directed by Owner. Construction Manager shall provide Owner's operations and maintenance personnel with operations and maintenance training with respect to the equipment and systems being provided as part of the Work. This training shall be digitally video recorded and indexed by Construction Manager for subsequent presentation to Owner's operations and maintenance personnel.

3.6.13.4 Construction Manager shall secure required guarantees and warranties, and shall assemble and deliver same to Owner in the manner required by Owner.

3.6.14 Design Services. If professional design services or certifications by a Professional related to systems, materials or equipment are specifically required of Construction Manager by the Contract Documents, Professional will specify performance and design criteria that such services must satisfy. Construction Manager shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by such professional. Shop drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Professional. Owner and Professional shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such Professional, provided Professional has specified to Construction Manager performance and design criteria that such services must satisfy. Professional will review, approve or take other appropriate action on submittals for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

3.6.15 As-Built and Permit Set Construction Documents. Construction Manager shall maintain in a safe place at the Project Site one as-built copy and one permit set of the Contract Documents, including all drawings, specifications, addenda, amendments, Change Orders and Construction Change Directives, as well as all written interpretations and clarifications issued by Professional, in good order and legibly annotated to show all changes made during construction. The as-built Contract Documents shall be continuously updated by Construction Manager throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders and Construction Change Directives, and all concealed and buried installations of piping, conduit and utility services. Construction Manager shall certify the accuracy of the updated as-built Contract Documents. As a condition precedent to Owner's obligation to pay Construction Manager, Construction Manager shall provide evidence, satisfactory to Owner and Professional, that Construction Manager is fulfilling its obligation to continuously update the as-built Contract Documents. All buried and concealed items, both inside and outside the Project Site, shall be accurately located on the as-built Contract Documents as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The as-built Contract Documents shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in red. The as-built Contract Documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to Owner and Professional for reference. Upon completion of the Work and as a condition precedent to Construction Manager's entitlement to final payment, the as-built Contract Documents, samples and shop drawings shall be delivered to Professional by Construction Manager for Owner.

3.6.16 Meetings.

3.6.16.1 Prior to the commencement of Work, Construction Manager shall attend a preconstruction conference with Owner and Professional and others as appropriate to discuss the Project schedule, procedures for handling shop drawings and other submittals, and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

3.6.16.2 During the prosecution of the Work, Construction Manager shall attend any and all meetings convened by Owner or Professional with respect to the Project, when directed to do so by Owner or Professional. Construction Manager shall have its subcontractors and suppliers attend all such meetings (including the preconstruction conference) as may be directed by Owner or Professional.

3.6.16.3 Construction Manager shall advise Owner, its representatives and Professional of their requested or required participation in any meeting or inspection giving each at least one (1) week written notice unless such notice is made impossible by conditions beyond Construction Manager's fault and control, in which case at least forty-eight (48) hours prior written notice must be given.

3.6.17 Use of Premises.

3.6.17.1 At all times during the performance of the Work, Construction Manager shall keep all of its operations; (including the use and storage of all equipment and materials); within the Project Site or such other areas as may be permitted by the Contract Documents. Construction Manager shall not use the Project Site in any manner that is unreasonably burdensome or otherwise inconsistent with Owner's interest. Construction Manager is responsible for any damage to any such area, or to the owner or occupant thereof, or any areas contiguous thereto, resulting from the performance of the Work.

3.6.17.2 Except as required by the Contract Documents or otherwise required in order for Construction Manager to satisfy its safety and security obligations under the Contract Documents, Construction Manager shall not erect or install, nor shall it permit any of its subcontractors, suppliers, subconsultants or any other party for whom it is legally responsible to erect or install, any signage upon the Project Site or any other property of Owner, unless such signage has been expressly approved in writing by Owner, which approval may be withheld by Owner in its sole discretion.

3.6.17.3 Construction Manager acknowledges that Work may be performed at a particular Project Site where Owner simultaneously is conducting and continuing its operations upon the same site. In such event, Construction Manager shall coordinate its Work so as to cause no unreasonable interference with or disruption to Owner's operations. Construction Manager shall not enter any Owner-occupied area of the Project Site unless first approved and scheduled by Owner. Construction Manager understands and acknowledges that Owner may incur damages if Owner's operations on the Project Site are interrupted or impaired as a result of the Work.

3.6.17.4 Owner may take early occupancy of all or any portions of the Work, at Owner's election, by designating in writing to Construction Manager the specific portions of the Work to be occupied and the date such occupancy shall commence. If any such specific early occupancy was not expressly identified at the time the GMP was established and such early occupancy negatively impacts Construction Manager's cost or time of performance, Construction Manager shall be entitled to an equitable adjustment to the Contract Price and the Contract Time, all in accordance with the other terms and conditions of the Contract Documents. Notwithstanding the foregoing, Construction Manager understands and acknowledges that Owner may need access to or use of certain areas of the Project Site after Construction Manager's achievement of Substantial

Completion, and that such occupancy, access or use shall not constitute Owner's acceptance of any Work.

3.6.18 Clean Up.

3.6.18.1 Construction Manager agrees to keep the Project Site clean at all times of debris, rubbish and waste materials arising out of the Work. If Construction Manager fails to keep the Project Site clean, Owner has the right, after providing a twenty-four (24) hour written notice, to perform any required clean up and to backcharge Construction Manager for the costs of such clean up. At the completion of the Work, Construction Manager shall remove all debris, rubbish and waste materials from and about the Project Site, as well as all tools, appliances, construction equipment and machinery and surface materials, and shall leave the Project Site clean and ready for occupancy by Owner.

3.6.18.2 Any existing surface or subsurface improvements, including pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Construction Manager from damage during the prosecution of the Work. Any such improvements so damaged shall be restored by Construction Manager at its expense to condition at least equal to that existing at the time of Construction Manager's commencement of the Work.

3.6.18.3 Construction Manager shall confine operations at the Project Site to areas permitted by Applicable Laws and the Contract Documents and shall not unreasonably encumber the Project Site with materials or equipment. Protection of construction materials or equipment stored on the Project Site from weather, theft and damage is the sole responsibility and risk of Construction Manager.

3.6.18.4 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project Site by Construction Manager. After equipment is no longer required for the Work, it shall be promptly removed from the Project Site. Construction Manager shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

3.6.18.5 Construction Manager shall use best efforts to minimize any interference with the occupancy or beneficial use of (a) any areas and buildings adjacent to the site of the Work, and (b) the building in the event of partial occupancy.

3.6.18.6 All labor, material and equipment required to provide and maintain controls for the duration of the Project, including those associated with traffic control (including all signage, street, sidewalks barriers and fencing), storm water and pollution controls shall be supplied and paid for and maintained by Construction Manager.

3.6.19 Permits, Licenses and Taxes.

3.6.19.1 Construction Manager shall obtain all necessary permits, licenses and other governmental approvals necessary for the development and construction of the Project and obtain the same at the times necessary to meet the Project schedule. All permits, licenses and other governmental approvals shall be obtained and paid for by Construction Manager, except that Owner shall pay for initial SFM and BCO permits. If Construction Manager performs any Work without obtaining, or contrary to, such permits, licenses or other governmental approvals, Construction Manager shall bear all costs arising

therefrom. All costs incurred by Construction Manager with respect to performing its obligations under this **Subsection 3.6.19** shall be considered a direct cost item and shall be considered reimbursable as Cost of the Work as provided for in the Contract. Construction Manager shall pay all governmental charges and inspection fees necessary for the prosecution of the Work.

3.6.19.2 Construction Manager shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work.

3.6.19.3 Construction Manager shall cooperate with Owner and perform such actions and execute such instruments as may be required or reasonably requested by Owner in order for Owner to obtain the benefit of any available rebates, special rates and incentives.

3.6.20 Tests and Inspections.

3.6.20.1 Owner, Professional, their respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project shall have access at all times to the Work, whether the Work is being performed on or off of the Project Site, for their observation, inspection and testing. Construction Manager shall provide proper, safe conditions for such access. Construction Manager shall provide Professional and Owner with timely prior written notice (at least forty-eight (48) hours) of the readiness of the Work for all required inspections, tests or approvals.

3.6.20.2 If the Contract Documents or any codes, laws, ordinances, rules or regulations of any public authority having jurisdiction over the Project requires any portion of the Work to be specifically inspected, tested or approved, Construction Manager shall assume full responsibility therefore, pay all costs in connection therewith and furnish Professional the required certificates of inspection, testing or approval. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to Owner and Professional.

3.6.20.3 If any Work that is to be inspected, tested or approved pursuant to the Contract Documents is covered without such inspection, testing or approval having been satisfactorily obtained by Construction Manager and without obtaining the written concurrence from Professional and Owner, such Work must, if requested by Professional or Owner, be uncovered for observation. Such uncovering shall be at Construction Manager's expense unless Construction Manager has given Professional and Owner forty-eight (48) hours' written notice of Construction Manager's intention to cover the same and has requested written concurrence by Professional and Owner and Professional or Owner has not acted with reasonable promptness to respond to such notice and request. If any Work is covered contrary to written directions from Professional or Owner, such Work must, if requested by Professional or Owner, be uncovered for Professional's and/or Owner's observation and be replaced at Construction Manager's sole expense.

3.6.20.4 Owner shall charge to Construction Manager and may deduct from any payments due Construction Manager all engineering and inspection expenses incurred by Owner in connection with any overtime work unless such overtime work was expressly requested by Owner and Construction Manager was on schedule. Such overtime work consisting of any work during the construction period beyond the regular eight (8) hour day and for any work performed on Saturday, Sunday or holidays.

3.6.20.5 Neither observations by Professional or Owner, nor inspections, tests or approvals by others shall relieve Construction Manager from Construction Manager's obligations to perform the Work in accordance with the Contract Documents.

3.6.20.6 Construction Manager is responsible, without reimbursement from Owner, for re-inspection fees and costs, to the extent such re-inspections are due to the fault or neglect of Construction Manager or its subcontractors.

3.6.20.7 Construction Manager shall only use a certified independent testing and balancing services contractor to perform "Test and Balance" ("T&B") services for this Project. The T&B contractor shall be completely independent of Construction Manager's mechanical and ventilating subcontractor(s). Construction Manager shall be responsible for coordinating mechanical/ventilating ("HVAC") work, including HVAC control systems and T&B work.

3.6.20.8 A completed preliminary T&B report meeting the requirements of the governmental authority(ies) having jurisdiction over the Project shall be delivered by Construction Manager to Owner prior to and as a condition of achieving Substantial Completion. Construction Manager shall deliver to Owner the final T&B report within thirty (30) days after the date of Substantial Completion and the delivery of such final T&B report shall be a condition of final payment.

3.6.20.9 In addition to all other inspection obligations of Construction Manager under the Contract Documents, Construction Manager shall coordinate with Owner's Threshold Inspector to conduct structural inspections on threshold buildings pursuant to a structural inspection plan prepared by Professional. The term "threshold building" as used herein shall have the meaning prescribed in the Florida Building Code. The purpose of the structural inspection plan is to provide specific inspection requirements, procedures and schedules so the building's structure can be adequately inspected for compliance with the applicable Contract Documents. Inspection of the shoring and reshoring for conformance with the shoring and reshoring plans is also required. Construction Manager shall comply with all requirements of Owner's Threshold Inspector following the Structural Engineer's review and approval.

3.6.20.10 Construction Materials Testing shall be the responsibility of Construction Manager, unless otherwise indicated by Owner in writing.

3.6.21 Supervision and Construction Manager's Representative.

3.6.21.1 Construction Manager is responsible for supervising, coordinating and performing the Work with such care and skill as would be provided by a contractor with extensive and special expertise in the type of work required under the Contract Documents. Construction Manager is responsible for completing the Work so that it complies accurately and completely with the requirements of the Contract Documents.

3.6.21.2 Construction Manager shall keep on the Work at all times during its progress a competent resident representative who shall not be replaced without prior written notice to Owner and Professional except under extraordinary circumstances. The representative shall have authority to act on behalf of Construction Manager. All communications given to the representative shall be as binding as if given to Construction Manager. Owner shall have the right to direct Construction Manager to remove and replace its Project representative or any other employee of Construction Manager or any employee of any subcontractor from the Project, in accordance with **Section 1.4**.

3.6.21.3 Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project Site authorized to act on behalf of Construction Manager to coordinate, inspect and provide general direction of the Work and progress of the subcontractors. Construction Manager shall provide no less than those personnel during the respective phases of construction that are set forth in **EXHIBIT B** to the Agreement. Construction Manager shall not change any of those persons identified in **EXHIBIT B** unless mutually agreed to in writing by Owner and Construction Manager, except as provided under **Section 1.4**. In such case, Owner shall have the right to approve the replacement personnel.

3.6.21.4 Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide this information to Owner and all other affected parties, such as the code inspectors of any permitting authority, the subcontractors, and Professional. Owner and Professional may attend meetings between Construction Manager and its subcontractors; however, such attendance is optional and shall not diminish either the authority or responsibility of Construction Manager to administer the subcontracts.

3.6.21.5 Construction Manager shall be responsible to Owner for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other persons performing any of the Work or supplying materials under a contract to Construction Manager. Construction Manager shall develop and maintain a program, acceptable to Owner and Professional, to assure quality control of the Work. Construction Manager shall supervise the Work of all subcontractors, providing instructions to each when their portion of the Work does not conform to the requirements of the Contract Documents and Construction Manager shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. Should a disagreement occur between Construction Manager and Professional over the acceptability of the Work, Owner, in its sole discretion, shall have the right to determine the acceptability.

3.6.21.6 Construction Manager shall not employ on the Project any person who has been convicted of a felony or misdemeanor-level criminal charge regarding sexual abuse or misconduct, nor permit any subcontractor to assign any employee of it to the Project who has been convicted of a felony or misdemeanor-level criminal charge regarding sexual abuse or misconduct.

### 3.6.22 Protection of Work.

3.6.22.1 Construction Manager shall fully protect the Work and adjacent property from loss or damage and shall bear the cost of any such loss or damage until final payment has been made. Loss or damage includes environmental impacts to the ground, air, and water. If Construction Manager or anyone for whom Construction Manager is legally liable is responsible for any loss or damage to the Work or other work or materials of Owner or Owner's separate contractors, or adjacent property, Construction Manager shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Construction Manager.

3.6.22.2 Construction Manager shall ascertain what temporary enclosures, if any, of building areas, including existing facilities, should be provided for and may be provided as a practical matter, in order to assure orderly progress of the Work and to protect and secure the Work and existing facilities, in periods when extreme weather conditions are likely to be experienced.

3.6.22.3 Construction Manager shall not permit any unsafe loading of any structure at the Project Site, nor shall Construction Manager subject any part of the Work or adjacent property to any forces that will endanger it.

3.6.22.4 Construction Manager shall not disturb any benchmark established by Owner with respect to the Project. If Construction Manager, or its subcontractors, agents or anyone for whom Construction Manager is legally liable, disturbs Owner's benchmarks, Construction Manager shall immediately notify Owner and Professional. Owner shall have the benchmarks reestablished and Construction Manager shall be liable for all costs incurred by Owner associated therewith.

## **ARTICLE 4     SUBCONTRACTORS**

### **4.1     Subcontractor Selection Bidding and Negotiation.**

4.1.1 A subcontractor is any person or entity who is performing, furnishing, supplying or providing any portion of the Work pursuant to a contract with Construction Manager. Construction Manager shall be solely responsible for and have control over the subcontractors.

4.1.2 Construction Manager shall review the design and shall determine how it desires to divide the sequence of construction activities. Construction Manager will determine the breakdown and composition of bid packages for award of subcontracts, based on the current Project schedule, and shall supply a copy of that breakdown and composition to Owner and Professional for their review and approval. Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and costs.

4.1.3 At all times Owner shall have access to and the right to require copies of all correspondence, records, files and other bid documents (including all bid responses) with respect to the bidding process. Further, Construction Manager shall notify Owner of the date, time and place of all bid openings and Owner shall attend any and all such bid openings. All bid openings shall be conducted in Orange County, Florida. Finally, Construction Manager shall develop in writing subcontract bidding procedures for Owner's review and approval. Once those procedures have been approved by Owner, Construction Manager shall not deviate from such procedures without obtaining Owner's prior written consent.

4.1.4 In accordance with Owner's policies on the subject in effect at the time the GMP proposal is accepted, Construction Manager shall prepare and assemble document packets for use in bidding subcontracts. Such packaging of the Work shall be broken down to maximize both competition and the involvement of small businesses in accordance with Owner's goals.

4.1.5 Construction Manager shall develop subcontractor and supplier interest for each division of the Work. Construction Manager shall pre-qualify proposed subcontractors using a pre-qualification form approved by Owner and Professional, which shall include, at a minimum, proof of licensure where applicable.

4.1.6 Construction Manager shall, in accordance with Owner's policy in effect at the time the GMP proposal is accepted, competitively bid each trade category or, if approved by Owner, negotiate for the performance of a particular trade category. Unless otherwise authorized by Owner in writing, Construction Manager shall obtain at least three (3) bids on all of the Work, including obtaining at least three (3) third party bids on any Work that Construction Manager desires to self-perform.

4.1.7 Construction Manager shall use its best efforts to obtain bids which are less than the final GMP proposal estimates.

4.1.8 Construction Manager shall conduct bid openings in the presence of Owner or Owner's representative. Construction Manager shall provide Owner with a copy of its preliminary bid tabulation and true and complete copies of all bids.

4.1.9 Construction Manager shall, for each subcontract, trade or bid division:

4.1.9.1 determine the final bid amounts, having reviewed and clarified the scope of Work in detail with bidders to determine which bids are the lowest responsive bids and are complete but do not include duplicate scope items;

4.1.9.2 prepare and furnish to Owner a final bid tabulation summary which includes by subcontract, trade and bid division, the applicable final GMP estimate and the related final bid amount and the details of all scope clarifications for Owner's review and approval;

4.1.9.3 if requested by Owner, provide a list of all potential DOP Materials;

4.1.9.4 identify to Owner in writing the subcontractors to which Construction Manager recommends award of subcontracts; and

4.1.9.5 award and enter into a subcontract between itself and each subcontractor which it has recommended in accordance with this Agreement unless otherwise notified by Owner.

4.1.10 No portion of the Work may be performed by Construction Manager or any "related party" (hereinafter defined) except with Owner's advanced written approval in and accordance with **Subsection 5.2.10** below and Owner's policies on the subject in effect at the time Construction Manager commences construction. Construction Manager shall prepare and submit its own bids on any Work it intends to self-perform.

4.1.11 Construction Manager shall award subcontracts within ninety (90) days of issuance of the "Notice to Proceed (Construction Phase)".

4.1.12 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior written consent of Owner. If a subcontract is awarded on a cost-plus a fee basis, Construction Manager shall provide in the subcontract for Owner to receive the same audit rights with regard to the subcontractor as Owner receives with regard to the Construction Manager.

4.1.13 Construction Manager shall promptly inform Owner in writing of any proposed replacements to the list of subcontractors and suppliers in the final bid tabulation sheet provided to Owner, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). Owner shall have the right, in its absolute and sole discretion, to reject any proposed replacement if such proposed replacement fails to meet any criteria or requirements established for subcontractors performing such portion of, or for, the Work.

4.1.14 Construction Manager shall promptly report to Owner any occasion in which the contract price in an agreement with a subcontractor or supplier is lower than the estimated price included in the GMP for the scope of Work covered by such agreement (including any Change Order Work). Further, Owner reserves the right to audit Construction Manager's agreements with subcontractors and suppliers and Construction Manager shall promptly make available to Owner all records necessary for such purpose.

**4.2 Subcontractor List.** When Construction Manager submits its GMP proposal to Owner, Construction Manager also shall submit to Owner a list of the names, addresses, licensing information



and phone numbers of the subcontractors Construction Manager intends to use for each portion of the Work, as well as identifying in writing those portions of the Work it intends to perform with its own employees. The list identifying each subcontractor cannot be modified, changed, or amended without prior written approval from Owner. Any and all work to be self-performed by Construction Manager must be approved in writing by Owner in its sole discretion prior to commencement of such work. Construction Manager shall continuously update that subcontractor list, so that it remains current and accurate throughout the entire performance of the Work. Construction Manager shall not enter into a subcontract with any subcontractor, if Owner reasonably objects to that subcontractor. Construction Manager shall not be required to contract with anyone it reasonably objects to. As part of the Project document file to be maintained by Construction Manager at the Project site, Construction Manager shall keep on file a copy of the license for every subcontractor and sub-subcontractor performing any portion of the Work, as well as maintain a log of all such licenses.

**4.3 Subcontracts.** All subcontracts between Construction Manager and its subcontractors shall be in writing and are subject to Owner's approval. Further, all subcontracts shall: (a) require each subcontractor to be bound to Construction Manager to the same extent Construction Manager is bound to Owner by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the subcontractor, (b) provide for the assignment of the subcontracts from Construction Manager to Owner at the election of Owner upon termination of Construction Manager, (c) provide that Indemnitees will be additional indemnified parties of the subcontract, (d) provide that Indemnitees will be additional insureds on all insurance policies required to be provided by the subcontractor except workman's compensation and professional liability, if applicable, (e) assign all warranties directly to Owner, (f) identify Owner as an intended third-party beneficiary of the subcontract, (g) provide that the Work being performed pursuant to such subcontract be performed in accordance with the requirements and intent of the Contract Documents and provide for retainage as specified herein; (h) provide for submission of Applications for Payment in form acceptable to Owner, together with reasonable backup and supporting information, together with Waivers and Releases of Lien and Waivers of Right to Claim Against the Payment Bond, in the forms required by the Contract, (i) provide that each subcontractor, sub-subcontractor and supplier furnish to Construction Manager or the applicable subcontractor, as the case may be, in a timely fashion all information necessary for the preparation and submission of the reports required by the Contract; (j) provide that the subcontractor will resolve all disputes involving Owner in the same manner as provided in the Contract, (k) require that any claims by subcontractor for delay or additional cost must be submitted to Construction Manager within the time and in the manner in which Construction Manager must submit such claims to Owner, and that failure to comply with such conditions for giving notice and submitting claims shall result in the waiver of such claims; and (l) incorporate the insurance requirements of this Agreement into all of its subcontracts and, upon Owner's request, to provide copies of such insurance policies and additional insured endorsements, to Owner (and require similar incorporation into all sub-subcontracts).

4.3.1 Construction Manager shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this **Section 4.3** and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such documents available to its sub-subcontractors. Construction Manager shall make available for Owner's review and copying or, at Owner's request, deliver to Owner true and complete copies of Construction Manager's agreements with subcontractors and suppliers.

4.3.2 Unless otherwise expressly agreed to by Owner in writing, all subcontracts shall provide:

“LIMITATION OF REMEDIES - NO DAMAGES FOR DELAY”

That the subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by Owner or Professional or attributable to Owner or Professional and including

claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work, the subcontractor's claim for adjustments in the contract sum is limited exclusively to its actual costs for such changes, plus no more than ten percent (10%) for overhead and five percent (5%) for fee.

The subcontract shall require the subcontractor expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claim for increase in the subcontract price, damages, losses or additional compensation.

**“PAYMENT TO SUBCONTRACTORS”**

When Construction Manager receives payment from Owner for labor, services or materials furnished by subcontractors and suppliers hired by Construction Manager for the Project, Construction Manager shall, in accordance with §218.735, Florida Statutes, remit payment due to those subcontractors and suppliers, less the value of any item contested in accordance with the Contract for Construction, within ten (10) days after Construction Manager's receipt of payment from Owner. When the payment due the subcontractor is for final payment, including retainage, the subcontractor must include with the invoice for final payment, a conditional release of lien and all required warranties and closeout documentation. When the subcontractor receives payment from Construction Manager for labor, services, or materials furnished by the subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers, less the value of any item contested in accordance with the Contract for Construction, within ten (10) days after the subcontractor's receipt of payment.

Further, Construction Manager shall require all subcontractors to similarly incorporate such terms into their sub-subcontracts.

**ARTICLE 5      COMPENSATION OF CONSTRUCTION MANAGER**

**5.1      Payment for Pre-Construction Services.** Owner agrees to pay Construction Manager, and Construction Manager shall accept as complete payment for performance of Pre-Construction Services, \_\_\_\_\_ Dollars (\$\_\_\_\_\_), payable in one final invoice upon delivery of conforming GMP proposal and execution of the GMP Amendment for the entire Work.

Construction Manager's invoice for Pre-Construction Services shall be in a form reasonably acceptable to Owner and be accompanied by such other information, documentation, and materials as Owner may reasonably require. The final invoice shall not be submitted until the GMP Amendment is executed for the entire Work. If Owner accepts the Construction Manager's Value Engineering solutions during design to keep the Project within the Owner's approved budget, and the final GMP comes in above the Owner's approved budget, then the preconstruction fee will be deemed unearned as provided in **Section 3.4.18.**

**5.2      Payment for Construction Services.**

5.2.1      Items Included. Owner shall pay, and Construction Manager shall accept, as full and complete payment for the Construction Services, only the sum of the following items (collectively, the “**Contract Price**”), which Contract Price shall not exceed the GMP:

- (i)      the aggregate Cost of the Work, not to exceed the amount therefore specified in the GMP;

- (ii) the compensation for Construction Manager's provision of management services (the "**Staffing Costs**"), not to exceed the amount therefore specified in the GMP;
- (iii) the aggregate net cost of Construction Manager's General Conditions (the "**General Conditions Costs**"), not to exceed the amount therefore specified in the GMP; and
- (iv) Construction Manager's Overhead and Fee, not to exceed the amount therefore specified in the GMP.

Items of Work not included in this **Subsection 5.2.1** are compensable only as part of the Construction Manager's Overhead and Fee and are otherwise not reimbursable.

5.2.2 Cost of the Work. The term "**Cost of the Work**" shall mean all costs necessarily and reasonably incurred by Construction Manager in the proper performance of the Work (and not otherwise included in Staffing Costs or General Conditions Costs). Such costs shall be at rates not higher than the standard paid at the place of the Project except with the prior written consent of Owner only after Construction Manager has provided sufficient support in writing that exceptional circumstances exist, which justify the payment of rates higher than the standard. The Cost of the Work shall include *only* those items set forth below in this **Subsection 5.2.2**:

5.2.2.1 Labor Costs. Wages of construction workers directly employed by Construction Manager to perform the construction of the Work at the Project Site.

5.2.2.2 Subcontract Costs. Payments made by Construction Manager to subcontractors in accordance with the requirements of the applicable written subcontracts.

5.2.2.3 Cost of Materials and Equipment Incorporated into the Completed Construction.

5.2.2.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

5.2.2.3.2 Costs of materials described in **Subsection 5.2.2.3.1** above, in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to Owner at the completion of the Work.

5.2.2.4 Costs Not To Be Reimbursed. The Cost of the Work shall not include the following items:

5.2.2.4.1 Any costs not specifically and expressly described in **Subsection 5.2.2.1** through **Subsection 5.2.2.3** above.

5.2.2.4.2 Costs or other amounts included in Staffing Costs, General Conditions Cost or Overhead and Fee (i.e. there shall be no duplication of such items).

5.2.2.4.3 Costs which would cause the GMP to be exceeded (as the GMP may be adjusted pursuant to the terms herein for Change Order Work).

5.2.3 Project Staffing Costs. Construction Manager's Project Staffing Costs are limited to actual expenditures for the cost of Construction Manager's supervisory and technical personnel engaged in supervision and management of the Work at the Project Site, as authorized in the GMP proposal approved by Owner. Any overtime must be pre-approved by Owner. Overhead costs

associated with Project staff, such as vehicles, tolls, cell phones, etc. shall be covered under Construction Manager's Overhead and Fee, per **Section 5.2.5** below.

5.2.4 General Conditions Costs. General Conditions Costs are limited to actual expenditures or negotiated amounts for the following items, as authorized in the GMP proposal approved by Owner, and to the extent not otherwise included as part of the Cost of the Work:

- (i) costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by Construction Manager at the jobsite and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by Construction Manager. Cost for items previously used by Construction Manager shall mean fair market value;
- (ii) costs incurred to provide Project Site safety;
- (iii) costs of removal of debris from the Project Site;
- (iv) that portion of insurance and bond premiums directly attributable to the Contract for Construction. Premiums shall be net of trade discounts, volume discounts, dividends and other adjustments;
- (v) sales, use, or similar taxes imposed by a governmental authority and paid by Construction Manager and directly related to the Work;
- (vi) fees and assessments for permits, licenses and inspections for which Construction Manager is required by the Contract for Construction to pay;
- (vii) data processing costs directly related to the Work and as approved by Owner, in writing;
- (viii) the cost of obtaining and using all utility services required for the Work;
- (ix) the cost of crossing or protecting any public utility, if required, and as directed by Owner;
- (x) the costs associated with a temporary facility (i.e. trailer). Construction Manager may use surplus materials from Owner's warehouse to outfit such temporary facility, to the extent available, such materials being provided on an "as-is", where is basis, without representation or warranty whatsoever. Construction Manager shall be responsible for all transportation, set up and breakdown of materials used to outfit the temporary facility. Overhead costs associated with temporary facilities, such as vehicles, tolls, cell phones, etc. shall be covered under Construction Manager's Overhead and Fee, per **Section 5.2.5** below;
- (xi) the cost of secure off-site storage space or facilities approved in advance by Owner;

- (xii) rental charges for, machinery, equipment, and tools not customarily owned by construction workers; however any rental charge shall not exceed the purchase price of such machinery, equipment or tools; and
- (xiii) cost of surveys, measurements and layout work reasonably required for the execution of the Work or by the Construction Documents.

5.2.5 Construction Manager’s Overhead and Fee.

5.2.5.1 Construction Manager’s Overhead and Fee shall be a combined, fixed percentage of (a) the Cost of the Work, (b) Construction Manager’s Project Staffing and (c) General Conditions Cost, excluding bond and insurance costs. The fixed percentage shall be negotiated by the parties, and shall not exceed five percent (5%). Items (a)-(c) collectively referred to as the “**Construction Cost**” shall not exceed the amounts set forth in the GMP Amendment.

5.2.5.2 Construction Manager’s Overhead and Fee shall cover all operating expenses of Construction Manager's home and branch offices, such as staffing, telephone service, postage, office supplies, expressage, and vehicles, tolls, mileage, IT hardware, software and support, cellular phones and mobile devices, and other similar expenses not included in the General Conditions Costs negotiated by the parties. For the avoidance of doubt, Construction Manager’s Overhead and Fee shall not include the amount of any unspent Contingency or unspent allowance amounts.

5.2.6 Industry Benchmark.

	<u>Rate</u>	<u>Base</u>
General Conditions	7%-8%	GMP
CM Overhead and Fee	2%-5%	Cost of Work
GL Insurance	0.45%	Revenue
Subcontract Bonds <b>A</b>	1%-1.3%	GMP
P&P Bond CM	1%	CMP/CM Revenue
Labor Burden <b>B</b>	30%-40%	Labor

- A** Including discount would result in 0.75%, if required or approved by Owner
- B** Burden is limited to: FICA, FUTA, SUTA and WC.

5.2.7 Construction Manager’s Contingency. Construction Manager’s Contingency, established in the GMP Amendment, may be utilized through Owner approved Construction Contingency Justification Form, solely for work not included in the Construction Documents which is necessary to cause the Project to conform to applicable building codes or to address unforeseen conditions that were not identified as missing during the review of Construction Documents (through no fault of Construction Manager). Use of Construction Manager’s Contingency expressly excludes labor costs, and any legal costs and expenses, including attorneys’ fees and costs, associated with the Project.

Construction Manager shall submit to Owner requests for use of the Contingency. No sums may be charged to the Contingency except with prior written approval of Owner. No sums may be charged to the Contingency for costs which arise out of Construction Manager’s gross negligence, intentional misconduct, a material breach of this Agreement, disputes with employees of Construction Manager or any subcontractor or sub-subcontractor working on the Project or with any union representing such employees, costs not otherwise subject to inclusion in a cost category of the GMP, or liquidated damages. Construction Manager is not entitled to payment of sums which are otherwise properly chargeable to the Contingency to the extent (a) such sums are

reasonably chargeable to a subcontractor or other responsible person or entity, (b) Construction Manager failed to notify Owner or its insurance carrier, if applicable, of the event which results in the claim to the Contingency resulting in coverage disclaimer, or (c) such sums exceed the available Contingency set forth in the GMP. All unspent Contingency shall accrue to the benefit of Owner, and at Final Completion of the Work the GMP shall be reduced by Change Order by the amount of the unspent Contingency. Construction Manager shall reconcile the Contingency monthly.

5.2.8 Buyout Savings.

- (i) If Construction Manager receives bids for portions of the Work which are less than the amounts budgeted in the GMP proposal approved by Owner for such portions of the Work, such buyout savings shall first be utilized to offset shortfalls on other bid packages.
- (ii) If, after offsetting any shortfalls, buyout savings remain, at the time provided herein for the award of subcontracts, a deductive Change Order shall be issued reducing the GMP by the sum of all such buyout savings.
- (iii) Savings will be computed as of the date of Final Completion of the Work and shall consist of the difference between (a) the GMP (as it may be adjusted in accordance with the terms of the Contract for Construction) and (b) the total aggregate sum of the Cost of the Work, plus the Staffing Costs, plus the General Conditions Costs, plus Overhead and Fee paid by Owner (such difference equals the “**Savings**”) shall be to Owner’s benefit.

5.2.9 Use of Buyout Savings/DOP Tax Savings. The net amount of buyout savings and savings from DOP materials may be utilized by Owner, as determined by Owner in its sole and absolute discretion.

5.2.10 Discounts, Rebates and Refunds. Cash discounts obtained on payments made by Construction Manager shall accrue to Owner if (a) before making the payment, Construction Manager included them in an application for payment and received payment from Owner, or (b) Owner has deposited funds with Construction Manager with which to make payments; otherwise, cash discounts shall accrue to Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to Owner, and Construction Manager shall make provisions so that they can be obtained. Construction Manager shall not obtain for its own benefit any discounts, rebates, or refunds in connection with the Work without providing to Owner seven (7) days’ prior written notice of the potential discount, rebate or refund and an opportunity for Owner to furnish funds necessary to obtain such discount, rebate or refund on behalf of Owner in accordance with the requirements of this Section. With respect to surplus materials and equipment purchased as part of the Cost of the Work or General Conditions Costs, at the time of final completion of the Work, such surplus items shall at Owner’s written election either be: (a) delivered to Owner and become Owner’s property, (b) be sold at a sale pursuant to terms reasonably acceptable to Owner and the value realized shall be paid to Owner, or (c) be retained by Construction Manager and removed from the Project Site, provided that Owner shall be entitled to a reduction in the GMP for the salvage value of such items.

5.2.11 Related Party Transactions. For purposes of this Agreement, the term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with Construction Manager; any entity in which any stockholder in, or management employee of, Construction Manager owns any interest in excess of ten percent (10%) in the aggregate; or any person or entity which has the right to control the business or affairs of Construction Manager. The term “related party” includes any member of the immediate family of any person identified above. If any of the costs to be reimbursed arise from a transaction between Construction Manager and a related party, Construction Manager shall notify Owner of the specific nature of

the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and Construction Manager shall procure the Work, equipment, goods or service from the related party, as a subcontractor in accordance with the applicable terms of this Agreement. If Owner fails to authorize the transaction, Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party.

5.2.12 Compensation for Change Orders. Amounts owed by Owner to Construction Manager shall be adjusted by duly authorized Change Order in accordance herewith.

5.2.12.1 Increase in Cost of Work. If the Cost of the Work is increased by Change Order, Owner shall pay Construction Manager the aggregate net cost directly paid by Construction Manager to subcontractors or suppliers for the performance of the Work and Construction Manager shall receive Overhead and Fee per the percentage set forth in the GMP Amendment, and an amount for any increased bond and insurance costs directly associated therewith.

5.2.12.2 Change Order Disputed. If Construction Manager disputes a Change Order decision by Owner, it must give Owner its written notice in accordance with **Section 9.4** or any and all objections shall be deemed waived.

5.2.13 Applications for Payment for the Work. Applications for payment and supporting information required by the Contract for Construction shall be submitted in detail sufficient for an audit thereof in accordance with Owner's policies on the subject in effect at the time Construction Manager commences construction. Within thirty (30) business days of receipt of Construction Manager's application for payment, properly prepared pursuant to Owner's policies on the subject, and all required supporting information, Owner shall pay Construction Manager the amount approved by Professional, less retainage, unless there is a dispute about the amount of compensation due to Construction Manager.

**5.3 Labor Burden.** For purposes of calculating amounts due to Construction Manager under this Agreement for staffing, the Parties agree that Construction Manager's labor burden for each employee staffing the Project shall be the labor burden approved by Owner prior to, or upon execution of, this Agreement. For purposes hereof, "labor burden" means the actual cost of benefits and taxes that Construction Manager must pay its employees, as per the certified payroll, and shall not include any profit, markup, bonus or expense unrelated to employee compensation. The labor burden shall fall within industry benchmarks illustrated in **Section 5.2.6**.

## **ARTICLE 6 PAYMENTS**

### **6.1 Progress Payments.**

6.1.1 Construction Manager's monthly Applications for Payment shall be in such form and contain such detail and backup and other information, documentation, and materials as Owner reasonably may require. The payment schedule set forth in **Sections 5.1 and 5.2** shall be used as the basis for Construction Manager's monthly Applications for Payment with respect to Pre-Construction Services. The first Application for Payment shall be submitted no earlier than thirty (30) days after the pre-construction phase Commencement Date. Construction Manager's Applications for Payment shall be completed, duly executed and notarized.

6.1.2 At the time it submits its GMP proposal to Owner, Construction Manager also shall submit to Owner and Professional, for their review, a detailed schedule of values based upon the GMP proposal; all in C.S.I. format, listing the major elements of the Work and the dollar value for each element and, if required by Owner, broken down further into the major elements of the Work to be completed during the various phases of the Work. That schedule of values, as further revised

to reflect the final negotiated GMP amount and as approved by Owner, will be attached to the GMP Amendment and shall be used as the basis for Construction Manager's monthly Applications for Payment thereafter. This revised schedule of values shall be updated for the current month Change Orders and submitted each month to Owner and Professional along with a completed, duly executed and notarized copy of the Application for Payment.

6.1.3 If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the Project Site, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which shall be subject to Owner's satisfaction. Owner has the discretion whether or not to pay for such unincorporated materials.

6.1.4 Construction Manager shall submit two (2) notarized original copies of its monthly Application for Payment to Owner and Professional on or before the twenty-fifth (25<sup>th</sup>) day of each month for Work performed during the previous month. Invoices received after the twenty-fifth (25<sup>th</sup>) day of each month shall be considered for payment as part of the next month's application. Within seven (7) days after receipt of each Application for Payment, Professional shall submit to Owner a Certificate for Payment in the amount recommended by Professional as being due and owing Construction Manager. Owner shall pay Construction Manager that portion of Professional's Certificate for Payment which Owner approves as being due and owing Construction Manager within thirty (30) days of Owner's receipt of the Certificate for Payment. Cost of Work will be paid based on the percentage of Work complete on site, with the exception of Construction Manager's initial Application for Payment which may include the reimbursement of costs for the Bonds. General Conditions and General Requirements shall be reimbursed upon receipt of proper backup documentation (certified payroll, etc.)

6.1.5 Owner shall retain ten percent (10%) of that portion of the gross amount of each monthly payment request certified by Professional and approved by Owner for payment, until fifty percent (50%) completion of the Work. Upon fifty percent (50%) completion of the Work, the amount of retainage thereafter withheld by Owner from subsequent payments shall be reduced to five percent (5%) of that portion of the gross amount of each monthly payment request certified by Professional and approved by Owner for payment. No retainage shall be held on bond or insurance. Also, after fifty percent (50%) completion of the Work has been achieved, and to the extent required by Section 218.735(8)(d), Florida Statutes, Construction Manager may request in its next monthly Application for Payment release of up to one-half (1/2) of the retainage theretofore withheld by Owner prior to said fifty percent (50%) of the Work being completed. Owner reserves the right, at its sole discretion, to further reduce or release any portion of such retainage prior to final payment; provided, however, nothing in this **Subsection 6.1.5** shall preclude or limit Owner's right to withhold payment as otherwise permitted by the terms of the Contract Documents or as permitted by law. Further, any reduction or release of retainage, or portion thereof shall not be a waiver of a) any of Owner's rights to retainage in connection with other payments to Construction Manager, or (b) any other right or remedy that Owner has under the Contract Documents, at law or in equity.

6.1.6 Payments to Construction Manager shall in no way imply approval or acceptance of Construction Manager's work.

6.1.7 Each Application for Payment shall be accompanied by: (a) properly executed and notarized (i) Waiver and Release of Liens in form acceptable to Owner and complying with Applicable Laws, and (ii) Waiver of Right to Claim Against the Payment Bond (Progress Payment) in form acceptable to Owner and complying with Applicable Laws, each showing that all materials, labor, equipment and other bills associated with that portion of the Work for which payment has been requested have been paid in full through the previous month's Application for



Payment, from Construction Manager and all first tier subcontractors and suppliers and all subcontractors and suppliers that have delivered a Notice to Owner; provided, however, Owner, in its sole discretion, may require such Waiver and Release of Liens and Waivers of Right to Claim Against the Payment Bond (Progress Payment) from all lower tier subcontractors and suppliers and, if so required Construction Manager shall, as a condition precedent to payment provide same; (b) updated schedule(s) required by the Contract Documents, (c) a written consent from the surety for the payment being requested; and (d) such other information, documentation, and materials as Owner or Professional may reasonably require (e.g. certified payrolls, petty cash accounts, and invoices). Owner shall not be required to make payment until and unless these affidavits, waivers, reports and other information, documentation and materials are furnished by Construction Manager. Further, if Construction Manager is withholding any portion of a payment to any subcontractor or supplier for any labor, services, or materials for which Owner has paid Construction Manager, Construction Manager agrees to refund such money to Owner.

6.1.8 Applications for Payment shall not include requests for payment for portions of the Work for which Construction Manager does not intend to pay a subcontractor or supplier, unless such Work has been performed by others whom Construction Manager intends to pay.

6.1.9 Each Application for Payment shall constitute a certification and representation by Construction Manager to Owner that: (a) the construction has progressed to the point indicated; (b) the quality of the Work covered by the application is in accordance with the Contract Documents; (c) there are no liens or claims outstanding or known to exist at the date of the Application for Payment; (d) all due and payable bills with respect to the Work have been paid to date or included in the amount requested in the current application, and there is no known basis for the filing of any construction liens or claims or any other lien or claim on the Work; (e) duly executed waivers and releases have been obtained from all subcontractors and suppliers for work done and materials furnished through the date of payment; (f) Construction Manager is entitled to payment in the amount requested; (g) such Application for Payment represents a just estimate of cost reimbursable to Construction Manager under the terms of the Contract Documents, and (h) such Application for Payment has not been front-end-loaded either by Construction Manager or by any of its subcontractors or suppliers (including placing a value on a line item that is in excess of its cost, increasing unit prices on early completed items while decreasing unit prices on later completed ones, and/or inflating the percentage of completion on line items).

6.1.10 Construction Manager warrants that title to all Work covered by an Application for Payment will pass to Owner no later than the time of payment unless later passage of title is expressly provided for elsewhere herein. Construction Manager further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from Owner shall, to the best of Construction Manager's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Construction Manager, subcontractors, suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

**6.2 Payments Withheld.** Professional shall review each Application for Payment submitted by Construction Manager and shall make certifications or recommendations to Owner as to the proper amounts, if any, which may be owed Construction Manager under the Application for Payment. Professional's payment certification or recommendation shall be evidenced by a Certificate for Payment issued by Professional to Owner. All Certificates for Payment are subject to Owner's review and approval. Both Professional and Owner shall have the right to refuse to certify or approve for payment any amounts, or portions thereof, requested by Construction Manager in an Application for Payment, or rescind any amount previously certified and approved in a Certificate for Payment, and Owner may withhold any payments otherwise due Construction Manager under the Contract or any other agreement between Owner and Construction Manager, to the extent it is reasonably necessary, to protect Owner from any expense, cost or loss attributable to: (a) defective or deficient Work not properly remedied in accordance with the terms of the Contract Documents; (b) the filing or reasonable evidence indicating the

probable filing of third party claims against Owner attributable to the fault or neglect of Construction Manager; (c) Construction Manager's failure to make timely and proper payments to all subcontractors and suppliers; (d) reasonable evidence that the remaining Work cannot be completed for the unpaid Contract Price balance; (e) reasonable evidence indicating that the remaining Work cannot be completed within the remaining Contract Time; (f) Construction Manager's failure to satisfactorily prosecute the Work in accordance with the requirements of the Contract Documents; or (g) any other material breach of the requirements of the Contract Documents by Construction Manager. Owner shall have the right, but not the obligation, to take any corrective action Owner deems appropriate to cure any of the above noted items, at Construction Manager's expense, if such items are not cured by Construction Manager to Owner's reasonable satisfaction within three (3) days after Construction Manager's receipt of written notice from Owner.

### **6.3 Final Payment.**

6.3.1 Owner shall make final payment to Construction Manager within forty-five (45) business days after the Work is finally accepted by Owner in accordance with **Section 10.2** herein, provided that Construction Manager first, and as an explicit condition precedent to the accrual of Construction Manager's right to final payment, shall have furnished Owner with: (a) a properly executed and notarized (i) Final Conditional Waiver and Release of Lien in form acceptable to Owner and in compliance with Applicable Laws and, (ii) Conditional Waiver of Right to Claim Against the Payment Bond (Final Payment) in form acceptable to Owner and in compliance with Applicable Laws, from Construction Manager and all first tier subcontractors and suppliers and all subcontractors and suppliers that have delivered a Notice to Owner; provided, however, Owner, in its sole discretion, may require such Waivers and Releases of Lien and Waivers of Right to Claim Against the Payment Bond (Final Payment) from all lower tier subcontractors and suppliers and, if so required Construction Manager shall, as a condition precedent to payment provide same; (b) all as-built Contract Documents, including as-built drawings for design-build systems delegated to Construction Manager; (c) a complete list of subcontractors and principal suppliers on the Project, including addresses and telephone numbers; (d) evidence reasonably acceptable to Owner that the Work has passed all requisite governmental inspections; (e) an indexed, readable and searchable electronic copy, in format acceptable to Owner and, if requested, hard copies of all operation and maintenance manuals, permits, and temporary and final certificates of completion or occupancy, as applicable, and third party warranty documents applicable to the Work; (f) a warranty matrix, in spreadsheet or database format, which includes the following information: Contractor's name, description of asset, building, room number, asset criticality, status, part number, serial number, manufacturer name, and warranty start and end date; (g) a Final Payment Affidavit in statutory form; (h) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner; (i) if required by Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by Owner; and (j) all other materials, information and documentation that may be required by the Contract Documents or Owner. Notwithstanding the foregoing, Owner reserves the right to require any of the foregoing items or portions thereof which may have been completed prior to final completion as a condition to payment of any progress payment to be made after completion of such item(s).

6.3.2 Construction Manager's acceptance of final payment shall constitute a full waiver of any and all claims by Construction Manager against Owner arising out of the Contract or otherwise relating to the Project, except those identified in writing by Construction Manager as unsettled in the final Application for Payment. Neither the acceptance of the Work nor payment by Owner shall be deemed to be a waiver of Owner's right to enforce any obligations of Construction Manager hereunder or to the recovery of damages for defective Work not discovered by Owner or Professional at the time of final inspection.

## **ARTICLE 7     OTHER WORK**

**7.1     Separate Contractors.** Owner may perform other work related to the Project at the site by Owner's own forces, have other work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, written notice thereof will be given to Construction Manager prior to starting any such other work. If Construction Manager believes that such performance will involve additional expense to Construction Manager or require additional time, Construction Manager shall send written notice of that fact to Owner and Professional within seven (7) days of being notified of the other work. If Construction Manager fails to send the above required seven (7) days' notice, Construction Manager will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Time or adjustment to the Contract Price.

**7.2     Coordination.** Construction Manager shall afford each utility owner and other contractor who is a party to such a direct contract (or Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs. Construction Manager shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Construction Manager shall be responsible for all damage to the work of others caused by the performance of its Work. Further, Construction Manager shall not in any way cut or alter the work of others without first receiving the written consent of that other person and Professional.

**7.3     Work of Separate Contractors.** If any part of Construction Manager's Work depends for proper execution or results upon the work of any other contractor or utility owner (or Owner), Construction Manager shall inspect and promptly report to Owner and Professional in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Such report must be made within seven (7) days of the time Construction Manager first became aware of the delay, defect or deficiency or by the scheduled commencement of Construction Manager's dependent Work, whichever occurs first. Construction Manager's failure to report within the allotted time will constitute an acceptance of the other work as fit and proper for integration with Construction Manager's Work.

## **ARTICLE 8     CONTRACT TIME, EXTENSION AND LIQUIDATED DAMAGES FOR DELAY**

**8.1     Diligent Prosecution.** Construction Manager shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subcontractors and suppliers, as well as coordinating its Work with all work of others at the Project Site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by Construction Manager or anyone for whom Construction Manager is responsible or liable. Unless expressly noted otherwise in the Contract Documents, Construction Manager shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents, coordination of trades and subcontractors, coordination of drawings to existing as-built conditions and site conditions, and the coordination of Owner's suppliers and contractors as set forth in **Article 7**.

**8.2     Excusable Delay.** Should Construction Manager actually be obstructed or delayed in the critical path of the prosecution of, or completion of, the Work as a result of unforeseeable causes: (a) beyond the control of Construction Manager, (b) not due to Construction Manager's fault or neglect, and (c) which could not be avoided by the exercise of reasonable diligence, including: (i) acts of God or of the public enemy, (ii) acts of government, (iii) fires, (iv) floods, (v) epidemics, (vi) quarantine regulation, (vii) strikes, (viii) lockouts, or (ix) weather conditions abnormal for the period of time (as defined below) which exceed the aggregate number of days allotted for adverse weather conditions in Construction Manager's Construction Schedule approved by Owner, Construction Manager shall notify Owner and Professional in writing within forty-eight (48) hours after the commencement of such delay (which time period shall control over any conflicting time periods specified elsewhere herein) stating the cause or causes thereof, or be deemed to have waived any right which Construction Manager may have had to

request a time extension therefor. “**Abnormal for the period of time**” for purposes of this Section means rain or bad weather (e.g. named tropical storms or hurricanes), only when such rain or bad weather is in excess of the ten (10) year average for that specific period of time (from its commencement to its conclusion, as compared with the historical data for that same period) as published by the National Oceanic and Atmospheric Administration, Ashville, North Carolina, for Metropolitan Orlando, Florida, Reporting Station. Construction Manager’s schedule shall allow the number of days it deems necessary for rain and bad weather when Construction Manager prepares its schedule and not every day of adverse weather conditions abnormal for the period of time shall be grounds for an extension of time. Construction Manager and Owner acknowledge that any Project Site rain gauge measurements will not be relied upon for determining rain fall amounts. Contractor shall use commercially reasonable efforts to mitigate the effects of any delays described in this Section so as to minimize any effect on the schedule for completion of the Work.

**8.3 Acceleration.** Owner shall have the right, at any time, whether or not Construction Manager is behind schedule, to order Construction Manager to accelerate its Work. In the event that Owner orders Construction Manager to accelerate its Work and Construction (a) is not behind schedule, and (b) believes that acceleration will increase the cost of performance, Construction Manager, shall be required to submit a Claim for increase pursuant to **Section 9.4**. Any such Claim shall be based exclusively and solely on actual and direct increased field costs associated with the acceleration.

**8.4 Delays Related to Hazardous Substances.** If Construction Manager encounters on the Project Site any Hazardous Substance(s), as set forth in to Section 11.3, Construction Manager immediately shall (a) immediately stop Work in the area affected; (b) take all reasonable precautions to prevent foreseeable bodily injury or death to persons; and (c) notify Owner and Professional(s), both orally and in writing, of the presence and location of any physical evidence of, or information regarding, such Hazardous Substance(s) on the Project Site. If the Work is so stopped and a Hazardous Substance is found, the Work in the affected area shall not thereafter be resumed until the Site is fully remediated and approved by Owner. A Change Order shall be issued, which shall include an adjustment to the Contract Time and compensation for any out of pocket costs incurred by Construction Manager as a result of the stoppage. If no Hazardous Substance is found after the Work is stopped, no Change Order will be issued. Further, if the Hazardous Substance was introduced to the Project Site or caused by Construction Manager or any of its employees, agents, subcontractors, or material suppliers, no Change Order will be issued for an adjustment in the Contract Time and Construction Manager shall indemnify Owner and hold Owner harmless for any costs incurred by Owner with respect to such Hazardous Substance.

**8.5 Compensation for Delay.** No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which Owner and Professional may be responsible, in whole or in part, shall relieve Construction Manager of its duty to perform or give rise to any right to damages or additional compensation from Owner. Construction Manager expressly acknowledges and agrees that it shall receive no damages for delay. Construction Manager’s sole remedy, if any, against Owner will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned “No Damage For Delay” provision. This Section shall expressly apply to claims for early completion, as well as to claims based on late completion. Notwithstanding the foregoing, if the Work is delayed due to the fault or neglect of Owner or anyone for whom Owner is liable, and such delays have a cumulative total of more than twenty-one (21) days after receipt by Owner of written notice from Construction Manager of such fault or neglect, Construction Manager may make a Claim for its actual and direct delay damages accruing after said twenty-one (21) days; provided, however, Construction Manager expressly acknowledges and agrees that its actual and direct delay damages shall not exceed, and shall be limited to no more than, One Thousand and No/100 Dollars (\$1,000.00) per day. In no event shall Owner be liable to Construction Manager whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, punitive, special, indirect, incidental, or consequential damages of any kind or nature whatsoever. For the avoidance of doubt, Owner’s exercise of its reserved right to change, increase or decrease the Work shall not be deemed to be “fault or neglect of Owner” serving as the basis for additional compensation under this

**Section 8.5.** Claims for increased compensation or extension of time for such changes, increases or decreases shall be governed by **Article 9**.

**8.6 Liquidated Damages for Failure to Achieve Substantial Completion and/or Final Completion.** Construction Manager shall achieve Substantial Completion and Final Completion of the Work within the time set forth in the Contract Documents (as may be adjusted in accordance with the Contract for Construction). Inasmuch as failure to achieve Substantial Completion and/or Final Completion of the Work within time set forth in the Contract Documents will result in damages to Owner, and as the damages arising from such failure cannot be calculated with any degree of certainty, it is agreed that if Construction Manager does not achieve Substantial Completion and/or Final Completion of the Work within time set forth in the Contract Documents, or within such further time, as may be allowed for time extensions in accordance with the provisions of the Contract for Construction, Construction Manager shall be required to pay to Owner as liquidated damages for such delay, and not as a penalty, the amount determined by the following formula: **GMP x .07/365**, for each day elapsing between the date fixed for Substantial Completion and/or Final Completion and the date Substantial Completion and/or Final Completion is fully achieved. The Parties agree that said liquidated damages are reasonable given existing circumstances, including the range of harm that is foreseeable and the anticipation that proof of damages would be costly and impractical. Construction Manager hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty. It is further mutually understood and agreed that Owner's assessment of liquidated damages for delays pursuant to this Section is intended to compensate Owner solely for Construction Manager's failure to achieve Substantial Completion and/or Final Completion of the Work in the time prescribed in the Contract Documents and shall not release Construction Manager from liability from any other breach of requirements of the Contract for Construction. If the liquidated damages set forth herein are deemed unenforceable for any reason, Owner instead shall be entitled to recover those actual delay damages that it sustained as a result of Construction Manager's failure to achieve Substantial Completion and/or Final Completion of the Work. Liquidated Damages for failure to achieve Final Completion shall not be stacked on top of Liquidated Damages for failure to achieve Substantial Completion. Liquidated Damages shall not be assessed against Construction Manager in the event of Owner delay; however, in event of concurrent delay by Owner and Construction Manager, Liquidated Damages shall still be assessed.

**8.7 Withholding of Liquidated Damages.** Owner may deduct liquidated damages prescribed in this Article from any unpaid amounts then or thereafter due Construction Manager under the Contract for Construction and any liquidated damages not so deducted shall be payable to Owner by Construction Manager upon demand by Owner plus interest from the date of demand at the maximum legal rate of interest until paid. Further, when Owner reasonably believes (a) that Substantial Completion will be inexcusably delayed; or (b) that Construction Manager will fail to achieve Final Completion by the Final Completion Date, Owner shall be entitled, but not required, to withhold from any amounts otherwise due Construction Manager the daily amount specified for liquidated damages in this Article and the GMP Amendment for each day of the anticipated unexcused delay. If and when Construction Manager overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which Owner has withheld payment, Owner shall release to Construction Manager only those funds withheld but no longer applicable, as liquidated damages, subject to the satisfaction of all other conditions precedent to release of such funds.

**8.8 Damages Other Than for Delay.** The liquidated damages prescribed in this **Article 8** shall be payable in addition to any other expenses or costs payable by Contractor to Owner under the Contract for Construction, and shall not preclude the recovery of damages by Owner under other provisions of the Contract for Construction. Owner's right to received liquidated damages shall in no manner affect Owner's right to terminate the Contract for Construction, as provided herein or elsewhere in the Contract for Construction. Owner's exercise of the right to terminate shall not release Contractor from the obligation to pay said liquidated damages.

## **ARTICLE 9      CHANGES IN THE WORK**

**9.1      Changes in the Work.** Owner shall have the right at any time during the progress of the Work, without invalidating the Contract, to change, increase or decrease the Work. Except in an emergency endangering life or property, no addition or changes to the Work shall be made except upon written order of Owner, and Owner shall not be liable to Construction Manager for any increased compensation or adjustment to the Contract Time without such written order. Accordingly, no course of conduct or dealings between the Parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be a basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided in the Contract Documents. No officer, employee or agent of Owner is authorized to direct any extra or changed work orally. Construction Manager shall familiarize itself with Owner's Change Order approval process and shall manage progress of the Work accordingly.

**9.2      Definitions.** A "Change Order" is a written instrument prepared by Construction Manager and signed by Owner, Construction Manager and, if requested by Owner, Professional stating their agreement upon all of the following: (a) the change in the Work; (b) the amount of the adjustment, if any, in the Contract Price; and (c) the extent of the adjustment, if any, in the Contract Time.

**9.3      Pricing Change Orders.** Change Order pricing and Construction Change Directive work shall be based on the actual Cost of the Work, Construction Manager's Staffing Costs, General Conditions Cost and Construction Manager's Overhead and Fee at the agreed rate, and such other information as reasonably requested by the Owner or the Professional

**9.4      Construction Manager's Estimate.** Promptly after being notified of a change, but in no event more than fourteen (14) days after its receipt of such notification (unless Owner has agreed in writing to a longer period of time), Construction Manager shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Construction Manager's estimate shall include an analysis of impacts to cost and time, if any, to perform additional work, or delete Work, as applicable, including the effects and impacts, if any, on unchanged Work, estimates of costs and Construction Manager's proposed methods to minimize costs, delay and disruption to the performance of the Work. If Construction Manager fails to submit a written proposal or request additional time for submitting the proposal within the fourteen (14)-day time period, it shall be presumed that the change described in Owner's request for a proposed change will not result in a modification to the Contract Price or Contract Time and, if directed by Owner in writing, the change shall be performed by Construction Manager without additional compensation. Owner's request for a proposed change does not authorize Construction Manager to commence performance of the change, unless otherwise specified in writing. If Owner decides that the proposed change be performed, the Work shall be authorized according to Change Order procedures set forth herein.

**9.5      Change Order Requests.** If Construction Manager observes any circumstance that may, in its opinion, be a change in the scope of the Work that justifies a change to the Contract Price or Contract Time or Construction Manager otherwise becomes aware of the need for or desirability of a change in the Work, then Construction Manager may submit a written Change Order Request ("COR") (to be followed by substantiating data), in a format provided by the Owner, and must specify the reasons for such proposed change, including relevant circumstances and impacts on the schedule. Construction Manager shall prepare and submit to Professional drawing, specifications or other data in support of a Change Order Request. Construction Manager shall submit a written price proposal concurrently with the COR. Contractor may request additional compensation and/or time through a COR but not for instances that Construction Manager knew or reasonably should have known occurred more than fourteen (14) days prior to the date the COR is submitted. Construction Manager's failure to initiate a COR within such period shall be deemed a waiver of the right to adjustment of the Contract Price or the Contract Time for the alleged change. Any such COR that is approved by Owner will be incorporated in a Change Order. If Owner determines that the Work in question is not a change in the scope of the Work and the COR is

denied but Construction Manager believes that it does have merit, the Contractor may submit a Claim in accordance with the procedures set forth herein.

**9.6 Change Orders.** A Change Order, in form provided by Owner, shall be prepared by Construction Manager, reviewed and certified by Professional and Owner, and executed promptly by the Parties after an agreement is reached between Construction Manager and Owner concerning requested changes. Construction Manager shall promptly perform changes authorized by duly executed Change Orders. The Contract Price and Contract Time shall be adjusted in the Change Order in the manner as Owner and Construction Manager shall mutually agree. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Price and the Contract Time.

**9.7 Disagreement on Change Orders.** If Owner and Construction Manager are unable to agree on a Change Order for a requested change, Construction Manager shall, nevertheless, promptly perform the change as directed by Owner in writing. In that event, the Contract Price and Contract Time shall be adjusted as directed by Owner. If Construction Manager disagrees with Owner's adjustment determination, Construction Manager must make a Claim pursuant to **Article 21** or else be deemed to have waived any Claim it might otherwise have had on that matter.

**9.8 Subcontractor Change Order Requests.** Construction Manager shall negotiate all Change Orders with all affected subcontractors and shall review the costs of those proposals and advise Owner and Professional of their validity and reasonableness, acting in Owner's best interest, prior to requesting approval of each Change Order from Owner.

**9.9 Records Regarding Changes.** Owner shall have the right to conduct an audit of Construction Manager's books and records, as well as those of its subcontractors and suppliers, to verify the accuracy of Construction Manager's claim with respect to Construction Manager's costs associated with any Change Order.

## **ARTICLE 10 COMPLETION**

**10.1 Substantial Completion.** "Substantial Completion" of the Work shall be achieved when the Work has been completed to the point where Owner can lawfully occupy or utilize the Work for its intended purpose under a Certificate of Occupancy or Temporary Certificate of Occupancy (with conditions acceptable to Owner in its sole discretion) or their equivalent. Professional shall certify the date Substantial Completion of the Work is achieved. When the entire Work (or any portion thereof designated in writing by Owner) is substantially complete, Construction Manager shall notify Owner and Professional in writing that the entire Work (or such designated portion) is substantially complete and request that Professional issue a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion). Construction Manager shall give Owner and Professional thirty (30) days' notice prior to the predicted Substantial Completion inspection date. The issuance of a Certificate of Substantial Completion for the Work shall be an express condition precedent to Contractor's right to request a Certificate of Occupancy or Temporary Certificate of Occupancy. The written notice from Construction Manager referenced in the first sentence of this Section shall include a proposed punch list of all items of Work to be completed or corrected by Construction Manager. Within a reasonable time thereafter, Owner, Construction Manager and Professional shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If Owner and Professional do not consider the Work (or designated portion) substantially complete, Professional shall notify Construction Manager in writing giving the reasons therefor and the inspection process shall be repeated at no additional cost to Owner until the Work is determined to be substantially complete. In such case, Construction Manager shall pay the costs (including those of Professional) of all additional Substantial Completion inspections. If Owner and Professional consider the Work (or designated portion) substantially complete, Professional shall prepare and deliver to Construction Manager a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion) which shall fix the date of Substantial Completion for the entire Work (or designated portion thereof) is actually achieved by

Construction Manager and include a final punch list of items to be completed or corrected by Construction Manager before final payment. Construction Manager shall submit Owner's Substantial Completion Form/Checklist and all required backup documentation for Owner approval. Following the issuance of the Certificate of Substantial Completion and submittal of other documents required by Owner, Construction Manager may apply to Owners Building Code Office for a Certificate of Occupancy. The final punch list shall be in compliance with the Contract Documents and all Applicable Laws. Accordingly, Professional shall provide the final punch list to Construction Manager within seven (7) days after Construction Manager has achieved Substantial Completion. Construction Manager acknowledges and agrees that the failure to include any corrective work or pending items not yet completed on the punch list does not alter the responsibility of Construction Manager to complete all the Work required under the Contract and does not waive Owner's right to demand completion of the item pursuant to the Contract Documents prior to or after final payment. Additionally, if the Contract involves Work on more than one building or structure, or involves a multi-phased Project, a punch list shall be developed in accordance with the timelines set forth in this Section for each building, structure, or phase of the Project. Owner shall have the right to exclude Construction Manager from the Work and Project site (or designated portion thereof) after the date of Substantial Completion (or partial Substantial Completion), but Owner shall allow Construction Manager reasonable access to complete or correct items on the final punch list.

**10.2 Final Completion.** "Final Completion" of the Work shall be achieved once (a) the Work passes a Final Completion inspection, and (b) the Construction Manager has produced all required Final Completion close-out documentation and items. Final Completion shall not be deemed to have occurred and no final payment shall be due Construction Manager or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and all required Final Completion close-out documentation and items have been produced to Owner by Construction Manager. When Construction Manager believes it has fully performed all of the Work, including all punch list items, Construction Manager shall deliver to Owner a written affidavit from Construction Manager certifying that all Work has been completed in accordance with the requirements of the Contract Documents. That written affidavit shall be delivered to Owner by Construction Manager at the same time it submits its final Application for Payment, which Construction Manager shall submit within thirty (30) days of the date of Substantial Completion. After receipt of such affidavit, the final Application for Payment and all other documents required for Project close-out, Professional and Owner shall promptly inspect the Work to determine if all of the Work has been completed and is ready for final acceptance by Owner. If Owner and Professional determine Construction Manager has completed the entire Work, Professional shall promptly issue a final Certificate for Payment, stating that, to the best of its knowledge, information and belief, and on the basis of its observations and inspections: (x) all of the Work has been completed in accordance with the requirements of the Contract Documents; (y) the final balance due Construction Manager, as noted in the final Certificate for Payment, is due and payable; and (z) all conditions precedent to Construction Manager's entitlement to final payment have been satisfied. Neither the final payment nor the retainage shall become due and payable until Construction Manager submits: (i) the duly executed and notarized final Waiver and Release of Lien in the form acceptable to Owner and in compliance with Applicable Laws, (ii) written consent of surety to final payment, (iii) all close-out documentation and information required by the Contract Documents to be provided by Construction Manager prior to its entitlement to final payment, (iv) if required by Owner, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by Owner, (v) Certificate of Final Completion in form approved by Owner, (vi) all operation and maintenance manuals not previously produced, (vii) Owner maintenance or "attic" stock as prescribed in the technical specifications, (viii) one (1) set of as-built plans and specifications, (ix) certification and affidavit that all insurance required of Construction Manager beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to Owner, (x) full, final and unconditional waivers of construction liens, from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim, (xi) full, final and unconditional certification and affidavit that all of Construction Manager's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied, (xii) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems



incorporated into the Work, endorsed, countersigned, and assigned as necessary; affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work, (xiii) a list of any item(s) due but unable to be delivered and the reason for non-delivery; and (xiv) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work. Owner reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though Professional may have issued its recommendations. Unless and until Owner is completely satisfied that Final Completion has been achieved, neither the final payment nor the retainage shall become due and payable.

## **ARTICLE 11 SAFETY, EMERGENCIES AND HAZARDOUS SUBSTANCES**

### **11.1 Safety.**

11.1.1 Construction Manager shall have its project management and site superintendent attend a one hour training conducted by Environmental Health & Safety, to be scheduled by Owner's Project Manager.

11.1.2 Construction Manager is responsible for the safety and protection of all persons and property on or about the Project Site during the progress of the Work. Further, it is Construction Manager's responsibility to protect from damage or loss all material and equipment to be incorporated into the Work which may be stored off of the Project Site. Construction Manager shall develop and implement, in accordance with the requirements of the Contract Documents a safety plan for the Work.

11.1.3 Construction Manager shall comply with, and give notices required by, all Applicable Laws applicable to performance of the Work and rules and regulations of Owner and any public body having jurisdiction over the Work, including all of their safety and building codes, environmental laws, ordinances, rules and regulations. Construction Manager shall notify owners of adjacent property and of any underground structures or improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation or replacement of their property. Construction Manager's duties and responsibilities for the safety and protection of the Work and the environment shall continue until such time as the Work is completed and final acceptance of same by Owner has occurred. Construction Manager shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. Further, Construction Manager shall employ all necessary measures to protect adjoining adjacent property and shall provide barricades, temporary fences and covered walkways required to protect the safety of passersby, as required by prudent construction practices, local building codes, ordinances or other laws and the Contract Documents. Construction Manager shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

11.1.4 At all times during the performance of the Work at the Project Site, Construction Manager shall have designated, and located on a full time basis at the Project Site, a qualified individual whose responsibility shall be to monitor and enforce Construction Manager's safety program at the Project Site. Construction Manager hereby designates its superintendent as that safety representative. Construction Manager may designate by written notice to Owner another individual, reasonably acceptable to Owner, who shall be Construction Manager's safety representative at the Project Site.

11.1.5 Alcohol, drugs and all illegal substances are strictly prohibited on any Owner property. All employees of Construction Manager, as well as those of all subcontractors and those of any other person or entity for whom Construction Manager is legally liable (collectively referred to herein as "**Employees**"), shall not possess or be under the influence of any such

substances while on any Owner property. Further, Employees shall not bring on to any Owner property any gun, rifle or other firearm, or explosives of any kind.

11.1.6 Construction Manager acknowledges that the Work may be progressing on a Project Site which is located upon or adjacent to an existing Owner facility. In such event, Construction Manager shall comply with the following:

11.1.6.1 All Owner facilities are smoke free. Smoking is strictly prohibited;

11.1.6.2 All Employees shall be provided an identification badge by Construction Manager. Such identification badge must be prominently displayed on the outside of the Employees' clothing at all times. All Employees working at the Project Site must sign in and out with Construction Manager each day;

11.1.6.3 Construction Manager shall strictly limit its operations to the designated work areas and shall not permit any Employees to enter any other portions of Owner's property without Owner's expressed prior written consent;

11.1.6.4 All Employees are prohibited from distributing any papers or other materials upon Owner's property, and are strictly prohibited from using any of Owner's telephones or other office equipment;

11.1.6.5 All Employees shall at all times comply with OSHA regulations with respect to dress and conduct at the Project Site. Further, all Employees shall comply with the dress, conduct and facility regulations issued by Owner's officials onsite, as said regulations may be changed from time to time;

11.1.6.6 All Employees shall enter and leave Owner's facilities only through the ingress and egress points identified in the site utilization plan approved by Owner or as otherwise designated, from time to time, by Owner in writing;

11.1.6.7 When requested, Construction Manager shall cooperate with any ongoing Owner investigation involving bodily injury, economic loss or damage to Owner's facilities or personal property therein;

11.1.6.8 Interaction between the Employees and the teacher and student population is strictly prohibited; and

11.1.6.9 Employees may not solicit, distribute or sell products while on Owner's property. Friends, family members or other visitors of the Employees are not permitted on Owner's property.

11.1.7 At all times Construction Manager shall adhere to Owner's safety and security regulations, and shall comply with all security requirements at Owner's facilities, including all safety and security regulations and requirements, as said regulations and requirements may be modified or changed by Owner from time to time.

11.1.8 Construction Manager certifies that no person or subcontractor will be assigned to work on any work pursuant to the Contract that pose any threat or risk of harm to the health, safety or welfare of any student, employee, guest, vendor or property of Owner. Further, Construction Manager agrees to indemnify and hold harmless Owner and its officers and employees from any and all claims, suits, damages, costs, or attorney fees incurred as a result of any harm done to any student, employee, guest, vendor or property of Owner by Construction Manager's employees or subcontractors assigned to do work pursuant to the Contract.

**11.2 Emergencies.** Construction Manager shall take immediate action to prevent injury to any person or damage to any property (including the Work and any adjacent property) which otherwise might arise from an emergency event at the Project Site. Property damage includes environmental impacts to the ground, air, and water. Construction Manager shall give Professional and Owner written notice within forty-eight (48) hours after the occurrence of the emergency, if Construction Manager believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. In addition, Construction Manager shall deliver to Owner copies of any written notice of violations received by Construction Manager or subcontractors within forty-eight (48) hours following notification by the regulatory agency. If Owner or Professional determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Construction Manager fails to provide the forty-eight (48) hour written notice noted above, Construction Manager shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Price or an extension to the Contract Time. Construction Manager is obligated to promptly report in writing to Owner all accidents relating to the Work that result in any personal injury or property damage. The notice procedures contained in this **Section 11.2** control over any conflicting notice periods herein.

**11.3 Hazardous Substances.** In the event Construction Manager reasonably believes it has discovered Hazardous Substances on the Project Site that are not contemplated by the Contract for Construction, Construction Manager shall proceed in accordance with Section 8.4. Construction Manager shall strictly comply with all Applicable Laws, and secure the Project Site to prevent access by unauthorized personnel, as directed by Owner. If (a) Construction Manager fails to comply with this Section and/or Section 8.4 or (b) Hazardous Substances are knowingly transported (either on or off-site) or (c) material which Construction Manager or its employees, agents, or subcontractors should have known were Hazardous Substance(s) is transported (either on or off-site), without notice to Owner, such materials shall become the property of Construction Manager and Construction Manager shall be solely responsible for all costs and fines associated therewith. For the purposes of this Agreement, "Hazardous Substances" means all hazardous or toxic substances, materials, wastes, pollutants and contaminants which are listed, defined, or regulated under Applicable Laws pertaining or related to health, safety or the environment, including the Comprehensive Environmental Response Compensation and Liability Act as amended, (42 U.S.C. § 9601 et seq), the Resource Conservation and Recovery Act as amended, (42 U.S.C. §6901 et seq), the Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251 to 1387), the Clean Air Act (42 U.S.C.A. §§ 7401 to 7671q), the Emergency Planning and Community Right to Know Act (42 U.S.C.A. §§ 11001 to 11050), the Toxic Substances Control Act (15 U.S.C.A. §§ 2601 to 2692), the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901 to 6992k), the Oil Pollution Act (33 U.S.C.A. §§ 2701 to 2761) and all rules and regulations promulgated pursuant thereto. Without limiting the generality of the foregoing, "Hazardous Substances" shall include polychlorinated biphenyl, asbestos (friable and non-friable), radon, urea formaldehyde, gasoline, diesel, oil, hydrocarbons, petroleum derived constituents, biomedical waste, or hazardous or toxic residue.

**11.4 Material Safety Data Sheets.** Construction Manager is responsible for compliance with any requirements included in the Contract Documents regarding Hazardous Substances. If any Hazardous Substances are contained in the products used on site or incorporated into the construction by Construction Manager or any of its subcontractors, Construction Manager shall provide to Professional and Owner a Material Safety Data Sheet at the time of each delivery or prior to each new use of such product. Construction Manager shall indemnify and hold harmless Indemnitees against the cost and expense Owner incurs: (a) for remediation of a material or substance Construction Manager brings to the site and negligently handles, or (b) where Construction Manager fails to perform its obligations under **Section 11.3** above.

## **ARTICLE 12 INSURANCE, BONDS & INDEMNIFICATION**

**12.1 Required Insurance.** Construction Manager shall maintain all forms of insurance required by Applicable Laws. Construction Manager shall also maintain the following insurance for the duration of this Agreement or such longer period of time as may be specified below or required by Applicable Laws:

12.1.1 Commercial General Liability insurance coverage for commercial general liability endorsed to state that limits apply to the Project separately [including Premises-Operations, Products and Completed Operations Coverage (including X, C, and U coverages, as applicable), Independent Contractors' Protective, Contractual Liability with specified provision for the Construction Manager's indemnity obligations, Personal Injury and Broad Form Property Damage, including Explosion, Collapse and Underground Hazards] and without elimination of the subcontractor exception to "damage to your work" exclusion, which shall provide a per occurrence coverage amount not less than One Million Dollars (\$1,000,000) and Ten Million Dollars (\$10,000,000) in the aggregate. Products and Completed Operations to be through the expiration of the applicable "statute of repose";

12.1.2 Automobile Liability insurance covering owned, rented and non-owned vehicles operated by Construction Manager or its Personnel with policy limits of not less than One Million Dollars (\$1,000,000) combined single limit and aggregate for bodily injury and property damage.;

12.1.3 Workers' Compensation insurance at full statutory limits as required by laws of the State in which the Project is located and Federal law, if applicable;

12.1.4 Employer's Liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000) for Bodily injury by Accident, each Accident, Bodily injury by Disease, each employee and Bodily Injury by Disease, policy limit;

12.1.5 Pollution Liability with policy limits of not less than One Million Dollars (\$1,000,000) per occurrence;

12.1.6 Builder's Risk unless otherwise directed by Owner in writing, at replacement cost, covering the full value of the construction being performed, including where applicable, the existing structure. Such policy shall be written on a causes of loss special form policy, and shall include coverage for reasonable compensation for the Construction Manager's services and expenses required as a result of such insured loss. This insurance shall insure the interests of the Construction Manager, subcontractors and sub-subcontractors in the Work. Property covered by the insurance shall include temporary building(s) or structure(s) at the Project site, other than any of Construction Manager's office trailer(s) (which shall be covered under separate policy. In addition, such insurance shall cover portions of the Work stored off the site, after written approval of the Owner, at the value established in the approval, and portions of the Work in transit. The deductible under the policy shall not exceed \$10,000.00 for all risks, except named storm, for which the deductible shall not exceed 1% of current value. Owner shall be responsible for payment of the deductible in the event of a loss due to named storm, and Construction Manager shall be responsible for payment of the deductible in all other instances. When the Work includes the repair, removal, installation and/or testing of live steam boilers, valves, pipes or lines, then such insurance shall include boiler and machine coverage, written on an ISO form or its equivalent. A loss or losses insured under this insurance policy shall be adjusted by the Construction Manager and its insurance company. The Construction Manager shall repair or replace the damaged property with the proceeds from the Builder's Risk policy. The Construction Manager shall be responsible for all damages and necessary repairs whether or not the loss is covered by the Builder's Risk policy.

12.1.7 Property insurance providing coverage for property in which the Construction Manager retains the risk of loss including its own equipment, (stationary or mobile), tools (including employee tools), supplies, materials. or any other property owned or leased by the Construction Manager;

12.1.8 To the extent the services or Work required of Construction Manager under the Contract for Construction include professional services, Professional Liability insurance to compensate Owner for all negligent acts, errors and omissions by Construction Manager and Construction Manager's Personnel arising out of this Agreement, with limits of not less than One

Million Dollars (\$1,000,000) per claim and in the aggregate. Construction Manager's Professional Liability insurance policy shall: (a) be maintained for a period up to and including the date of the expiration of the applicable "statute of repose", (b) have a retroactive date prior to the performance of any professional services to be provided under the Contract for Construction, and (c) state that in the event of cancellation or non-renewal, the discovery period for insurance claims (tail coverage) shall be at least four (4) years.

## **12.2 Insurance Requirements Generally.**

12.2.1 All insurance policies shall be issued and countersigned by duly authorized representatives of such companies and shall be written on ISO standard forms or their equivalents.

12.2.2 All of the foregoing policies of insurance shall be: (a) issued by an insurance carrier approved in advance by Owner, with a rating from A.M. Best Company of not less than A/XII, that is licensed to provide such coverage in the State of Florida, and that has been in such insurance business continuously for not less than five (5) years immediately prior to the Effective Date, and (b) in a form satisfactory to Owner without unacceptable exclusions or exceptions to coverage.

12.2.3 All insurance policies shall be fully performable in Orange County, Florida, and shall be construed in accordance with the laws of the State of Florida.

12.2.4 All insurance policies to be provided by Construction Manager pursuant to the terms hereof must expressly state that the insurance company will accept service of process in Orange County, Florida and that the exclusive venue for any action concerning any matter under those policies shall be in the appropriate state court situated in Orange County, Florida.

12.2.5 All policies and renewals thereof are to be written for not less than one (1) year.

12.2.6 All policy numbers must be clearly identified.

12.2.7 All liability policies must provide for claims to be made on an occurrence basis, except Professional Liability, which shall be written on a claims made basis. All Claims Made Policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than four (4) years. If provided as an option, Construction Manager shall purchase the extended reporting period on cancellation or termination unless a new policy is affected. Any new policy shall maintain the original retroactive date evidenced at the commencement of the Contract.

12.2.8 Indemnitees (hereinafter defined) must be named as additional insureds on the all liability policies (other than the Professional Liability policy) and all certificates of insurance (except the Professional Liability policy) shall include the following statement: "Indemnitees are added as additional insureds to the Commercial General Liability, Automobile Liability and Builder's Risk policies. Indemnities shall also be named Additional Insured on the Commercial General Liability policy of any off-site storage premises. Additional Insured status applies on a primary/non-contributory basis. Waiver of Subrogation applies in favor of Indemnitees for Commercial General Liability, Automobile Liability, Worker's Compensation and Builder's Risk policies."

12.2.9 All insurance policies required of Construction Manager shall be primary and non-contributory to any other insurance or indemnity as may be available to any additional insured and contain a severability or separation of insureds clause. Each insurance policy required by the Contract shall apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.

12.2.10 Owner shall be named as “Certificate Holder” on the Certificate of Insurance for Construction Manager’s Professional Liability insurance policy.

12.2.11 The deductibles or self-insured retentions on Construction Manager’s insurance policies shall not exceed Five Thousand Dollars (\$5,000) per occurrence (or claim for Construction Manager’s Professional Liability Insurance policy, if applicable); except for the Builder’s Risk policy, as set forth in **Section 12.1.6** above.

12.2.12 Payment of any such deductible or self-insured amounts shall be at Construction Manager’s sole cost and expense. It shall be the insurance company’s responsibility to seek reimbursement from the insured. Companies issuing the insurance policy or policies shall have no recourse against Owner for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Construction Manager.

12.2.13 The insurance policies required of Construction Manager shall be endorsed to contain a provision requiring a written notice directly from the producer or insurer to Owner at least thirty (30) days prior to any cancellation, non-renewal or material modification of the policies, provided that only ten (10) days’ prior written notice shall be required in the case of cancellation for non-payment of premium. Construction Manager shall also notify Owner, in a like manner, within two (2) days after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by Construction Manager from its insurer, and nothing contained herein shall relieve Construction Manager of this requirement to provide notice.

12.2.14 In the event of a reduction in the aggregate limit of any policy to be provided by it hereunder, Construction Manager shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy.

12.2.15 Owner shall retain the right to review, at any time, coverage, form, and amount of insurance.

12.2.16 The procuring of required policies of insurance shall not be construed to limit Construction Manager’s liability or to fulfill the indemnification provisions and requirements of the Contract.

12.2.17 All Certificates of Insurance will reference the contract, bid, project or job number on the certificate. All insurance carriers listed on the certificate must have their corresponding A. M. Best carrier ID listed.

12.2.18 Notices of Accidents (occurrences) and Notices of Claims associated with work being performed under the Contract, shall be provided to Construction Manager’s or subcontractor’s, as the case may be, insurance company and Owner as soon as practicable after notice to the insured.

**12.3 Waiver of Subrogation.** Construction Manager waives all rights of subrogation against Indemnitees for damages or injuries caused by perils covered by any insurance required to be maintained by Construction Manager or its subcontractors, to the extent such damages or injuries are covered by such insurance. Construction Manager shall require similar waivers from all of its subcontractors. If any policies of insurance required to be maintained by Construction Manager or its subcontractors require an endorsement to provide any waiver of subrogation referenced above, Construction Manager shall cause such policies to be so endorsed.

**12.4 Subcontractors’ Insurance.** Construction Manager shall ensure that any and all Construction Manager’s subcontractors also carry and maintain the above-specified policies of insurance meeting the requirements of **Sections 12.1** and **12.2** above, unless other requirements are expressly agreed to by

Owner in writing, and Construction Manager shall include language in all subcontracts binding Construction Manager's subcontractors to the terms and conditions of this **Article 12**, unless other requirements are expressly agreed to by Owner in writing. Construction Manager shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.

**12.5 Evidence of Insurance.** Upon execution of this Agreement, and at every date for renewal of a required insurance policy and at such other times as Owner shall request, Construction Manager and Construction Manager's subcontractors shall cause a certified copy of Construction Manager's and Construction Manager's subcontractors' insurance policies or, at Owner's election, Certificates of Insurance, Declarations Pages and Additional Insured Endorsements, to be issued to Owner by an insurance agent licensed in the State of Florida. The maintenance in full current force and effect of the insurance coverage required by this Agreement and provision of a valid evidence of insurance that meets the requirements of this Agreement are conditions precedent to the payment of any amounts due Construction Manager by Owner. In no event shall any failure of Owner to receive copies or certificates of policies required under the Contract be construed as a waiver by Owner of Construction Manager's obligations to obtain insurance pursuant as required by the Contract. The obligation to procure and maintain insurance required by the Contract is a separate responsibility of Construction Manager and independent of its duty to furnish a copy or certificate of such insurance policies. The acceptance by Owner of any evidence of the insurance coverages and limits required by the Contract, including any Certificate of Insurance, policy or additional insured endorsement, does not constitute approval or agreement by Owner that the insurance requirements have been met or that the insurance policies shown on the evidence of insurance are in compliance with the requirements of the Contract. Construction Manager shall deliver the required evidence of insurance to the following address:

University of Central Florida  
EH&S Risk Management  
P.O. 163500  
Orlando FL 32816

**12.6 Failure to Maintain Insurance.** The failure of Construction Manager or any of Construction Manager's subcontractors to fully and strictly comply at all times with the insurance requirements set forth herein will be deemed a material breach of this Agreement. In the event that Construction Manager shall fail or be unable to obtain or maintain coverage required pursuant to this Article, Owner, in addition to all other rights and remedies available to it and without waiving Construction Manager's default, shall have the right (but not the obligation) to obtain and/or maintain coverage of the type and amount required hereunder on behalf of Construction Manager or its subcontractor(s), as applicable; in which case, Construction Manager shall furnish to Owner all necessary information and to reimburse Owner for the cost of such coverage. At Owner's option, Owner may deduct the costs and expenses of any coverage obtained by Owner on behalf of Construction Manager or its subcontractor(s) from any amount due to Construction Manager under this Agreement or under any other agreement between Owner and Construction Manager.

**12.7 Insurance No Limitation.** Insurance coverage required in this Agreement shall be additional security for the obligations assumed by Construction Manager and in no event shall the types or limits of coverage required be deemed to limit any obligations or liabilities assumed under this Agreement. The carrying of insurance shall not be deemed to release Construction Manager or in any way diminish its liability or obligations hereunder, by way of indemnity or otherwise.

**12.8 Effect of Insurance.** Compliance with insurance requirements shall not relieve Construction Manager of any responsibility to indemnify Owner for any liability to Owner as specified in any other provision of this Agreement, and Owner shall be entitled to pursue any remedy in law or equity if Construction Manager fails to comply with the contractual provisions hereof. Indemnity obligations specified elsewhere herein shall not be negated or reduced by virtue of any insurance carrier's (a) denial

of insurance coverage for the occurrence or event which is the subject matter of the claim; or (b) refusal to defend any named insured.

**12.9 Owner's Right to Adjust Requirements.** Owner has the right to allow Construction Manager deviate from any of the above insurance requirements, if Owner, at Owner's sole discretion decides to do so. If Owner decides to allow Construction Manager to deviate from the above noted insurance requirements, Owner will inform Construction Manager in writing in those particular circumstances. Unless Owner notifies Construction Manager in writing that Owner is willing to allow Construction Manager to deviate from the insurance requirements noted above, all of the above insurance requirements shall apply to Construction Manager.

**12.10 Bond Requirements.** Construction Manager shall, within five (5) days after the GMP is agreed to by Owner and Construction Manager and before any portion of the construction phase Work is commenced, furnish Payment and Performance bonds (together, the "Bonds") on Owner's standard forms covering the full and faithful performance of the Contract for Construction and the payment of obligations arising hereunder. The Bonds must comply with the following provisions and must be otherwise acceptable to Owner:

12.10.1 The Bonds shall each be in amount equal to the Contract Price and all subsequent increases.

12.10.2 The Bonds must be underwritten by a surety company which has a currently valid Certificate of Authority issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.

12.10.3 The surety company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.

12.10.4 The surety company shall be in full compliance with the provisions of the Florida Insurance Code.

12.10.5 The surety company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.

12.10.6 The Bonds must be fully performable in Florida, with service and venue in Orange County, Florida.

12.10.7 If the GMP exceeds \$500,000.00, the surety company shall also comply with the following provisions:

12.10.7.1 The surety company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide:

CONTRACT PRICE (\$)	POLICYHOLDER'S RATING	REQUIRED FINANCIAL RATING
500,000 to 1,000,000	A	CLASS IV
1,000,000 to 2,500,000	A	CLASS V
2,500,000 to 5,000,000	A	CLASS VI
5,000,000 to 10,000,000	A	CLASS VII



10,000,000 to 25,000,000	A	CLASS VIII
25,000,000 to 50,000,000	A	CLASS IX
50,000,000 to 75,000,000	A	CLASS X

12.10.7.2 The surety company shall not expose itself to any loss on any one risk in an amount exceeding ten percent (10%) of its surplus to policyholders, provided:

12.10.7.2.1 Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this Section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this State have been met.

12.10.7.2.2 In the case of a surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any surety deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

12.10.8 If the surety for any bond furnished by Construction Manager is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract for Construction, Construction Manager shall, within five (5) days thereafter, substitute another bond and surety, both of which shall be subject to the minimum requirements noted above and Owner’s approval.

12.10.9 In accordance with the requirements of Section 255.05(1)(a), Florida Statutes, within five (5) days after Owner’s written approval of the Bonds and before commencing the construction phase Work, Construction Manager shall record in the Public Records of Orange County, Florida, a copy of the Bonds. Construction Manager shall deliver to Owner certified copies of the recorded Bonds within ten (10) days of recording of the Bonds but, in any event, before commencing the construction phase Work. The proper recording and delivery of such Bonds are conditions precedent to Owner’s obligation to make any progress payments to Construction Manager hereunder.

12.10.10 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract for Construction, Construction Manager shall promptly furnish a copy of the Bonds or shall permit a copy to be made.

**12.11 Indemnification.** To the maximum extent permitted by applicable law, Construction Manager shall defend, indemnify and hold harmless Owner, University of Central Florida Board of Trustees, and their respective officers, employees and trustees (collectively, “**Indemnitees**”) from any and all liabilities, claims, damages, penalties, demands, judgments, actions, proceedings, losses or costs, including reasonable attorneys’ fees and paralegals’ fees, whether resulting from any claimed breach of this Agreement or the Contract for Construction by Construction Manager, for infringement of patent rights, copyrights, or other intellectual property rights, or from personal injury, bodily injury (including death), property damage, direct or consequential damages, or economic loss, to the extent caused, in whole or in part, by the negligence, recklessness, or intentional wrongful misconduct of Construction Manager or anyone employed or utilized by Construction Manager in the performance of the Contract for Construction. This indemnification obligation shall not be construed to negate, abridge or reduce, and shall be in addition to, any other rights or remedies which otherwise may be available to an indemnified

party or person to the extent described in this **Section 12.11**. For the avoidance of doubt, such indemnification shall not include claims of, or damages resulting from, gross negligence, or willful, wanton or intentional misconduct of the Indemnitees or their officers, directors, agents or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of Construction Manager or any of Construction Manager's contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. Construction Manager's indemnification obligations under the Contract for Construction, including those specified in this **Section 12.11**, shall be deemed to fully comply with Section 725.06, Florida Statutes, including any amendments thereto, in all respects. If any word, clause or provision of any of the indemnification provisions of the Contract for Construction is determined not to be in compliance with Section 725.06, Florida Statutes, including any amendments thereto, it shall be stricken and the remaining words, clauses and provisions shall remain in full force and effect. It is the intent of the parties that Construction Manager's indemnification obligations comply fully with Section 725.06, Florida Statutes, including any amendments, in all respects and, to the greatest extent permitted by Applicable Law, Construction Manager waives for itself and its insurers any and all claims that the indemnification obligations under this Agreement violate Applicable Law.

**12.12 Claims Under Indemnity.** In claims against Owner indemnified under this Agreement by an employee of Construction Manager, anyone directly or indirectly employed by Construction Manager or anyone for whose acts Construction Manager may be liable, the indemnification obligation under this Agreement shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Construction Manager under workers' compensation acts, disability benefit acts or other employee benefit acts, nor shall the indemnification obligation be limited by the existence of any insurance policy.

## **ARTICLE 13 AUDIT RIGHTS**

**13.1 Record Keeping.** Construction Manager shall exercise such controls as may be necessary for proper financial management under the Contract for Construction and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to Owner. Construction Manager shall keep all records and accounts which concern or relate to the Work hereunder for a minimum of three (3) years from the date of termination of the Contract or the date the Project is completed, whichever is later or such longer period of time as may be required by law.

**13.2 Audits.** Owner, and any duly authorized agents or representatives of Owner, shall be provided access to all such records and accounts at any and all times during normal business hours upon request by Owner. Further, Owner, and any duly authorized agents or representatives of Owner, shall have the right to audit, inspect and copy all of Construction Manager's and any subcontractor's Project records and accounts as often as they deem necessary and Construction Manager shall cooperate in any audit, inspection, or copying of the documents. This access, inspection, copying and auditing rights shall survive the termination of the Contract.

**13.3 Records.** For purposes hereof, Construction Manager's "records and accounts" means any and all information, materials and data of every kind and character, whether hard copy or in electronic form, which may, in Owner's judgment have any bearing on or pertain to the Contract for Construction, including books, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, correspondence, daily diaries, written policies and procedures, time sheets, payroll registers, payroll records, cancelled payroll checks, subcontract files (e.g., including proposals of successful and unsuccessful bidders, bid recap), original estimates, estimating work sheets, correspondence, Change Order files (including documentation covering negotiated settlements), back-charge logs and supporting documentation, invoices and related payment documentation, general ledgers, records detailing cash and trade discounts earned, insurance rebates and dividends, superintendent reports, drawings, receipts, vouchers and memoranda.

**13.4 Access.** Owner's authorized representative shall have reasonable access to Construction Manager's facilities, shall be allowed to interview all current or former employees to discuss matters

pertinent to the Contract for Construction, shall be provided adequate and appropriate work space at Construction Manager's facilities, may count employees at the Project Site, may be present for the distribution of payroll and shall have such other rights of access as may be reasonably necessary to carry out an audit.

**13.5 Adjustments.** If at any time, Owner conducts such an audit of Construction Manager's records and accounts and finds that Construction Manager overcharged Owner, Construction Manager shall pay to Owner the "**Overcharged Amount**", which is defined as the total aggregate overcharged amount together with interest thereon (such interest to be established at the rate of Twelve percent (12%) per annum). If the Overcharged Amount is equal to or greater than Ten Thousand and No/100 Dollars (\$10,000.00), Construction Manager shall pay to Owner the Overcharged Amount and the "**Audit Amount**", which is defined as the total aggregate of Owner's reasonable audit costs incurred as a result of its audit of Construction Manager. Owner may recover the Overcharged Amount and the Audit Amount, as applicable, from any amount due or owing Construction Manager with regard to the Project or under any other agreement between Construction Manager and Owner. If such amounts owed Construction Manager are insufficient to cover the Overcharged Amount and Audit Amount, as applicable, then Construction Manager shall pay such remaining amounts to Owner within seven (7) business days of its receipt of Owner's invoice for such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.

**13.6 Survival.** This **Article 13**, including all access, inspection, copying, auditing, reimbursement and repayment rights shall survive the termination of the Contract.

**13.7 Flow Through.** Construction Manager shall ensure notice of Owner's audit rights is provided to its subcontractors, suppliers and any other vendor providing services or materials for the Project and shall ensure that each agreement it enters into pursuant hereto includes the provisions of this **Article 13**. The audit of a subcontractor's costs will not include the base bid subcontract work performed under their initial lump sum subcontract, except verification of initial bid amount vs contract amount. Any change in cost, added and/or removed scope, from the initial lump sum base bid will be subject to audit, including change order work.

## **ARTICLE 14 BACKGROUND SCREENING STANDARDS, CIVIL LITIGATION, DRUG TESTING, E-VERIFY**

### **14.1 Background Checks.**

14.1.1 Construction Manager shall perform, at Construction Manager's expense, a criminal background screening for each of Construction Manager's employees, subcontractors, agents and representatives (collectively, "**Personnel**") intended to perform work at a site owned or controlled by Owner. Construction Manager agrees that the criminal background screening will have been performed no more than ninety (90) days prior to the assignment of the applicable Personnel to Owner's site for work. Construction Manager acknowledges that this obligation may require re-screening of previously screened Personnel. Construction Manager shall not permit any Personnel to provide services or work under this Agreement who does not meet the criminal background screening requirements set forth herein.

14.1.2 Construction Manager shall conduct a Florida and nationwide criminal background check for its Personnel, through a law enforcement agency, or a Professional Background Screener accredited by the National Association of Professional Background Screeners (NAPBS). Background screening shall require that Construction Manager's Personnel shall not have been convicted of, found guilty of, regardless of adjudication, or have entered a plea of *nolo contendere* or guilty to the following type of offenses (including felony and misdemeanor) indicated below:

- (i) Murder, manslaughter, aggravated manslaughter, homicide;

- (ii) Aggravated assault, assault, battery, or aggravated battery;
- (iii) Sexual misconduct of any type;
- (iv) Kidnapping or false imprisonment;
- (v) Lewd and lascivious offenses;
- (vi) Drug offenses;
- (vii) Abuse, neglect, negligent treatment, exploitation, or contributing to the delinquency or dependency of a child;
- (viii) Abuse, neglect, negligent treatment, or exploitation of an adult;
- (ix) Burglary, theft, robbery, and related crimes;
- (x) Arson, embezzlement, violent acts, prostitution, willful destruction of property;  
or
- (xi) Any felony offense not identified above.

14.1.3 Construction Manager's Personnel shall be rescreened annually; however, in the event Personnel previously screened ceases to provide work or services to Construction Manager for more than ninety (90) days, Construction Manager shall re-screen such Personnel prior to allowing such Personnel to again provide services or work at Owner's site.

14.1.4 Construction Manager shall maintain copies of the results of the criminal background checks for the term of this Agreement and for a period of three (3) years after final payment is made, whichever is longer.

14.1.5 In the event Construction Manager obtains, or is provided, supplemental criminal background information, including police reports or arrest information, after execution of this Agreement or a prior background screening, which potentially disqualifies Personnel previously deemed eligible to provide work or services under this Agreement, Construction Manager shall promptly notify Owner of such matter. Construction Manager shall take immediate action to review the matter; however, during such review time until a determination of eligibility is made, Construction Manager shall immediately cease allowing said Personnel to provide services or work under this Agreement without entitlement to additional time or compensation. Additionally, Construction Manager's Personnel shall be required to notify Construction Manager within forty-eight (48) hours of any arrest which has occurred after such Personnel was deemed eligible to provide services or work under this Agreement.

14.1.6 Construction Manager shall submit to Owner a duly executed affidavit in the form attached hereto as **EXHIBIT C**, affirming the Personnel listed in the affidavit have completed the required background check and have been deemed eligible by Construction Manager to provide services under this Agreement. Should there be a change in the Personnel listed on the affidavit, Construction Manager shall immediately submit an updated affidavit specifically identifying new or removed Personnel.

**14.2 Drug Testing.** Owner's facilities and sites, including the Project Site, are drug-free workplaces and school environments. Construction Manager warrants that it has, or will have prior to performing any services or Work, a drug-testing program in place that complies with Applicable Laws.

**14.3 E-Verify.** Owner is an E-verify employer. Construction Manager must be enrolled in E-Verify with the federal Department of Homeland Security at the time of performance of Work under this Agreement. Construction Manager must provide proof of enrollment as a professional in E-verify at the time of Owner's award of this Agreement to Construction Manager. If not, then Owner may terminate this Agreement immediately upon notice to Construction Manager for any violation of this provision. After enrollment in E-Verify, Construction Manager shall use E-Verify to initiate verification of employment eligibility of all new hires, including consultants, subcontractors, agents, or representatives of Construction Manager who are assigned to the Project or intended to perform work or services under this Agreement. Construction Manager shall complete the E-Verify of Construction Manager's new hires within three (3) business days after the date of hire.

**14.4 Civil Litigation.** Construction Manager warrants that it is not plaintiff or defendant in any civil litigation currently pending in the United States and concerning the type of work or services to be performed under this Agreement that would materially impair its ability to perform its obligations under this Agreement. If Construction Manager becomes either a plaintiff or defendant in such civil litigation during the term of this Agreement, Construction Manager will inform Owner as soon as practicable. If Construction Manager fails to inform Owner of such civil litigation, Owner may terminate this Agreement and Construction Manager will be responsible for the cost incurred as a result of said termination.

**14.5 Termination.** Notwithstanding anything in the Contract for Construction to the contrary, Owner may terminate this Agreement immediately upon notice to Construction Manager for any violation of this Article.

**14.6 Flow Through.** Construction Manager shall incorporate the substance of this **Article 14** in all subcontracts under this Agreement.

## **ARTICLE 15 GOVERNMENT REGULATIONS**

**15.1 Clean Air Act / Federal Water Pollution Control Act.** Construction Manager certifies that it does, and shall, comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et.seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et.seq., as amended), and will include a provision in all subcontracts as required under Federal law.

**15.2 Executive Order 11246.** Construction Manager certifies that it does, and shall, comply with Executive Order 11246, (Equal Employment Opportunity), as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).

**15.3 "Anti-kickback" Act.** Construction Manager certifies that it does, and shall, comply with the Copeland "Anti-kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR, Part 3). Construction Manager shall report all suspected or reported violations to the Economic Development Administration.

**15.4 Contact Work Hours and Safety Standards Act.** Construction Manager certifies that it does, and shall, comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

**15.5 Civil Rights Act of 1964.** Construction Manager certifies that it does, and shall, comply with Title VI of the Civil Rights Act of 1964 (P.L.88-352).

**15.6 Education Amendments of 1972.** Construction Manager certifies that it does, and shall, comply with Section 112 of P.L. 92-45 and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686).

**15.7 Rehabilitation Act.** Construction Manager certifies that it does, and shall, comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

**15.8 Age Discrimination Act.** Construction Manager certifies that it does, and shall, comply with the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107).

**15.9 Drug Abuse Office and Treatment Act.** Construction Manager certifies that it does, and shall, comply with the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended.

**15.10 Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act.** Construction Manager certifies that it does, and shall, comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended.

**15.11 Public Health Service Act.** Construction Manager certifies that it does, and shall, comply with Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd-3 and 290ee-3, as amended).

**15.12 Civil Rights Act of 1968.** Construction Manager certifies that it does, and shall, comply with Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et.seq.), as amended.

## **ARTICLE 16 ENERGY EFFICIENT COMMERCIAL BUILDING TAX DEDUCTION**

**16.1 Energy Efficiency.** Construction Manager agrees to the following terms and conditions of engagement for the work described herein:

16.1.1 Owner reserves the right to designate any eligible entity as the "Designer" of the energy efficient improvements incorporated in the Project for the purposes of allocating accelerated depreciation benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended (the "**Code**");

16.1.2 If Owner determines that Construction Manager shall receive accelerated depreciation benefits as a "Designer" for the purposes of Section 179D of the Code or that Construction Manager shall otherwise benefit financially from the monetization of the accelerated depreciation benefit, Construction Manager shall discount the Contract Price or provide a cash rebate to Owner (the determination of rebate versus discount to be determined by Owner in its sole discretion) in an amount equal to no less than fifty percent (50%) of the incremental financial benefit realized by Construction Manager as a result of the accelerated depreciation benefit or the monetization thereof, such actual percentage to be negotiated in good faith by Owner at the time the financial benefit to Construction Manager becomes ascertainable;

16.1.3 Owner reserves the right to retain a third party consultant ("**Energy Efficiency Consultant**") to manage and administer the process of obtaining and monetizing the accelerated depreciation benefit derived from the Project and to designate the Energy Efficiency Consultant as the "Designer" of the energy efficient improvements for the purposes of Section 179D of the Code; and

16.1.4 Construction Manager shall cooperate in all reasonable respects with the Energy Efficiency Consultant's efforts to obtain and monetize any such benefits derived from the Project on behalf of Owner.

## **ARTICLE 17 WARRANTY AND DEFECTIVE WORK**

**17.1 Warranty.** Construction Manager shall obtain and assign to Owner on a non-exclusive basis all warranties given to Construction Manager by any subcontractors or by any suppliers supplying materials, equipment or fixtures to be incorporated into the Project. Construction Manager expressly warrants to

Owner that all materials and equipment to be incorporated into the Work shall be new unless otherwise specified. Further, Construction Manager expressly warrants to Owner that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Construction Manager further warrants to Owner that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. Further, any warranty to be provided will be in such form as is acceptable to Owner and shall not include any exclusions, exceptions or modifications except to the extent approved by Owner in its sole discretion. In addition to all other rights and remedies available to Owner at law or in equity, including any implied warranties Owner may be entitled to as a matter of law, Construction Manager expressly warrants to Owner that it shall promptly correct, upon receipt of written notice from Owner, any portion of the Work which is found to be defective or otherwise not in conformance with the requirements of the Contract Documents. In the event that any defective or non-conforming work is deemed by Owner in its sole discretion to present an immediate threat to safety or security, Owner shall be entitled to correct and fix such defective or non-conforming portions of the Work, and Construction Manager shall reimburse Owner for all costs and expenses incurred by Owner in performing such Work. This obligation to correct defective or nonconforming Work shall run for a period of two (2) years (or such longer period of time as may otherwise be specified in the Contract Documents) commencing from the date Substantial Completion is achieved. With respect to the correction of any defective or nonconforming Work, Construction Manager shall be liable for all damage to any part of the Work itself and to any adjacent property which is caused by such corrective work. Construction Manager shall conduct, jointly with Owner and Professional, a warranty inspection at eleven (11) and twenty three (23) months after the date Substantial Completion is achieved. Construction Manager is responsible for scheduling, notification and execution of the eleven (11) and twenty three (23) months inspection. Any items not covered as a result of lapsed warranties will be the responsibility of the Construction Manager. Construction Manager's warranty excludes remedy for damage or defect caused by Owner's abuse, modifications not performed by Construction Manager, improper or insufficient maintenance by Owner (unless such maintenance was performed in accordance with the directions from Construction Manager), improper operation by Owner (unless such operations were performed in accordance with the directions from Construction Manager), or normal wear and tear under normal usage.

## **17.2 Defective Work.**

17.2.1 Work not conforming to the requirements of the Contract Documents shall be deemed defective Work. If required by Owner or Professional, Construction Manager shall as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the defective Work has been rejected by Owner or Professional, remove it from the site and replace it with non-defective Work. Construction Manager shall bear all direct, indirect and consequential costs of such correction or removal (including fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby, and shall hold Owner and Professional harmless for same.

17.2.2 If Owner or Professional consider it necessary or advisable that covered Work be observed by Professional or inspected or tested by others, Construction Manager, at Professional's or Owner's request, shall uncover, expose or otherwise make available for observation, inspection or tests as Owner or Professional may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Construction Manager shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including fees and charges of engineers, architects, attorneys and other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Price. If, however, such Work is not found to be defective, Construction Manager shall be allowed an increase in the Contract Price and/or an extension to the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

17.2.3 Owner shall have the right to order Construction Manager to stop all or any portion of the Work if at any time Owner reasonably determines that Construction Manager's performance of the Work is not in compliance with the requirements of the Contract Documents. Such noncompliance shall include Construction Manager's failure to provide adequate labor, materials or equipment to satisfactorily maintain the various Project schedules (including the Project schedule). This right to stop the Work shall be exercised, if at all, solely for Owner's benefit and nothing herein shall be construed as obligating Owner to exercise this right for the benefit of Construction Manager or any other person.

17.2.4 Should Owner determine, at its sole opinion, it is in Owner's best interest to accept defective Work, Owner may do so. Construction Manager shall bear all direct, indirect and consequential costs attributable to Owner's evaluation of and determination to accept defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such defective Work, incorporating the necessary revisions in the Contract Documents and reflecting an appropriate decrease in the Contract Price. If Owner accepts such defective Work after final payment, Construction Manager shall promptly pay Owner an appropriate amount determined by Owner to adequately compensate Owner for its acceptance of the defective Work.

17.2.5 If Construction Manager fails, within three (3) days after written notice from Owner or Professional, to correct defective Work or to remove and replace rejected defective Work as required by Owner or Professional, or if Construction Manager fails to perform the Work in accordance with the Contract Documents, or if Construction Manager fails to comply with any of the provisions of the Contract Documents, Owner may, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, Owner may exclude Construction Manager from any or all of the Project Site, take possession of all or any part of the Work, and suspend Construction Manager's services related thereto, take possession of Construction Manager's tools, appliances, construction equipment and machinery at the Project Site and incorporate in the Work all materials and equipment stored at the Project site or for which Owner has paid Construction Manager but which are stored elsewhere. Construction Manager shall allow Owner, Professional and their respective representatives, agents, and employees such access to the Project Site as may be necessary to enable Owner to exercise the rights and remedies under this Section. All direct, indirect and consequential costs of Owner in exercising such rights and remedies shall be charged against Construction Manager, and a Change Order shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Price. Such direct, indirect and consequential costs shall include fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Construction Manager's defective Work. Construction Manager shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

## **ARTICLE 18 WARRANTY AGAINST WATER INTRUSION & MOLD**

**18.1 5-year Warranty.** For five (5) years after the date of Substantial Completion of the Work, Construction Manager shall warranty, repair, and remediate any incident of water intrusion or water damage caused by improper construction or installation of defective materials, including the installation of roofing materials, building side panels, attached exterior drainage, vapor barriers, windows, doors, improper installation of seals or sealants, improper construction of foundations, or other substandard or improperly installed materials or construction work. The warranty given in this **Section 18.1** is in addition to all other warranties given hereunder or implied by Applicable Law.

**18.2 Notice of Defect.** If Construction Manager becomes aware of a design flaw, building practice, material unreliability or any other reason that the completed Project could be subject to water intrusion, mold, fungus, or bacterial growth, Construction Manager shall notify Owner in writing within twenty-four (24) hours. Additionally, Construction Manager shall be responsible for correcting the work or



repairing the damage without additional expense to Owner for a period of five (5) years after the date of Substantial Completion of the Work.

**18.3 Damages.** If, for a period of five (5) years after the date of Substantial Completion of the Work, water intrusion occurs for any of the reasons listed in **Sections 18.1** or **18.2** above, and said water intrusion causes mold, fungus, or bacterial growth or damage, Construction Manager will be responsible for the cost of removing the mold, fungus, or bacterial growth and repairing any damage.

**18.4 Exclusion.** Warranties in this **Article 18** exclude design flaws and material selection made by the Professional. Should Construction Manager assert that the required warranty work is due to such design flaw or material selection, Owner, in addition to all of Owner's other rights and remedies, may retain an independent third party to make a determination as to the nature of the flaw. Should the third party determine that the flaw is not due to the Professional's design or material selection, Construction Manager shall be responsible for all costs incurred in obtaining such third party determination, as well as all resulting corrections, repairs or replacements.

## **ARTICLE 19 ADDITIONAL WARRANTIES**

**19.1 2-year Warranty.** Construction Manager shall provide a minimum two (2) year warranty on all building components, which warranty commences on the date of Substantial Completion of the Work. The minimum two (2) year warranty shall in no way limit, reduce or shorten any warranty guaranteed by law, issued by manufacturers, or accepted as a general contracting or construction practice. The warranty given in this **Section 19.1** is in addition to all other warranties given hereunder or implied by Applicable Law.

**19.2 Roof Warranty.** In addition to any warranties granted in the Contract for Construction, Construction Manager shall ensure the roof and its components are warranted by the roofing manufacturer against water intrusion, leaks, and defects for a period of twenty-five (25) years after the date of Substantial Completion of the Work. The warranty given in this **Section 19.2** is in addition to all other warranties given hereunder or implied by Applicable Law.

**19.3 Correction, Repair, Replacement.** Correction, repair, or replacement of warranted or guaranteed Work described in **Articles 18** and **19**, or found elsewhere in the Contract for Construction, shall be done without any additional expense to Owner during the warranty period. If correction or repair of the same Work fails to result in a permanent fix or solution on more than two (2) occasions during the warranty period, Owner may at its sole discretion, demand replacement of the Work without any additional expense to Owner.

**19.4 Exclusion.** Warranties in this **Article 19** exclude design flaws and material selection made by the Professional. Should Construction Manager assert that the required warranty work is due to such design flaw or material selection, Owner, in addition to all of Owner's other rights and remedies, may retain an independent third party to make a determination as to the nature of the flaw. Should the third party determine that the flaw is not due to the Professional's design or material selection, Construction Manager shall be responsible for all costs incurred in obtaining such third party determination, as well as all resulting corrections, repairs or replacements.

## **ARTICLE 20 TERMINATION AND SUSPENSION**

### **20.1 Termination for Convenience Prior to Establishment of the GMP.**

20.1.1 Prior to the execution of the GMP Amendment, Owner may terminate this Agreement upon not less than seven (7) days' written notice to Construction Manager for Owner's convenience and without cause.

20.1.2 In the event of termination of this Agreement pursuant to **Section 20.1**, Construction Manager shall be equitably compensated for Pre-Construction Services performed prior to receipt of a notice of termination. In no event shall Construction Manager's compensation under this Section exceed the Pre-construction phase compensation set forth in **Section 5.1**.

## **20.2 Termination for Default.**

20.2.1 Construction Manager shall be considered in material default of the Contract and such default shall be considered cause for Owner to terminate the Contract, in whole or in part, as further set forth in this Section, if Construction Manager(a) fails to begin the Work under the Contract Documents within the time specified herein; or (b) fails to properly and timely perform the Work as directed by Owner or Professional or as provided for in the approved Project schedule or Construction Schedule; or (c) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (d) discontinues the prosecution of the Work contrary to the requirements of the Contract; or (e) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (f) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (g) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (h) makes an assignment for the benefit of creditors; or (i) fails to obey any Applicable Laws with respect to the Work; or (j) fails to promptly pay its subcontractors and suppliers; or (k) fails to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials to maintain applicable schedules; or (l) materially breaches any other provision of the Contract Documents.

20.2.2 If Owner determines that Construction Manager is in default under the Contract, Owner shall notify Construction Manager in writing of Construction Manager's default(s). If Owner determines that Construction Manager has not remedied and cured the default(s) within three (3) business days following receipt by Construction Manager of said written notice, then Owner, at its option, without releasing or waiving its rights and remedies against Construction Manager's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Construction Manager's right to proceed under the Contract, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of Construction Manager, take assignments of any of Construction Manager's subcontracts and purchase orders that Owner may designate, and complete all or any portion of Construction Manager's Work by whatever means, method or agency which Owner, in its sole discretion, may choose.

20.2.3 If Owner deems any of the foregoing remedies necessary, Construction Manager shall not be entitled to receive any further payments hereunder until after the Work is completed. All monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including Professional and attorneys' fees) or damages incurred by Owner incident to such completion, shall be deducted from the unpaid balance of the Contract Price, and if such expenditures exceed the unpaid balance of the Contract Price, Construction Manager shall promptly pay to Owner on demand the full amount of such excess, including costs of collection, attorneys' fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Price exceeds all such costs, expenditures and damages incurred by Owner to complete the Work, Construction Manager shall not be entitled to any portion of such excess, except for the unpaid portion of the Contract Price earned or incurred prior to Construction Manager's right to continue performance under the Contract being terminated. These payment obligations shall survive termination of the Contract.

20.2.4 The liability of Construction Manager hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by Owner in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment,

supplies, and other items therefor or re-letting the Work, and in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder. Further, in the event Owner has exercised its right to terminate due to Construction Manager's default, Construction Manager shall be prohibited from bidding or otherwise seeking additional work from Owner in accordance with Owner's then current debarment policy.

20.2.5 If, after notice of termination of Construction Manager's right to proceed pursuant to this Section, it is determined for any reason that Construction Manager was not in default, or that its default was excusable, or that Owner is not entitled to the remedies against Construction Manager provided herein, then such termination shall be deemed a termination for Owner's convenience and Construction Manager's remedies against Owner shall be the same as and limited to those afforded Construction Manager under **Section 20.3** below.

**20.3 Termination for Convenience (after establishment of GMP) and Right of Suspension.**

20.3.1 Owner shall have the right to terminate the Contract after execution of the GMP Amendment without cause upon seven (7) days written notice to Construction Manager.

20.3.2 Owner shall have the right to suspend all or any portions of the Work upon giving Construction Manager two (2) days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Construction Manager's sole and exclusive remedy shall be to seek an extension to the Contract Time in accordance with the procedures set forth in the Contract Documents. In no event shall Construction Manager be entitled to any additional compensation or damages except as otherwise expressly provided for in the Contract Documents; provided, however, if the ordered suspension exceeds ninety (90) days, Construction Manager shall have the right to terminate the Contract with respect to that portion of the Work which is subject to the ordered suspension. When all or a portion of the Work is suspended for any reason, Construction Manager shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage.

20.3.3 If the Contract for Construction is (a) terminated Owner for convenience or (b) suspended more than ninety (90) days by Owner pursuant and Construction Manager terminates, Owner shall pay Construction Manager specified amounts due for Work actually performed prior to the effective termination date and reasonable costs associated with termination. Owner shall pay Construction Manager:

(i) reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating Construction Manager's performance, plus a fair and reasonable allowance for Construction Manager's Overhead and Fee thereon (such Fee shall not include anticipated profit or consequential damages); provided, however, that if it appears that Construction Manager would not have profited or would have sustained a loss if the Work had been completed, no fee shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rates of loss, if any; and

(ii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or supplier orders. These costs shall not include amounts paid in accordance with other provisions hereof.

**20.4 Limitation.** Under no circumstance shall Construction Manager be entitled to recover from Owner indirect, consequential, and special or punitive damages as a result of any termination, including lost profits and loss of business opportunity.

**20.5 Continuing Duty.** Irrespective of reasons for termination, if the Contract is terminated, Construction Manager shall, unless notified otherwise by owner, shall (a) immediately stop work, (b) terminate outstanding orders and subcontracts, (c) settle the liabilities and claims arising out of the

termination of subcontracts and orders, and (d) transfer title to Owner such completed Work, and, if paid by Owner, materials, equipment, parts, fixtures, information and such contract rights as Construction Manager has.

## **ARTICLE 21 CLAIMS AND DISPUTES**

**21.1 Claim Defined.** The term “**Claim**” as used herein shall mean any and all demands made by one party hereunder against the other party, whether such demand be for money, time or the assertion of any right or obligation that arises out of the Contract Documents.

**21.2 Notice of Claims.** Unless another time is expressly provided for herein, initial notice of Claims by Construction Manager shall be made in writing to Owner and Professional within seven (7) calendar days after the first day of the event giving rise to such Claim or else Construction Manager shall be deemed to have waived the Claim. If initial notice of Claim is properly received by Owner and Professional as stated herein, written supporting data shall be submitted to Owner and Professional within thirty (30) days after the occurrence of the event, unless Owner grants additional time in writing, or else Construction Manager shall be deemed to have waived the Claim.

**21.3 Continuing Performance.** Construction Manager shall proceed diligently with its performance as directed by Owner, regardless of any pending Claim, unless otherwise agreed to by Owner in writing. Owner shall continue to make payments of undisputed amounts due in accordance with the Contract Documents during the pendency of any Claim.

**21.4 Negotiation.** Prior to the initiation of any action or proceeding permitted by the Contract to resolve disputes between the Parties, the Parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power.

**21.5 Mediation.** Except for claims in which injunctive relief is sought, as a condition precedent to either Party filing any action for a claim, dispute or other matter arising out of or related to this Agreement, the Parties shall submit the dispute to mediation pursuant to the American Arbitration Association Construction Industry Mediation Rules currently in effect. Either Party may file a written request for mediation with the American Arbitration Association and serve a copy on the other Party. The mediation shall be concluded within sixty (60) days of the request, unless otherwise agreed or ordered by the court. Any legal or equitable proceedings shall be stayed pending conclusion of the mediation. The Parties shall share the mediator’s fee and other administrative costs of the mediation equally. The mediation shall be held in Orange County, Florida, unless the Parties agree upon another location. Agreements reached in mediation shall be enforceable in any court of competent jurisdiction as settlement agreements. To the extent permitted by law, the mediation proceedings shall be confidential and shall be privileged from disclosure in any subsequent proceedings as settlement discussions.

**21.6 Litigation.** For disputes not resolved by mediation in accordance with the preceding Section, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction and, in that regard, each of the Parties hereby (a) irrevocably and unconditionally consents to submit itself to the sole and exclusive personal jurisdiction of any federal or state court located within Orange County, Florida, (the “**Applicable Courts**”), (b) waives any objection to the laying of venue of any such litigation in any of the Applicable Courts, (c) agrees not to plead or claim in any such court that such litigation brought therein has been brought in an inconvenient forum and agrees not otherwise to attempt to deny or defeat such personal jurisdiction or venue by motion or other request for leave from any such court, and (d) agrees that such Party will not bring any action, suit, or proceeding in connection with any dispute, claim, or controversy arising out of or relating to this Agreement or the Project in any court or other tribunal other than any of the Applicable Courts. Notwithstanding the foregoing, disputes, claims, questions or disagreements involving monetary claims of \$200,000.00 or less shall be conducted pursuant to, and under, the Administrative Procedures Act, Chapter 120 Florida Statutes.

**21.7 Waiver of Jury Trial.** To the extent allowed by applicable law, the Parties expressly covenant and agree to waive the right to trial by jury in connection with any litigation or judicial proceeding

related to or concerning, directly or indirectly, this Agreement, or the conduct, omission, action, obligation, duty, right benefit, privilege or liability of a Party. This waiver of right to trial by jury is separately given and is knowingly, intentionally and voluntarily made by the Parties, and both acknowledge that separate and good and valuable consideration has been provided by each for this waiver. The Parties have had an opportunity to seek legal counsel concerning this waiver. This waiver is intended to and does encompass each instance and each issue as to which the right to a jury trial would otherwise accrue. The Parties further certify and represent to each other that no employee, representative or agent of Construction Manager or Owner (including their respective counsel) has represented, expressly or otherwise, to Construction Manager or Owner or to any agent or representative of Construction Manager or Owner (including their respective counsel) that they will not seek to enforce this waiver of right to jury trial. This waiver shall apply to this Agreement and any future amendments, supplements or modifications hereto.

**21.8 Joinder.** In the event the dispute resolution procedure applicable to another dispute between Owner and another party regarding the Project is different from the procedure specified in this Agreement, then Construction Manager hereby consents, if requested by Owner, to its joinder in such dispute resolution proceeding, provided that the dispute resolution proceeding involves substantially common questions of law or fact.

**21.9 Attorneys' Fees.** In the event of any Claim arising out of the Contract, the prevailing Party shall be entitled to recover from the non-prevailing Party its costs, including reasonable attorneys' fees (including fees for determining the amount of fees due) at all levels, including at trial, on appeal, and in bankruptcy and post-judgment proceedings.

**21.10 Chapter 558, Florida Statutes.** The Parties specifically opt out of the requirements of Chapter 558, Florida Statutes.

**ARTICLE 22 MISCELLANEOUS PROVISIONS**

**22.1 Notices.** Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, or (c) legible facsimile or email transmission, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given upon receipt or refusal to accept delivery, or, in the case of facsimile or email transmission, as of the date of the facsimile or email transmission. Either Party may change its address by giving written notice to the other Party in accordance with the requirements of this Section.

Owner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

Construction Manager: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

**22.2 Successors and Assigns.** Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other Party to this Agreement and to

the partners, successors and permitted assigns of such other Party with respect to all covenants of this Agreement. Construction Manager shall not assign (whether partially or wholly) this Agreement whether by operation of law or otherwise, without the prior written consent of Owner, which Owner may grant or withhold in its sole and absolute discretion. Any attempted assignment in violation of the foregoing prohibition shall be void *ab initio* and, at Owner's election, a breach of this Agreement. If Construction Manager makes a permitted assignment in accordance with this provision, Construction Manager shall nevertheless remain legally responsible for all obligations arising under the Agreement, unless otherwise agreed by Owner.

**22.3 Third-Party Beneficiaries.** This Agreement shall inure solely to the benefit of the Parties and their successors and assigns, and, except as otherwise specifically provided in this Agreement, nothing contained in this Agreement is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third-party against either Owner or Construction Manager.

**22.4 Amendment.** No modification or amendment to the Contract for Construction shall be valid or binding upon the Parties unless in writing and executed by the Party or Parties intended to be bound by it.

**22.5 Severability.** If any provision of this Agreement or the Contract for Construction, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.

**22.6 Waiver.** The failure of Owner to enforce at any time or for any period of time any one or more of the provisions of the Contract for Construction shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision. Further, the failure of Owner to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of the Contract for Construction, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance. Waiver by Owner of a breach of any provision of the Contract for Construction shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of the Contract for Construction. No approval, consent or waiver by Owner shall be effective unless it is in writing and then only to the extent specifically stated.

**22.7 Strict Compliance.** No failure of Owner to insist upon strict compliance by Construction Manager with any provision of this Agreement shall operate to release, discharge, modify, change or affect any of Construction Manager's obligations.

**22.8 Time of the Essence.** Time is of the essence in the performance of Construction Manager's duties the Contract for Construction. For purposes of the Contract for Construction, the term "days" means consecutive calendar days unless a contrary intent is specifically indicated with regard to any reference to the word "days" and the term "business day" shall mean all days of the week excluding Saturdays, Sundays and all legal holidays observed by Owner.

**22.9 Governing Law.** The Contract for Construction shall be governed by, and construed under, the laws of the State of Florida, without regard to its choices of law provisions.

**22.10 No Contingency Fee.** Construction Manager represents and warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for Construction Manager) to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm (other than a bona fide employee working solely for Construction Manager) any fee, commission, percentage, or gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

**22.11 No Bribes or Kickbacks.** Construction Manager shall not by any means:

- (i) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;
- (ii) offer to accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its consultants; or
- (iii) without the express written permission of Owner in accordance with Owner's policy on the subject, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material equipment, system, process or procedure in which Construction Manager has a direct or indirect proprietary or other pecuniary interest.

**22.12 Public Records.** This Agreement may be canceled by Owner for refusal by Construction Manager to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by Construction Manager in conjunction herewith.

**22.13 Annual Appropriations.** Owner's performance and obligation to pay hereunder is contingent upon an annual appropriation by the Legislature.

**22.14 Convicted Vendor List.** Construction Manager warrants that it is not on the convicted vendor list for a public entity crime committed within the past thirty six (36) months. Construction Manager further warrants that it will neither utilize the services of, not contract with, any supplier, subcontractor, or consultant for an amount in excess of Fifteen Thousand Dollars (\$15,000) in connection with this Project if the supplier, subcontractor or consultant has been placed on the convicted vendor list within the past thirty six (36) months.

**22.15 Survival.** All of Construction Manager's representations, warranties and indemnities made in, required by, or given in accordance with this Agreement and the Contract for Construction, as well as all continuing obligations of the Parties indicated in this Agreement and Contract for Construction, will survive final payment, completion, and acceptance of Construction Manager's services and the Work or termination or completion of this Agreement or termination of the services of the Construction Manager.

**22.16 Sufficiency of Services.** Nothing in the Contract for Construction is intended or shall be construed to require Owner to determine the adequacy, accuracy or sufficiency of the Work or Construction Manager's services and nothing in the Contract for Construction shall impose upon Owner a duty to third-parties to assure that Construction Manager or Construction Manager's Personnel, Professional or others are adhering to Applicable Laws. Further, Owner's review of, inspection of, acceptance of, or payment for any of the Work or Construction Manager's services shall not constitute acceptance of, or a waiver of any of Owner's rights or remedies relating to, Work or services that fail to conform to the requirements of this Agreement, unless Owner expressly accepts such non-conforming Work or services in writing.

**22.17 Remedies Cumulative.** Except as may be expressly stated otherwise herein, the remedies granted to Owner in the Contract for Construction are cumulative and not in limitation of any other rights and remedies of Owner at law or in equity.

**22.18 Equal Employment Opportunity.** Owner is an equal opportunity institution and, as such, encourages the use of small businesses, including women and minority-owned small businesses in the provision of construction related services. Small businesses should have a fair and equal opportunity to compete for dollars spent by Owner to procure construction-related services. Competition ensures that prices are competitive and a broad vendor base is available. Construction Manager shall use good faith efforts to ensure opportunities are available to small businesses including women and minority-owned businesses on the Project.

**22.19 Construction.** This Agreement has been negotiated by the Parties with the advice of counsel. Therefore, this Agreement shall not be interpreted more strictly against one Party than the other, including by virtue of one Party having drafted some or all of this Agreement. The singular shall include

the plural, the plural the singular, and the use of any gender shall include all genders. Whenever the word “including”, “include” or “includes” is used in this Agreement it shall be deemed to be followed by the words “without limitation”. The terms “hereof”, “herein”, “hereunder”, and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, unless stated otherwise. Caption headings are included for ease of use only and shall not be utilized for purposes of interpreting the provisions of this Agreement. All Section and Article references in this Agreement are to Articles and Sections of this Agreement unless expressly stated otherwise.

**22.20 Exhibits.** All Exhibits referenced herein and attached hereto are incorporated herein by reference, including:

**EXHIBIT A** – PROJECT SCHEDULE

**EXHIBIT B** – CONSTRUCTION MANAGER’S TEAM

**EXHIBIT C** – AFFIDAVIT OF CRIMINAL BACKGROUND, E-VERIFY, AND DRUG SCREENING

**22.21 Counterparts.** This Agreement may be executed and delivered in counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be one agreement. For purposes of executing this Agreement, a document signed and transmitted by facsimile or by emailed PDF scan shall be treated as an original document. The signature of either Party on a faxed or emailed PDF scanned version of this Agreement shall be considered as an original signature and the document transmitted shall be considered to have the same binding legal effect as if it were originally signed. At the request of either Party, any facsimile or PDF scanned document shall be re-executed by all Parties in original form. Neither Party may raise the use of facsimile, emailed PDF scan or the fact that any signature was transmitted by facsimile or email as a defense to the enforcement of this Agreement or any amendment executed in compliance with this Section.

*[Signature page to follow]*



IN WITNESS WHEREOF, a duly authorized and validly authorized representative of each Party has affixed his or her respective signature hereto.

**FOR CONSTRUCTION MANAGER:**

ATTEST:

\_\_\_\_\_  
(Name, Title, & Corporate Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

On this \_\_\_\_ day of \_\_\_\_\_, 2016

As Witnessed By:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Signature)

On this \_\_\_\_ day of \_\_\_\_\_, 2016

**FOR OWNER: THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES**

\_\_\_\_\_

EXHIBIT A

**PRELIMINARY PROJECT SCHEDULE**

<b>PHASE</b>	<b>START DATE</b>	<b>END DATE</b>
Early Site Work	00 00 0000	00 00 0000
Schematic Design Deliverable	00 00 0000	00 00 0000
Schematic Cost Estimate Report	00 00 0000	00 00 0000
Design Development Deliverable	00 00 0000	00 00 0000
Design Development Cost Estimate Report	00 00 0000	00 00 0000
50% Construction Documents Deliverable	00 00 0000	00 00 0000
50% Construction Documents Cost Estimate Report		
100% Construction Documents Deliverable (Permit/Bid Set)	00 00 0000	00 00 0000
Guaranteed Maximum Price (GMP) Proposal	00 00 0000	00 00 0000
Conformed Construction Documents (includes UCF, BCO, SFM comments)		
Construction Start Date		
Substantial Completion Date		
Final Completion Date		

**NOTE: Any changes to the preliminary project schedule milestones set forth above must be approved in writing by Owner. Following Owner's acceptance of the GMP, the dates for Substantial Completion and Final Completion can only be modified by Owner-approved change order.**

**EXHIBIT B**

**CONSTRUCTION MANAGER'S TEAM**

**1.4 Construction Manager's Team**

[Insert Construction Manager's Personnel Chart]

**EXHIBIT C**

**AFFIDAVIT OF CRIMINAL BACKGROUND, E-VERIFY, AND DRUG SCREENING**

CONTRACT: \_\_\_\_\_

CONSTRUCTION MANAGER'S NAME: \_\_\_\_\_

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

By signing this form, I am swearing or affirming that all individuals providing work or services to University of Central Florida (“**Owner**”) under the above-referenced Agreement, on any Owner owned or leased property: (a) have been background screened in accordance with requirements set forth in the Agreement; (b) have been deemed eligible by Contractor to provide work or services to Owner based on the results of such screening; (c) have passed drug screening; and (d) are legally eligible to work in Florida.

The information contained herein is current, as of the date this Affidavit is furnished to Owner. All individuals providing work of services to Owner under the above-referenced Agreement are listed below.

Each individual is identified by name, date of birth and shall fall into one (1) of the following categories:

- Previously screened and deemed eligible.  
[Attach list of individuals]
  
- New individuals screened and deemed eligible.  
[Attach list of individuals]
  
- Individuals no longer providing services for Construction Manager under the Agreement  
[Attach list of individuals]

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

Sworn to and subscribed before me this \_\_ day of \_\_\_\_\_, 2017.

My commission expires