

## **DEVELOPER'S AGREEMENT**

This Agreement (hereinafter the "Agreement" or "Contract") is made this \_\_\_\_ day of \_\_\_\_\_, 2012, between **THE CITY OF FORT LAUDERDALE**, a Florida municipal corporation, whose address is 100 North Andrews Avenue, Fort Lauderdale, Florida 33301 (hereinafter "Owner") and **RECREATIONAL DESIGN & CONSTRUCTION, INC.**, a Florida corporation, whose address is 3990 North Powerline Road, Oakland Park, Florida 33309 (hereinafter "Developer").

WHEREAS, the Owner owns a certain parcel of land (hereinafter referred to as the "Project Site") having a street address of 501 Seabreeze Boulevard, Fort Lauderdale, Florida 33316 and legally described as the INTERNATIONAL SWIMMING HALL OF FAME COMPLEX, according to the Plat thereof, as recorded in Plat Book 138, Page 19 of the Public Records of Broward County, Florida; said lands lying, situate and being in the City of Fort Lauderdale, Broward County, State of Florida;

WHEREAS, the Owner hereby retains the Developer to perform all Work and Design Services in connection with the design and construction of the renovation of the Fort Lauderdale Aquatic Complex (FLAC), including the International Swimming Hall of Fame building (the "Project") at the Site;

WHEREAS, the Plans and Specifications (as hereinafter defined) will be prepared by the Developer for the Project; and

WHEREAS, the following exhibits are attached to this Agreement and incorporated herein by reference:

- Exhibit A -- Truth-In-Negotiation Certificate
- Exhibit B -- Guaranteed Maximum Price (GMP)
- Exhibit C -- Owner Direct Material Equipment Purchase Program
- Exhibit D -- Scope of Design Services
- Exhibit E -- Scope of Construction Services
- Exhibit F -- Form of Payment Bond
- Exhibit G -- Form of Performance Bond
- Exhibit H -- Release and Affidavit
- Exhibit I -- List of Design Professionals
- Schedule 3.10.2 – Basis for GMP

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**#12-2203  
EXHIBIT #1**

## **ARTICLE 1: GENERAL AGREEMENT PROVISIONS**

1.1 Recitals. The recitals set forth in the Whereas clauses are incorporated by reference and made a part of this Agreement.

1.1A Defined Terms. The following terms, as used and referred to herein, shall have the meaning(s) set forth below, unless the context indicates otherwise:

*Application for Payment* means the written form accepted by the Owner which is to be used by the Developer in requesting progress or final payments and which is to include supporting documentation as is required by the Contract Documents.

*Building Code* means The Florida Building Code, together with Broward County Amendments thereto, existing and applicable at the time of the execution of this Agreement, which is the code which governs building and construction standards, review of plans for construction, issuance of Building Permits, inspections for compliance with construction standards, issuance of Certificates of Occupancy and Certificates of Completion by the Building Official.

*Building Official* means that term as defined in the Building Code.

*Building Permit* or *Permit* means any building permit issued by the appropriate department, office or official of the City (or other governmental authority having jurisdiction over the Project and Project Site) charged with reviewing the Plans, Specifications, Drawing, details and other Construction Documents for compliance with the Building Code, U.L.D.R. or similar codes applicable to the construction of the Project and having the authority to issue building permits for construction of buildings, structures or other improvements in accordance with Construction Documents therefor reviewed and approved by such department, office or official.

*Business Day* means those days that are Monday through Friday, not including Holidays observed by the City.

*Certificate of Completion* means that certificate issued by the Building Official as proof that a structure or system is complete and for certain types of permits is released for use and may be connected to a utility system. A Certificate of Completion does not grant authority to occupy or connect a building, such as a shell building, prior to the Certificate of Occupancy.

*Certificate of Occupancy* means a certificate of occupancy or temporary certificate of occupancy issued by the Building Official or other appropriate governmental authority under the Building Code for any part of the Project.

*Certificate of Substantial Completion* means the Certificate provided by the City Manager on behalf of the Owner certifying that all Work, excluding the Punch List items, has been completed, inspected and accepted by Owner.

*Change Order* is a written document prepared by the Developer and executed by the Owner's City Manager and Developer, setting out in detail and authorizing an addition, deletion or revision to the Work, which may involve a reduction in the GMP or an adjustment of the Contract Time issued on or after the Effective Date of the Agreement. A Change Order must comply with the Contract Documents.

*City* means the City of Fort Lauderdale, a Florida municipal corporation and a political subdivision of the State of Florida. The term includes the elected officials, officers, employees, agents and volunteers of the City. In the event that the City exercises its regulatory authority as a government body, the exercise of such regulatory authority and the enforcement of any rules, regulations, codes, laws and/or ordinances shall be deemed to have occurred pursuant to City's authority as a governmental body and shall not be attributable in any manner to the City as a party to this Agreement.

*City Code* or *Code* means the ordinances and code of the City that regulate the development and construction of projects and buildings, including the Building Codes and zoning regulations, known as the ULDR.

*City Commission* means the governing body of the Owner.

*City Manager* means the Owner's Chief Executive Officer.

*City of Fort Lauderdale* means the City of Fort Lauderdale, a Florida municipal corporation and Owner herein. The term includes the elected officials, officers, employees, agents and volunteers of the City.

*Claim* means a demand by either the Developer or Owner seeking an adjustment or interpretation of an Agreement term, payment of money, extension of time, or any other relief with regard to the terms of this Agreement or the Construction Documents.

*Construction Change Directive* means a written document prepared and executed by the Owner which serves to change the Work and provides for any proposed adjustment in the GMP and/or Contract Time. City Manager has the authority to issue Construction Change Directives in the cumulative amount not to exceed five (5) percent of the GMP and increase the Contract Time by up to 90 days without City Commission approval.

*Construction Documents* means and includes, without limitation, the Agreement, the Design Criteria Package, the Exhibits and any duly executed addenda, Plans, Drawings and Specifications, Project Documents for the construction of the Project prepared by the Developer, but only after the Construction Documents have been approved in writing by the Owner and any duly executed addenda issued thereto and modifications, Change Orders, Construction Change Directives, Amendments and/or clarifications issued after execution of the Agreement, all of which shall have been agreed to and executed by both Owner and Developer.

*Construction Services* means, after the Construction Documents have been sufficiently completed by Developer (as defined in § 3.10.1 below), those services provided by the Developer, including management, supervision, 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 Documents.

*Contract Documents* means and shall consist of this Agreement, the Design Criteria Package, the Exhibits identified herein, and any duly executed Addenda, Drawings and Specifications for construction of the Project, being prepared by the Developer, but only after the Construction Documents have been completed by Developer and approved in writing by Owner and any duly executed addenda issued thereto and modifications, Change Orders, Construction Change Directives, Amendments and or clarifications issued after execution of the Agreement, all of which shall have been agreed to and executed by both Owner and Developer.

*Contract Time* means the number of days stated in the Agreement for the completion of the Work. The dates on which the Work shall be started and the dates on which the Work shall be completed as stated in the Notice to Proceed.

*Cost of the Work* means all costs necessarily and reasonably incurred by Developer in the proper performance of the designated Work for the Construction Services in accordance with the terms of this Agreement. 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 Project Manager only after Developer has provided sufficient support in writing that exceptional circumstances exist which justify the payment of rates higher than the standard.

*Day(s)*. In computing any period of time expressed in day(s) in this Developer's Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or Holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and Holidays shall be excluded in the computation.

*Designer* is the entity or entities whose services have been retained by the Developer to provide the main professional architectural and engineering design services. The Developer has appointed Zyscovich Inc., as Architect of Record and shall be deemed to be the Designer. Developer has appointed C3TS - Corzo Castella Carballo Thompson Salman, P.A. as the Engineer of Record. The term "Designer" includes the Designer's authorized representatives, successors, assignors and/or subconsultants. Developer has retained, or will retain, additional design professionals, as noted on the list of design professionals attached hereto as **Exhibit I** (collectively, "Additional Designers").

*Design Criteria Package* means the Phase II-Design Development Documents as described in **Exhibit D** to this Agreement.

*Design Fee* means the total lump sum compensation for all Design Services.

*Design Services* means those services involved in the architectural and engineering designs necessary and/or incidental to preparing the Construction Documents, in providing value engineering services, reviewing Construction Documents for constructability, assisting and meeting with the Owner during various design phases, and preparing cost estimates and schedules as provided herein.

*Developer's Fee* shall be Developer's total compensation for all overhead not reimbursable as Cost of the Work under § 3.5, as well as Developer's total profit for Construction Services.

*Direct Purchase Program* means that purchasing program set forth in **Exhibit C** to this Agreement.

*Drawings* means the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, and generally include Plans, elevations, sections, details, schedules and diagrams and the written requirements for the materials, equipment, systems and workmanship for completion of the Work and performance of related services.

*Environmental Assessments* means an assessment of the environmental condition of the Project Site which such assessment must be conducted by engineers licensed to perform such tasks by the State of Florida.

*Field Order* is a written approval for the Developer to proceed with the Work requested by the Owner, which is so minor in nature that it does not involve additional costs or additional construction time.

*GMP* means the Guaranteed Maximum Price that Owner is obligated to pay for completion of the Project and all Work associated therewith.

*Hazardous Materials (HAZMAT)* means any solid, liquid, or gaseous material that is toxic, flammable, radioactive, corrosive, chemically reactive, or unstable upon prolonged storage in quantities that could pose a threat to life, property, or the environment defined in Section 101(14) of Comprehensive Environmental Response, Compensation and Liability Act of 1980 and in 40 CFR 300.6). Also defined by 49 CFR 171.8 as a substance or material designated by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce and which has been so designated.

*Hazardous Substance* means substances as defined by Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act; any substance

designated pursuant to Section 311(b) (2) (A) of the Clean Water Act; any element, compound, mixture, solution or substance designated pursuant to Section 102 identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act {but not including any waste listed under Section 307[a] of the Clean Water Act}; any hazardous air pollutant listed under Section 112 of the Clean Air Act; and any imminently hazardous chemical substance or mixture pursuant to Section 7 of the Toxic Substances Control Act. The term includes any material, substance of waste in concentrations that violate any other federal, state or local environmental statute, ordinance or regulation. The term does not include petroleum, including crude oil or any fraction thereof, which is not otherwise specifically listed or designated as a hazardous substance in the first sentence of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

*Hazardous Waste* means those solid wastes designated by OSHA in accordance with 40 CFR 261 due to the properties of ignitability, corrosivity, reactivity, or toxicity. Any material that is subject to the Hazardous Waste Manifest requirements of the EPA specified in 40 CFR Part 262.

*Holidays* means those designated non-work days as established by the City Commission of the City of Fort Lauderdale.

*Instruments of Service* are the representations in any medium of expression now known or later developed of the tangible and intangible creative work performed by Developer's Designer or Additional Designers under the professional services agreement between the Designer or Additional Designers and Developer for the Project. Instruments of Service may include, but are not limited to, studies, surveys, models, sketches, drawings, Specifications, and other similar materials.

*Notice to Proceed* means that written notice by the Project Manager on behalf of the Owner fixing the date on which the Contract Time will commence to run and on which the Contract Time will end. Notwithstanding anything contained herein to the contrary, in no event will Developer be required to commence construction until Developer has received the Building Permit and all other necessary Permits to commence construction of the Project in accordance with the agreed upon Construction Documents.

*Owner* means the City of Fort Lauderdale, a Florida municipal corporation ("City") whose governing body is the City Commission. Unless otherwise indicated, actions taken by the Owner shall be authorized by the City Commission. The term includes all Authorities, Boards, Committees, Bureaus, Divisions, Departments and offices thereof together with individual members, elected officials, officers, employees agents and volunteers thereof when acting in their official capacity or within the scope and authority of their position on behalf of the Owner.

*Person* means any natural person, firm, partnership (general or limited), corporation, company, professional association, unincorporated association, joint venture, joint stock association, estate, trust, business trust, cooperative, limited liability company, limited liability partnership or body politic, including any heir, executor, personal representative, executor, administrator, guardian, trustee, receiver, successor or assignee, or other person acting in a similar representative capacity.

*Permit* see Building Permit.

*Plans* means those drawings which show the character and scope of the Work to be performed and which have been prepared by the Developer and approved by Owner and are referred to in the Contract Documents.

*Project* means the completion of all Work necessary or incidental to the construction and renovation of FLAC, including the International Swimming Hall of Fame Museum, within the Project Site. The term *Project* also includes the non-exclusive use, occupation and operation of the Project Site for the parking of motor vehicles, ingress to and egress from the Project site, landscaping and associated irrigation and draining in accordance with the Construction. The term *Project* shall not include the possession, use or occupancy of the Project Site for any other purpose, except as expressly authorized in this Agreement. The term *Project* includes any portion thereof.

*Project Documents* means copies or originals of all records, documents, drawings, notes, tracings, plans, Auto CADD files, Specifications, maps, evaluations, reports and other technical data, other than working papers, prepared or developed by Developer under this Agreement.

*Project Manager* means the person designated by the City Manager with the authority to supervise the Work and approve matters contemplated in this Agreement which are presented in writing, provided, however, that the Project Manager is not authorized to issue any orders or instructions to the Developer that would have the effect of modifying or changing in any manner whatsoever the (1) Scope of Services to be provided and performed by Developer hereunder; (2) the Contract Time; or (3) the amount of compensation Owner is obligated or committed to pay Developer.

*Project Schedule* means that Exhibit 15 attached to GMP **Exhibits B**.

*Project Site* means the real property upon which the Project is to be constructed, said real property having a street address of 501 Seabreeze Boulevard, Fort Lauderdale, FL 33316, legally described as SWIMMING HALL OF FAME COMPLEX, according to the Plat thereof, as recorded in Plat Book 138, Page 19 of the Public Records of Broward County, Florida; said lands lying, situate and being in the City of Fort Lauderdale, County of Broward, State of Florida.

*Project Program* means the design concept, cost estimates and Project Schedule submitted to the Owner by the Developer on March 28, 2012 and presented to the City Commission.

*Provide* means to furnish and install materials and equipment, together with all incidentals for a complete and ready to use item and system.

*Punch List* means the Owner's list of Work yet to be done or corrected by the Developer before the Final Completion date can be determined by Owner.

*Specifications* means that portion of the Contract Documents which are the written requirements for the materials, equipment, systems, standards and workmanship for completion of the Work and performance of related services.

*Substantial Completion* or *Substantially Complete* means the date when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy or utilize the Project for its intended use, and only minor Punch List items which can be corrected or completed without any material interference with the Owner's use of the Project remain to be corrected or completed. Issuance of all Certificates of Occupancy and Certificates of Completion for Work on the Project by the Building Official shall conclusively establish Substantial Completion.

*Substantially Completed Date* means the earlier of the date of issuance of the Certificate of Occupancy or Certificate of Completion by the Building Official or the date when the Developer has requested in writing, stating that the Work is substantially completed and is ready for an inspection and issuance of a final punch list for the Project.

*Staging of Materials or Equipment* means, during construction or reconstruction of the Project, the placement of materials or equipment or parking of vehicles within the public rights-of-way other than those appearing on the face of the plat for the Project Site or vehicular travel lanes adjacent thereto in any manner other than (a) temporarily and (b) for the purpose of and while actually engaged in the act of loading or off-loading materials or equipment from a vehicle. Staging of Materials or Equipment shall include equipment or materials off-loaded from a vehicle and placed within the Project Site when not being removed from the public rights of way described above to the Project Site as soon as practicable.

*U.L.D.R.* or *ULDR* means the Unified Land Development Regulations for the City found in the City's Code of Ordinances, Chapter 47.

*Work* means and shall include all construction services required by the Contract Documents, including all Design Services, labor, materials, equipment and services, and shall include the entire completed delivered Project or the various separately identifiable parts thereof required to be furnished under the Contract Documents, including, but not limited to, (i) performing all tests, inspections, examinations deemed



necessary for an evaluation of the condition of the Project Site and its suitability for performing the Work needed to complete the Project, and (ii) applying for and securing of all governmental approvals needed to complete the Project, including all Certificates of Completion and Certificates of Occupancy required under applicable Building Codes. *Work* is also the result of performing services, furnishing labor and furnishing and incorporating material and equipment into the Project as required by the Contract Documents.

## 1.2 Relationship of Parties.

1.2.1 The Developer accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Developer's best efforts, skill and judgment, consistent with industry standards for respective Work performed (if dispute arises as to the Work, then limited to industry standard requirements), in performing the Work under this Agreement for the Owner. The Developer shall furnish efficient business administration and supervision, and use the Developer's best efforts, consistent with industry standards, to perform the Work and completion of the Project in an expeditious manner consistent with the terms of the Contract Documents.

1.2.2 Wherever the terms of this Agreement refer to some action, consent, or approval (excluding approvals of Change Orders, Construction Change Directives, except as provided for in Section 1.3 below, or amendments to the Agreement) to be provided by Owner or some notice, report or document is to be provided to Owner, such reference to "Owner" shall mean Owner's City Manager or his designee (to the extent such designee has been authorized under this Agreement), unless otherwise stated herein and any such consent or approval shall not be unreasonably withheld or delayed.

1.2.3 Intentionally deleted.

1.2.4 Nothing contained in the Contract Documents shall be construed to create a contractual relationship between any other person or entity other than the Owner and Developer. However, it is agreed that Owner is an intended third party beneficiary of all contracts for design and engineering services, all subcontracts, purchase orders and other agreements between Developer and third parties pertaining to the Work or this Project. Developer shall incorporate the obligations of this Contract into its respective consultant agreements, subcontracts, supply agreements and purchase orders.

1.3 The Contract Documents. Developer shall prepare the Contract Documents for approval by the Owner. Any modification to this Agreement shall only be effective if it is reduced to writing, and duly executed by both parties, except a

Construction Change Directive shall be effective after review by Developer and approval and execution by the City Commission or Owner's City Manager in instances where the Construction Change Directive does not exceed the cumulative amount of five (5) percent of the GMP or the increase in Contract Time does not exceed 90 days.

- 1.4 It is the intent of the Contract Documents to describe a functionally complete Project (or portion thereof) to be designed and constructed in accordance with the Contract Documents. Any work, services, materials or equipment that may reasonably be inferred from the Contract Documents (in accordance with industry standards, if a dispute arises as to this matter) 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 Work is performed, except as may be otherwise specifically stated herein.
- 1.5 If during the performance of the Work, Developer discovers a conflict, error or discrepancy in the Contract Documents, Developer shall, within five (5) days of discovery by Developer, report same to Project Manager in writing, and before proceeding with the Work affected thereby, shall provide a written interpretation or clarification to Project Manager for Project Manager's review and approval. Prior to commencing each portion of the Work affected by the conflict, error or discrepancy, Developer shall first take all necessary field measurements and verify the applicable field conditions. After taking such measurements and verifying such conditions, Developer shall carefully compare such measurements and conditions with the requirements of the Contract Documents, taking into consideration all other relevant information known to Developer, for the purpose of identifying and bringing to Owner's attention all conflicts or discrepancies with the Contract Documents.
- 1.6 Construction Documents approved by Owner 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, Developer shall follow the order of priority of documents listed in Section 3.43.1 hereof. 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; provided, same complies with industry standards.

- 1.7 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents or industry standards dictate otherwise.
- 1.8 Where no explicit quality or standards for materials or workmanship are established for the Work, such Work is to be consistent with the standard practices of the trades and free of defects and as reasonably inferable from the Drawings and consistent with the quality of the surrounding Work and of the construction of the Project generally and consistent with industry standards.
- 1.9 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.
- 1.10 The mechanical, electrical and fire protection Drawings are diagrammatic only, and are not intended to show the alignment, physical locations or configurations of such Work. Such Work shall be installed without additional cost to the Owner to clear all obstructions, permit proper clearances for the work of other trades, and present an orderly appearance where exposed. Prior to beginning such Work, the Developer shall prepare coordination drawings showing the exact alignment, physical location and configuration of the mechanical, electrical and fire protection installations and demonstrating to the Developer's satisfaction that the installations will comply with the preceding sentence.
- 1.11 The Developer must coordinate with the Owner's Information Technology Services (ITS) Department during Design Development Phase, for the installation of technology infrastructure cabling throughout the Project. Fiber optic or copper cabling will also be installed or coordinated with a service provider(s) via underground conduit provided by the Developer to the public right-of-way from a designated communication room. The Developer must include ITS during site planning to determine the number of underground conduits required for technology purposes. Owner agrees to provide Developer, when necessary, with all of its requirements relating to technology infrastructure and other information, depending on discipline involved, during the development of the Design Development Documents.
- 1.12 Exact locations for fixtures and outlets shall be identified and located as to quantity and approximate locations. Project Manager may approve minor

location variations (not affecting cost) during rough in phase of construction for Owner convenience.

- 1.13 Where the Work is to fit with existing conditions or Work to be performed by others, the Developer shall fully and completely join the Work with such conditions or Work, unless otherwise specified.

1.14 Ownership and Use of Documents.

1.14.1 Developer shall furnish Owner with one (1) signed and sealed copy and one (1) reproducible set of the Construction Documents. All copies of the Construction Documents, required by Developer for execution of the Work, shall be made by Developer from its reproducible set at Developer's sole cost and expense. Upon the completion or termination of this Agreement, if directed by Owner, Developer shall deliver to Owner copies or originals of all records, documents, drawings, notes, tracings, plans, Auto CADD files, specifications, maps, evaluations, reports and other technical data, other than working papers, prepared or developed by Developer under this Agreement ("Project Documents"). Project Manager shall specify whether the originals or copies of such Project Documents are to be delivered by Developer. Developer shall be solely responsible for all costs associated with delivering to Project Manager the Project Documents. Developer, at its own expense, may retain copies of the Project Documents for its files and internal use.

1.14.2 Notwithstanding anything in this Agreement to the contrary and without requiring Owner to pay any additional fees, provided that Owner is not in default of any of its obligations hereunder, Developer hereby grants Owner a nonexclusive, irrevocable license in all of the Project Documents for Owner's use on this Project. Developer warrants to Owner that it has full right and authority to grant this license to Owner. Further, Developer consents to Owner's use of the Project Documents to complete the Project following Developer's termination for cause or to perform additions to or remodeling or renovation of the Project; provided, however, Owner assumes all responsibility and liability for any reuse of such Project Documents without written authorization by Developer, Designer and any applicable Additional Designers, and Owner hereby agrees to indemnify, defend and hold Developer, Designer and such Additional Designers harmless from any liability, claim, cost or damage, including attorneys' fees and costs, resulting from such reuse of the Project Documents.

## **ARTICLE 2: OWNER'S RESPONSIBILITIES**

### **2.1 Information and Services.**

- 2.1.1 Owner has approved the Project Program as submitted by the Developer on March 28, 2012.
- 2.1.2 The Owner has established and updated an overall budget for the Project, based on consultation with the Developer, which shall include a contingency line item for changes in the Work, unforeseen conditions and other costs which are the responsibility of the Owner, as more particularly described in Section 3.10 hereof.
- 2.1.3 The parties agree that before execution of this Agreement, Developer has not had the opportunity to conduct investigations and/or testing of the Project Site with respect to its suitability for construction of the Project and any impact on construction costs, including, without limitation, testing of such items as soil conditions and/or environmental hazards/contaminants and obtain reports with respect thereto (collectively, the "Test Reports"). Consequently, Developer shall have ninety (90) days from the execution of this Agreement by both parties ("Inspection Period"), to conduct such investigations and/or testing as it deems necessary and obtain the Test Reports.

Within five (5) days following the expiration of the Inspection Period, Developer shall provide written notice to Owner, together with copies of such Test Reports, indicating whether the Test Reports reveal any conditions which will increase the Contract Time and/or increase the GMP ("Inspection Notice") and requesting the Owner's approval of a Change Order reflecting any such increase in Contract Time and/or increase in the GMP. Owner shall have twenty (20) days from receipt of the Inspection Notice to either (i) provide Developer with a signed Change Order reflecting the requested increase in Contract Time and/or increase in GMP; whereupon this Agreement shall continue, or (ii) provide written notice to Developer ("Owner's Response Notice"), indicating that it will either (a) not change the Contract Time and/or GMP, as requested by Developer, or (b) agree to some extension of Contract Time and/or increase GMP. Developer shall have five (5) days following receipt of Owner's Response Notice to accept the terms of Owner's Response Notice or provide written notice to Owner that it is terminating this Agreement; whereupon, neither party shall have any further obligations under this Agreement.

- 2.1.4 The Project Manager is hereby designated by the City Manager to be Albert Carbon Project Manager, whose address is 100 N. Andrews Ave Fort Lauderdale, FL 33301. Any change to the Project Manager shall be made in writing to the Developer.

- 2.2 The Project Manager shall review and make appropriate recommendations within five (5) days on all requests submitted by Developer for payment for services and work provided and performed in accordance with this Agreement.
- 2.3 Information or services required of the Owner by this Agreement shall be furnished by the Owner within five (5) Business Days after receipt from the Developer of a written request for such information or services, unless otherwise specified in the Contract Documents. Owner's failure to provide information or services within the time period provided shall entitle Developer to an extension of the Contract Time with respect thereto on a day for day basis after expiration of such five (5) Business Day period.
- 2.4 In the event the Developer fails and refuses to correct any Work in accordance with the Contract Documents, within a five (5) Business Day time period after receipt of written notice from the Project Manager with regard to such failure, which is not in accordance with the requirements of the Contract Documents, (provided, however, if such correction cannot be completed within five (5) Business Days, then if Developer commences to cure same within five (5) Business Days and diligently pursues same to completion, then Developer shall have satisfied this Agreement), the City Manager at the City Manager's sole discretion may direct the Developer to stop the Work or any portion thereof, until such time as the non-conforming Work has been corrected.
- 2.5 In the event the Developer fails to address and agree upon corrective action with the Project Manager in accordance with the Contract Documents, within a five (5) Business Day time period after receipt of written notice from the Project Manager with regard to such failure (provided, however, if such correction cannot be completed within five (5) Business Days, then if Developer commences to cure same within five (5) Business Days and diligently pursues same to completion, then Developer shall have satisfied this Agreement), the Owner may, without waiving its rights to pursue any and all other remedies, move forward to correct such deficiencies itself. In that event, the Owner, except as provided for in 1.3, will issue a Construction Change Directive deducting from any and all payments due to the Developer the cost of correcting such non-conforming Work, including any compensation to third parties for additional services and expenses incurred as a result of such failure by the Developer. The method for determining the Construction Change Directive value shall be determined mutually by the City Manager and the Developer. In the event the payments due the Developer are insufficient to pay for the Construction Change Directive referenced above, then the Developer shall immediately pay the difference to the Owner.

### **ARTICLE 3: DEVELOPER'S RESPONSIBILITIES**

#### **A. Design Services.**

- 3.1 Within ten (10) days after Owner's issuance of the Notice to Proceed, the Developer shall perform the Design Services, and shall commence and diligently complete preparation of the Construction Documents. Issuance of the Notice to Proceed shall fix the date on which the Contract Time will commence to run and on which the Contract Time will end. The scope of Work for Design Services shall include the work and services set forth in **Exhibit D**.
- 3.2 In conjunction with Developer's rendition of Design, Developer shall receive the fixed amount of \$2,553,180.00 ("Design Fee") as the total lump sum compensation for all Design Services. Said lump sum amount shall be paid on a percent completion basis, in accordance with a schedule submitted by Developer, and reviewed and approved by Project Manager at the time of the City's issuance of the Notice to Proceed. The Design Fee is comprised of \$977,500.00 for the parking garage component of the Project and \$1,575,680.00 for the swimming pool component of the Project.

**B. Construction Services.**

- 3.3 The scope of Work for Construction Services shall include the work and services set forth in **Exhibit E**, which is attached hereto.
- 3.4 With respect to the Construction Services to be provided by Developer hereunder, Owner shall reimburse Developer for the Cost of the Work and pay Developer a fixed Developer's Fee ("Developer's Fee") as set forth in the GMP for the Construction Services. Developer agrees to provide Owner with a Guaranteed Maximum Price Proposal for the total sum of the Developer's Fee plus the Cost of the Work broken down into the sub-trade proposals and other construction categories and level of detail reasonably required by Owner. Developer agrees that all of its books, records and files, with respect to its presentation of the Guaranteed Maximum Price Proposal, shall be open to Owner for review and copying during normal business hours and subject to the terms of Section 3.14 hereof.

In the event of any termination by Owner of Developer, the Developer shall promptly provide all materials and information relating to the Project to Owner in appropriate formats and expressly grants the Owner the right to use the Design documents to contract for the construction phase of the work and the Developer will be considered the Architect/Engineer of Record for such purposes. Developer's agreement for Design Services from the Architect of Record and Engineer of Record shall provide their joinder and consent to the Owner's use of the Design documents. The Developer will not be entitled to any additional compensation in the event of such termination and compensation paid as the Design Fee (through the date of any such termination) shall be considered full compensation for the Owner's use of the Design Document for construction.

- 3.5 Costs to be Reimbursed. Owner shall pay Developer the Cost of the Work for the Construction Services. Except as otherwise provided herein, the Cost of the Work for Construction Services which Owner shall pay Developer shall include only those items set forth below in this section 3.5:

3.5.1 Labor Costs.

- 3.5.1.1 Wages of construction workers directly employed by Developer to perform the construction of the Work at the Project site or, with Project Manager written agreement, at off-site workshops. Costs to be reimbursed will be the actual wages paid inclusive of labor burden to the individuals performing the work.
- 3.5.1.2 Wages or salaries of Developer's supervisory and administrative personnel who are stationed at the Project site which includes Schedule 3.10.2 – Basis for GMP, and all such personnel listed on **Exhibit B-4**. Costs to be reimbursed will be per Division 1, General Conditions Schedule and will be the actual wages paid inclusive of labor burden to the individuals performing the work.
- 3.5.1.3 The parties hereby establish the fixed markup rate of twenty-nine percent (29%) for all labor burden, including all taxes, insurance, contributions, assessments and benefits required by law and collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such markup is to apply only upon those wages and salaries included in the Cost of the Work under subsections 3.5.1.1 and 3.5.1.2, above, but in any event excluding bonuses and other similar extraordinary benefits.

- 3.5.2 Subcontract Costs. Payments made or due by Developer to subcontractors in accordance with the requirements of the applicable written subcontracts.

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

- 3.5.3.1 Costs, including transportation and storage of materials and equipment incorporated or to be incorporated in the completed construction.
- 3.5.3.2 Costs of materials described in subsection 3.5.3.1, above, in excess of those actually installed but required to provide



reasonable allowance for waste and for spoilage, such reasonable allowance to be mutually agreed upon by the parties. Unused excess materials, if any, shall be handed over to Owner at the completion of the Work or, at Owner's option, shall be sold by Developer; amounts realized, if any, from such sales, shall be credited to Owner as a deduction from the Costs of the Work.

3.5.4 Costs of other materials and equipment, temporary facilities and related items.

- 3.5.4.1 Costs, including transportation, storage, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities (including project field offices, furniture and fixtures), temporary utilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Developer at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Developer.
- 3.5.4.2 Rental charges, at standard industry rates for the area, for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Developer at the Project site, whether rented from Developer or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of all equipment rented, whether from Developer or others, shall be detailed in the Final GMP Contract provided for in **Exhibit B**.
- 3.5.4.3 Cost of removal and proper legal disposal of debris from the Project site.
- 3.5.4.4 Costs of document reproduction (limited to \$.15/page), parcel delivery charges and telephone service at the Project site and reasonable petty cash expenses of the Project site office.
- 3.5.4.5 That portion of the reasonable travel and subsistence expenses of Developer's personnel, assigned to the Project site, incurred while traveling outside of the Fort Lauderdale/Broward County metropolitan area in discharge of duties connected with the Work, detailed in the Final GMP Contract provided for in **Exhibit B**.

### 3.5.5 Miscellaneous Costs.

- 3.5.5.1 That portion of any premiums for (i) bonds directly attributable to this Contract and (ii) any additional insurance coverages which are purchased by Developer, detailed in the Final GMP Contract provided for in **Exhibit B**.
- 3.5.5.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Developer is liable.
- 3.5.5.3 Fees and assessments for the Building Permit and other permits, licenses and inspections for which Developer is required by the Contract Documents to pay and impact fees, as listed in Schedule of Values as an Allowance.
- 3.5.5.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of this Contract.
- 3.5.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.
- 3.5.5.6 Deposits lost for causes other than Developer's fault or negligence.
- 3.5.5.7 Legal, mediation and arbitration costs, including reasonable attorneys' fees, other than those arising from disputes between Owner and Developer, reasonably incurred by Developer in performance of the Work and with City Manager's prior written consent, which consent shall not be unreasonably withheld.
- 3.5.5.8 Costs reasonably incurred in repairing or correcting damage or nonconforming Work executed by Developer, or its subcontractors, subconsultants, or suppliers, provided that such damage or nonconforming Work was not caused by (i) the negligence or failure to fulfill a specific responsibility of Developer to Owner set forth in the Contract Documents, or (ii) Developer's foremen, engineers, superintendents or other supervisory, administrative or managerial personnel, (iii) the failure of Developer's personnel to supervise adequately those portions of the Work to be performed by Developer's subcontractors, subconsultants or suppliers, and only to the extent that the cost of repair or correction is not recoverable

by Developer from (i) insurance or bonds, or (ii) any of the subcontractors, subconsultants, or suppliers.

- 3.5.6 Other Costs. Other costs incurred in performance of the Work if and to the extent approved in advance in writing by Owner, which approval shall not be unreasonably withheld.
- 3.5.7 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting safety of persons or property, such as, without limitation, properly securing the Project Site in the event of a threatened hurricane or tropical storm and repairing any resulting damage therefrom. Extensions of Contract Time, extended General Conditions to Developer on account of delays to Contract Time and costs incurred due to such threatened harm or emergency shall be mutually and reasonably agreed upon by Owner and Developer.
- 3.6 Costs Not To Be Reimbursed. The Cost of the Work shall not include the following items:
  - 3.6.1 Salaries and other compensation of Developer's personnel stationed at Developer's principal office or offices other than the Project Site office, except as noted in 3.5.1.2.
  - 3.6.2 Expenses of Developer's principal office and offices other than the Project Site office.
  - 3.6.3 Overhead and general expenses, except as may be expressly included in section 3.5 above or otherwise in this Agreement.
  - 3.6.4 Developer's capital expenses, including interest on Developer's capital employed for the Work.
  - 3.6.5 Except as expressly provided in subsection 3.5.5.8 above, costs due to the fault or negligence of Developer, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, costs for the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.
  - 3.6.6 Any costs not specifically and expressly described in GMP Proposal or Section 3.5 or otherwise in this Agreement.
  - 3.6.7 Costs which would cause the GMP to be exceeded, except those costs included in approved Change Orders and Construction Change Directives (as the GMP may be adjusted pursuant to the terms herein for Change Orders and Construction Change Directive) or as otherwise provided in this Agreement.

- 3.7 Discounts, Rebates and Refunds. Cash discounts obtained on payments made by the Developer shall be added to the Contingency (as hereinafter defined). Trade discounts, rebated, refunds, and amounts received from sales of surplus materials and equipment shall be added to the Contingency.
- 3.8 General. The construction phase shall commence within ten (10) days after the latest to occur of the issuance of all Building Permits necessary to commence construction and the Owner's written authorization to Developer to proceed with construction. Notwithstanding anything contained herein to the contrary, in no event will Developer be obligated to commence construction of the Project unless and until the costs for the Design Services and Construction Services (together with, the Design Fee and Developer's Fee) under the approved Construction Documents do not exceed the GMP, in Developer's sole discretion, and the Contract Time shall be extended accordingly, if necessary.
- 3.9 The Developer shall cause all Work required by the Contract Documents to be properly completed in accordance with the terms of the Contract Documents and within the Contract Time, subject to the GMP and adjustment of the Contract Time, as provided in this Agreement.
- 3.10 Guaranteed Maximum Price (GMP)

THE GUARANTEED MAXIMUM PRICE (GMP) CANNOT EXCEED (1) **TWENTY-FOUR MILLION EIGHT-HUNDRED SIXTY-FOUR THOUSAND NINE-HUNDRED AND FIFTY DOLLARS** (\$24,864,950.00) FOR THE PUBLIC IMPROVEMENTS (AS DELINEATED ON THE PROJECT PROGRAM SUBMITTED TO THE CITY OF FORT LAUDERDALE ON MARCH 28, 2012) AND (2) **SEVEN MILLION FIVE-HUNDRED SEVENTY-TWO THOUSAND FOUR-HUNDRED AND EIGHTY-FOUR DOLLARS** (\$7,572,484.00) FOR THE PARKING GARAGE, BOTH ELEMENTS INCLUSIVE OF THE COSTS FOR DESIGN SERVICES, DESIGN FEE AND DEVELOPER'S FEE, OR A TOTAL GMP OF **THIRTY-TWO MILLION, FOUR HUNDRED THIRTY-SEVEN THOUSAND, FOUR HUNDRED THIRTY-FOUR DOLLARS (\$32,437,434.00).**

**ONCE THE CONSTRUCTION PHASE HAS COMMENCED, DEVELOPER AGREES THAT IT WILL BE RESPONSIBLE FOR PAYING ALL COSTS OF COMPLETING THE WORK WHICH EXCEED THE GMP, AS MAY BE ADJUSTED IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.**

3.10.1 Subject to the provisions of Section 3.8 hereof, when the Construction Documents are 90% complete, Developer will provide the final cost detail to support the GMP, which is the total not-to-exceed estimate of the Cost of Work, cost of Design Services, the Design Fee and the Developer's Fee, and the form of which is attached hereto as **Exhibit B**. The GMP shall include all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and any other services necessary for the proper execution and completion of the Work.

3.10.2 After the City's approval of 90% Construction Documents, the Construction Documents shall not be modified to include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment. If these modifications are required, all of which, if required, shall be incorporated by Change Order and shall increase the Contract Time and/or GMP, as appropriate.

3.10.3 Basis of Guaranteed Maximum Price. The Developer shall include as Exhibit B to this Agreement, a written statement of its basis for the GMP, which shall include:

3.10.3.1 A list of the Drawings and Specifications, including all addenda thereto and the conditions of the Contract Documents, which were used in preparation of the GMP.

3.10.3.2 A list of allowances and a statement of their basis.

3.10.3.3 A list of the clarifications and assumptions made by the Developer in the preparation of the GMP to supplement the information contained in the Drawings and Specifications

3.10.3.4 The GMP, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Developer's Fee that comprise the GMP.

3.10.3.5 The Date of Substantial Completion upon which the GMP is based, and a schedule of the Construction Documents' issuance dates upon which the date of Substantial Completion is based.

Notwithstanding anything contained herein to the contrary, the Owner has acknowledged and agreed to the qualifications, clarifications and conditions set forth in the Basis for the GMP attached hereto and made a part hereof as Schedule 3.10.3.

3.10.4 Included within the GMP is the Developer's Fee. The Developer's Fee is hereby established as \$4,710,577.80 based on a fixed percentage of 17.78% for each of the parking garage component and for the swimming pool component of the Project (the "Developer's Fee"), calculated on all amounts reflected in the GMP Sum, more particularly described in Exhibit "B," excluding permits, payment and performance bond, builder's risk insurance, project specific E & O policy, Developer's Contingency and Owner's Contingency. The sum of the Cost of the Work, cost of Design Services, the Design Fee and the Developer's Fee shall not exceed the GMP also referred to as the Contract Sum. The Developer's Fee shall constitute

Developer's total compensation for profit and overhead for Construction Services. The Developer's Fee is to be included in the Developer's monthly Application for Payment, in accordance with Article 9.1.4 of this Agreement, and shall be proportional to the percentage of Work completed, less payments of the Developer's Fee previously made.

3.10.5 The GMP shall be subjected to additions and deductions by changes in the Work, as provided in the Contract Documents and the date of Substantial Completion shall be subject to adjustment, as provided in the Contract Documents.

3.10.6 The GMP Sum is guaranteed by the Developer not to exceed the amount provided in **Exhibit B** to this Agreement, subject to additions and deductions by changes in the Work, as provided in the Contract Documents.

3.10.7 The Developer acknowledges that this Agreement is to be administered on an "open book" arrangement relative to the cost of the Work and approved subcontract agreements; provided, however, that Owner shall not unreasonably withhold or delay approval to such subcontract agreements.

3.10.8 Included within the GMP is the Developer's general conditions costs ("General Conditions"), which shall be referenced as a separate line item in the Schedule of Values. The Developer's General Conditions are to be included in Developer's monthly Application for Payment, in accordance with Article 9.1.4 of this Agreement, and shall be proportional to the percentage of Work completed, less payments of General Conditions previously made. Notwithstanding anything contained herein to the contrary, the General Conditions are a fixed amount and shall not be subject to audit or shared "Savings", as hereinafter defined.

3.10.9 Included within the GMP will also be a Contingency line item as follows:

3.10.9.1 The parties agree that, given the size, scope, and nature of the Project, unforeseen contingencies may arise during the course of construction. The Schedule of Values will contain line items for a Developer's Contingency (as hereinafter defined) and an Owner's Contingency (as hereinafter defined), such contingencies being referred to collectively as the "Contingency Funds". The Developer's Contingency will consist of (i) one line item labeled Developer's Aquatic Contingency in the amount of \$237,897.78; and (ii) one line item labeled Developer's Parking Contingency in the amount of \$217,871.22 (collectively, the "Developer's Contingency"). The Owner's Contingency will consist of (i) one line item

labeled Owner's Aquatic Contingency in the amount of \$150,000.00; and (ii) one line item labeled Owner's Parking Contingency in the amount of \$100,000.00 (collectively, the "Owner's Contingency"). There will also be a line item for Savings (as defined in Section 9.1.12) in which any value engineering savings, material cost savings, subcontractor cost reductions and buy-out achieved during the course of the Project will be deposited. During the course of construction, Developer shall, in accordance with the Pay Application mechanism outlined in Section 9, have the right to draw down on the Contingency Funds to pay for and/or otherwise address the aforesaid unforeseen contingencies, in the order of priority set forth in this Section 3.10.9.1. For the purposes of this Agreement, items for which the Contingency Funds may be used include unforeseen items, including, but not limited to, conflicts in the Design Documents or Construction Documents or Specifications, governmental or building code requirements not known to Developer during the Design Phase, unforeseen field or other conditions, extended General Conditions and additional repair and construction costs based on Force Majeure events, unanticipated escalation of materials, subsurface conditions and other unforeseen conditions not otherwise identified or reasonably ascertained at the time of execution of this Agreement (collectively, "Unforeseen Contingencies"); however, the Contingency Funds shall not be used to pay for Owner's requested changes to the Work which would be addressed in a Change Order increasing the GMP and/or Contract Time, as appropriate. Notwithstanding anything contained herein to the contrary, the Developer's Contingency can be used by the Developer to pay for and/or address not only the Unforeseen Contingencies, but also to pay for and/or address the following (collectively, "Developer's Additional Contingencies"): (a) construction costs (including, labor, equipment and materials) resulting from errors or omissions in the Design Documents, Construction Documents or Specifications; provided, however, no such contingency funds shall be used to pay for additional design costs relating to such error or omission; and (b) costs of acceleration of construction to remain on the agreed upon schedule. For the purposes of this Section 3.10.9.1, the order of priority in which the Contingency Funds may be drawn upon shall be as follows: Developer's Contingency first, then Savings (as defined in Section 9.1.12) second, and then Owner's Contingency.

3.10.9.2 The parties agree that to the extent either identifies an Unforeseen Contingency, the party identifying such condition and seeking to have that condition satisfied from the contingency line item, shall give written notice to the other party within ten (10) days of identifying the condition and quantifying the amount to be applied to the contingency line item, with reasonable backup documentation supporting such request ("Contingency Notice"). The party receiving the Contingency Notice shall, within five (5) days of receipt of the Contingency Notice, provide written affirmation that the amount sought to be applied to the contingency line item is acceptable, or alternatively, provide written notice of all objections to the Contingency Notice to the other party. If the parties are unable to resolve any disagreement relating to the Contingency Funds within ten (10) days thereafter, the parties shall address this matter as with all other Claims outlined in this Agreement. Notwithstanding anything in the foregoing to the contrary, the use of the Developer's Contingency by the Developer shall not require the Owner's approval; provided, however, that such funds are being used to pay for and/or address Unforeseen Contingencies or Developer's Additional Contingencies, as such terms are defined in Section 3.10.9.1. The use of the Owner's Contingency and the Owner's share of the Savings by Developer shall be subject to the prior approval of the Owner.

3.10.9.3 Notwithstanding anything contained herein to the contrary, any amounts remaining in the Contingency Funds at the conclusion of the Project shall be allocated between the parties as follows: (i) all amounts remaining in the Developer's Contingency shall be retained by the Developer; and (ii) all amounts remaining in the Owner's Contingency shall be retained by the Owner. Any amounts remaining in Savings shall be divided between the parties in accordance with the Savings clause in Section 9.1.12.

3.10.10 The parties agree that the Developer shall be the commercial pool contractor for the Project and the pool pricing contained in the GMP shall be subject to verification at 90% completion of the Construction Documents by a cost estimator retained by the Owner. In such capacity as the pool contractor, for the purposes of this Agreement, Developer shall be subject to the terms and provisions of this Agreement relating to subcontractors.



- 3.11 Changes in Work. Adjustments to the GMP because of changes in the Work shall be determined by any of the methods listed in Article 7 of this Agreement.
- 3.12 All tests, inspections and approvals of portions of the Work required by the Contract Documents or any applicable laws, ordinances, rules, regulations or orders of public authorities having jurisdiction, shall be made at an appropriate time. The Developer shall be responsible for making arrangements for such tests, inspections and approvals with an independent testing laboratory acceptable to the Owner's Project Manager, or with the appropriate public authority. In the event the Owner or public authority having jurisdiction determine that portions of the Work require additional testing, inspection or approval, the Owner's Project Manager must approve such additional testing, inspection or approval in writing. The Developer shall make arrangements for such additional testing, inspection or approval, and give timely prior notice to the Owner's Project Manager. In the event the testing, inspection or approval described in this subparagraph reveals the failure of portions of the Work to be in compliance with the requirements of the Contract Documents, the Developer shall bear all costs of such non-conforming Work, including the additional testing, inspection or approval. Retesting costs for additional testing occasioned by the failure of portions of the Work to be in compliance with the Contract Documents are not to be included in the reimbursable Cost of the Work.
- 3.13 The Developer shall obtain and deliver promptly to the Owner's Project Manager any occupancy permit and/or any certificates of final inspection of any part of the Developer's Work and operating permits for any mechanical apparatus, such as elevators, escalators, boilers, and air compressors, which may be required by law to permit full use and occupancy of the premises by the Owner. Receipt of such permits or certificates by the Owner's Project Manager shall be a condition precedent to Substantial Completion of the Work unless the certificates stated herein are withheld for reasons that are neither the fault nor the negligence of the Developer.

**C. Other Responsibilities.**

3.14 Accounting Records and Audit.

- 3.14.1 The Developer shall keep in electronic form full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be Timberline accounting/Estimating software. During construction and until final payment by Owner hereunder, the Owner, including Owner's employees, officer, agents and accountants shall be afforded reasonable access to the Developer's records, books, correspondence, instructions, Drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Project for review and audit

purposes during normal business hours and on five (5) days written notice to Developer. The Developer shall preserve in electronic form these records, documents and data for a period of five fiscal years after final payment, or for such longer period as may be required by Florida law. If the Developer receives notification of a dispute or the commencement of litigation regarding the Project within this five-year period, the Developer shall continue to maintain all Project records until final resolution of the dispute or litigation.

3.14.1.1 The Developer shall furnish the Owner with one electronic copy of all financial records as to the costs to be reimbursed under Article 3.5 regarding the Project, the receipt of which by the Owner is required prior to release of the final payment.

3.14.2 Upon five (5) days' written notice, from the date of this Agreement to the latest date described in Section 3.14.1 for record preservation, the Developer shall make its Project records available during normal business hours to the Owner or its authorized representative(s) at the Developer's office. Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the Developer's Project records at the Owner's reasonable expense, within adequate work space at the Developer's facilities. Failure by the Developer to supply substantiating Project records shall be reason to exclude the related costs from amounts which might otherwise be payable by the Owner to the Developer pursuant to this Agreement.

3.14.3 This Article 3.14, "Accounting Records and Audit," shall survive the termination of this Agreement.

3.15 The Developer is solely responsible for reviewing and comparing the Contract Documents with each other and within five (5) days of discovery, report to the Owner any and all errors, inconsistencies or omissions. In the event the Developer performs any Work with the knowledge that it involves an error, inconsistency or omission in the Contract Documents, the Developer shall be responsible for such erroneous, inconsistent, or omitted Work. The Developer is also responsible for taking such field measurements as are necessary in order to verify field conditions and to compare such field measurements and conditions with the Contract Documents. Any and all errors, inconsistencies or omissions shall be reported to the Owner within five (5) days of discovery.

3.16 The Developer shall be solely responsible for supervising and directing the Work, and shall have sole responsibility for determining appropriate construction means, methods, techniques, sequences and procedures, and for coordinating the Work under the Contract Documents. The Developer shall be solely

responsible to the Owner for the acts and omissions of all Persons performing or supplying any portion of the Work for which the Developer has contracted.

- 3.17 Warranty. For a period of one (1) year from the date of Final Completion of the Work, the Developer hereby warrants to the Owner that all materials and equipment furnished under the Agreement will be of good quality and new, and that the Work performed will be free from any and all defects (except for those inherent in the quality or nature of the Work or any of the materials incorporated therein) and will be in conformity with the requirements of the Contract Documents. Interpretation of the Contract Documents shall be made upon the basis that any Work to be done and materials to be furnished shall be regarded as meaning that only the best general practice is to prevail and that only material and workmanship of the best quality is to be used. All Work not conforming to these requirements may be declared defective by the Owner. If requested, the Developer shall furnish evidence to the satisfaction of the Owner of the quality of the materials and equipment supplied. The warranty provided in this paragraph shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law. Prior to Final Payment the Developer shall procure and deliver to the Owner all special warranties required by the Contract Documents.
- 3.18 In no case shall a substitution be granted where the Owner requires a sole source item to match existing standards.
- 3.19 In requesting approval of deviations or substitutions, the Developer shall provide evidence leading to a reasonable certainty that the proposed substitution or deviation will provide a quality of result at least equal to that otherwise attainable. If, in the opinion of the Owner, the evidence presented by the Developer does not provide a sufficient basis for such reasonable certainty, the Owner may reject such substitution or deviation without further investigation. The Owner shall not unreasonably reject the request of the Developer.
- 3.20 The Contract Documents are intended to produce a Project of consistent character and quality of design. All components of the Project including visible items of mechanical and electrical equipment must have a coordinated design in relation to the overall appearance of the Project. The Owner shall judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. The Owner will not approve as equal to materials specified proposed substitutes which, in the Owner's opinion, would be out of character, obtrusive, or otherwise inconsistent with the character or quality of design of the Project. In order to permit coordinated design of color and finishes the Developer shall, if required by the Owner, furnish the substituted material in any color, finish, texture, or pattern which would have been available from the manufacturer originally specified, at no additional cost to the Owner.

- 3.21 The Developer shall pay all applicable sales, consumer, use and similar taxes for the Work which are legally required, except on items the Owner chooses to utilize its Direct Purchase Program; provided, however, that same shall be reimbursable Costs of Work per Section 3.5.5.2.
- 3.22 City permits are required on City property. The Developer will pay all applicable permit, utility, transportation concurrency fees, FP&L and impact fees attendant to the Work; provided, however, that same shall be reimbursable, and included as Allowances under the Schedule of Values.
- 3.23 In-progress inspections by the Owner or representatives employed by the Owner will check for compliance with applicable codes and monitor the course of construction on the Owner's behalf. Owner's inspectors shall at all times have access to the Work during normal work hours and Developer shall provide proper facilities for such access and for inspecting, measuring and testing. This inspector may call to the Developer's attention, Work which is considered to be not in accordance with the Drawings and Specifications, and therefore unacceptable. Such inspections shall not be deemed an approval of any work of the Developer or others nor shall such inspections in any manner reduce or limit Owner's rights or remedies in regard to Developer non-compliance with the terms of this Agreement. The Developer will either repair or replace such construction, or appeal to the Owner for a ruling. The City Manager will be the final authority as to acceptability of Work, and the inspector will not by inference, be accepting Work on the Owner's behalf. The inspector may from time to time request changes in the Work which will enhance the job or remove an undesirable condition. In such instances, the request will be in writing to the Developer.
- 3.24 The Developer shall comply with and give notices required by all applicable laws, ordinances, rules, regulations and lawful orders of public authorities with regard to the performance of the Work. In the event the Developer observes that any portions of the Contract Documents are not in compliance with the above, the Developer shall, within five (5) days of discovery, notify the Owner's Project Manager in writing of such variances. In the event the Developer performs any Work with knowledge that it is at variance with applicable laws, ordinances, rules, regulations and lawful orders of public authorities without giving such notice, then the Developer shall be responsible for the attributable costs for such Work.
- 3.25 The Developer shall employ a competent superintendent, reasonably acceptable to the City Manager, and necessary assistants who shall be in attendance at the Project Site full time during the progress of the Work until the date of Substantial Completion, and for such additional time thereafter as the Owner and Developer both agree to be necessary for the expeditious completion of the Work; provided, however, no such superintendent shall have the authority to bind Developer. The Developer's Representative for the purposes of having authority to act on behalf of Developer and for the purposes of making decisions to bind

Developer shall be Joseph Cerrone, subject to change by written notice to Owner. The Developer shall remove the superintendent if requested to do so in writing by the City Manager for reasonable cause, and shall promptly replace her/him with a competent person reasonably acceptable to the City Manager.

- 3.26 The Developer shall retain a competent registered professional engineer or registered land surveyor, who shall establish the exterior lines and required elevations of all buildings and structures to be erected on the Project Site and shall establish sufficient lines and grades for the construction of associated Work such as, but not limited to, roads, utilities and site grading. The engineer or land surveyor shall certify the actual location of the constructed improvements and facilities in relation to property lines, building lines, easements, vertical datum and other restrictive boundaries.
- 3.27 The Developer shall establish in the Project Documents the building grades, lines, levels, column, wall and partition lines required by the various subcontractors in laying out their Work.
- 3.28 The Developer shall arrange for and attend job meetings with the Owner's Project Manager and such other persons as the City Manager may from time to time wish to have present. The Developer shall be responsible for recording and distributing meeting minutes. The Developer shall be represented by a principal, project manager, general superintendent or other authorized main office representative, as well as by the Developer's own superintendent. An authorized representative of any subcontractor or sub-subcontractor shall attend such meetings if the representative's presence is required by the City Manager. Such representatives shall be empowered as appropriate on all matters to be discussed at such meetings, including costs, payments, change order, time schedules, manpower and Construction Change Directive, unless the above listed items require written approval by the Owner and the Developer.
- 3.29 The superintendent as designated by the Developer and accepted by the Owner shall not be reassigned from the job prior to final completion, except with the approval of the Owner's Project Manager. In the event of separation or termination of employment of Developer's superintendent, the Developer may assign a new superintendent subject to the reasonable approval of Owner.
- 3.30 The Developer shall be required to prepare a schedule of submittals for the Owner's approval which is coordinated with the construction schedule, allowing sufficient time for review. The submittals shall reference progress schedule dates for installation and Specification section. The Owner shall be provided with one copy of the accepted schedule of submittals for the Owner's records.
- 3.31 The Developer shall maintain at the office one record copy of the Drawings, Specifications, addenda, Change Orders and any other modifications, which serve to indicate all current changes, in addition to all approved shop drawings,

product data samples, and all other similar submittals. The Developer shall maintain "as-built" drawings at the Project Site office. The "as-built" drawings shall document all changes in the Drawings and Specifications made during the course of the Work. The "as-built" drawings shall be in sufficient form and detail to permit the Owner to maintain and repair the Work after its completion. At the completion of the Work, these items shall be delivered to the Owner prior to release of final payment.

- 3.32 The Developer shall review, approve and submit to the Owner any and all shop drawings, product data, samples and any other similar submittals which are required by the Contract Documents, and allow a reasonable amount of time for review by the Owner, without impacting the Work schedule, but in no event more than five (5) days after delivery to Owner. The Developer shall not perform any part of the Work relating to the shop drawings, product data, samples or any other similar submittals, until such items have been approved by the Owner within five (5) days. Notwithstanding anything contained herein to the contrary, Contractor shall be entitled to an extension of the Contract Time (on a day for day basis) and any additional General Conditions relating to any delay in Owner's approval which affects the critical path.
- 3.33 The Owner's approval by its Project Manager of any shop drawing, product data, sample or other similar submittal does not in any way relieve the Developer of responsibility for deviations from the requirements of the Contract Documents. Further, the Developer shall not be relieved of responsibility for any errors or omissions in the shop drawings, product data, samples or any other similar submittals simply by the Owner's approval. In the event a deviation is requested, the Developer shall specifically identify the deviation in writing to the Owner's Project Manager at the time of the submittal and the Owner's Project Manager is required to respond in writing to approve the specified deviation within five (5) days.
- 3.34 By approving and submitting shop drawings, product data, samples, and similar submittals, the Developer represents that the Developer has determined and verified all dimensions, quantities, field dimensions, relations to existing Work, coordination with Work to be installed later, coordination with information on previously accepted shop drawings, product data, samples, or similar submittals and verification of compliance with all the requirements of the Contract Documents. The accuracy of all such information is the responsibility of the Developer.
- 3.35 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Owner shall be entitled to rely upon such certifications, and the Owner shall not be expected to make any independent examination with respect thereto.

- 3.36 The right of possession of the premises and the improvements made thereon by the Developer shall be retained at all times by the Owner. The Developer's right to enter arises solely from the permission granted by the Owner under the Contract Documents. The Developer shall confine the Developer's equipment, the storage of materials and the operations of the Developer's workmen to the Project Site and according to the directions of the Owner's Project Manager or City Manager, and shall not unreasonably encumber the Project Site with the Developer's materials.
- 3.37 The Developer shall keep the Project Site, the surrounding area, surrounding rights-of-way and properties free from all waste, construction debris, or trash. At the completion of the Work, the Developer shall remove all tools, construction equipment, machinery and surplus materials. In the event the Developer fails to keep the Project Site, surrounding area, surrounding rights-of-way and properties in a clean condition, then upon three (3) days' written notice to Developer and failure of Developer to correct such condition, then the Owner may do so and charge the cost back to the Developer.
- 3.38 Developer Use of Project Site: The Developer shall confine construction equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits and the requirements of the Contract Documents, and shall not encumber the premises with construction equipment or other materials or equipment. Notwithstanding anything to the contrary contained herein, Owner shall allow Developer to utilize D.C. Alexander Park as a construction staging area; provided, however, that Developer agrees to restore the property to its pre-construction condition upon Developer's completion of the Project.

The Developer shall not enter upon private or public property (not constituting the Project Site) for any purpose without first securing the written permission of the property owner, furnishing the Project Manager with a copy of said permission. This requirement will be strictly enforced, particularly with regard to such properties as may be utilized for storage or staging by the Developer. The use of such off-site property for storage or staging must be permissible under the ULDR.

The Developer shall conduct all Work in such a manner as to avoid and prevent damage to adjacent private or public property. Any damage to existing structures or property of any kind, including permanent reference markers or property corner markers, or the interruption of a telephone, telecommunications or utility service caused by Developer or its subcontractors, shall be repaired or restored by the Developer as soon as reasonably possible in light of the extent of the damages and/or repairs, at Developer's expense and no expense to the Owner.

The Developer will preserve and protect all existing vegetation such as trees, shrubs and grass on or adjacent to the Project Site which do not interfere with the Work, as determined by the Project Manager. The Developer will be responsible for repairing or replacing anything damaged by the Developer, including, but not limited to, any trees, shrubs, lawns, landscaping and structures that may be damaged due to operation of equipment, stockpiling of materials, tracking of grass by equipment or other Work activity. The Developer will be liable for, and will be required to replace or restore at no expense to the Owner all structures and vegetation not protected or preserved as required herein that may be destroyed or damaged.

During the progress of the Work, the Developer shall keep the Project Site free from accumulations of waste materials, rubbish and debris resulting from the Work. Upon the completion of the Work, or more frequently if so directed by the Project Manager, the Developer shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by the Owner. The Developer shall restore to their original condition those portions of the Project Site not designated for alteration by the Contract Documents at no cost to the Owner.

- 3.39 Immediately prior to the Owner's inspection for Substantial Completion, the Developer shall completely clean the Project Site utilizing a licensed cleaning service. Concrete and ceramic surfaces shall be cleaned and washed. Resilient coverings shall be cleaned, waxed and buffed. Woodwork shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and all metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Developer at the Developer's expense.
- 3.40 Responsibility for Work. Notwithstanding any requirements herein for Owner's review, inspection or approval, the parties acknowledge and agree that Developer shall be solely responsible and liable for the performance of the design and construction of the Work in accordance with the Contract Documents.
- 3.41 Notices and Compliance with Law. Developer shall be responsible for giving all notices and for complying with all laws, ordinances, rules, regulations and lawful orders of any public authorities having jurisdiction over the particular portion of the Project with respect to the performance of the subject Work. The Master Project Schedule for the subject Work and the GMP associated therewith shall be based upon the laws, ordinances and regulations which are in effect on the date of this Agreement. Any changes in laws, ordinances or regulations thereafter that require additional work outside Developer's established scope shall be the subject of a Change Order under Article 7 of this Agreement.



- 3.42 Indemnification for Infringement. Developer shall pay all royalty and license fees required for the design and construction of any portion of the Project assigned to it. To the maximum extent permitted by law, Developer shall defend any and all suits or claims for infringement of patent rights and shall indemnify and save Owner harmless from all loss or expense on account thereof (including attorneys' and paralegals' fees); provided, however, Developer shall not be responsible for such defense or loss when a particular design, process or product is required by Owner.
- 3.43 Design Services. Developer shall provide the architectural and engineering design for the Project. The design for the Project shall be set forth in the Construction Documents. All changes, supplements and additions to the Construction Documents shall be subject to Owner's review within five (5) days and written approval, such approval to be obtained prior to the commencement of any portion of the Work relating thereto. Notwithstanding anything contained herein to the contrary, Contractor shall be entitled to an extension of the Contract Time (on a day for day basis) relating to any delay in Owner's approval which affects the critical path.
- 3.43.1 The precedence of documents is as follows:
- List of Clarifications and Assumptions listed in 3.10.3.3.
  - List of Project Plans and accompanying Specifications 3.10.3.1
  - City of Fort Lauderdale Construction Standards and Specifications
  - The GMP as listed in 3.10.3.4
  - This Agreement
- 3.44 Review, Recommendations and Warranty. Developer shall familiarize itself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical and structural Plans and Specifications being prepared by the Designer and shall follow the development of the Project design through all required Design activities. Developer shall make recommendations with respect to the selection of systems and materials, and cost-reducing alternatives including assistance to Owner in evaluating alternative comparisons versus long term cost effects. The evaluation shall address the benefits of the speed of erection and early completion of the Work. Developer shall furnish pertinent information as to the availability of materials and labor that will be required. Developer shall submit to Owner such comments as may be appropriate concerning construction feasibility and practicality. Developer shall call to Owner's attention any defects in the design, drawings and specifications or other documents of which it is aware.
- 3.45 AT THE TIME THE CITY APPROVES 90% CONSTRUCTION DOCUMENTS, THE DEVELOPER SHALL BE DEEMED TO HAVE WARRANTED TO OWNER, THAT THE CONSTRUCTION DOCUMENTS ARE CONSISTENT WITH EACH OTHER, AND CONSTRUCTIBLE FOR THE CONTRACT AMOUNT, SUBJECT TO ANY CHANGES REQUIRED BY BUILDING CODE AND THE PERMITTING PROCESS. FURTHER, THE DEVELOPER SHALL BE DEEMED TO HAVE WARRANTED TO OWNER THAT THE

WORK DESCRIBED IN THE CONSTRUCTION DOCUMENTS IS CONSTRUCTABLE WITHIN THE CONTRACT TIME, AND AT THE GMP.

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

3.47 Interfacing.

3.47.1 Developer 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. Particular attention shall be given 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.

3.47.2 Developer shall include in the reports required under Paragraph 3.45 above, comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that Developer may arrange for necessary corrections.

3.48 Truth-In-Negotiation and Adjustment.

The Developer shall execute a Truth-in-Negotiation Certificate (in the form of **Exhibit A** to the Agreement) stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting.

#### **ARTICLE 4: ADMINISTRATION OF THE AGREEMENT**

4.1 The Developer will provide administration of the Work and the Project Site.

4.2 Any needed communications by and with subcontractors or material suppliers shall be through the Developer, with the Developer then communicating with the Owner's Project Manager.

4.3 The Owner's Project Manager shall review the Developer's applications for payment. The Owner's Project Manager shall reject Work which it determines

does not conform to the Contract Documents. However, this authority does not in any respect serve to release or otherwise discharge the Developer's responsibility with regard to performing the Work in compliance with the Contract Documents.

4.4 All Claims are required to be made in writing by the parties asserting the Claim.

4.4.1 Claims arising prior to final payment or the earlier termination of the Agreement shall be referred to the Owner's City Manager for action.

4.4.2 Initial notice of Claims by Developer shall be made in writing to Owner's City Manager within fifteen (15) days after the incident giving rise to the Claim or within fifteen (15) days after the complaining party first knew of the condition giving rise to the Claim, whichever is later, or else Developer shall be deemed to have waived the Claim. Written supporting data shall be submitted to Owner's City Manager within fifteen (15) days after the Claim is made to Owner's City Manager, unless Owner's City Manager grants additional time in writing, or else Developer shall be deemed to have waived the Claim. Pending final resolution of any Claim, unless otherwise mutually agreed between the parties in writing, the Developer shall proceed with the performance of the Work, to the extent reasonably possible, and the Owner shall proceed to make uncontested payments in accordance with the Contract Documents.

4.4.3 The making or acceptance of any progress payment or a final payment shall not in any respect constitute a waiver of any Claim by the Owner or the Developer, respectively.

4.5 If the Developer encounters conditions at the site which are sub-surface or otherwise concealed physical conditions which could not have been discovered by Developer in the exercise of reasonable due diligence prior to preparation of the Contract Documents, then the Developer shall provide notice to the Project Manager of the conditions, no later than fifteen (15) days after the first observance of the condition. After investigation, the Owner's City Manager will determine if conditions meet the foregoing criteria, and what, if any, adjustment is needed to the Contract Sum or Contract Time at the Owner's sole discretion. Owner is under no obligation to adjust the Contract Sum or Contract Time based on the existence of such condition. Developer reserves all rights to object to the determination by the City Manager hereunder.

4.6 In the event the Developer wishes to make a Claim for an increase in the GMP, the Developer shall provide written notice prior to proceeding to execute the Work which is the subject of the Claim or in connection with its request for an extension of Contract Time. However, prior notice is not required for Claims involving an immediate emergency endangering health, safety, welfare or property, but shall be provided as soon as possible.

- 4.7 In the event the Developer wishes to make a Claim for an increase in the Contract Time, the Developer is required to provide written notice. The Developer shall describe the effect of the claimed delay on the Contract Time, and shall furnish the Owner with such supporting documents as the Owner may reasonably require. Extensions of Contract Time may only be granted by the City Commission, except as provided for in Section 1.3 of this Agreement. In the event adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data, establishing that the weather condition was abnormal (in accordance with the standard provided in Section 8.6 hereof), could not have been reasonably anticipated, and had an adverse effect on the scheduled Work. Owner shall respond within the time frames provided in Section 4.9 hereof.
- 4.8 In the event either party to this Agreement suffers injury or damage to person or property as a result of an act or omission of the other party, of any of the other party's employees or agents, written notice of such injury or damage shall be provided to the other party immediately, and in no event later than 21 days after the injury or damage. In the event there is to be a Claim for additional cost or time, it shall be provided as described in this Article.
- 4.9 The Owner shall review within five (5) days, Claims and may (1) defer any action with respect to all or any part of a Claim and request additional information from the Developer; (2) decline to render a decision for any reason which the Owner deems appropriate; or (3) render a decision on all or a part of the Claim within fourteen (14) days from the date of the Claim. The Owner shall notify the Developer in writing of the disposition of such Claim. If the Owner decides that the Work relating to such Claim should proceed regardless of the disposition of such Claim, the Owner shall issue to the Developer a written order to proceed. The Developer shall proceed as instructed, and all rights of both parties with respect to such Claim shall be deemed to have been reserved. Owner shall be required to evaluate any such Claims in a reasonable manner, taking into account industry standards in the community.
- 4.10 Either party may pursue any Claim against the other in the State Court having jurisdiction in Broward County, Florida, as provided in Article 15 of this Agreement, provided the party has first complied with the provisions of this Article 4 with respect to such Claim.
- 4.11 Developer shall prepare, maintain and submit to Owner's Project Manager, for its review and approval, the various logs, reports, and schedules. These logs, reports and schedules shall not constitute nor take the place of any notice required to be given by Developer to Owner pursuant to the Contract Documents.
- 4.12 Developer shall maintain in a safe place at the Project site one record copy and one permit set of the Contract Documents, including, but not limited to, all Drawings, Specifications, addenda, amendments, Change Orders, Construction

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

- 4.13 Developer shall advise Owner's Project Manager of requested or required participation in any meeting or inspection giving at least one week written notice unless such notice is made impossible by conditions beyond Developer's fault and control, in which case at least 48 hours prior written notice must be given.

#### **ARTICLE 5: SUBCONTRACTORS AND MATERIAL SUPPLIERS**

- 5.1 The Developer shall continue to develop subcontractor interest in the Project and shall furnish to the Owner, through its City Manager, a list of possible subcontractors, including material suppliers who are to furnish materials or equipment fabricated to a special design, from which proposals will be requested for each portion of the Work. The Owner, through its City Manager, will reply in writing to the Developer, within five (5) days of receipt, if the Owner knows of any objection to such subcontractor or material supplier. The receipt of such list shall not require the Owner to investigate the qualifications of proposed subcontractors or material suppliers, nor shall it waive the right of the Owner later to reasonably and timely object to or reject any proposed subcontractor or supplier.

To the extent not prohibited by law, the Developer agrees to employ local subcontractors to the maximum extent feasible and warrants that the use of local subcontractors shall not increase costs to the City. The term local subcontractors is defined as "any business that has established and agrees to maintain a

permanent place of business located in a non-residential zone and staffed with full-time employees within the limits of the City of Fort Lauderdale or within 10 miles of the corporate limits of the City of Fort Lauderdale **or** shall maintain a staffing level for their work of at least fifty percent (50%) of whom are residents of the City of Fort Lauderdale.” The Developer agrees to provide the appropriate documentation necessary for the City to confirm that each subcontractor selected meets the criteria as defined herein.

The use of any subcontractor who does not meet the above-referenced definition of local subcontractor for any portion of the work must be requested in writing by Developer and is subject to approval by the City Manager.

- 5.2 Equal Employment Opportunity and Affirmative Action. The Developer shall comply with applicable laws, regulations, and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.
- 5.3 The Developer shall not subcontract with any proposed person or entity to which the Owner, through its City Manager, has made a reasonable and timely objection. If the Owner has a reasonable objection to a person or entity proposed by the Developer, the Developer shall promptly propose another person or entity for that portion of the Work. Further, the Developer shall not change a subcontractor, person or entity previously selected, in the event the Owner makes a reasonable objection to such change.
- 5.4 The Developer is required to enter into written agreements with each subcontractor who will perform any portion of the Work on the Project. The subcontract agreement shall incorporate the terms of the Contract Documents, and the terms of this Agreement. Further, where appropriate, the Developer shall require each subcontractor to enter into similar agreements with sub-subcontractors and material suppliers. Before entering any agreement with a subcontractor, Developer shall confirm that the subcontractor is properly licensed by the state and Broward County, and any applicable municipality, for the portion of the Work to be performed on the Project and shall supply such information or proof of licensing, in writing, to Owner.
- 5.5 Each subcontract agreement for a portion of the Work shall be assignable by the Developer to the Owner in the event of a termination of this Agreement by the Owner with cause or by Developer, with cause, and only for those subcontract agreements which the Owner accepts by notifying the subcontractor in writing.
- 5.6 Contract Requirements.
  - 5.6.1 All Subcontracts shall provide:

- 5.6.1.1 Limitation of Remedy – No damages for delay. The subcontractor's exclusive remedy for delay in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or the Architect or attributable to the Owner or Architect and including claims based on breach of contract or negligence, shall be an extension of Contract Time.
- 5.6.1.2 In the event of a change in the Work, the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 10% for overhead, profit and bond costs for additional work and 10% for deducts. A detailed breakdown, with necessary backup, shall be provided.
- 5.6.1.3 The subcontract shall require the subcontractor to expressly agree that the foregoing constitutes its sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies or claims for increase in the contract price, damages, losses or additional compensation.

#### **ARTICLE 6: CONSTRUCTION BY OWNER**

- 6.1 The Owner has the right to perform construction work related to the Project that is not covered by the Work, with the Owner's own employees, or by contracting with other individuals or entities. The Owner shall be responsible for coordination of activities of Owner's own employees or of any separate contractors, with the Work performed by the Developer and shall attempt to minimize any interference with Developer's performance of the Work. The Developer shall cooperate or participate with any separate contractor and the Owner in reviewing and coordinating construction schedules.
- 6.2 The Developer shall not unreasonably interfere with either the Owner or any separate contractor's ability to store materials and equipment, or perform construction Work, to the extent possible. In the event the Developer's Work depends upon, or connects to, the construction by the Owner or any separate contractor, the Developer is required, prior to proceeding with that portion of the Work, to report to the Owner any and all discrepancies or defects which would render it unsuitable for continuation of the Work. In the event the Developer fails to report within five (5) Business Days of observation of any defect, such failure shall be deemed an acceptance of the Work performed by the Owner or separate contractor by the Developer.
- 6.3 Any and all costs caused by delays or by improperly timed or coordinated activities, or defective construction Work, shall be borne by the party responsible. The Developer shall promptly repair any damage caused by the Developer to any

Work or to the property of the Owner or any separate contractor and Owner shall repair, or reimburse Developer for any repairs, relating to any damage caused by any of them to any portion of the Work or the property of Developer or any of its subcontractors.

## **ARTICLE 7: CHANGES TO THE WORK**

- 7.1 Changes to the Work may be accomplished by preparation of and execution of a Change Order or Construction Change Directive. Change orders or Construction Change Directives will be preceded by a change proposal request initiated by the Developer or the Owner. The Developer shall provide the Owner prices and details within ten (10) days of receipt of a change proposal request.
- 7.2 A Construction Change Directive shall be used in the event the parties to this Agreement cannot reach an agreement on the terms of a Change Order.
  - 7.2.1 Upon request of the Owner, the Developer shall, without any increase in the GMP for such estimate, submit to the Owner within ten (10) days, in such form as the Owner may require, an accurate written estimate of the cost of any proposed Work set forth in the Construction Change Directive.
  - 7.2.2 The estimate shall indicate the quantity and unit cost of each item of materials, and the number of hours of Work and hourly rate for each class of labor, as well as the description and amounts of all other cost chargeable under the terms of this subparagraph. Unit labor costs for the installation of each item of materials shall be shown if required by the Owner. The Developer shall promptly revise and resubmit such estimate if the Owner determines that it is not in compliance with the requirement of this Article, or that it contains errors of fact or mathematical errors. If required by the Owner, in order to establish the exact cost of new Work added or of previously required Work omitted, the Developer shall obtain and furnish to the Owner bona fide proposals from recognized suppliers for furnishing any material included in such Work. Such estimates shall be furnished promptly so as to occasion no delay in the Work, and shall be furnished at the Developer's expense. The Developer shall state in the estimate any extension of time required for the completion of the Work if the change or extra Work is ordered. Notwithstanding any other provision of this Agreement, and without limitation, the Developer shall obtain and maintain supporting documentation for Change Orders that reports detailed and specific amounts for labor, materials and equipment charges, as well as mark-up.
  - 7.2.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods, as selected by the Owner.



- (a) By unit prices stated in the Contract Documents or otherwise mutually agreed upon.
- (b) By cost and percentages estimated by the Developer as defined in this subparagraph and accepted by the Owner. The Developer's estimate shall become a fixed price which shall not be changed by any variation in the actual cost of executing the Work covered by the change.
- (c) By actual cost determined after the Work covered by the change is completed, plus percentage.

As used in this subparagraph, "cost" shall mean the estimated or actual net increase or decrease in cost to the Developer, subcontractor, or sub-subcontractor for performing the Work covered by the change, including actual payments for materials, equipment rentals, expendable items, wages and associated benefits to workmen and to supervisors employed full time at the site, insurance bonds and other provable direct costs, but not including any administrative, accounting, or other indirect or overhead costs, or any wages or benefits of supervisory personnel not assigned full time to the site, or any amount of profit or fee to the Developer, subcontractor or sub-subcontractor.

As used in this subparagraph, "percentage" shall mean an allowance to be added to or subtracted from the cost in lieu of overhead and profit and of any other expense which is not included in the cost of the Work covered by the change, as defined above. Percentage for the Developer, a subcontractor, a sub-subcontractor or any other lower tier subcontractors for any work performed by their own forces shall be a maximum of 14% of any net increase, and 14% of any net decrease when the decrease results in a reduction of overhead requirements. The maximum percentage of 14% as applied to subcontractors shall be a cumulative percentage, inclusive of sub-contractor, sub-subcontractors and other subordinate contracting parties. In the event the Developer does not perform any of the Work with its own forces, the percentage for the Developer shall be 12%.

- 7.3 When in the reasonable judgment of the Owner a series of Construction Change Directives effect a single change, percentage shall be calculated on the cumulative net increase or decrease in cost, if any.
- 7.4 If there are no applicable unit prices in the Contract Documents, it shall be the Owner's option to require the cost of any change to be determined by one of the other methods stated in 7.2.3. If the cost of the change to the Work is by unit prices and the nature of the Work is such that it cannot readily be measured after

the completion of such Work or any subsequent Work, the Developer shall keep daily records, available at all times to the Owner for inspection, of the actual quantities of such Work put in place, and delivery receipts or other adequate evidence, indicating the quantities of materials delivered to the Project Site for use in such unit price Work, and distinguishing such from other similar material delivered for use in work included in the GMP.

- 7.5 If Owner elects to determine the Costs of the Work as provided in paragraph 7.2.3 (b) or (c), or if the method of determining the costs has not been established before the Work is begun, the Developer shall keep detailed daily records of labor and materials costs applicable to the Work.
- 7.6 Upon receipt of a Construction Change Directive, the Developer shall promptly proceed with the change in the Work. In the event the Owner and Developer do not agree with the adjustment in the Contract Time and/or adjustment to GMP as a result of the Construction Change Directive, the dispute shall be referred to the Owner for determination. Once the Owner and Developer reach agreement concerning the adjustment in the Contract Time and/or adjustment to GMP, such agreement shall be reduced to writing and executed in an appropriate change order.
- 7.7 Intentionally Omitted.
- 7.8 Notwithstanding any other provision in this Agreement concerning audits of this Project, and not in derogation thereof, Owner shall have the right to conduct an audit of Developer's books and records to verify the accuracy of Developer's Claim with respect to Developer's costs associated with any Change Order or Construction Change Directive, subject to the provisions of Section 3.14.
- 7.9 Owner's Project Manager may direct Developer to make nonmaterial changes to the Work, so long as such changes do not require or result in any adjustment to the Contract Amount/GMP, Contract Time or Project quality and are within the scope of the Work. All such changes must be evidenced by a written order from Owner to Developer. Developer shall comply with all such orders following proper execution of same.
- 7.10 No action, conduct, omission or course of conduct by Owner shall act to waive, alter, or change the requirement that Change Orders must be in writing and signed by Owner's Project Manager. Such written and signed Change Orders are the sole and exclusive way to change either the amount of compensation to be paid to Developer or the time within which Developer is to perform its obligations hereunder. No changes will be allowed based upon actual, constructive or oral notice.

## **ARTICLE 8: TIME**

- 8.1 Time is of the essence in the performance of the Work under this Contract. The Developer shall commence Work, including Design Services, within ten (10) days after issuance of the Notice to Proceed by the Owner. The Developer shall furnish the Owner with a design and construction schedule which shall be considered a binding part of this Agreement. The completion of the design phase (indicated by receipt of the complete building permit) shall occur no later than two hundred ninety five (295) Business Days following the issuance of the Notice to Proceed by the Owner, subject to extension on a day-for-day basis for any delay in the permitting process beyond that shown in the attached Project Schedule. The Substantial Completion of the construction phase shall occur no later than three hundred thirty one (331) Business Days following the issuance of the written authorization by the Owner to commence construction, subject to adjustment pursuant to the terms hereof.
- 8.2 Substantial Completion of the Work shall be achieved when the Work has been completed to the point where Owner can occupy or utilize the Work for its intended purpose, with only minor Punch List items which can be corrected or completed without material interference with the Owner's use of the Project remaining to be completed or corrected. The entire Work shall be fully completed and ready for final acceptance by Owner within sixty (60) days after the Substantial Completion Date, subject to extension for any Punch List items requiring long lead time materials.
- 8.3 If the Owner has determined that the Developer should be permitted to extend the time for completion, the dates in the Project Schedule shall be adjusted accordingly to retain their same relationship to the adjusted date of Substantial Completion, and the dollar value of Work to be completed as of the first of each month shall be adjusted prorata.
- 8.4 Time is of the essence in the performance of the Work under the Contract Documents, subject to the provisions of the Contract Documents. The Owner and Developer agree that the losses suffered by Owner, if Substantial Completion of the Work is not achieved, are not ascertainable at this time. Developer acknowledges and agrees that, since time is of the essence, the Owner will suffer financial and other losses if substantial completion of the Work is not achieved within the Contract Time, as said Contract Time may be adjusted pursuant to the terms of the Contract Documents. Should the Developer fail to achieve Substantial Completion of the Work within the Contract Time, subject to adjustments as provided in the Contract Documents, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, and as Owner's sole and exclusive remedy for such failure, the sum of Two Thousand Dollars (\$2,000.00) for each day thereafter until Substantial Completion is achieved. The Developer shall have sixty (60) days to complete the Punch List items identified at the time of Substantial Completion. In the event Final Completion (which is the

completion of all Punch List items) is not achieved within sixty (60) days after Substantial Completion (subject to extension in the event any repair/correction of a Punch List item involves long lead time items), the Developer shall be assessed One Thousand Dollars (\$1,000.00) for each day beyond such sixty (60) day period that Final Completion is delayed. Developer hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the Owner's actual damages at the time of contracting if Developer fails to achieve Substantial Completion of the Work within the Contract Time. Further, the parties acknowledge that it would be extremely difficult, if not impossible, to ascertain Owner's actual damages with any degree of certainty in the event Developer fails to achieve Substantial Completion of the Work within the Contract Time. For the purposes of this Agreement, "Final Completion" shall mean that all Work, including Punch List items, has been completed by Developer.

- 8.5 Developer shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subconsultants, subcontractors and materialmen, 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 Developer or anyone for whom Developer is liable. Developer 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, and the coordination of Owner's suppliers and contractors.
- 8.6 If Developer is obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Developer, and not due to its fault or neglect, including but not restricted to those force majeure items listed in Section 15.23 hereof, natural disasters, acts of God or of the public enemy, acts of government, fires, floods, epidemics, terrorist activities, material shortages or embargos or blockages, quarantine regulation, labor unrest, war (declared or undeclared), strikes, lockouts, existence of injunctions, moratoriums, or requirements for obtaining licenses, easements, permits or other compliance with applicable laws, rules and regulations, unusually severe weather conditions by comparison with the ten-year Broward County, Florida, average not capable of reasonable anticipation (collectively, "Force Majeure"), Developer shall notify Owner in writing within ten (10) days after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Developer may have had to request a time extension and/or extended General Conditions. As used herein, the term "acts of God" shall include a tropical storm or hurricane making landfall within fifty (50) miles from the Project Site or any weather event that the Emergency Management Response enacts an evacuation of the coastal areas.

- 8.7 If Developer encounters on the Project site any materials reasonably believed by Developer to be petroleum or petroleum related products, Hazardous Materials, Hazardous Substance or Hazardous Waste which have not been rendered harmless, Developer immediately shall (i) stop Work in the area affected and (ii) report the condition to Owner in writing. If the Work is so stopped and Hazardous Materials, Substances or Waste is found, the Work in the affected area shall not thereafter be resumed except by Change Order. If an adjustment to the Contract Time is warranted a request for a Construction Change Directive shall be initiated. If no Hazardous Material, Substance or Waste is found after the Work is stopped, no Change Order is required to resume the Work in the affected area. Further, if the Hazardous Material, Substance or Waste was generated or caused by Developer or any of its employees, agents, subconsultants, subcontractors, or material suppliers, no Construction Change Directive will be required for an adjustment in the Contract Time and Developer shall indemnify Owner and hold Owner harmless for any costs incurred by Owner with respect to such hazardous material.
- 8.8 No Extended Damages: For other and additional good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, except as otherwise permitted in the Contract Documents, and subject to availability of funds in the Contingency and Savings, the Developer covenants and agrees that in the event of any delay of construction or for any reason, allegation or claim, and notwithstanding the reason of the delay, reason, claim or allegation or who caused them or the construction delay or whether they were caused by the Owner, that there will be no entitlement to Developer to or for any direct or indirect financial damages or losses for extended corporate overhead impact, extended project overhead impacts, project support services, mobilization or demobilization or by whatever other label or legal concept or theory and types of names or labels or basis such claims may have, or any business damages or losses of whatever type or nature, and Developer hereby waives any right to make any such claim or claims. This provision will have application and effect when construction delays are anticipated and agreed upon by both the Owner and the Developer and in all other circumstances as well.
- 8.9 Delays caused by or resulting from Persons who are not affiliated with the Developer shall not give rise to a claim by Developer for damages for increase in material and/or labor costs, subject to availability of funds in the Contingency and Savings. Such Persons include, but are not limited to, the Owner's contractors and subcontractors, Florida Power and Light Company, AT&T, and any other utility at the project site.

#### **ARTICLE 9: PROGRESS PAYMENTS AND COMPLETION OF CONSTRUCTION**

- 9.1 Progress Payments. Based upon applications for payment submitted to the Owner by the Developer, the Owner shall make progress payments on account of

the Contract Sum to the Developer as provided below and elsewhere in the Contract Documents.

- 9.1.1 Developer's monthly Applications for Payment shall be in such form and contain such detail and backup as Owner reasonably may require. Prior to submitting its first monthly Application for Payment, Developer shall submit to Owner's Project Manager, for review and approval, a Schedule of Values based upon the lump sum compensation to be paid Developer for Design Services hereunder. After its approval by Owner, that Schedule of Values shall be used as the basis for Developer's monthly Applications for Payment with respect to the Design Services. The first Application for Payment shall be submitted no earlier than thirty (30) days after the Notice to Proceed. The approved Schedule of Values shall be updated to reflect current Change Orders and Construction Change Directives and submitted each month to Owner along with a completed and notarized copy of the Application for Payment form. The Application for Payment shall be signed by the Developer, and notarized, and shall be supported by sufficient data which serves to establish the Developer's right to the payment, such as requisitions from subcontractors or material suppliers, and reflecting retainage of 10% which may be withheld until substantial completion or final completion. The amount of retainage will be reduced to 5% upon 50% completion of the Agreement value. The Design Fee retainage will be reduced to 0% upon acceptance by the City of 100% Construction Documents and permits being issued. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. The format and number of copies of such applications for payment shall be in a format as requested by the Owner's Project Manager. Retainage withheld may be reduced upon Substantial Completion of the Work to 150% of the estimated cost of all outstanding punch list items, upon approval by the Owner.
- 9.1.2 The Developer shall submit to Owner's Project Manager, for its review, a Schedule of Values based upon the GMP listing the major elements of the Work and the dollar value for each element. That Schedule of Values shall be used as the basis for Developer's monthly Applications for Payment. The revised Schedule of Values shall be updated for the current month Change Orders and Construction Change Directives and submitted each month to Owner's Project Manager by Developer along with a completed and notarized copy of the Application for Payment form.
- 9.1.3 The Owner agrees to make payments in accordance with the Florida Local Government Prompt Payment Act for Construction Services, Section 218.735, Florida Statutes.
- 9.1.4 The Application for Payment shall reflect the amount of Work completed each month separated by materials stored and labor, inclusive of

Developer's Fee, as a percent complete of each line item within the schedule of values for the Project. The Developer shall, upon request from the Owner, provide all required invoices, payrolls, petty cash accounts and any other evidence required by the Owner to verify the values indicated as percent complete in the Application for Payment.

- 9.1.5 Applications for payment may also include requests for payment for changes in the work which have been authorized by Change Order or Construction Change Directives, only when such Construction Change Directives have documented an adjustment to the Contract Sum. Further, applications for payment shall not include any requests for payment of amounts the Developer does not intend to pay to a subcontractor or material supplier, for any reason.
- 9.1.6 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 and Project Manager's ability to confirm same on inspection. Payments shall not be made for materials which are not suitably stored at the Site, or off-site at a bonded warehouse.
- 9.1.7 By submitting an Application for Payment, the Developer warrants that full and complete title will vest in the Owner with regard to all Work covered by an Application for Payment, no later than the time of such payment. Additionally, all Work represented by a submitted Application for Payment shall be free and clear of any and all liens, claims, security interests or encumbrances in favor of any Person.
- 9.1.8 Upon receipt of the Owner's Certificate for Payment, the Owner shall make payment to the Developer. The Developer shall, within seven (7) days of receipt of payment from Owner, pay each subcontractor out of the amounts paid to the Developer on account of such subcontractor's portion of the Work, minus any percentages retained as retainage from payments made to the Developer on account of such subcontractor's portion of the Work. The Developer shall, by appropriate written agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors and material suppliers in a similar manner. However, the Owner shall not have an obligation to pay or to see the payment of money to a subcontractor, sub-subcontractor or material supplier.

- 9.1.9 Any certificate for payment, progress or monthly payment to Developer, or partial or entire use or occupancy of the Project by the Owner, shall in no way imply approval or acceptance of Developer's work.
- 9.1.10 Each Application for Payment shall be accompanied by a Release and Affidavit, in the form attached to the Agreement as **Exhibit H**, showing that all materials, services, labor, equipment and other bills associated with that portion of the Work payment is being requested on have been paid in full through the previous month's Application for Payment. Owner shall not be required to make payment until and unless the Release and Affidavit is furnished by Developer.
- 9.1.11 All Applications for Payment are subject to Owner's review and approval. Owner shall have the right to refuse to approve for payment any amounts, or portions thereof, requested by Developer in an Application for Payment, or rescind any amount previously approved for payment, and Owner may withhold any payments otherwise due Developer under this Contract or any other agreement between Owner and Developer, 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 (provided, however, that the amount being withheld is only the amount necessary to address the defective Work); (b) the filing or reasonable evidence indicating the probable filing of third party claims against Owner attributable to the fault or neglect of Developer; (c) Developer's failure to make timely and proper payments to all subconsultants, subcontractors and suppliers; (d) Developer's failure to satisfactorily prosecute the Work in accordance with the requirements of the Contract Documents; or (e) any other material breach of the requirements of the Contract Documents by Developer. 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 Developer's expense, if such items are not cured by Developer to Owner's reasonable satisfaction within five (5) Business Days after Developer's receipt of written notice from Owner; (provided, however, if such correction cannot be completed within five (5) Business Days, then if Developer commences to cure same within five (5) Business Days and diligently pursues same to completion, then Developer shall have satisfied this Agreement). The Owner's accountants, auditors or other representatives will review and report in writing on the Developer's final accounting within 30 days after delivery of the final accounting to the Owner by the Developer. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Developer's final accounting, and provided the other conditions of final payment have been met, the Owner will, within seven (7) days after receipt of the written report of the Owner's accountants, either issue to the Owner a final



certificate for payment with a copy to the Developer, or notify the Developer and Owner in writing of the Owner's reason for withholding a certificate.

- 9.1.12 Upon Final Completion of the Project, Developer shall prepare and furnish to the Owner for the review and approval of the Owner, a final cost accounting of the Work. All Savings on the Project shall be divided as follows: seventy-five percent (75%) of the Savings to Owner; twenty-five percent (25%) of the savings to Developer. For the purposes of this Agreement, "Savings" shall mean, the GMP, less all Costs of Work to complete the Project (including all costs for Design Services), the Design Fee and the Developer's Fee. The parties stipulate and agree that this Contract is not a line-item GMP; consequently, the total Cost of Work used in the calculation of Savings to be distributed between the parties, shall be the sum total of all amounts paid or payable on all line items together and not by individual losses or savings on each line item. Developer's share of the Savings shall be included and paid with Developer's Final Application for Payment.
- 9.1.13 The Owner shall pay any amount within the given Application for Payment, including the final application that is not disputed by Owner in the time set forth within.
- 9.2 When the Developer deems the Work or a portion thereof to be Substantially Complete, the Developer shall notify the Owner. The Developer and Owner shall schedule a complete project walk-through and review. At the end of the walk-through and review, the Owner and Developer shall prepare a single Punch List which shall include a comprehensive list of items to be completed or corrected. The Developer shall be responsible for completion and correction of all items on the Punch List. Items on the Punch List shall be corrected by the Developer within sixty (60) days of establishment of the Punch List; provided, however, that additional time is not necessitated by long lead time items. The creation of the Punch List does not in any respect alter the ultimate responsibility of the Developer to complete the project in accordance with the Contract Documents.
- 9.3 When the Owner determines that the Work or designated portion thereof is Substantially Complete, the Owner shall issue a Certification of Substantial Completion which establishes the date of Substantial Completion, provided, however, that where all Certificates of Occupancy and Certificates of Completion for the Work on the Project have been issued by the Building Official, then Owner must issue a Certificate of Substantial Completion. After issuance of the Certificate of Substantial Completion, when the Owner determines that the Work on the Punch List has been completed in accordance with the Contract Documents, then Owner shall issue and Developer shall counter-sign a Certificate of Completion for the Project.

- 9.4 Intentionally Omitted.
- 9.5 The Owner may, at its discretion, upon issuance of a Certificate of Occupancy or a Certificate of Completion for a portion of the Work, occupy or use such portion of the Work, prior to the final completion of the Project. Prior to such Owner partial occupancy or use, the Owner and Developer shall inspect the area to be occupied in order to document the condition of the Work. However, in no event, shall the Owner's partial occupancy or use of the Work constitute acceptance of any Work not in compliance with the requirements of the Contract Documents.
- 9.6 Final payment of the Contract Sum will be made after the Owner certifies that the Work is complete, and Owner's representatives complete their final acceptance report and issuance of the Certificate of Final Completion, which shall all occur no later than five (5) days after Developer's completion of the Punch List. Neither final payment nor any remaining retainage shall be paid to the Developer until the Owner has received an affidavit in a form sufficient to the Owner that all indebtedness in connection with the performance of the Work for which the Owner or the Owner's Project Site may be held liable or encumbered, have been fully paid or otherwise satisfied; a certification in a form acceptable to the Owner which establishes that all required insurance will remain in full force and effect after final payment and will not be cancelled or allowed to expire until at least 30 days prior written notice has been provided to the Owner; consent of the surety to final payment; and any other certifications reasonably required by the Owner establishing full payment or satisfaction of any obligations. In the event the Developer fails to furnish such certifications as the Owner reasonably requires to satisfy the Owner that there are no outstanding Claims by any Persons whomsoever, the Owner may require the Developer as a condition of final payment and at the Developer's expense, to furnish a bond in a form and amount satisfactory to the Owner to indemnify the Owner against such Claims. Final payment by the Owner to the Developer shall not constitute a waiver of any Claim the Owner may have against the Developer for Work not in compliance with the Construction Documents. However, acceptance of final payment by the Developer, a subcontractor or material supplier shall constitute a waiver of any Claims by that entity or individual, except those previously made in writing and clearly identified as unsettled at the time of the final Application for Payment and payment thereon. 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 Developer hereunder or to the recovery of damages for defective Work not discovered by Owner at the time of final inspection.
- 9.7 Intentionally Omitted.
- 9.8 Notwithstanding anything contained herein to the contrary, to the extent Owner fails or refuses to make payments hereunder, Owner acknowledges and agrees that Developer's obligation to pay its subcontractors and/or suppliers under this

Agreement is expressly conditioned upon and limited to the payments made by the Owner to the Contractor.

#### **ARTICLE 10: DEVELOPER'S SAFETY PROGRAM**

- 10.1 The Developer shall be responsible for initiating, maintaining and supervising a safety program in connection with its Work under the Agreement and Construction Documents. A copy of the Developer's Safety Program shall be submitted to Owner upon written request of City Manager or his designee.
- 10.2 In the event the Developer encounters on the site material reasonably believed to be a Hazardous Material, Substance or Waste which has not been rendered harmless, the Developer shall immediately stop Work in the area affected and report the condition to the Owner in writing. Developer shall thereafter as soon as reasonably possible conduct a thorough investigation to determine if the suspected Hazardous Material, Substance or Waste in the affected area is in fact a Hazardous Material, Substance or Waste and shall certify to Owner that such material is not a Hazardous Material, Substance of Waste or if such material is in fact a Hazardous Material, Substance or Waste that has been abated and that it is safe to return to the affected area and resume Work. Owner may require Developer to furnish copies of reports of tests conducted by a qualified testing laboratory verifying the absence of such Hazardous Material, Substance or Waste before Developer will resume Work. By way of a Construction Change Directive the Contract Time may be equitably adjusted to account for the time lost due to the encountering of the Hazardous Material, Substance or Waste and the reasonable cost associated therewith, pursuant to the procedure for making a claim set forth in Article 4.
- 10.3 The Developer shall not be required pursuant to the changes clause herein to perform without consent any Work relating to Hazardous Material, Substance or Waste.
- 10.4 The Developer shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to employees and other persons on the Project Site and Staging Areas, the Work and all materials and equipment to be incorporated into the Work, other property utilized in conjunction with the Work on the Project, including public rights-of-way or properties adjacent thereto, and any other property of the Owner, whether or not forming part of the Work located at the Project Site or adjacent thereto and areas to which the Developer has access.
- 10.5 The Developer shall erect and maintain all reasonable safeguards for safety and protection, including signs and other warnings as appropriate, in its performance of the Agreement. In the event the Work requires the use or storage of explosives or other hazardous materials, equipment, or means or methods, the

Developer shall exercise the utmost care and carry on such activities under the continuous supervision of properly qualified individuals.

- 10.6 The Developer shall promptly remedy any and all damage and loss to property referred to above. In the event the damage or loss is due in whole to the Developer's negligence, the Developer shall bear the entire cost of the loss or damage, if the damage or loss is due in part to the Developer's negligence, the Developer shall bear the cost that is determined, by a neutral third party, mutually selected by the parties.
- 10.7 The Developer shall designate its superintendent on the Project as its safety program representative.
- 10.8 The Developer shall provide and maintain in good, operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations regarding fire protection made by the representatives of the fire insurance company carrying insurance on the Work or by the local fire chief or fire marshal. The area within the site limits shall be kept orderly and clean, and all combustible rubbish shall be promptly removed from the site.
- 10.9 The Developer shall at all times protect excavations, trenches, buildings and materials, from rain water, ground water, backup or leakage of sewers, drains and other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Developer shall provide and operate all pumps, piping and other equipment necessary to this end.
- 10.10 During the progress of the Work and at all times prior to the date of Substantial Completion, the Developer shall provide temporary heat, ventilation, and enclosure, adequate to permit the Work to proceed in a timely fashion, and to prevent damage to completed Work or Work in progress, or to materials stored at the Project Site or other location utilized for Staging of Materials or Equipment. The permanent heating and ventilation systems may be used for these purposes when available unless otherwise provided in the Contract Documents.
- 10.11 In the event of an emergency affecting the safety of Persons or property, the Developer shall utilize its judgment and discretion to prevent or minimize any threatened damage, injury or loss. In the event of such an emergency, the Developer shall immediately notify the Owner, and coordinate and cooperate in the resolution of all such emergencies.

#### **ARTICLE 11: INSURANCE AND BOND REQUIREMENTS**

- 11.1 The Developer shall deliver the proofs of insurance to the Owner prior to the commencement of any Work, and in no event any later than five (5) days after the execution of this Agreement; with the exception of the required bonds and

Builder's Risk Insurance, which will be delivered within ten (10) days of the earlier of issuance of all permits or start of the construction phase.

- 11.2 The Developer shall, throughout the performance of its services and Work under this Agreement and throughout the term of this Agreement maintain and provide to the Owner the insurance coverages listed in this Article 11. The insurance policies shall be issued and underwritten by a licensed insurer, licensed as such in the State of Florida. The Developer shall provide insurance that may not be reduced, terminated, or cancelled unless 30 days prior written notice thereof is furnished to the Owner. Certificates of insurance and certified, true copies of all policies (if required by the Owner) shall be furnished to the Owner within five (5) days after the execution of this Agreement. In the event of any cancellation or reduction in insurance coverage, the Developer shall obtain substitute coverage, maintaining required coverage without any lapse of coverage whatsoever. The insurance policies shall name the Owner as additional insured (except for the professional liability and worker's compensation insurance).

Developer shall provide Additional Insured Endorsement ISO Form CG 20 10 11 85, ISO Form 20 37 10 01, or their equivalent acceptable to Owner, at no expense to Owner, its officers, directors or employees as additional insureds.

- 11.3 The insurance required by in this Article shall include all major divisions of coverage, and shall be on a commercial general basis including premises and operations (including explosion, collapse, and underground), Independent Contractor Hired Products and Completed Operations, and Owned, Nonowned, and Hired Motor Vehicles. Such insurance shall be written for not less than any limits of liability required by law or others set forth in the Contract Documents, whichever is greater. All insurance shall be written on an occurrence basis, unless the Owner approves in writing coverage on a claims-made basis. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the work until date of final payment and termination of any coverage required to be maintained after final payment.
- 11.4 The Developer shall furnish to the Owner copies of any endorsements that are subsequently issued amending limits of coverage.
- 11.5 The insurance required by this Article shall be written for not less than the following, or greater if required by law.

11.5.1 **Workers' Compensation:** The Developer shall provide and maintain workers' compensation insurance for all employees in the full amount required by statute and full compliance with the applicable laws of the State of Florida. Said policy must include Employers' Liability insurance with limits of no less than:

- Each Accident \$500,000.00
- Disease – Policy Limit \$500,000.00
- Disease – Each Employee \$500,000.00

**11.5.2 Commercial General Liability:** The Developer shall provide minimum limits of \$5,000,000 each occurrence, \$5,000,000 annual aggregate combined single limit for bodily injury and property damage liability. This shall include premises/operations (including explosion, collapse, and underground), independent contractors, products, completed operations, broad form property damage, personal and advertising injury, and contractual liability, specifically confirming and insuring the indemnification and hold harmless clause of the contract. This policy of insurance shall be considered primary to and not contributing with any insurance maintained by Owner and shall name Owner as an additional insured. The policy of insurance shall be written on an "occurrence" form. Maximum deductible will be \$25,000 each claim.

**11.5.3 Builder's Risk:** Coverage must be provided as follows:

- Form - All Risk Coverage - Coverage is to be no more restrictive than that afforded by the latest edition of Insurance Services Office Forms CP 0020.
- Amount of insurance is to be 100% of the completed value of such additions(s), building(s) or structures(s).
- Waiver of Occupancy Clause or Warranty - Policy must be specifically endorsed to eliminate any "Occupancy Clause" or similar warranty or representation that the building(s), addition(s) or structure(s) in the course of construction shall not be occupied without specific endorsement of the policy. The policy must be endorsed to provide that the builder's risk coverage will continue to apply until final acceptance of the building(s), addition(s) or structure(s) by the Owner.
- Maximum Deductible - \$25,000 each claim.
- Named Additional Insured - The Owner must be included as a named additional insured.
- Notice of Cancellation and/or Restriction - The policy must be specifically endorsed to provide the City of Fort Lauderdale with a thirty (30) day notice of cancellation and/or restriction.
- Wind and Hail – Deductible shall be between 3% and 5%, not to exceed 5%.

**11.5.4 Commercial Automobile Liability:** The Developer shall provide minimum limits of liability of \$2,000,000 each accident, combined single limit for bodily injury and property damage. This shall include coverage for owned, hired, and non-owned automobiles. The State of Florida has no-fault automobile insurance requirements. The Developer shall be

certain coverage is provided which conforms to any specific stipulation in the law.

- 11.5.5 **Professional Liability:** The Designers retained by the Developer shall, during the Term of this Agreement, provide the Owner with evidence of professional liability insurance for its legal liability arising out of the performance of professional services under this Agreement. Such insurance shall have minimum limits of \$2,000,000 per occurrence, \$4,000,000 aggregate with respect to acts, errors or omissions in connection with professional services to be provided under this Agreement. Designer shall waive its right of recovery against Owner as to any claims under this insurance. The Designer further agrees to maintain like coverage for a minimum of four (4) years following the latest date of the following: completion of this Agreement, completion of construction or issuance of a certificate of occupancy. Designer shall promptly submit certificates of insurance providing for an unqualified written notice to Owner of any cancellation of coverage or reduction in limits. In addition, Designer shall also notify Owner by certified mail, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by Designer from its insurer. Designer shall promptly submit a certified, true copy of the policy and any endorsements issued or to be issued on the policy if requested by Owner.
- 11.5.6 **Umbrella Liability:** The Developer shall provide umbrella coverage with limits of no less than \$2,000,000 excess of Commercial General Liability, Automobile Liability, and Employer's Liability.
- 11.6 The Developer shall procure property insurance for that portion of the Work stored off Site or in transit, and the cost for such shall be borne by the Developer.
- 11.7 Performance and Payment Bonds. The Developer shall furnish bonds covering the faithful performance of the Agreement and payment of any and all obligations arising under the Agreement as required by Florida law. Upon request, the Developer shall furnish a copy to any person or entity requesting a copy. Such bonds shall be in conformance and compliance with Section 255.05, Florida Statutes, and shall contain the information and provisions set forth in the referenced section.
- 11.7.1 Developer shall provide Owner with Performance and Payment Bonds, in the form prescribed in **Exhibits G and H**, in the amount of 100% of the total sum of the GMP, the costs of which are to be paid by Developer. The Performance and Payment Bonds must comply with the following provisions and must be otherwise acceptable to Owner:

- 11.7.1.1 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.
  - 11.7.1.2 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.
  - 11.7.1.3 The surety company shall be in full compliance with the provisions of the Florida Insurance Code.
  - 11.7.1.4 The surety company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time this Agreement is executed.
  - 11.7.1.5 The Bonds must be fully performable in Florida, with service and venue in Broward County, Florida.
- 11.7.2 If the surety for any bond furnished by Developer 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 Documents, Developer 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. The cost of any such replacement bond shall be paid by Developer.
- 11.7.3 Within five (5) days prior to commencing any construction Work on the Project Site, Developer shall execute, deliver to the Owner and cause to be recorded in the Public Records of Broward County, Florida, a copy of the Performance and Payment Bonds for the Project. Developer, prior to commencing any construction Work on the Project Site, shall deliver within five (5) days to Owner evidence, reasonably acceptable to Owner, of the recording of said Bonds along with recording data. The delivery of such evidence is a condition precedent to Owner's obligation to make any progress payments to Developer hereunder. Developer shall deliver the original, recorded Performance and Payment Bonds to Owner within two (2) Business Days after receipt of same from the Broward County Clerk of the Circuit Court.
- 11.7.4 Notwithstanding anything to the contrary, Owner agrees that upon issuance of a final Certificate of Occupancy for the Project, the Surety shall be released and discharged on the Performance Bond provided to Owner hereunder solely as to any and all liability, claims, obligations, causes of action, costs and damages of any nature and/or kind, at law and/or in equity, relating to, or arising out of, any design services provided under



this Agreement, but not as to any other obligations of the Surety arising under the Performance Bond. In such event, among other causes of action Owner may have, at law or in equity, as to costs, damages or services arising from any design services, Owner agrees to look to the professional liability insurance provided by the Designers under the terms of this Agreement for defects in design services and not to the Performance Bond.

- 11.8 Insurance as Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of the Developer, its subcontractors, sub-subcontractors, material suppliers, employees, or agents to the Owner or others. Any remedy provided to the Owner, or the Owner's officers, employees, agents or assigns, by the insurance shall be in addition to and not in lieu of any other remedy available under the Agreement or otherwise.
- 11.9 No Waiver by Approval/Disapproval. Neither approval by the Owner nor failure to disapprove the insurance furnished by the Developer shall relieve the Developer of its full responsibility to provide the insurance as required by this Agreement.
- 11.10 During the term of this Agreement Developer shall provide, pay for, and maintain, with companies satisfactory to Owner, the types of insurance described in this Article 11. All insurance shall be from responsible companies duly authorized to do business in the State of Florida. All insurance carriers shall be rated (A) or better by the most recently published A.M. Best Rating Guide. The Owner reserves the right to accept or reject the insurance carrier. Certified, true and exact copies of all insurance policies required shall be provided to Owner, on a timely basis, if requested by Owner. Certificates of insurance and policies shall contain provisions that thirty (30) days' written notice by registered or certified mail shall be given Owner of any cancellation, intent not to renew, or reduction in the policies' coverages. Developer shall also notify Owner, in a like manner, within ten (10) days after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by Developer from its insurer, and nothing contained herein shall relieve Developer of this requirement to provide notice. All insurance coverages of Developer shall be primary to any insurance or self-insurance program carried by Owner applicable to this Agreement.
- 11.11 The terms "The City of Fort Lauderdale, Florida" and "City" shall include The City of Fort Lauderdale, Florida, a municipal corporation, and all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and offices thereof and individual members and employees thereof in their official capacity, and/or while acting on behalf of The City of Fort Lauderdale, Florida.
- 11.12 All insurance policies, other than the Professional Liability policy and the Workers Compensation policy, provided by Developer to meet the requirements of this Agreement shall name The City of Fort Lauderdale, Florida, as that name is

defined in section 11.11 above, as an additional insured as to the operations of Developer under the Contract Documents and shall contain a severability of interests provisions.

- 11.13 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 Developer.
- 11.14 For all policies of insurance required in this Article 11, deductibles shall be no greater than \$5,000 each claim, unless otherwise specified. Any self-insured retention or deductible greater than \$5,000 will need to be pre-approved by the Owner and may be subject to review of appropriate financial documents of Developer.
- 11.15 All insurance coverages of Developer shall be primary to any insurance or self-insurance program carried by Owner applicable to this Agreement, and the "Other Insurance" provisions of any policies obtained by Developer shall not apply to any insurance or self-insurance program carried by Owner applicable to this Agreement.
- 11.16 The Certificates of Insurance, which are to be provided pursuant to paragraph 11.2 above, must identify this Agreement.
- 11.17 All insurance policies shall be fully performable in Broward County, Florida, and shall be construed in accordance with the laws of the State of Florida.
- 11.18 All insurance policies to be provided by Developer pursuant to the terms hereof will accept service of process in Broward 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 Broward County, Florida.
- 11.19 The acceptance by Owner of any Certificate of Insurance pursuant to the terms of this Agreement evidencing the insurance coverages and limits required hereunder does not constitute approval or agreement by Owner that the insurance requirements have been met or that the insurance policies shown on the Certificates of Insurance are in compliance with the requirements of this Agreement.
- 11.20 Before starting and through completion of all Work required hereunder and thereafter as required to cover claims arising from the period through final acceptance and the warranty period, Developer and their Designers shall procure and maintain insurance of the types and to the limits specified in this Article 11. Developer shall require each of its subconsultants and subcontractors except the Designers to procure and maintain, until the completion of that subconsultant's or subcontractor's work or services, insurance of the types and to the limits specified in **Exhibit J**. Prior to work being performed by any subconsultants or subcontractors, the Developer shall provide to Owner copies of all Certificates of

Insurance and certified, true copies of underlying insurance policies, of the types and limits specified above, that the Developer has required from all subconsultants or subcontractors

- 11.21 If any insurance provided pursuant to this Agreement expires prior to the completion of the Work required hereunder, renewal Certificates of Insurance and, if requested by Owner, certified, true copies of the renewal policies, shall be furnished to Owner thirty (30) days prior to the date of expiration.
- 11.22 Should at any time Developer not maintain the insurance coverages required in this Agreement, Owner may, following five (5) Business Days' written notice to Developer and Developer's failure to cure same within such period of time, cancel this Agreement or at its sole discretion shall be authorized to purchase such coverages and charge Developer for such coverages purchased. If Developer fails to reimburse Owner for such costs within thirty (30) days after demand, Owner has the right to offset these costs from any amount due Developer under this Agreement. Owner shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Owner to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

## **ARTICLE 12: UNCOVERING AND CORRECTION OF THE WORK**

- 12.1 In the event the Developer covers a portion of the Work contrary to the request of the Owner or prior to an inspection by the Owner, the Developer must if requested in writing uncover the Work, and then shall be required to replace the work at the Developer's sole expense, without any change to the Contract Time.
- 12.2 In the event the Developer covers a portion of the Work which the Owner has not specifically requested to inspect, the Owner may request the Developer to uncover the Work. If such Work is in compliance with the Contract Documents, the costs of uncovering the Work and replacement of the Work shall be reimbursed to the Developer by the Owner. If such Work is not in compliance with the Contract Documents, the Developer shall bear such costs.
- 12.3 The Project is subject to and shall be constructed in accordance with the Florida Building Code, and to all applicable codes referenced therein. This facility will be designed and constructed in accordance with Section 255.2575, Florida Statutes on energy-efficient and sustainable buildings.
- 12.3.1 The Developer shall promptly correct any and all Work rejected by the Owner and any and all Work which fails to comply with the requirements of the Contract Documents. The Developer shall bear all of the costs for correcting such Work.

- 12.4 If within one (1) year after the date of issuance of the Certificate of Final Completion, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Developer shall promptly return to the Project and correct the deficient Work upon receipt of written notification from the Owner to do so. The obligation set forth in this subparagraph shall survive acceptance of the Work under this Agreement and any termination of the Agreement. The Owner shall give such written notice promptly after discovery of the deficient Work. This one (1) year Developer warranty described in this subparagraph does not impact or impair any manufacturer's warranty or the Owner's ability to make any other claim against the Developer as allowed under Florida law.
- 12.5 The Developer shall, within five (5) Business Days after notice from Owner, remove from the Project Site any and all portions of the Work which are not in compliance with the requirements of the Contract Documents (provided, however, that in the event such removal or correction cannot be completed within five (5) Business Days, then if Developer commences such work within five (5) Business Days and diligently pursues same to completion, then Developer shall have satisfied this Agreement). In the event the Developer fails to correct any non-conforming Work within the time period provided above, the Owner may correct such non-conforming Work in accordance with this Article 12.6. In the event the Owner corrects the non-conforming Work, the Owner may remove and store any salvageable materials or equipment at the Developer's expense. If the Developer fails to reimburse the Owner for such expenses, within seven (7) days after written notice, the Owner may take any and all action it deems appropriate in order to obtain reimbursement of its expenses under this subparagraph. Any action taken by the Owner under this subparagraph shall not in any respect serve to limit in law or equity the Owner's ability to place any other Claim against the Developer.
- 12.6 The Owner has the discretion to accept Work that is not in compliance with the requirements of the Contract Documents. In this event, the Owner shall reduce its decision to writing, which shall include any reduction, if any, to the Contract Sum as a result of the acceptance of non-conforming Work. Any such adjustment to the Contract Sum shall apply whether or not final payment has been made under this Agreement.

### **ARTICLE 13: TERMINATION OF THE AGREEMENT**

#### **Termination by Developer**

- 13.1 The Developer may terminate the Agreement if the Work is stopped for a period of 30 days, for any of the following reasons:
- (a) The issuance of an order of a Court or any other public authority having jurisdiction;

- (b) An act of government, such as a declaration of national emergency, making materials unavailable;
  - (c) In the event the Owner has not made payment on an uncontested certificate for payment within the time stated in the Contract Documents and after written notice from the Developer of the failure to make timely payment and a period of twenty (20) days after notice within which Owner may make payment and prevent termination. However, if Owner in response to this written notice initiates a legal action for declaratory judgment or other appropriate action then the funds due, if any, shall be paid within thirty-five (35) days of the rendition of a final judgment or if an appeal is taken then promptly upon completion of all appellate and trial court proceedings.
- 13.2 In the event the Developer elects to terminate the Agreement for one of the above enumerated reasons, the Developer shall provide the Owner with fourteen (14) days prior written notice, and thereafter terminate the Agreement and receive from the Owner payment for any non-deficient Work executed up to the date of such termination notice; including the Design Fee and Developer's Fee through such date of termination.
- 13.3 In the event the Work is stopped for a period of sixty (60) days through no act or fault of the Developer, a subcontractor, sub-subcontractor or material supplier as set forth in § 13.1 above, but solely because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to substantive matters relating to the progress of the Work, the Developer may, upon giving the Owner a 14 days prior written notice and opportunity to cure, terminate the Agreement and recover from the Owner payment for any non-deficient Work executed up to the date of said termination notice, including the Design Fee and Developer's Fee through such date of termination.

**Termination by Owner for Cause**

- 13.4 The Owner may terminate the Agreement for cause for any of the following reasons:
- (a) Repeated refusal or failure of the Developer to supply sufficient, properly skilled workers, or proper materials to the Work Site;
  - (b) Failure to make payment to subcontractors for materials or labor in accordance with the required agreements between the Developer and subcontractors; provided, however, that Developer does not have a legitimate dispute with such subcontractor or supplier, and has so notified Owner of same;
  - (c) Disregard by the Developer of any applicable laws, ordinance, or rules, regulations or orders of a public authority having jurisdiction; or

- (d) Any substantive and material breach of a provision of this Agreement or the Contract Documents.

13.5 If any of the above enumerated causes exist, the Owner may, without prejudice to any other rights or remedies, and after giving the Developer and the Developer's surety, if any, twenty-one (21) days' advance written notice, terminate this Agreement with the Developer and may, subject only to any prior rights of the surety, take possession of the Project Site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Developer; accept assignment of subcontracts pursuant to this Agreement; and finish the Work by whatever reasonable method the Owner may deem appropriate. The Developer shall not be entitled to receive any further payment under this Agreement. In the event the costs for completing the Work, including compensation for any Owner services and reasonable expenses, exceed the unpaid balance of the Contract Sum, the Developer shall pay the difference to the Owner. In the event the Agreement is terminated, the Owner shall pay the Developer for any non-deficient Work executed up to the date of such termination, including, without limitation, de-mobilization costs, General Conditions, together with the Design Fee and Developer's Fee up to the date of termination.

#### **Suspension or Termination by Owner Without Cause**

- 13.6 The City Manager may, without cause, require the Developer to suspend or delay the Work in whole or in part for such period of time as the City Manager may determine necessary. Such requirement shall be in writing, authorized and signed by Owner's City Manager which will also constitute a change in Contract Time equal to the number of days Work is suspended by the Owner without cause. Termination of this Agreement can only be authorized by the City Commission. An adjustment will be made for any increases in the cost of performance of the Agreement, caused by the suspension, delay or termination, including, without limitation, de-mobilization and re-mobilization costs, extended General Conditions and escalation (or credit for decrease in costs) on materials, together with the Design Fee and Developer's Fee up to the date of suspension or termination. No adjustment shall be made to the extent that the Developer is responsible for any cause which would also have suspended, delayed, or interrupted the work or to the extent that the Developer has previously requested an equitable adjustment under another provision of this Agreement and such request has either been granted or denied. This provision shall not be construed to modify or expand the limitations on the Developer's remedies or compensation provided in this Agreement.
- 13.7 In the event the Work is temporarily suspended or terminated under this subparagraph, the Owner shall pay the Developer for any non-deficient Work executed up to the date of said temporary suspension or termination, including, without limitation, de-mobilization and re-mobilization costs, extended General

Conditions and escalation (or credit for decrease in costs) on materials, together with the Design Fee and Developer's Fee up to the date of suspension or termination.

**ARTICLE 14: TAX EXEMPT OWNER DIRECT MATERIAL/EQUIPMENT PURCHASE PROGRAM**

- 14.1 The Owner shall appoint the Developer as the Owner's authorized representative with respect to any matter arising out of the purchase orders under this program. The Developer will cooperate fully with the Owner with respect to the implementation of a tax exempt direct material/equipment purchase program involving the direct purchase of various construction materials, supplies and equipment that is currently part of this Contract.

The Owner Direct Purchase Program, is attached hereto as **Exhibit C**, controls the Direct Purchase Program for the Project. The Direct Purchase Program will be operated in accordance with the following provisions:

- 14.1.1 The Owner will issue its own purchase orders directly to the third party vendor or supplier of material and equipment purchased under the Direct Purchase Program. The purchase order will be accompanied by a Certificate of Entitlement in accordance with the Florida Department of Revenue Rule 12A-1.094, F.A.C. – Public Works Contracts, and the Owner's Exemption Certificate which includes its name, address, and the exemption number with issuance and expiration date.
- 14.1.2 All material and equipment purchased under the Direct Purchase Program is sold directly to the Owner and is directly to the Owner and is directly invoiced by the vendor or supplier.
- 14.1.3 The Owner takes title and possession of all materials and equipment purchased under the Direct Purchase Program from the vendor or seller before they are incorporated into the Project.
- 14.1.4 The Owner makes direct payment to the third party vendor or seller for all purchases from its own funds or accounts for all purchases under the Direct Purchase Program.
- 14.2 The Owner agrees to process its purchase orders so that the progress of construction is not jeopardized. Should the Owner fail to process the purchase orders within a time frame so as not to delay the construction, the Developer shall, at its sole discretion, void the Owner purchase order and purchase the item direct thereby waiving any rights the Owner may have for a direct purchase tax savings and Developer shall be entitled to an extension of the Contract Time to address any impact on the critical path. If the items included in the purchase order represent any materials, supplies or equipment that is part of a subcontractor's scope of Work, then any terms and conditions that the

subcontractor deems to be warranted to protect their interest, shall also be included and/or substituted. Vendors and suppliers must be approved by the Owner prior to the processing of purchase orders.

- 14.3 The items being purchased shall be purchased from the vendors and suppliers selected by the Developer and/or the subcontractor for prices negotiated by the Developer and/or subcontractors.
- 14.4 The Developer has established an accounting system that will adequately track and monitor the direct purchases made by the Owner. The system developed by the Developer shall track and monitor that materials purchased (and shall adequately identify the same), costs, tax savings, and such other charts of accounts or information as may be reasonable requested by the Owner. The Developer shall submit a monthly accounting report of this information with the Developer's Application for Payment.
- 14.5 The Developer shall provide all rough drafts of purchase orders to the Owner for processing in such time and sequence that the Work will not be impeded or delayed in any manner. Notwithstanding anything in this Article 14.5 to the contrary, the Developer remains fully responsible under its Contract with the Owner, and the implementation of this direct purchase program shall not be used in any manner by the Developer to justify any delay unless such delay is a direct result of the Owner's failure to comply timely with the terms of the Direct Owner Purchase Program through no fault of the Developer, whereupon Developer shall be entitled to an extension of the Contract Time with respect to any such delays. Should a delay be incurred that is not the result of the Owner's failure, as stated above, the Developer shall be held accountable for such a delay. The Developer, for \$10.00 and other valuable consideration, the adequacy of receipt of which is hereby acknowledged and deemed to be sufficient, does hereby release, waive and hold harmless the Owner from and against any claim for damages, acceleration damages, or any other matter, claim or damage that may arise from or be related to in any way the owner's Direct Purchase Program to the extent stated herein.
- 14.6 The Developer shall be responsible for all purchases in the same manner as if the Developer had purchased the items, inclusive of managing the warranties for the Owner. The Developer shall cooperate with the Owner and take all action necessary to assure that all warranties with respect to any materials or equipment which may be available from any vendor are passed-through to the Owner.
- 14.7 Intentionally Omitted.
- 14.8 The Developer and its surety hereby agree that the performance bond penal amount shall be unaffected by any direct purchase deductive change order which is made pursuant to this program.



- 14.9 The Developer agrees that its builder's risk insurance coverage amount shall be unaffected by any direct purchase deductive change order implemented pursuant to this program.
- 14.10 Payment shall be directly made by the Owner to the vendor for any Direct Purchases.
- 14.11 To the extent authorized under Florida law, Owner agrees to indemnify and hold harmless the Developer, its subcontractors and suppliers of and from any claims, liability, or responsibility to the State of Florida for any action the State may take against any of them for the payment of any sales or use taxes as a result of Owner's direct purchase of such materials, supplies or equipment.
- 14.12 Intentionally Omitted.
- 14.13 Owner shall not withhold retainage on any payments made to the vendor.

#### **ARTICLE 15: MISCELLANEOUS PROVISIONS**

- 15.1 Recitals. The recitals set forth in the Whereas Clauses are incorporated herein by reference and made a part of this Agreement.
- 15.2 Defining Terms. Unless otherwise noted, the terms used in the Agreement shall have their ordinary and customary meanings as used in the industry.
- 15.3 Disclaimer of Liability. The Owner shall not at any time, be liable for injury or damage occurring to any person or property from any cause, whatsoever, arising out of Developer's fulfillment of this Agreement.
- 15.3.1 Indemnification. Subject to the provisions of Section 725.06(2), Florida Statutes, and for other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer agrees as follows:
- 15.3.2 The Developer shall, at its sole cost and expense, indemnify and hold harmless the Owner, including, but not limited to, its officers, agents, contractors and subcontractors, representatives, employees, volunteers and elected and appointed officials, successors and assigns from or on account of all claims, damages, losses, liabilities and expenses, direct or indirect including, but not limited to, fees and charges of engineers, architects, attorneys, experts, consultants and other professionals and court costs arising out of or from (a) any negligence, recklessness or intentional, wrongful misconduct of the Developer, including, but not limited to, its agents, officers, servants, representatives and employees as well as its subcontractors and their agents, officers, servants representatives and employees (hereafter the Developer); (b) any and all

bodily injury, sickness, disease or death caused by any negligent recklessness or intentional wrongful conduct on the part of the Developer or as a result of Developer's failure to act; (c) injury to or destruction of property (other than the Work), including any resulting loss of use; (d) other such damages, liabilities, or losses received or sustained by any person or persons during or on account of any of Developer's negligent actions connected with the construction of this Project including the warranty period; (e) the violation of any federal, state, county or other laws, ordinances or regulations by Developer, its subcontractors, agents, servants, independent contractors or employees; (f) any construction defect including both patent and latent defects; ; (g) the breach or alleged breach by Developer of any term of the Agreement, including the breach or alleged breach of any warranty or guarantee; (h) the use of any improper materials.

- 15.3.3 Developer agrees to indemnify, defend, save and hold the Owner harmless from any type of Claim or demand whatsoever (including, but not limited to, damages, liabilities, losses, claims, fines, costs, expenses and fees, and from any and all suits and causes of actions of every name, or description) that may be brought against Owner, on account of any claims, fees, royalties, or costs for any invention or patent and/or for the infringement of any and all copyrights or patent rights claimed by any person, Developer, or corporation pertaining to the acts or omissions of Developer, its agents, servants, independent contractors, subcontractors or employees under this Agreement;
- 15.3.4 Except as otherwise provided herein, Developer shall pay all Claims, losses, liens, settlements or judgments of any nature in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees and suit costs for trials and appeals.
- 15.3.5 If any Subcontractor, supplier, laborer, or materialmen of Developer or any other person directly or indirectly acting for or through Developer files or attempts to file a mechanic's or construction lien against the real property on which the Work is performed or any part thereof or against any personal property or improvements thereon or make a claim against any monies due or to become due from the Owner to Developer or from Developer to a Subcontractor, for or on account of any Work, labor, services, material, equipment, or other items furnished in connection with the Work or any change order, Developer agrees to satisfy, remove, or discharge such lien or claim at its own expense by transfer to bond, payment, or otherwise within fifteen (15) days from receipt of written notice from the Owner.

Additionally, until such time as such lien or claim is satisfied, removed or discharged by Developer, 150% of the amount of the lien shall be held by

Owner as security for the satisfaction, removal and discharge of such lien and any expense that may be incurred while obtaining the discharge. If Developer shall fail to do so, Owner shall have the right, in addition to all other rights and remedies provided by this Agreement or by law, to satisfy, remove, or discharge such lien or claim by whatever means Owner chooses at the entire and sole cost and expense of Developer which costs and expenses shall, without limitation, include attorney's fees, litigation costs, fees and expenses and all court costs and assessments, and which shall be deducted from any amount owing to Developer. In the event the amount due Developer is less than the amount required to satisfy Developer's obligation under this, or any other article, paragraph or section of this Agreement, the Developer shall be liable for the deficiency due the Owner.

The Developer and the Owner agree that Section 725.06(2), Florida Statutes controls the extent and limits of the indemnification and hold harmless provisions of this Agreement, if any, and that the parties waive any defects in the wording of this Article that runs afoul of said statutory section.

- 15.4 Limitation of Liability. The Owner desires to enter into this Agreement only if in so doing the Owner can place a limit on the Owner's liability for any cause of action arising out of this Agreement, so that the Owner's liability for any breach never exceeds the Developer's Fee minus any amount paid to the Developer. For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer expresses its willingness to enter into this Agreement with the knowledge that the Developer's recovery from the Owner to any action or claim arising from the Agreement is limited to the GMP minus any amount paid to the Developer, including the Developer's Fee. Accordingly, and notwithstanding any other term or condition of this Agreement that may suggest otherwise, the Developer agrees that the Owner shall not be liable to the Developer for damages in an amount in excess of the Developer's Fee minus any amount paid to the Developer for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the Owner's liability as set forth in Section 768.28, Florida Statutes, or to extend the Owner's liability beyond the limits established in said Section 768.28.
- 15.5 If the Developer commits a default due to its insolvency or bankruptcy, the following shall apply:
- 15.5.1 Should this Agreement be entered into and fully executed by the parties, and funds have been released to the Developer by the Owner (Debtor) files for bankruptcy, the following shall occur:

- 15.5.1.1 In the event the Developer files a voluntary petition under 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Developer shall acknowledge the extent, validity, and priority of the lien recorded in favor of the Owner. The Developer further agrees that in the event of this default, the Owner shall, at its option, be entitled to seek relief from the automatic stay provisions in effect pursuant to 11 U.S.C. 362. The Owner shall be entitled to relief from the automatic stay pursuant to 11 U.S.C. 362(d)(1) or (d)(2), and the Developer agrees to waive the notice provisions in effect pursuant to 11 U.S.C. 362 and any applicable Local Rules of the United States Bankruptcy Court. The Developer acknowledges that such waiver is done knowingly and voluntarily.
- 15.5.1.2 Alternatively, in the event the Owner does not seek stay relief, or if stay relief is denied, the Owner shall be entitled to monthly adequate protection payments within the meaning of 11 U.S.C. 361. The monthly adequate protection payments shall each be in an amount determined in accordance with the Note and Mortgage executed by the Developer in favor of the Owner.
- 15.5.1.3 In the event the Developer files for bankruptcy under Chapter 13 of Title 11, United States Code, in addition to the foregoing provisions, the Developer agrees to cure any amounts in arrears over a period not to exceed twenty-four (24) months from the date of the confirmation order, and such payments shall be made in addition to the regular monthly payments required by the Note and Mortgage. Additionally, the Developer shall agree that the Owner is over secured and, therefore, entitled to interest and attorney's fees pursuant to 11 U.S.C. 506(b). Such fees shall be allowed and payable as an administrative expense. Further, in the event the Developer has less than five (5) years of payments remaining on the Note, the Developer agrees that the treatment afforded to the claim of the Owner under any confirmed plan of reorganization shall provide that the remaining payments shall be satisfied in accordance with the Note, and that the remaining payments or claim shall not be extended or amortized over a longer period than the time remaining under the Note.

15.5.2 Should this Agreement be entered into and fully executed by the parties, and the funds have not been forwarded to Developer, the following shall occur:

15.5.2.1 In the event the Developer files a voluntary petition pursuant to 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Developer acknowledges that the commencement of a bankruptcy proceeding constitutes an event of default under the terms of this Agreement. Further, the Developer acknowledges that this Agreement constitutes an executory contract within the meaning of 11 U.S.C. 365. The Developer acknowledges that this Agreement is not capable of being assumed pursuant to 11 U.S.C. 365(c)(2), unless the Owner expressly consents in writing to the assumption. In the event the Owner consents to the assumption, the Developer agrees to file a motion to assume this Agreement within ten (10) days after receipt of written consent from the Owner, regardless of whether the bankruptcy proceeding is pending under Chapter 7, 11, or 13 of Title 11 of the United States Code. The Developer further acknowledges that this Agreement is not capable of being assigned pursuant to 11 U.S.C. 365(b)(1).

- 15.6 Should the Developer's Work be terminated by the Owner, the termination shall not affect any rights of the Owner against the Developer then existing or which may thereafter accrue. Any retention or payment of monies due the Developer by the Owner will not release the Developer from liability.
- 15.7 The Developer has no right, authority or ability to terminate the Work except for wrongful withholding of any payments due the Developer from the Owner or for the reasons set forth in Section 13.1.
- 15.8 Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, the term "including" is not limiting, and the terms "hereof", "herein", "hereunder", and similar terms in the Contract Documents refer to the Contract Documents as a whole and not to any particular provision thereof, unless stated otherwise.
- 15.9 Gender. Unless the context clearly indicates to the contrary, pronouns having a neuter, masculine or feminine gender shall be deemed to include the others.
- 15.10 Entire Agreement. This Agreement and the Construction Documents incorporated herein by reference constitute the entire Agreement between the parties with respect to the matters covered by this Agreement. All prior negotiations, representations and agreements not incorporated in this Agreement are cancelled. This Agreement can be modified or amended only by a written document duly executed by the parties or their duly appointed representative.

15.11 Binding Effect. Each and all of the covenants, terms, provisions and agreements contained in this Agreement shall be binding upon and inure to the benefits of the parties and their respective assigns, successors, subsidiaries, affiliates, holding companies and legal representatives, as allowed in this Agreement.

15.12 Notices. All notices shall be in writing, and may be served by (a) depositing the same in the United States mail addressed to the party to be notified, postpaid, and registered or certified with return receipt requested, (b) delivering the same to such party, by (i) personal delivery, or (ii) overnight courier, or (c) facsimile transmission provided that a copy is sent on the same day, by 5 p.m. (local time of party giving notice), by any of the methods described in (a) or (b). Notice deposited in the mail shall be deemed to have been given on the third day next following the date postmarked on the envelope containing such notice, or when actually received, whichever is earlier. All notices to be given to the parties shall be sent to or delivered at the addresses or facsimile numbers set forth below:

If to the Owner:

Lee R. Feldman, City Manager  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301

With a Copy:

City Attorney  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301

If to Developer:

Joseph Cerrone, III, President  
Recreational Design & Construction, Inc.  
3990 North Powerline Road  
Oakland Park, Florida 33309

With a Copy to:

Steven W. Deutsch, Esquire  
Frank, Weinberg & Black, P.L.  
7805 S.W. 6<sup>th</sup> Court  
Plantation, Florida 33324

By giving the other party at least 15 days written notice, each party shall have the right to change its address and specify as its new address any other address in

the United States of America.

- 15.13 Waiver. No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by another in the performance of any obligations shall be deemed or construed to be consent or waiver to or of any other breach or default by that party. Except as otherwise provided in this Agreement, failure on the part of any party to complain of any act or failure to act by another party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of that party.
- 15.14 Captions. The headings used for the various portions of this Agreement and the Construction Documents are inserted only as a matter of convenience, and for reference, and in no way define, limit or describe the scope or the intent of this Agreement, any section of this Agreement, or any section of the Contract Documents.
- 15.15 Severability. In the event the provisions of this Agreement are determined by a Court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Agreement, and the remainder of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision will materially and adversely affect the rights of a party, such party may elect, at its option, to terminate this Agreement in its entirety.
- 15.16 Cumulative Remedies. All rights, powers, remedies, benefits, and privileges are available under any provision of this Agreement to any party, is in addition to and cumulative of any and all rights, powers, remedies, benefits and privileges available to such party under all other provisions of this Agreement, at law or in equity.
- 15.17 Approval. Whenever any review or approval is required by any party, such party agrees that such review or approval will be promptly and expeditiously prosecuted to conclusion, subject to any stricter time frames specifically set forth in the Contract Documents.
- 15.18 Further Assurances. The parties agree to execute any and all further instruments and documents, and take all such action as may be reasonably required by any party to effectuate the terms and provisions of this Agreement and the transactions contemplated in this Agreement.
- 15.19 No Partnership or Joint Venture. It is understood and agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between the parties or any third party, or cause any party to be responsible in any way for the debts and obligations of the other party.

- 15.20 No Construction Against Drafter. Each of the parties has been represented by legal counsel who have had ample opportunity to, and have, participated in the drafting of this Agreement. Therefore, this Agreement shall not be construed more favorably or unfavorably against any party.
- 15.21 Third Party Beneficiary. This Agreement has been made and entered into for the sole protection and benefit of the Owner, and its respective successors, and no other person or entity shall have any right or action under this Agreement.
- 15.22 No Assignments. This Agreement is for the personal services of the Developer, and may not be assigned by the Developer in any fashion, whether by operation of law or by conveyance of any type including without limitation, transfer of stock in the Developer, without the prior written consent of the Owner, which consent the Owner may withhold in its sole discretion.
- 15.23 Force Majeure. With regard to the performance under this Agreement, a party shall not be deemed to be in default of this Agreement, or have failed to comply with any term or conditions if, for reasons beyond the parties reasonable control, including without limitation acts of God, natural disaster, labor unrest, strikes, lockouts, terrorist activities, material shortages, embargos or blockages, war, declared or undeclared, the existence of injunctions or requirements for obtaining licenses, easements, permits or other compliance with applicable laws, rules and regulations, unusually severe weather conditions by comparison with the ten-year Broward County, Florida average, such performance is not reasonably possible within such time periods, then the time for such performance shall be extended until removal of such reasons beyond the parties reasonable control, provided that the party commences such performance as soon as reasonably possible and diligently pursues such performance. As used herein, the term "acts of God" shall include a tropical storm or hurricane, making landfall within fifty (50) miles from the Project Site or any weather event that the Emergency Management Response enacts an evacuation of the coastal areas.
- 15.24 Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Florida. Broward County, Florida shall be the proper for all suits to enforce this Agreement. Any legal proceeding arising out of or in connection with this Agreement shall be brought in the Circuit Courts of Broward County, Florida. Developer (which term for the purposes of this subparagraph shall include Developer's surety) consents and submits to the exclusive jurisdiction of any such court and agrees to accept service of process from the State of Florida in any matter to be submitted to any such court. Notwithstanding any other provision of the Contract Documents, the Owner does not agree to, nor shall the parties arbitrate in any manner whatsoever any issue arising out of this Agreement, the Contract Documents or the performance thereof. In connection with a dispute, legal action or litigation arising out of this Agreement, the Contract Documents or the performance thereof, the prevailing



party shall be entitled to receive its attorneys' fees and costs from the non-prevailing party.

15.25 Waiver of Jury Trial. **THE PARTIES EXPRESSLY WAIVE THE RIGHT TO A JURY TRIAL.**

15.26 Dispute Resolution. Prior to initiating any litigation arising out of the Agreement, the parties agree to submit the dispute to non-binding mediation by a mediator who is certified in Florida in an effort to resolve disputes in an expedient manner. Each party shall bear their own attorneys' fees, and the cost of the mediator shall be split between the parties.

15.27 Right to Enter this Agreement. Each party warrants and represents, with respect to itself, that neither the execution of this Agreement nor the performance of its obligations under this Agreement shall violate any legal requirement, result in or constitute a breach or default under any indenture, contract, or other commitment or restriction to which it is a party or by which it is bound. Each party also warrants and represents, with respect to itself, that the execution of this Agreement and the performances and obligations under this Agreement shall not require any consent, vote, or approval which has not been obtained, or at the appropriate time shall not have been given or obtained. Each party agrees that it has or will continue to have throughout the term of this Agreement the full right and authority to enter into this Agreement and to perform its obligation under this Agreement. Upon written request, each party agrees to supply the other party with evidence of its full right and authority.

15.28 Conduct While on Owner Property. The Developer acknowledges that its employees and agents must behave in an appropriate manner while on the premises of any Owner facility and shall at all times conduct themselves in a manner consistent with City of Fort Lauderdale policies and subject to the City Manager or designee. It will be considered a breach of this Agreement for any agent or employee of the Developer to behave in a manner which is inconsistent with good conduct or decorum, or to behave in any manner which will disrupt the Owner's business or constitute any level of threat to safety, health, and well-being of any citizen, visitor, volunteer or employee of The City of Fort Lauderdale. The Developer agrees to immediately remove any agent or employee if directed to do so by the City Manager or designee.

15.29 Owner Transfer of Interest. If the Owner conveys its interest in the Project to a third party, any rights which the Owner may have against the Developer arising from this Agreement shall automatically transfer to such third party without the necessity of a written document or consent from the Developer.

15.30 Public Entity Crime Information Statement and Debarment. Section 287.133(2)(a), Florida Statutes states: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not

submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list."

By signing this Agreement, Developer certifies, to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by a federal department or agency.
- (b) Have not, within a five-year period preceding the issuance of RFP #105-10408 been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- (c) Are not presently indicted or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph (b).
- (d) Have not within a five-year period preceding the issuance of RFP #105-10408 had one or more public transactions (federal, state or local) terminated for cause or default.

Developer agrees to notify the City of Fort Lauderdale within 30 days after the occurrence of any of the events, actions, debarments, proposals, declarations, exclusions, convictions, judgments, indictments, information, or terminations as described in Article 15.30 (a) – (d) above, with respect to Developer or its principals.

15.31 No Waiver of Sovereign Immunity. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable.

15.32 Non-Discrimination. The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations

under this agreement because of race, color, religion, gender, age, marital status, disability, political or religious beliefs, national or ethnic origin.

15.33 Waiver of Consequential Damages. Notwithstanding anything contained herein to the contrary, Developer and Owner hereby waive all Claims against each other for consequential damages arising out of or relating to this Agreement or the other Contract Documents.

15.34 WAIVER OF CHAPTER 558 NOTICE. THE PARTIES AGREE THAT ANY CLAIMS FOR CONSTRUCTION DEFECTS SHALL NOT BE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

**CITY**

WITNESSES:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida:

\_\_\_\_\_

By \_\_\_\_\_  
JOHN P. "JACK" SEILER, Mayor

\_\_\_\_\_  
Print Name

\_\_\_\_\_

By \_\_\_\_\_  
LEE R. FELDMAN City Manager

\_\_\_\_\_  
Print Name

(SEAL)

ATTEST

By \_\_\_\_\_  
JONDA K. JOSEPH, City Clerk

Approved as to form:

\_\_\_\_\_  
CARRIE L. SARVER  
Assistant City Attorney

WITNESSES

\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_

\_\_\_\_\_  
Print Name

(CORPORATE SEAL)

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012  
by \_\_\_\_\_ and \_\_\_\_\_, as \_\_\_\_\_ and \_\_\_\_\_,  
respectively, of \_\_\_\_\_ a Florida corporation, on behalf of the corporation.  
☐ They are personally known to me or ☐ have produced \_\_\_\_\_ as  
identification and ☐ did ☐ did not take an oath.

(SEAL)

RECREATIONAL DESIGN &  
CONSTRUCTION, a Florida corporation:

By \_\_\_\_\_

\_\_\_\_\_  
Print Name/Title

ATTEST

By \_\_\_\_\_

\_\_\_\_\_  
Print Name/Title

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)

\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped

\_\_\_\_\_  
My Commission Expires:

Commission Number \_\_\_\_\_

**Exhibit A**

**The City of Fort Lauderdale, Florida  
Truth-In-Negotiation Certificate**

The wage rates and other factual unit costs supporting the compensation under the Developer's Agreement between the City of Fort Lauderdale, Florida and Recreational Design & Construction, Inc. dated \_\_\_\_\_, 2012 are accurate, complete and current as of the time of entering into the contract. This Certificate is executed in Compliance with Section 287.055(5)(a), Florida Statutes.

DATED this \_\_\_\_ day of \_\_\_\_\_ 2012.

DEVELOPER: \_\_\_\_\_

By: \_\_\_\_\_

**STATE OF** \_\_\_\_\_  
**COUNTY OF** \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, as \_\_\_\_\_, of \_\_\_\_\_. Developer, on behalf of Developer. He/She is personally known to me **OR** has produced \_\_\_\_\_ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public (Signature)

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

\_\_\_\_\_  
(Title or Rank)

\_\_\_\_\_  
(Serial Number, if any)

## **Exhibit B**

### **The City of Fort Lauderdale, Florida GMP**

Pursuant to Paragraph 3.10 of the Developer's Agreement between the City of Fort Lauderdale, Florida and Recreational Design & Construction, Inc., for the Project known as Fort Lauderdale Aquatic Center Project, the Owner and Developer establish the Guaranteed Maximum Price and Contract Time for the Work as set forth herein below.

#### **I. Guaranteed Maximum Price (GMP)**

The Developer's Guaranteed Maximum Price for the Work (GMP), including the Cost of the Work and the Developer's Fee is (1) **Twenty-Four Million Eight Hundred Sixty Four Thousand Nine Hundred and Fifty Dollars (\$24,864,950.00)** for the public improvements (as delineated on the Project Program submitted to the City of Fort Lauderdale on March 28, 2012) and (2) **Seven Million Five Hundred Seventy Two Thousand Four Hundred and Eighty Four Dollars (\$7,572,484.00)** for the parking garage, both elements inclusive of the cost for Design Services, the Design Fee and Developer's Fee for a total GMP of **Thirty Two Million, Four Hundred, Thirty Seven Thousand, Four Hundred Thirty Four Dollars (\$32,437,434.00)**. The Developer's Fee is hereby established as **Four Million, Seven Hundred, Ten Thousand, Five Hundred Seventy Seven Dollars, Eighty Cents (\$4,710,577.80)** based on a fixed percentage of 17.78% for each of the parking garage component and for the swimming pool component of the Project, calculated on all amounts reflected in the GMP Sum, excluding permits, payment and performance bond, builder's risk insurance, project specific E & O policy, Developer's Contingency and Owner's Contingency.

The Above GMP is for the **FULL AND FINAL GUARANTEED MAXIMUM PRICE FOR THE WORK**, subject to the terms set forth in the Agreement.

**II. Contract Time** – The date of Substantial Completion of the construction of the Work shall be on or before three hundred thirty one (331) Business Days from the issuance of written authorization by Owner to commence construction. The date of Final Completion for the Work established by this **Exhibit B** shall be sixty (60) days after Substantial Completion, by which the entire Work shall be fully completed and ready for acceptance.

#### **III. Enumeration of GMP Exhibits/Attachments**

Work shall be in conformance with the Contract Documents and the Contract. Exhibits include the following attachments, which further delineate and itemize

pertinent elements of the GMP and the associated project Scope of Work. Said Exhibits are as follows Exhibits 1 through 11 are required at 90% Construction Document approval by the City and Final GMP **Exhibit B**. Exhibits 12 through 16 are required within 15 days after the issuance of all permits.

- Exhibit 1 Final GMP Summary of Cost by Division/Trade Package
- Exhibit 2 GMP General Condition Cost Itemization
- Exhibit 3 GMP Cost of Work Exclusions, overhead staff and any lump sum costs (include descriptions of formulas used to allocate the cost to the project, as well as third party evidence for the rates or unit prices used in the allocation).
- Exhibit 4 GMP Developer List of onsite staff charged to Cost of Work
- Exhibit 5 GMP Assumptions and Clarifications
- Exhibit 6 GMP Allowances (including unit prices and quantity amounts)
- Exhibit 7 GMP Accepted Cost Savings
- Exhibit 8 Schedule of List of Drawings, as Signed/Dated by A/E of Record and Developer
- Exhibit 9 Schedule/List of RFI/ASI's (asked and answered during Bid Portion of the Work that is included in the Cost of the Work)
- Exhibit 10 Developer Insurance Provided Affidavit, Bond & Insurance Rate and Cost (include descriptions of formulas used to allocate the cost to the project, as well as third party evidence for the rates used or unit prices in the allocation).
- Exhibit 11 Developer Surety Form of Bond (indicating all language of Bond document)
- Exhibit 12 Developer List of Sub-contractors and suppliers with License Nos., as dated
- Exhibit 13 Developer Affidavit, Attesting to Subcontractor/Vendor Licensure Verification, as dated
- Exhibit 14 Project Master Delivery Schedule (w/summary milestone delivery items)
- Exhibit 15 Project Schedule (CPM Delivery schedule with itemized breakdown of Work scope by Building, and resource loaded)
- Exhibit 16 Master Schedule (Project Submittals with submittal due dates/responsible Party)



#### **IV. Signature**

IN WITNESS THEREOF, the above parties have executed this instrument, the name of each party being affixed and these present duly signed by its undersigned representative, pursuant to authority of its governing body.

**OWNER:**  
**City of Fort Lauderdale, Florida**

By: \_\_\_\_\_  
Print Name: Lee R. Feldman  
Title: City Manager  
Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

**RECREATIONAL DESIGN &  
CONSTRUCTION, INC.**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

## **Exhibit B**

### **Exhibit 1 - Final GMP Summary of Cost by Division/Trade Package**

## **Exhibit B**

### **Exhibit 2 - GMP General Condition Cost Itemization**

The Contract Documents should include a certified statement that the labor costs represent those amounts that are actually paid to the Persons that are to be working on the Project. Provide the labor burden for the each of the submitted staffing

## **Exhibit B**

### **Exhibit 3 - GMP Cost of Work Exclusions**

OH staff and any lump sum costs (include descriptions of Formulas used to allocate the cost to the project as well as third party evidence for the rates or unit prices used in the allocation)

## **Exhibit B**

### **Exhibit 4 - GMP Developer**

List of onsite staff charged to Cost of Work, provide the labor burden for the submitted staff.

## **Exhibit B**

### **Exhibit 5 – GMP Assumptions and Clarifications**

## **Exhibit B**

### **Exhibit 6 – GMP Allowances, including unit prices and quantity amounts**

## **Exhibit B**

### **Exhibit 7 – GMP Accepted Cost Savings**



## **Exhibit B**

### **Exhibit 8 – Schedule of List of Drawings, as Signed/Dated by A/E of Record and Developer**

## **Exhibit B**

### **Exhibit 9 – Schedule/List of RFI/ASI's asked and answered during Bid Portion of the Work that is included in the Cost of the Work**

## **Exhibit B**

### **Exhibit 10 – Developer Insurance Provided Affidavit, Bond & Insurance Rate and Cost**

Include descriptions of formulas used to allocate the cost to the Project, as well as third party evidence for the rates used or unit prices in the allocation

## **Exhibit B**

### **Exhibit 11 – Developer Surety Form of Bond, indicating all language of Bond document**

**Exhibit B**

**Exhibit 12 – Developer List of Subcontractors and suppliers with License  
Nos., as dated**

**Exhibit B**

**Exhibit 13 – Developer Affidavit, Attesting to Subcontractor/Vendor  
Licensure Verification, as dated**

**Exhibit B**

**Exhibit 14 – Project Master Delivery Schedule, w/summary milestone  
delivery items**

## **Exhibit B**

### **Exhibit 15 – Project Schedule, CPM Delivery schedule with itemized breakdown of Work scope by Building, and resource loaded**



**Exhibit B**

**Exhibit 16 – Master Schedule, Project Submittals with submittal due  
dates/responsible party**

**The City of Fort Lauderdale, Florida**  
**Exhibit C**  
**Owner Direct Material/Equipment Purchase Program**

1. The Subcontractor has included Florida State Sales and other applicable taxes in his bid for material, supplies and equipment. The Owner, being exempt from sales tax, reserves the right to make direct purchases of various construction equipment, materials or supplies included in the Subcontractor's bid and/or contract, substantially in accordance with the form of Purchase Order attached herewith.

Any equipment, materials or supplies directly purchased by the Owner that are included in the Subcontractor's contract shall be referred to as Owner-Purchased Materials and the responsibilities of both Owner and Subcontractor relating to such Owner-Purchased Materials shall be governed by the terms and conditions of the procedures. The Owner will own and hold full title to all Owner-Purchased Materials.

2. Material suppliers shall be selected by the Subcontractor awarded the subcontract.

The Subcontractor has included the price for all construction materials in his bid. Owner purchasing of construction materials, if selected, will be administered on a deductive Change Order basis.

3. Subcontractor shall provide Developer a list of all intended suppliers, vendors, and material men for consideration as Owner-Purchased Materials. This list shall be submitted at the same time as the preliminary schedule of values. The Subcontractor shall submit a description of the materials to be supplied, estimated quantities and prices.
4. Upon request from Developer, and in a timely manner, Subcontractor shall prepare a standard Purchase Order Requisition Form in a form acceptable to the Owner and the Developer, to specifically identify the materials which Owner had, at its sole option, elected to purchase directly. The Purchase Order Requisition Form shall include:
  - A. The name, address, telephone number and contact person for the material supplier.
  - B. Manufacturer or brand, model or specification number of the item.
  - C. Quantity needed as estimated by the Subcontractor.

- D. The price quoted by the supplier for the materials identified therein.
- E. Any sales tax associated, with such quote.
- F. Delivery dates as established by Subcontractor.

Subcontractor shall include reference to any terms and conditions which have been negotiated with the vendors; i.e., payment terms, warranties, retainage, etc.

Such Purchase Order Requisition Forms are to be submitted to Developer's designated representative no less than fifteen (15) days prior to the need for ordering such Owner-Purchased Materials, in order to provide sufficient time for Owner review and approval and to assure that, such Directly Purchased Materials may be directly purchased by Owner and delivered to the Project site so as to avoid any delay to the Project.

5. After receipt of the Purchase Order Requisition Form, Owner shall prepare its Purchase Orders for equipment, materials or supplies which the Owner chooses to purchase directly. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the Subcontractor, less any sales tax associated with such price. Promptly upon receipt of each Purchase Order, Subcontractor shall verify the terms and conditions of the Purchase Order prior to its issuance to supplier and in a manner to assure proper and timely delivery of items. Owners Procurement Manager or his designated representative shall be the approving authority for the Owner on Purchase Orders in conjunction with Owner-Purchased Materials. The Purchase Order shall require that the supplier provide the required shipping and handling insurance. The Purchase Order shall also require the delivery of the Owner-Purchased Materials on the delivery dates provided by the Subcontractor in the Purchase Order Requisition Form and shall indicate F.O.B. jobsite.
6. In conjunction with the execution of the Purchase Orders by the suppliers, the Subcontractor shall execute and deliver to the Owner, through the Developer, one or more deductive Change Orders, referencing the full value of all Owner-Purchased Materials to be provided by each supplier from whom the Owner elected to purchase material directly, plus all sales tax savings associated with such materials in Subcontractor's bid to Developer.
7. All shop drawings and submittals shall be made by the Subcontractor in accordance with the Project Specifications.

8. Subcontractor shall be fully responsible for all matters relating to the receipt of materials furnished by Owner in accordance with these Procedures, including, but not limited to, verifying correct quantities, verifying documentation of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss, or damage to equipment and materials following acceptance of items by the Owner due to the negligence of the Subcontractor. The Subcontractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Subcontractor for the particular materials furnished. The Subcontractor agrees to indemnify and hold harmless the Owner and Developer from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions or directions of Subcontractor. Owner purchased materials shall be stored at the construction site.
9. As Owner-Purchased Materials are delivered to the Project Site, the Subcontractor and the Developer, as City's Representative, shall visually inspect all shipments from the suppliers, and approve the vendor's invoice of material delivered. The Subcontractor shall assure that each delivery of Owner-Purchased materials is accompanied by adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order, together with such additional information as the Owner or Developer may require. The Developer, as Owner's Representative, shall verify in writing to the Owner the accuracy of the delivery ticket. The Subcontractor will then forward the invoice to the Owner through the Developer for payment. The invoice shall be thereupon furnished to the Finance Department for processing and payment in the manner as all other City of Fort Lauderdale invoices are processed. The Owner shall have the right to assign personnel to verify and audit the accuracy of all Director Purchase Documents.
10. The Subcontractor shall insure that Owner-Purchased Materials conform to the Specifications, and determine prior to incorporation into the Work if such materials are patently defective, and whether such materials are identical to the material ordered and match the description on the bill of lading. If the Subcontractor discovers defective or non-conformities in the Owner-Purchased Material upon such visual inspection, the Subcontractor shall not utilize such non-conforming or defective materials in the Work and instead shall promptly notify the vendor of the defective or non-conforming condition in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally, the Subcontractor shall notify the Owner, through the

Developer, of such occurrence. If the Subcontractor fails to perform such inspection and otherwise incorporated Owner-Purchased Materials, the condition of which it either knew or should have known by performance of an inspection, Subcontractor shall be responsible for all damages to Owner and/or Developer resulting from Subcontractor's incorporation of such materials into the Project, including liquidated or delay damages. In the event that materials furnished are found to be defective or non-conforming, the Subcontractor shall promptly take action to remedy the defect or non-conformance so as not to delay the work.

11. The Subcontractor shall maintain records of all Owner-Purchased Materials it incorporates into the work from the stock of Owner-Purchased Materials in its possession. The Subcontractor shall account monthly to the Owner, through the Developer, for any Owner-Purchased Materials delivered into the Subcontractor's possession, including portions of all such materials which have been incorporated into the work.
12. The Subcontractor, as the Owner's agent, shall be responsible for obtaining and managing all warranties and guarantees for all material and products as required by the Contract Documents. All repair, maintenance or damage-repair calls shall be forwarded to the Subcontractor for resolution with the appropriate supplier or vendor.
13. Notwithstanding the transfer of Owner-Purchased Materials by the Owner to the Subcontractor's possession, the Owner shall retain title and assume risk to any and all Owner-Purchased Materials.
14. The transfer of possession of Owner-Purchased Materials from the Owner to the Subcontractor shall constitute a bailment for the mutual benefit of the Owner and the Subcontractor. The Owner shall be considered the bailor and the Subcontractor the bailee of the Owner-Purchased Materials. Owner-Purchased Materials shall be considered returned to the Owner for the purposes of its bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project. All Owner-Purchased Materials shall be stored at the construction site.
15. The Owner shall in no way be liable for interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs or time resulting from delay in the delivery of, or defects in, Owner-Purchased Materials when such delay is a result of the failure of the Subcontractor's performance.
16. On a monthly basis, Subcontractor shall be required to review invoices submitted by all suppliers of Owner-Purchased Materials delivered to the Project site during that month and either concur or object to the Owner's

issuance of payment to the suppliers, based upon Subcontractor's records of material delivered to the site and any defects in such materials.

17. In order to arrange for the prompt payment to the supplier, the Subcontractor shall provide to the Owner, through the Developer, a list indicating the acceptance of the goods or materials in accordance with the established monthly Payment Request Schedule. The list shall include a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt and verification of the appropriate documentation, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be released, delivered, and remitted directly to the supplier. The Subcontractor agrees to assist the Owner and Developer to immediately obtain a partial or final release of lien waiver as appropriate.
18. Salvage materials shall be the property of the Owner and stored or removed from the site by the Subcontractor at the Owner's direction.
19. The Owner's direct purchase of equipment, materials or supplies, as provided herein does not relieve the Developer or any Subcontractor of any obligation required pursuant to the contract or subcontract pertaining to the performance of work, except as to the Owner's obligation to make direct payments to such vendors and may reduce the bonds to the extent permitted by Section 255.05, Florida Statutes.
20. All obligations and duties imposed on the Developer contained in the Agreement are incorporated herein by reference.

**The City of Fort Lauderdale, Florida**  
**Exhibit D**  
**Scope of Design Services**

**1. DESCRIPTION OF PROJECT:**

The project consists of providing design services to the City of Fort Lauderdale for the design and construction of the Fort Lauderdale Aquatic Center (FLAC).

The FLAC project currently includes the following aspects, although project elements may be added or deleted through the negotiation process prior to establishment of the Guaranteed Maximum Price (GMP) and the schedule. Once the GMP and schedule are established, any further changes to the Project and/or Developer's obligations must be done by Change Order signed by both parties.

- Final Design, permitting, and construction of an aquatic complex including, at a minimum, the following components:
  - Bath House Facility (4 levels – 30,450 sq. feet) which includes
    - Office Space
    - Swim Team Offices
    - Dive Team Offices
    - Swim and Dive Meet Operations Center
    - Weight Training Rooms
    - Recreational Rooms
    - Meeting/Conference Rooms
    - Locker Rooms
    - Restrooms
    - Equipment Space
    - Concession Area
  - International Swimming Hall of Fame Facility (10,150 sq. ft. of two story shell space)
  - FINA Competition Pool (53m x 25m)
  - Competition Pool Grandstand Seating (2,040 seats) with Canopy Shade Structure
  - Lockers, Restrooms and Storage to be located under Grandstands
  - Dive Pool (25m x 25 yd) with Bleacher Seating (540 seats)
  - Dive Platforms, Springboards, Acclimation Spa
  - Instructional Pool (20 ft x 40 ft)
  - Renovation of existing (lower level) Pool (50m x 25 yd) including the installation of a movable floor
  - Lower-level Seating (240 seats)

- Parking Structure (minimum of 529 spaces)
- Surface parking (uncovered) (54 spaces)
- Waterfront Public Park, Landscaping and perimeter walkway
- New Public Plaza (Seabreeze)
- The FINA Competition Pool and lower-level pool shall meet the requirements for one-time certification for competition as established by USA Swimming.
- The FINA Dive Pool and associated dive platforms and springboards shall meet the requirements for certification for competition as established by USA Diving.
- Conceptual drawings were submitted to the Owner by the Developer on March 28, 2012 for the proposed site layout and proposed building plan and exterior elevations.
- Site improvements including, but not limited to, clearing and grubbing, utility installation and connections, stormwater conveyance and detention/retention system, landscaping, and other improvements as required to complete the facility.
- Building Improvements including the construction of the Bath House Facility, and all other required components such as dumpster enclosures, equipment screens, and retaining walls as required.

The Developer will be expected to recommend value engineering concepts that can reduce initial and life cycle costs and/or add value to the project.

The project is expected to be in compliance with USGBC Standards, for sustainable buildings, but will not be LEED certified for new construction.

The Owner intends to pursue sales tax recovery to the greatest degree practicable.

## 2. PROGRAM VERIFICATION PHASE:

- 2.1. During the various design phases of this Agreement, Developer will provide Owner with value engineering suggestions and other services with respect to Developer's design. Those services shall include but are not limited to the preparation of cost estimates and comments concerning the constructability of the design.



- 2.2. Developer shall review the Owner's Central Beach Master Plan (revised November 30, 2009) and will either submit a written statement that the design documents will be prepared in accordance with the requirements set forth therein or Developer will submit a written request for variance, identifying specific exceptions. Owner may, at its discretion, accept or reject the request for variance.
- 2.3. Developer shall review the Owner's Construction Standards and Specifications and will either submit a written statement that the design documents will be prepared in accordance with the requirements set forth therein or Developer will submit a written request for variance, identifying specific exceptions. Owner may, at its discretion, accept or reject the request for variance.
- 2.4. At the conclusion of the Program Verification and during the various design phases of this Agreement, Developer will provide Owner with cost estimates and comments concerning the constructability of the design.

Developer shall work with the Owner's Director of Public Works, Owner's Director of Parks and Recreation, Owner's Project Manager and other users of the Project to meet design requirements and identify the areas within the facility design, which offer the greatest potential for the elimination of unnecessary costs. Owner's Standards shall not be eliminated as value engineering items.

- 2.5. As part of the Design Services, Developer will be required to provide Owner with a cost estimate as part of the Program Verification Phase—together with a written explanation for all variances between that budget estimate and Owner's approved Project construction budget. The cost estimate format shall be subject to Owner's approval and may require electronic submission of cost estimate information. If Developer's budget estimate or any other estimate prepared by or for Owner indicate that construction costs will exceed the GMP, Owner may elect to modify its budget and/or require Developer to revise the design elements to bring them within the GMP. Developer shall be solely responsible for all costs and expenses which it may incur in revising the design elements to bring them within the GMP. Notwithstanding anything contained herein to the contrary, in no event will Developer be obligated to commence construction of the Project unless and until all costs for the Design Services and Construction Services (together with the Design Fee and Developer's Fee) under the approved Construction Documents do not exceed the GMP and the Contract Time shall be extended accordingly, if necessary, with the parties having all rights as provided in Section 3.8 of the Agreement.

### 3. PHASE II - DESIGN DEVELOPMENT PHASE:

After Owner's review and written approval of the Phase I – Program Verification and issuance of Owner's written Notice to Proceed. Developer shall commence the Phase II – Design Development Phase services and perform the following:

- 3.1. Develop design documents to a level of definitiveness and detail to fix and describe the size and character of the various Project components and each Project discipline and system as may be appropriate for this stage of development, including long lead and special order materials and equipment, which will permit determination of whether the facility can be satisfactorily constructed in all task areas by all disciplines within the GMP.
- 3.2. Continue developing the architectural, structural, mechanical, electrical, security, and other discipline's responsibilities to establish the final scope and details for that discipline's work.
- 3.3. Perform materials research and prepare specifications specific to Project requirements in draft form.
- 3.4. Identify and properly coordinate the requirements of the various utility services that have an impact upon the Project Design. Drainage investigations and drainage designs shall be coordinated with storm water management district having jurisdiction on the site.
- 3.5. Continue to develop Project construction cost estimates and the overall Project schedule.
- 3.6. Generate alternative ideas through Value Engineering Workshops with the Owner to provide the identified primary function for the Project.
- 3.7. Evaluate alternative ideas in terms of their feasibility to construct, time and cost.
- 3.8. Develop selected alternative ideas in detail with emphasis on their technical durability, constructability and life cycle cost.
- 3.9. Developer's final Phase II – Design Development submittal and presentation shall include +/- 75% design documents.
- 3.10. Developer shall prepare and submit with Phase II – Design Development Documents a quality assurance/quality control (QA/QC) itemized checklist, conferring that the Phase II – Design Development Documents submittal is in compliance with the Owner's program submission requirements and that all project design disciplines have been coordinated. 3.11. Developer shall conduct a pre-submittal document review meeting with the Owner's

Project Manager prior to submission of the Phase II - Design Development Documents. Developer, may be required, to conduct at least one presentation at completion of this Phase II to demonstrate how Owner's previously submitted comments were incorporated into the design documents.

- 3.11. All Phase II - Design Development Documents prepared by or for Developer are subject to Owner's review and approval. At completion of the Design Development Phase, Developer shall submit the Phase II - Design Development Documents to the Project Manager for review and comment. Developer shall respond in writing to the review comments within 7 days of receipt. Responses shall be forwarded directly to the Owner's Project Manager. Developer shall revise the Phase II - Design Development Documents as required by Owner's Project Manager in order to obtain Owner's written approval and authorization to proceed to the Phase III- Construction Documents Phase; provided, however, in no event will Developer be required to incorporate Owner's comments into the Project if to do so would result in the GMP being exceeded, with the parties having all rights as provided in Section 3.8 of the Agreement.
- 3.12. As part of the Design Services, Developer will be required to further develop and update the budget estimate it initially prepared as part of its Program Verification Phase services and bring to Owner's attention in writing any variances between that updated budget estimate and the GMP. If Developer's updated budget estimate or any other estimate prepared by or for Owner based upon the Design Development Documents indicate that construction costs will exceed the GMP, Owner may elect to modify its budget and/or require Developer to revise the Design Development Documents to bring them within Owner's approved Project construction budget. Developer shall be solely responsible for all costs and expenses which it may incur in revising the Design Development documents to bring them within Owner's approved Project construction budget. Notwithstanding anything contained herein to the contrary and any rights of Owner to review and request changes to the Design Development Documents, in no event will Developer be obligated to commence construction of the Project unless and until the costs for the Design Services and Construction Services (together with, the Design Fee and Developer's Fee) under the approved Construction Documents do not exceed the GMP, in Developer's sole discretion, and the Contract time shall be extended accordingly, if necessary, with the parties having all rights as provided in Section 3.8 of the Agreement.

#### 4. PHASE III – CONSTRUCTION DOCUMENTS PHASE:

After Owner's review of the Phase II – Design Development Documents and issuance of Owner's written authorization to proceed, Developer shall commence the Phase III - Construction Documents Phase services and perform the following:

- 4.1. Prepare final calculations, Construction Documents setting forth in detail each discipline's requirements into a cohesive whole based upon the approved Phase II – Design Development Documents and consult with Owner.
- 4.2. Prepare final quality assurance/quality control (QA/QC) itemized checklist, confirming that the Phase III – Construction Documents submission is in compliance with the Owner's program submission requirements and that all project design disciplines have been coordinated.
- 4.3. Complete the Project manual in accordance with Owner's Construction Standards and Specifications.
- 4.4. Review and advise Owner regarding final Project schedule and GMP.
- 4.5. Prepare and file all applications, data and documents required to obtain the approval of all authorities having permit jurisdiction over the Project. Developer shall advise Owner and schedule the necessary contacts and liaison with all authorities having permit jurisdiction over the Project, and shall furnish, on a timely basis, such plans, data and information as may be necessary to secure approval of the required permits. Developer shall, at no additional cost to Owner, make all reasonable and necessary construction plan revisions required to obtain the necessary permit approvals for construction of the Project.
- 4.6. As part of the Design Services, Developer will be required to further develop and update its budget estimate as part of the Phase III – Construction Documents, and notify Owner in writing of any variances between that updated budget estimate and the GMP. If Developer's updated budget estimate or any other estimate prepared by or for Owner based upon the Phase III – Construction Documents indicate that construction costs will exceed the GMP, Owner may elect to modify its budget and/or require Developer to revise the Construction Documents to bring them within Owner's approved Project construction budget. Developer shall be solely responsible for all costs and expenses which it may incur in revising the Construction Documents to bring them within Owner's approved Project construction budget. Notwithstanding anything contained herein to the contrary, and any rights of Owner to review and request changes to the Construction Documents, in no event will Developer be obligated to commence construction of the Project unless and until the costs for the Design Services and Construction Services

(together with the Design Fee and Developer's Fee) under the approved Construction Documents do not exceed the GMP, and the Contract Time shall be extended accordingly, if necessary, with the parties having all rights as provided in Section 3.8 of the Agreement.

- 4.7. All Phase III - Construction Documents prepared by or for Developer are subject to Owner's review and approval. At completion of the Construction Documents Phase, Developer shall submit the Phase III - Construction Documents to the Project Manager for review and comment. Developer shall respond in writing to the review comments within 14 days of receipt. Responses shall be forwarded directly to the Owner's Project Manager. Developer shall revise the Phase III-Construction Documents as required by Owner to obtain Owner's written approval of such documents. Notwithstanding anything contained herein to the contrary, and any rights of Owner to review and request changes to the Construction Documents, in no event will Developer be obligated to commence construction of the Project unless and until the costs for Design Services and Construction Services (together with the Design Fee and Developer's Fee) under the approved Construction Documents do not exceed the GMP, and the Contract Time shall be extended accordingly, if necessary, with the parties having all rights as provided in Section 3.8 of the Agreement.
- 4.8. As used herein, the term "Construction Documents" refers to all documents to be prepared by and for Developer pursuant to this Agreement with respect to the construction of the Project, including, but not limited to, all drawings, specifications, bid documents, Project Manual, contract conditions, and Addenda.

#### 5. PHASE IV - BUILDING PERMIT PHASE:

- 5.1. Developer is responsible for obtaining all necessary and required permits for the Project.
- 5.2. As part of the Building Permit application package, the Developer shall provide the applicable Building Permit office with the number of complete sets of signed and sealed Construction Documents and all other bidding documents prepared by the Developer as indicated in the Deliverable Schedule set forth in the Guidelines. Each of the drawings and the cover sheet of the Project Manual shall be signed, sealed, and dated by the Developer per Florida Statutes.
- 5.3. As part of the Building Permit application process, the Building Official shall review and provide comments to the Developer on the submitted Construction Documents. Developer shall revise the Construction Documents by incorporating necessary revisions to address mandatory

inclusions made by the Building Official. The revised final Construction Documents shall be signed and sealed by the Developer and re-submitted to Owner in the quantities indicated in the Deliverable Schedule. Once this revised set of Construction Documents is approved by Owner, it will be deemed to be the final approved set of Construction Documents upon which the construction of the Project is to be based.

## 6. SERVICES RELATING TO ALL PHASES:

- 6.1. Developer shall investigate and confirm in writing to Owner, to the best of Developer's knowledge, conformance of the Plans and Specifications with all applicable Building Code provisions together with local public and utility regulations.
- 6.2. Developer shall ensure compliance with USGBC Standards for sustainable buildings, but will not be certified as LEED.
- 6.3. Developer shall furnish check prints for every Project phase including ten (10) sets at the completion point of each phase. Developer shall furnish to Owner one (1) electronic set at the completion of each phase. The electronic set to be provided to Owner at 100% Construction Documents shall be fully conformed to incorporate all addenda issued prior to bidding.
- 6.4. At all phases of design, Developer's design documents must be consistent with Owner's Construction Standards and Specifications unless expressly authorized otherwise in writing by Owner.
- 6.5. Developer shall submit to Owner design notes and computations to document the design conclusions reached during the development of the Project design as requested by Owner.
  - 6.5.1. When the plans are submitted for final review, the design notes and computations corrected for any Owner comments shall be resubmitted. At the Project completion, a final set of the design notes and computations, properly certified by Developer, shall be submitted with the record set of plans and tracings.
  - 6.5.2. The design notes and calculations shall include, but not be limited to, the following data:
    - 6.5.2.1 Design criteria used for the Project;
    - 6.5.2.2 Structural calculations;
    - 6.5.2.3 Drainage calculations;

- 6.5.2.4 Calculations as required by provisions of the Florida Energy Conservation Manual (Department of General Services), latest revision;
  - 6.5.2.5 Calculations showing probable cost comparisons of various alternatives considered;
  - 6.5.2.6 Documentation of decisions reached resulting from meetings, telephone conversations or site visits; and
  - 6.5.2.7 Other Project related correspondence as appropriate.
- 6.6. All drawing documents for the Project shall be accurate, legible, complete in design and drawn to scales acceptable to Owner. The completed drawing documents shall be furnished on reproducible material and in a size and format which is reasonably acceptable to Owner.
- 6.7. Owner in no way obligates itself to check Developer's work, and further, is not responsible for maintaining the Design Schedule, except with respect to providing timely responses and/or approvals as provided in the Contract Documents.
- 6.8. Owner's approval or acceptance of any service in any phase does not relieve Developer of any of its duties, obligations or responsibilities under this Agreement.
- 6.9. All design services performed by Developer and any documents prepared by Developer and submitted to Owner shall meet Section 255.2575, Florida Statutes on energy-efficient and sustainable buildings.
- 6.10. Developer acknowledges that Owner may establish construction budgets for any particular portions of the Project, which budgets may be subject to adjustments, as mutually approved by Owner and Developer in writing.
- 6.11. Developer represents to Owner that it has expertise, or has engaged professional firms who have expertise, in the type of professional architectural and/or engineering services that will be required for the Project. Drawings shall be prepared in electronic format acceptable to the Owner and the Project Manual shall be prepared as an electronic Microsoft Word document per Owner's standards. By execution of this Agreement, Developer acknowledges it has received the most recent version of the Owner's Standards & Specifications as of the date of this Agreement and will follow, observe and design in accordance with the standards, requirements and conventions set forth therein. Developer agrees that all Work to be provided by Developer pursuant to this Agreement shall be subject to Owner's reasonable review and approval and shall be in accordance with all applicable published laws, statutes, ordinances, codes

(including City's ULDR), rules, regulations (including utility regulations), local and state fire marshal requirements and the Florida Building Code, as well as the requirements of any governmental agencies which regulate or have jurisdiction over the Project or the Work to be provided and performed by Developer hereunder. In the event of any conflicts in these requirements, Developer shall promptly notify Owner of such conflict in writing and utilize its best professional judgment to resolve the conflict. Owner's approval of the design documents in no way relieves Developer of its obligation to deliver complete and accurate documents necessary for successful construction of the Project.



**The City of Fort Lauderdale, Florida**  
**Exhibit E**  
**Scope of Construction Services**

PHASE V - Construction Services

Developer shall provide the following services in addition to all other Construction Services required by the terms of this Contract:

- 1.1 Prepare a list of required submittals for shop drawings, product data, samples, warranties, and other submittals required by Contract Documents, in tabular form which will indicate specification section number and section name per Project Manual Table of Contents.
- 1.2 Process, review, respond and distribute shop drawings, product data, samples, substitutions and other submittals required by the Construction Documents within ten (10) Business Days of receipt.
- 1.3. Maintenance of a master file of all submittals, including submittal register, made to Developer, with duplicates for Owner. Owner's copy shall be in electronic/CD format and submitted at time of Substantial Completion.
- 1.4 Prepare, reproduce and distribute supplemental drawings, specifications and interpretations in response to requests for clarification by Owner as required by construction exigencies. Developer's response to any such request must be received by Owner within ten (10) Business Days. Developer will review and respond to all submittals, including but not limited to shop drawings, within a reasonable period of time so as not to delay the progress of the Work, but in no event, more than ten (10) Business Days, unless Owner expressly agrees otherwise in writing.
- 1.5. Developer shall submit to the applicable Building Permit office the number of sets of drawings and/or documents reflecting the approved changes in the Work as may be required by that office. Code compliance issues must be approved by the applicable Building Permit office prior to inspection of the subject Work.
- 1.6. Developer shall arrange for all Project Site facilities as required by Owner and necessary to enable Developer to perform its respective duties and to accommodate any representatives of Owner which Owner may choose to have present on the job, the description of such facilities to be included in the GMP.
  - 1.6.1. Tangible personal property, otherwise referred to as Project Site facilities, include, but are not limited to such things as trailers, toilets, typewriters, computers and any other equipment necessary to carry on the Work.

- 1.7. Developer's administration of the Work shall include the following:
  - 1.7.1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
  - 1.7.2. Maintain a roster of companies on the Project with names and telephone numbers of key personnel.
  - 1.7.3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
  - 1.7.4. Provide labor relations management for a harmonious, productive Project.
- 1.8. Developer also shall provide job site administration functions during construction to assure proper documentation, including but not limited to the following:
  - 1.8.1. Job Meetings: Developer shall attend meetings such as pre-construction conferences, progress meetings, job conferences, pre-closeout meetings, and other Project-related meetings, as may be directed by Owner. Developer's Architect is also required to attend any such meetings. Developer shall provide meeting minutes for these meetings. Conduct a preconstruction conference with each subcontractor after award of the subcontract and prior to the start of its portion of the Work. Hold weekly progress and coordination meetings, or more frequently if required by Work progress, to provide for the timely completion of the Work. In addition, Developer shall arrange and conduct regular Project status meetings with Owner at intervals to be determined by the Owner.
  - 1.8.2. Developer shall use the job site meetings as a tool for the preplanning of Work and enforcing schedules, and for establishing procedures, responsibilities, and identification of authority for all parties to clearly understand. During these meetings, Developer shall identify the party or parties responsible for following up on any problems, delay items or questions, and Developer shall note the action to be taken by such party or parties. Developer shall revisit each pending item at each subsequent meeting until resolution is achieved. Developer shall attempt to obtain from all present any problems or delaying event known to them for appropriate attention and resolution.
  - 1.8.3. Shop Drawing Submittals/Approvals: Provide staff to review and approve shop drawings and other submittals and to implement procedures for transmittal to Developer of such submittals for

action, and closely monitor their review process. Owner reserves the right to review the shop drawings and other submittals and require approval on such shop drawings and other submittals; with any review and approval by Owner being within ten (10) Business Days after receipt.

- 1.8.4. 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.
- 1.8.5. Payments to Subcontractors: Develop and implement a procedure for the review, processing and payment of applications by subcontractors for progress and final payments.
- 1.8.6. Document Interpretation: Respond to all questions for interpretation of the Contract Documents made by subcontractors.
- 1.8.7. Reports and Project Site Documents: Record the progress of the Work. Submit written progress reports to Owner, including information on subcontractors' Work, and the percentage of completion. Keep a daily log available to Owner and any permitting authority inspectors.
- 1.8.8. Subcontractors Progress: Prepare periodic punch lists for subcontractors' work including unsatisfactory or incomplete items and schedules for their completion.
- 1.8.9. Substantial Completion: Notify Owner in writing when the Work or designated portions thereof are ready for the Substantial Completion inspections. From the Punch Lists of incomplete or unsatisfactory items prepared by Developer and reviewed and supplemented by Owner, prepare a schedule for their completion indicating completion dates for Owner's review.
- 1.8.10. Final Completion: Monitor the subcontractors' performance on the completion of the Work and provide notice to Owner when the Work is ready for final inspection. Secure, review and certify compliance with the Contract Documents, then transmit to Owner all required guarantees, warranties, affidavits, releases, bonds, waivers, manuals, record drawings, and maintenance books.
- 1.8.11. 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.

1.8.12. Record Drawings: Developer shall monitor the progress of its own forces and its subcontractors on marked up field prints which shall be developed by Developer into the final record drawings.

1.9. Developer shall maintain at the Developer's office or field office, originals or copies of, and on electronic file copy of, on a current basis, all Project files and records, including, but not limited to, the following administrative records:

- 1.9.1. Subcontracts and Purchase Orders
- 1.9.2. Shop Drawing Submittal/Approval Logs
- 1.9.3. Equipment Purchase/Delivery Logs
- 1.9.4. Contract Drawings and Specifications with Addenda
- 1.9.5. Warranties and Guarantees
- 1.9.6. Cost Accounting Records
- 1.9.7. Labor Costs
- 1.9.8. Material Costs
- 1.9.9. Equipment Costs
- 1.9.10. Cost Proposal Request
- 1.9.11. Payment Request Records
- 1.9.12. Meeting Minutes
- 1.9.13. Cost-Estimates
- 1.9.14. Intentionally Omitted
- 1.9.15. Lab Test Reports
- 1.9.16. Insurance Certificates and Bonds
- 1.9.17. Contract Changes
- 1.9.18. Permits
- 1.9.19. Material Purchase Delivery Logs
- 1.9.20. Technical Standards
- 1.9.21. Design Handbooks
- 1.9.22. "As-Built" Marked Prints
- 1.9.23. Operating & Maintenance Instruction
- 1.9.24. Daily Progress Reports
- 1.9.25. Monthly Progress Reports
- 1.9.26. Correspondence Files
- 1.9.27. Transmittal Records
- 1.9.28. Inspection Reports
- 1.9.29. Bid/Award Information
- 1.9.30. Bid Analysis and Negotiations
- 1.9.31. Punch Lists
- 1.9.32. Intentionally Omitted
- 1.9.33. Intentionally Omitted
- 1.9.34. Subcontractor licenses

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

- 1.10. Developer shall provide the following services with respect to the Work, to facilitate the smooth, successful and timely occupancy of the Project by Owner:

1.10.1. Developer 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 Developer's coordination of the delivery of Owner supplied furniture, fixtures and equipment for the Project prior to Substantial Completion.

1.10.2. Developer shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to Owner in such a manner as to promote their usability. Developer 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 may be videotaped by Owner for subsequent presentation to Owner's operations and maintenance personnel.

1.10.3. Developer shall secure required guarantees and warranties, and shall assemble and deliver same to Owner in the manner required by Owner

- 1.11 Developer will revise the final approved Construction Documents to incorporate all "As-Built" information contained in the Developer's marked-up "As-Built" drawings and specifications, as well as to reflect all addenda, contract changes and field changes (sometimes referred to herein as the "Record Documents"). Developer shall provide Owner with one (1) electronic copy on compact disk (CD) of the Record Documents, two sets of the conformed, signed and sealed drawings and prints, and two sets of the conformed Project Manual/Specifications.

1.11.1 The electronic copy on CD of the Record Documents shall be provided in "pdf" or "dwg" format.

1.11.2 Throughout the Construction Phase, Developer shall mark-up "As-Built" drawings and Project Manual/Specifications, on a regular basis to reflect all "As-Built" conditions at the Site, maintaining such "As-Built" drawings and specifications is a condition precedent to Developer's entitlement to payment hereunder.

- 1.12 Developer, upon final acceptance of the Project, shall issue and sign the Certificate of Final Inspection in a form approved by the Owner.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**The City of Fort Lauderdale, Florida  
Exhibit F  
Form of Payment Bond  
[INSERT CITY STANDARD BOND FORM]**

**The City of Fort Lauderdale, Florida**  
**Exhibit G**  
**Form of Performance Bond**  
**[INSERT CITY STANDARD BOND FORM]**



## Release and Affidavit

1. In accordance with the Contract Documents and in consideration of \$\_\_\_\_\_ paid, \_\_\_\_\_ ("Developer") releases and waives for itself and its subcontractors, materialmen, successors and assigns, all claims demands, damages, costs and expenses, whether in contract or in tort, against The City of Fort Lauderdale, Florida, a body corporate existing under the laws of the State of Florida ("Owner") relating in any way to the performance of the Agreement between Developer and Owner, dated \_\_\_\_\_, 201\_\_, for the period from \_\_\_\_\_ to \_\_\_\_\_.
2. Developer certifies for itself and its subcontractors, materialmen, successors and assigns, that all charges for labor, materials, supplies, lands, licenses and other expenses for which Owner might be sued or for which a lien or a demand against any payment bond might be filed, have been fully satisfied and paid, except as otherwise noted herein.
3. Developer agrees to indemnify, defend and save harmless Owner from all demands or suits, actions, claims of liens or other charges filed or asserted against Owner arising out of the performance by Developer of the Work covered by this Release and Affidavit; provided, however, that Owner has timely and fully satisfied all of its payment obligations under the Contract Documents.
4. Except as otherwise provided herein, Developer certifies that it has paid all its subcontractors and materialmen in full all amounts owed them from any previous payments received by Developer from Owner and has not withheld any such amounts.
5. This Release and Affidavit is given in connection with Developer's [monthly/final] Application for Payment No.\_\_\_\_\_.

**Developer:**

Witnesses:

\_\_\_\_\_

\_\_\_\_\_

By:\_\_\_\_\_

Its:\_\_\_\_\_

Date:\_\_\_\_\_

[Corporate Seal]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/She is personally known to me or has produced a \_\_\_\_\_ (state) driver's license no. \_\_\_\_\_ as identification.

My Commission Expires:

\_\_\_\_\_  
Notary Public (Signature)

(AFFIX NOTARY SEAL)

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

\_\_\_\_\_  
(Title or Rank)

\_\_\_\_\_  
(Serial Number, if any)