

CONSTRUCTION MANAGER-AT-RISK CONTRACT

This Agreement made and entered into this _____ day of _____, 2017 between the City of Fort Lauderdale, a Florida municipal corporation (“City”), and Skanska USA Building Inc., a Delaware Corporation (“Construction Manager”), authorized to do business in the state of Florida, whose offices are located at 330 S.W. 2nd Street, Fort Lauderdale, Florida 33312.

WHEREAS, the City desires to retain a construction manager for the Project as expressed in its RFQ #255-11497, dated December 11, 2014; and,

WHEREAS, the City Commission approved the final ranking and authorized negotiations with the Construction Manager on May 5, 2015 (CAM #15-0458); and

WHEREAS, the Construction Manager has expressed its willingness and capability to perform the necessary work to accomplish the Project.

NOW, THEREFORE, the City and the Construction Manager, in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE 1 - PROJECT TEAM AND EXTENT OF AGREEMENT

The Construction Manager accepts the relationship of trust and confidence established between itself and the City by this Agreement. The Construction Manager covenants with the City to furnish the skill and judgment reflected in its RFQ proposal submission and to cooperate with the Architect-Engineer in furthering the interests of the City. The Construction Manager agrees to furnish efficient business administration and superintendence and shall use its best efforts to complete the Project in compliance with the Contract Documents and in the most expeditious and economical manner consistent with the interest of the City and in full accordance with applicable laws.

Construction Manager understands and agrees that a material inducement for the City entering into this Agreement, following a competitive award process authorized under Florida law, was Construction Manager’s representations about its expertise in the scheduling, sequencing and construction of the Las Olas Corridor Improvement Project, which is a two phased project including a parking garage, the Oceanside Plaza, Las Olas Boulevard Streetscape, the Intracoastal Promenade and the Intracoastal Park, as well as its superior familiarity with the unique local conditions and geography of the City of Fort Lauderdale, Florida, and the jobsite areas. Construction Manager understands that time is of the essence in connection with the performance of the Work set forth in this Agreement, and that even a minor breach of its terms may have a substantial, adverse impact upon the City, adjacent merchants, and the seasonal nature of City of Fort Lauderdale’s economy, including the lifestyles of its residents and visitors. Accordingly, Construction Manager hereby affirms that the foregoing is true and correct, and that all anticipated costs to achieve the schedule and design intent have been included in the Guaranteed Maximum Price (“GMP”) for the Project.

1.1 **The Project Team.** The Project Team shall work jointly during design and through Final Acceptance and shall be available thereafter should additional services be required. The Architect-Engineer will provide leadership on all matters relating to design of the Project, with support from the Construction Manager, and the Construction Manager shall provide leadership to the Project Team on all matters relating to construction.

1.2 **Intent.** The intent of the Contract Documents is to require all items and services necessary for the proper execution and completion of the Work, as necessary to provide the City with a fully functional and functioning Project within the scope and intent of the Contract Documents and within the Guaranteed Maximum Price and the Project Schedule, including any and all such necessary items and services consistent with, contemplated by, and reasonably inferable from the Contract Documents, whether or not such items and services are specifically mentioned therein. The City and the Construction Manager have negotiated a Pre-Construction Phase Fee for the Pre-Construction Phase Services for the Project, as well as additional terms and conditions relating to the Project. The City may at a later date issue one or more Notices to Proceed for the Construction Phase for the Project to be covered under the scope of this Agreement, if the City Commission, at its sole and absolute discretion, accepts the Construction Manager's proposed GMP. The GMP shall set forth the General Conditions Fee and the Construction Overhead and Profit Fee, as well as any other terms and conditions specific to the Project. The Construction Manager shall not commence any Work until authorized in writing by the City. City shall have no duties other than those duties and obligations expressly set forth within the Contract Documents. The Construction Manager shall be responsible for the performance of all duties called for by this Agreement with regard to the Project. The services under this Agreement shall be completed when the Construction Manager fully and completely satisfies the requirements of the Contract Documents.

1.3 **Extent of Agreement.** This Contract Documents which comprise the entire Agreement between the City and the Construction Manager supersede any prior negotiations, representations or agreements and consist of the following:

This Agreement.

General Conditions, Exhibit 1.

All other exhibits to this Agreement.

Public Construction Bond, Performance Bond, Payment Bond and Certificates of Insurance.

Notice of Award and Notice to Proceed.

Technical Specifications.

Plans/Drawings.

Addenda (if applicable), inclusive.

Bid Form and supplement Affidavits and Agreements.

All applicable provisions of State and Federal Law.

RFQ #255-11497, Instructions to Bidders, and Bid Bond.

Construction Manager's response to the City's RFQ #255-11497.

Schedule of Completion and Schedule of Values.

All amendments, modifications, and supplements, change orders and work directive changes issued on or after the Effective Date of the Agreement.

Any additional documents that are required to be submitted under the Agreement.

Permits on file with the City and/or those permits to be obtained shall be considered directive in nature and will be considered a part of this Agreement. A copy of all permits shall be given to the City for inclusion in the Contract Documents. Terms of permits shall be met prior to acceptance of the Work and release of the final payment.

In the event of any conflict between the documents or any ambiguity or missing specification or instruction, the following priority is established:

- a. Specific direction from the City Manager (or designee).
- b. Change Orders and other Contract Modifications to this Agreement (excluding the construction documents).
- c. Specifications as to quality and drawings as to location and quantity.
- d. Supplemental conditions or special terms.
- e. General Terms and Conditions (Exhibit 1 to this Agreement).
- f. This Agreement and any attachments.
- g. The completed construction documents, as approved in writing by the City.
- h. RFQ #255-11497 and the specifications prepared by the City.
- i. Construction Manager's response to the City's RFQ #255-11497.
- j. Schedule of Values.
- k. Schedule of Completion.

Contract Documents shall be construed in a harmonious manner, whenever possible. The general intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Project by the Construction Manager.

The Contract Documents shall be taken as a whole and are complementary, and any item of Work called for in any Contract Document shall be as binding as if called for by all, so that any part of the Work shown or described in any of the Contract Documents, though not specifically referred to in other Contract Documents, shall be executed by Construction Manager and binding as a part of the Contract Documents, as well as any Work which, in the opinion of City, may be fairly inferred from the Contract Documents or by normal industry practice.

Detailed plans shall take precedence over general plans for the same part of the Work. Specifications and detail plans which may be prepared or approved by City after the execution of the Agreement and which may be fairly inferred from the original specifications and plans are to be deemed a part of such specifications and plans, and that portion of the Work shown thereby shall be performed without any change in the Contract Price or Project Schedule. With respect to conflicts between large-scale drawings and small-scale drawings, the larger scale drawing shall govern.

Where compliance with two or more requirements is indicated in any of the enumerated Contract Documents and where these requirements within the Contract Documents conflict in quantity or quality, the Construction Manager shall comply with the most stringent requirement as determined by the City, unless specifically indicated otherwise in the Contract Documents.

Whenever it shall be provided in this Agreement that the Construction Manager is required to perform a service or obligation “at its sole cost and expense” or words of substantially similar meaning, the Construction Manager shall not be entitled to reimbursement for such item and the cost of such service or obligation shall not be included in the cost of the project or as part of the Construction Manager’s fees.

1.4 **Independent Contractor.** Construction Manager is an independent contractor and is not an agent or employee of City or Agent in performing the Work. Except as otherwise provided herein, Construction Manager shall maintain complete control over its own employees, agents, and operations and those of its subcontractors, vendors and their respective employees and agents. Construction Manager hereby accepts complete responsibility as a principal for its agents, subcontractors, vendors, suppliers, their respective employees, agents and persons acting for or on their behalf, and all others it hires to perform or assist in performing the Work.

ARTICLE 2 – DEFINITIONS

2.1 “Applicable Laws” means all laws, statutes, ordinances, codes, building codes, regulations, rules, orders and resolutions of all national, administrative, state, local, municipal, and other governing bodies relating to the Project or to the performance of the Services or the Work.

2.2 “Architect” means EDSA, INC. and any successor architect firm that may be retained in connection with the Project.

2.3 “Base GM” means that portion of the GMP reflecting (a) the cost of the Project, and (b) the Construction Manager’s Fee.

2.4 “Change Order” means a written order to Construction Manager executed by the City in accordance with the contract authorizing and directing an addition to, deletion from, or adjustment or revision to the requirements of the Contract Documents, or an adjustment to the compensation payable to Construction Manager, or to the time for performance of the contract and completion of the Project, or any combination thereof.

2.5 “Constructability” means the creative, organized process of analyzing the Construction Documents minimizing design, detailing, and specifications problems which might render the Construction Documents unbuildable or require changes to the Work to make them buildable.

2.6 “Construction Documents” means all technical drawings and other documents issued by the Architect-Engineer identifying, among other things, the design, location and dimensions of the Work and which set forth in detail the requirements for the construction of the Project, and generally including plans, elevations, sections, details, schedules, diagrams, Shop Drawings, and the specifications with the written requirements for materials, equipment, systems, standards and workmanship for the Work.

2.7 “Construction Manager” means Skanska USA Building Inc., and its successors and assigns, and is the firm that shall provide comprehensive construction management services for the Project pursuant to the Contract Documents, including, preparation of cost estimates, Constructability reviews, Value Engineering and assistance with systems life cycle cost analysis, estimating, scheduling, bidding and submission of a GMP, as defined below, for construction, and construction management. Upon execution of the GMP Amendment or earlier with respect to any construction Work awarded prior to the establishment thereof, the Construction Manager shall serve as, from that point forward, and conclusively shall be deemed to be, the General Contractor under the Contract Documents, and shall construct the Project and be liable for the acceptable performance of the Work and payment of all debts pertaining to the Work.

2.8 “Construction Phase” means that period set forth in the Project Schedule beginning on the effective date as set forth in a Notice to Proceed directing the Construction Manager to proceed with the Construction Work and other activities necessary to complete the Project or specified portions thereof, and ending on the date of Final Completion of the Project. The Construction Phase may include the period required to complete the Construction Documents following the issuance of the Notice to Proceed, to the extent such documents remain incomplete.

2.9 “Construction Phase Services” means the services to be performed through the Construction Manager during the Construction Phase of the Project, including, the performance of all the Work required by this Contract Documents or reasonably inferable herein for the Construction Phase of the Project.

2.10 “Design for Construction” means the complete and final design and construction documents provided by Architect which shall include the plans, specifications, and all changes and modifications thereto, prepared by or on behalf of Architect for use in constructing the Project, performing the Work, and rendering the Project fully operational.

2.11 “Design Phase” means the phase of the Project commencing upon the Effect Date of the Agreement and ending upon completion of the Design for Construction for the Project.

2.12 “Design Phase Services” means all services required during the Design Phase of the Project.

2.13 “Final Completion” means satisfaction of all conditions set forth in GC 63, at which time all conditions and requirements of the Contract Documents, permits and regulatory agencies have been satisfied; any documents required by the Contract Documents have been received by

the City; any other documents required to be provided to City have been received by City; and the Work has been fully completed in accordance with the Contract Documents.

2.14 “GMP” or “Guaranteed Maximum Price” means the sum agreed to between the Construction Manager and the City and set forth in the GMP Amendment as the maximum total amount that the Construction Manager guarantees not to exceed for the completion of all Work required by or reasonably inferable from the Contract Documents, plus the Construction Manager’s Fee and General Conditions Fee, the Construction Manager’s Contingency, as such amount may be adjusted by Change Order or Construction Change Directive pursuant to the Contract Documents.

2.15 “GMP Amendment” means the GMP Proposal, as may be amended and accepted by the City, at its sole and absolute discretion, which amendment shall automatically become incorporated herein upon the City and the Construction Manager’s execution of same, and shall establish, among other things, the GMP, and the Contract Time for the completion of all Construction Phase Services.

2.16 “GMP Proposal” means a proposal for completing the Construction Phase Services, which will be submitted at a date specified by the City, based on the most currently available set of Construction Documents, and which shall include the Construction Manager’s proposed GMP for the construction of the Project in accordance with the Contract Documents. However, the City has no obligation to accept the GMP proposal.

2.17 “Notice to Proceed” means a written letter or directive issued by the Project Coordinator to Construction Manager to commence and proceed with portions of the Work as specified therein or a specific task of the Project, and stating any further limitations on the extent to which Construction Manager may commence and proceed with the Work. Unless otherwise approved by the City at its sole discretion, City’s issuance of a Notice to Proceed for the Construction Phase or portions thereof shall be contingent upon Construction Manager’s obtaining all appropriate permits and satisfying all requirements of agencies having jurisdiction.

2.18 “City’s Representative” means the individual named by the City, in writing and as such writing may be amended from time to time, to act on City’s behalf in the administration of this Agreement. City’s Representative does not have the authority to waive or modify any condition or term of the Contract Documents.

2.19 “Preliminary Design” means all design documents constituting the Preliminary Design as required and defined in the City’s contract with the Architect.

2.20 “Project” means the Las Olas Boulevard Corridor Improvement Project as specified in the RFQ #255-11497 dated December 11, 2014.

2.21 “Punch List” means the list or lists prepared by Construction Manager, the Architect-Engineer, Owner’s Representative, and the City, identifying matters that remain to be completed

between achievement of Substantial Completion and Final Completion in order that Final Completion can be declared by City to have occurred.

2.22 “Reimbursable Expenses” means those items, and only those items, set forth in this Agreement properly documented and reasonably, necessarily, and actually incurred in the performance of the Services and the Work.

2.23 “Schedule of Values” means a written schedule setting forth the detailed and itemized cost breakdown, inclusive of labor, materials and taxes of all elements comprising the GMP set forth in the GMP Amendment.

2.24 “Services” means those services, functions, roles, responsibilities, obligations and duties required of Construction Manager pursuant to the terms of the Contract Documents.

2.25 “Shop Drawings” means plans, drawings, prints, diagrams, illustrations, brochures, schedules and other data that are prepared by Construction Manager or any of its Subcontractors or Suppliers, and which illustrate how specific portions of the Work will be fabricated or installed.

2.26 “Subcontractor” means any person or entity with whom the Construction Manager contracts to perform any part of the Work or to supply materials in relation to the Work. In addition, the term Subcontractor shall apply to Subcontractors of any tier and suppliers and materialmen employed on or for the Project pursuant to a subcontract or other agreement with a Subcontractor or lower-tier Subcontractor.

2.27 “Substantial Completion” shall be deemed to have occurred when the Work, as certified in writing by the Architect-Engineer and determined by the City in its sole discretion, has been developed, designed, engineered and constructed in accordance with the Contract Documents such that all conditions of permits and regulatory agencies have been satisfied and the Project is ready for occupancy, utilization and continuous commercial operation for the uses and purposes intended by the City, without material interference from incomplete or improperly completed Work and with only Punch List items remaining to be completed, all as reasonably determined by the City and evidenced by the issuance of a certificate of occupancy or completion by the authority having jurisdiction, and a Certificate of Substantial Completion by the Architect-Engineer and acceptance of such certificate by the City.

2.28 “Value Engineering” means the detailed analysis of systems, equipment, materials, services, facilities and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions at the lowest cost consistent with required and necessary performance, reliability, quality and safety through the elimination or modification of those features which add cost without contributing to the facility’s required function or design value.

ARTICLE 3 – CONSTRUCTION MANAGER’S BASIC SERVICES

3.1 The Construction Manager’s services shall be those necessary and appropriate to the successful completion of the Project in a timely and cost-effective manner and shall include, but are not limited to, those described or specified herein. The Construction Manager shall provide all requested services according to the capabilities reflected in its RFQ Proposal Submission. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned. Unless otherwise provided in this Agreement, or as agreed in writing between City and Construction Manager, the form and content of all systems, reports, forms and regular submittals by Construction Manager to City shall be subject to prior approval of the City and Construction Manager shall submit such materials to City for City’s approval prior to implementation. City’s approval thereof shall not limit City’s right to thereafter require reasonable changes or additions to approved systems, reports, forms and regular submittals by Construction Manager to City. Except as to Shop Drawings and other design work performed by Construction Manager, its Subcontractors or agents pursuant to this Agreement, Construction Manager’s services hereunder are not intended to include the performance of design work and Construction Manager does not assume any responsibility for the design of any Work, except for Construction Manager-initiated design such as subcontracted Delegated Design Work.

ARTICLE 4 – ADDITIONAL SERVICES

4.1 Upon the mutual agreement of the City and the Construction Manager, and upon written authorization from the City, the Construction Manager shall provide additional services that are beyond the scope of the Basic Services described in Article 3 herein. The Construction Manager shall be compensated for such additional services by Change Order to be negotiated by the City and the Construction Manager at the time of the additional service request, as set forth in the General Conditions.

ARTICLE 5 – CITY’S RESPONSIBILITIES

5.1 The City will designate a representative to act in its behalf. This representative, or his/her designee will receive progress reports of the Work from the Construction Manager, serve as liaison with the Construction Manager and the Architect, receive and process communications and paperwork, and represent the City in the day-to-day conduct of the Project. The Construction Manager will be notified in writing of the representative and of his/her designee, or any changes thereto.

ARTICLE 6 - SCHEDULE

6.1 **Preconstruction Phase.** The Construction Manager shall complete the documents and things provided for in Article _____, within _____ (_____) days, and Guaranteed Maximum Price Proposal within _____ (____) days after the Architect/Engineer documents (at 90% completion) have been made available to the Construction Manager.

6.2 **Construction Phase.** The performance of the Work under the Construction Phase of this Contract shall be substantially completed by the Construction Manager on or before the date as later set forth in the GMP Amendment, time being of the essence in this Contract.

6.3 The Construction Manager agrees to complete the Work in accordance with the agreed upon substantial completion date, 667 days from the Notice to Proceed. The Construction Manager acknowledges that time is of the essence throughout this Contract, and that failure to complete the Project within the time set forth in the approved schedule will result in substantial damages to the City that are impossible to precisely ascertain. Upon failure of the Construction Manager to substantially complete the Project within the specified period of time, plus approved time extensions, Construction Manager shall pay to the City, as liquidated damages and not as a penalty, the sum of \$1,000 for each calendar day in excess of the established substantial contract completion date, plus approved time extensions. After achieving substantial completion, as more particularly addressed in GC 61 and its several subparts, should Construction Manager fail to complete the remaining Work within the time specified for final completion in Exhibit 1, plus approved time extensions, if any, and after providing Construction Manager with seven (7) days advance written notice, City shall have the right to complete the work through other means, and the costs therefore shall be set-off against retainage remaining in the contract balances, which, if insufficient, the balance shall be paid to City by Construction Manager, or its performance bond Surety.

6.4 The City may direct the Construction Manager to expedite the Work by whatever means the Construction Manager may use, including, without limitation, increasing staffing or working overtime to bring the Work back within the agreed construction schedule. If expediting the Work is required due to reasons within the control or responsibility of the Construction Manager, then the additional costs incurred shall be chargeable to the Cost of the Work as part of, and subject to the GMP. If the expediting of the Work is required due to reasons outside the control or responsibility of the Construction Manager, then in such event, the additional costs incurred shall be the subject of an appropriate adjustment by Change Order, as elsewhere provided for in the General Conditions.

6.5 The City shall have the right to occupy, or use, any portion of the Work prior to completion of the Project. If use or occupancy ahead of schedule affects the cost of the Project or the schedule for the Work, the Construction Manager shall so notify the City, in writing, and the use or occupancy will be treated as a Change to the Work in accordance with Article 9, herein.

ARTICLE 7 – GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

7.1 The initial schedule prepared by the Construction Manager for the Project shall reflect and track the design progress through the completion of the presentation of the GMP Proposal for the construction of the Project and completion of Construction Documents. The Construction Manager shall propose for the Project, the amount to be included in the GMP for the Construction Manager's general conditions costs and Construction Manager's Contingency identified in Subsection 7.4.1. The City shall have the option of accepting or rejecting the GMP

Proposal as presented by the Construction Manager. Should the City Commission accept the GMP Proposal, a GMP Amendment reflecting that authorization shall be issued. Once accepted by City, any mistakes by Construction Manager in estimating costs or Work in its preparation of a GMP shall not serve as the basis for a Claim by Construction Manager or upward adjustment to the GMP.

7.2 Upon acceptance of a GMP Proposal and execution of the GMP Amendment, the GMP for the Project will be fixed and firm for the duration of the Work and shall include the maximum compensation payable to Construction Manager for all costs, expenses, taxes, overhead and profit for the full and complete performance of all Work required by or reasonably inferable from the Contract Documents. The GMP is not subject to price escalation or de-escalation and is not subject to increase or decrease, except for changes in the Work or adjustments as approved by Change Order and in accordance with the Contract Documents. The GMP shall be construed at any given point in time to include any fixed firm adjustments thereto made by Change Order in accordance with the Contract Documents. In the event the Construction Manager's total expenditures for the Project exceed the Guaranteed Maximum Price as may be adjusted pursuant to the Contract Documents, the Construction Manager shall pay such excess from its own funds without any reimbursement by the City. City shall not be required to pay any amount that exceeds the Guaranteed Maximum Price as may be adjusted pursuant to the Contract Documents, and the Construction Manager shall have no Claim against the City on account thereof.

7.3 In addition to the base GMP, a GMP for the Project will include an agreed upon sum as the Construction Manager's Contingency relating to construction of the Project. Use of the Construction Manager Contingency shall be as provided in Section 7.3.1. Use of the City Contingency shall be requested through the Change Order process and must be approved in writing by the City prior to the prosecution of the related Work.

7.3.1 **Construction Manager's Contingency.** The Construction Manager's Contingency shall be for the Construction Manager's use against risks assumed by Construction Manager, in providing the GMP with uncertainties that are beyond the control of the Construction Manager, including the reasonable and necessary costs incurred by the Construction Manager due to (1) costs of the Project that were not specifically foreseeable or quantifiable as part of the GMP Amendment or unforeseen circumstances relating to construction of the Work not directly or indirectly attributable to Construction Manager's (or its Subcontractors or Suppliers) noncompliance with the Contract Documents, and which result in unavoidable increases in the Cost of the Project; (2) increased costs/escalation resulting from the Subcontractor and Supplier bidding process due to changed market conditions, as measured against a relevant market index selected by the City; (3) increased Costs of the Project solely to the limited extent resulting from questions of conflicts, clarity or coordination of the Construction Documents, provided such coordination questions do not implicate matters covered by Construction Manager's warranty; (4) costs for implementing a hurricane preparedness plan and further provided that all such costs and expenses must be a Cost of the Project. If bids are received below the applicable line items in the GMP, the buyout savings or surplus will be added to the Construction Manager's Contingency. If bids are received above the applicable line item in the GMP, the deficiency will

be charged to the Construction Manager's Contingency, however such events shall not be a cause to increase the Base GMP.

- a. All payments hereunder shall be made in accordance with and subject to Article ____ of the Agreement. Upon making a draw against the Construction Manager's Contingency, the Construction Manager shall increase the relevant line items in the Schedule of Values by the amount of the draw, including any associated Construction Overhead and Profit Fee, and shall decrease the respective Construction Manager's Contingency line item accordingly. Construction Manager's draws made against the Construction Manager's Contingency shall be reported to the Project Coordinator on a monthly basis with all associated supporting documentation sufficient to evidence each draw against the Construction Manager's Contingency.
- b. The Project Coordinator and/or Architect-Engineer shall have the authority to verify all actual costs charged to the Construction Manager's Contingency. The City, through the Project Coordinator, may at any time dispute the legitimacy or reasonableness of any draws made or costs charged to the Construction Manager's Contingency, and the City may withhold such disputed amounts from any other amounts otherwise due the Construction Manager. Any dispute with regard to the legitimacy or reasonableness of such expenditures (or City's withholding thereof) may be the subject of a Claim.
- c. In no event shall the use of the Construction Manager's Contingency cause for the GMP to be exceeded, and the Construction Manager shall be solely responsible for all costs that exceed the GMP (as adjusted by Change Order or Construction Change Directive), without any reimbursement from the City. Construction Manager shall use all diligent, good-faith efforts to maximize cost savings and minimize use of the Construction Manager's Contingency.

7.4 The term "GMP," as used in this agreement is a term of convenience only and is not intended to affect how a GMP or its components are to be determined or adjusted.

7.5 By execution of this Contract, the Construction Manager certifies that all factual unit costs supporting the fees specified in this Contract are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished the Owner in the future to support any additional fees that may be authorized will also be accurate and complete.

ARTICLE 8 – CONSTRUCTION MANAGER'S FEE

8.1 In consideration of the performance of the services specified in this Agreement with respect to the Project on which the City will issue a Notice to Proceed, the City agrees to pay the Construction Manager as compensation for its services relating to the Project, fees as set forth below.

8.1.1 **Construction Phase General Conditions Fee.** Prior to commence of the Construction Phase of the Project, the City will issue a Notice to Proceed directing the Construction Manager to proceed with the Construction Phase. The Construction Manager's compensation for General Conditions Work or services performed during the Construction Phase shall be a fixed lump sum

amount, based on a detailed schedule of General Conditions costs and services that shall be provided by the Construction Manager. The General Conditions Fee shall be invoiced and paid in monthly payments as agreed by the Parties and set forth in the applicable GMP. The first monthly payment shall become due thirty (30) days following the issuance of the first Notice to Proceed by the City (and the submission by the Construction Manager of a complete and approved Application for Payment) and the final monthly payment shall be paid only when construction of the Project is finally completed and occupancy of the Project is accepted by the City. If construction is authorized for only a part of the Project, the fee paid shall be proportionate to the amount of Work authorized by the City.

8.1.1 **Adjustments in Fee.** For changes in the Project as provided herein, the General Conditions Fee for the Project shall be adjusted as follows:

- a. The Construction Manager shall be paid an additional fee subject to negotiation with the City if the Construction Manager is placed in charge of reconstruction of an uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager, its employees, agents, Subcontractors and others for whom Construction Manager may be responsible.
- b. Should the Contract Time set forth in the GMP Amendment be contractually extended for Excusable Delay or for additional Work due no fault of the Construction Manager or its Subcontractors, the Construction Manager's additional General Conditions fee will be negotiated and set forth in a Change Order, as an adjustment to the GMP on a per working day basis. The Construction Manager's staff during such time extensions shall be established and set forth in the Change Order.
- c. **Construction Manager's Exclusive Remedy.** In the event the date for Substantial Completion or Final Completion is extended for Excusable Delay, the Construction Manager's sole and exclusive remedy is an extension of the Contract Time for completion of the Work and payment of additional General Conditions fee as provided for herein.

8.1.2 **Costs and Expenses Included in General Conditions Fee.** The direct and indirect costs and expenses for facilities or performance of Work by the Construction Manager for items which do not end themselves readily to inclusion in one of the separate trade contracts and within this Subsection below, are included in the General Conditions Fee during the Construction Phase and not otherwise reimbursable:

- a. Onsite and Local Project Management Staff: Wages, salaries, benefits and costs associated with Construction Manager's supervisory and other technical, administrative and clerical Project personnel engaged in supervision and management of the work on the Project Site, at the agreed-upon billing rates to be established as part of the GMP Amendment, but only to the extent not already included as Cost of the Work under Article 9, and specifically attributable to the Work performed in connection with the Project, including the Project Manager, Construction Superintendent, structural superintendent, assistant superintendent, shop drawing checker, secretary, layout foreman, consultants, estimators, cost controllers, accountants, office administrative

personnel, time keepers, clerks, safety director, safety coordinator, safety labor, overall project schedule preparation, scheduler costs, cost of periodic site visits for supervisory, inspection, oversight, or management of the Project by specific "home office" personnel previously approved in writing by the City.

- b. Field/Onsite Construction Offices and Supplies including transportation and set-up of onsite construction office trailers, construction of ramps and stairs for onsite construction office, interior build-out of onsite construction office, onsite construction office trailer rental, first aid supplies, reproduction services, monthly office supplies, Project reference manuals, field office postage, field office furniture, onsite construction office computer system and software, installation and equipment of field computer ISDN line, monthly cost for field ISDN/computer line, onsite construction office photocopier rental and supplies, plan printing or document reproduction used for bidding of information purposes required by the Contract Documents, long-distance telephone calls, telegrams, postage, package delivery and courier service, hardwired telephone service, and reasonable expenses of Construction Manager's Jobsite office if incurred at the Project Site and directly and solely in support of the Work, Project Site photographs, field office express mail/courier charges, miscellaneous onsite construction office supplies, safety material and equipment, small tools, equipment or machinery, miscellaneous hand tool rental equipment (other than that of the subcontractors), hand tool purchase, hand tool repair, hand tool rental, job radios, jobsite cleaning labor and material, trash containers, final exterior and interior cleaning materials and labor other than subcontractors, miscellaneous cutting and patching, traffic control, off duty police officer(s), alarm system and monitoring for trailers;
- c. Surveys, measurements and layout work reasonably required to perform the Work;
- d. Retention/storage of Project Records;
- e. Off-site storage space or facilities approved in advance by the City;
- f. Miscellaneous expendable items, extended jobsite General Conditions (unless such extended jobsite General Conditions are compensable pursuant to Section _____, in which case Construction Manager shall be entitled to a Change Order for those costs), interest on monies retained by the City, escalated costs of materials and labor, home office expenses or any cost incurred that may be allocated from offices of the Construction Manager or any of its Subcontractors;
- g. Other expenses or charges properly incurred and paid in the prosecution of the work and services required of Construction Manager pursuant to this Agreement, with the prior written approval of the city, for the provision of management and other related services necessary to complete the Project in an expeditious and economical manner consistent with this Agreement and in the best interests of the City, but specifically excluding legal costs, attorney's fees, court costs and any other fees, costs or expenses already included as a Cost of the Work in Article 9; and
- h. Other costs as may be specified in the GMP Amendment.

Construction Manager agrees that no payment or reimbursement beyond the General Conditions Fee shall be made for any of the general conditions items set forth in this section, unless such general conditions costs and expenses are actually incurred and arise from Changes in the Work approved by the City. Construction Manager covenants and agrees that it shall not seek, nor is it

entitled to, reimbursements or payments as part of the General Conditions Fee, for any items it has already included as a Cost of the Work in Section 9.

ARTICLE 9 – COST OF THE WORK

9.1 With respect to this Project, the City agrees to pay the Construction Manager for the Cost of the Project as defined in this Article 9. Such payment shall be in addition to the Construction Manager's fees stipulated in Article 8.

9.2 **Direct Cost Items.** The Cost of the Work shall include the following items for equipment, materials, labor, taxes and Subcontractors to complete the Work:

9.2.1 Wages paid for labor of construction workers directly employed by the Construction Manager to perform the construction of the Work at the Project Site or, with the Project Coordinator's advance written approval, at off-site workshops;

9.2.3 Wages paid for labor of supervisory or administrative personnel not included in the Construction Manager's fees stipulated in Article 8, but who are in the direct employ of the Construction Manager in the performance of the construction Work at the Project Site, provided Construction Manager has obtained the advance written approval of the Project Coordinator for such personnel;

9.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or 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 (excluding bonuses), provided such costs are based on wages and salaries included in the Cost of the Work under Subsections 9.2.1 through 9.2.3;

9.2.5 Temporary Project utilities including the portion of temporary electric hookup not typically paid by the electrical subcontractor, temporary electrical distribution and meters, monthly temporary electric charge by Florida Power & Light, HVAC testing electrical charges, temporary water connection not typically provided by the plumbing subcontractor, temporary water meter, temporary water deposit, fire hydrant service, temporary fire protection monthly temporary water service, temporary toilets, temporary construction phone hookup and installation, temporary construction phone monthly charges, construction phone long distance charges, cellular phones, site erosion control and Project entrance(s), fencing and covered walkways, storage containers, storage rental costs, temporary onsite roads, temporary onsite fencing, temporary onsite gates, street barricades, construction temporary signage, pedestrian walkway and street occupation fees for construction activities, temporary trash chute and dumpsters;

9.2.6 Cost of all materials, supplies and equipment incorporated in or to be incorporated in the completed construction of the Project; including costs of transportation and storage thereof, and

cost of materials in excess of those actually installed (but only to the limited extent to allow for reasonable waste and spoilage);

9.2.7 Payments due to Subcontractors and Suppliers from the Construction Manager or made by the Construction Manager to Subcontractors for their Work performed pursuant to subcontracts or agreements issued in accordance with the Contract Documents;

9.2.8 Costs, including transportation and storage, maintenance, installation, dismantling and removal of materials, supplies, of all temporary facilities, machinery, equipment, and hand tools (except hand tools customarily owned by construction workers) which are provided by the Construction Manager at the Project Site and are fully consumed in the performance of the Work. Cost of items previously used by the Construction Manager shall mean fair market value;

9.2.9 Rental charges for temporary facilities, machinery and equipment (except hand tools) used at the Project Site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Such rental charges shall include, but not be limited to, the Construction Manager cost of opening a new office specifically for the Project during the Pre-Construction Services Phase, prior to the establishment of an office at the Project Site, except as set forth in 9.3. Rental charges shall be consistent with those general prevailing in the location of the Project. The Construction Manager shall obtain bids for all temporary facilities, machinery and equipment to be rented from no less than three (3) responsible suppliers. If the cumulative total of rental charges in connection with any single item is in excess of sixty percent (60%) of its fair market value as of the date that such item is intended to be first put into service in connection with the Work, then such item shall be purchased instead of rented, and sold at the completion of the Work. All proceeds from such sales shall be credited to the City as a deduction from the Cost of the Project;

9.2.10 Rental rates and charges consistent with those prevailing in the area of the Project (Broward County, or, if such information on prevailing rates and charges is not available, South Florida) on all necessary machinery and equipment, exclusive of hand tools used at the Project Site, whether rented from the Construction Manager or other. Such rental charges include installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of a subcontractor of the Construction Manager's own forces in the performance of the Work. If the Parties fail to agree on the standard rates prevailing in the area of the Project, the standard rates shall be deemed to be the rates shown in the latest edition of the "AED Green Book" prepared by EquipmentWatch, San Jose, CA, or, if not shown in AED, the rates shown in the latest edition of "Rental Rate Blue Book for Construction Equipment," published by EquipmentWatch, San Jose, CA; or, if not shown in the Blue Book, the latest edition of "Tool and Equipment Rental Schedule" published by National Electrical Contractor's Association, Bethesda, MD. In any case, the Cost of the Project will be charged the lowest of the applicable hourly, daily, weekly or monthly rate specified, based upon actual use. Each specified rate is inclusive of all costs and expenses to furnish the equipment (including transportation, delivery, pickup, fuel, energy costs, consumables, connections, maintenance, wear and tear, repair, depreciation, storage, tax,

overhead and profit). If an hourly rate is used, equipment shall be charged based upon actual usage within a ½ hour;

9.2.11 Cost of bond premiums, insurance premiums for coverage required by the Contract Documents, including costs of City-authorized additional coverage (such authorization not to be unreasonably withheld) and/or self-insured retentions in connection with claims against such coverage, which are directly attributed to this Agreement, subject to the review and approval of the City, which shall not be unreasonably withheld;

9.2.12 Sales, use or similar taxes imposed by any governmental authority and paid by the Construction Manager or its subcontractors that are related to the Work and for which the Construction Manager is liable;

9.2.13 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay;

9.2.14 The cost of corrective Work subject, however, to the GMP and the provisions of Section 6, and except for any corrective Work made necessary because of defective workmanship or other causes contributed to by the Construction Manager or its Subcontractors or suppliers. No costs shall be paid by the city or schedule adjustments made to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any Work not in conformance with the Construction Documents or applicable construction-related codes or to correct any deficiency or damage caused by negligent acts by the Construction Manager or its Subcontractors and suppliers;

9.2.15 Fees of laboratories for tests required by the Contract Documents, except those related to defective or non-conforming Work for which reimbursement is excluded by the provisions of the Contract Documents or the costs of which Construction Manager is able to recover from the Subcontractor(s) responsible for the defective or non-conforming Work;

9.2.16 Costs for trash and debris control and removal from the Project Site;

9.2.17 That portion of the reasonable expenses of Construction Manager's supervisory or administrative personnel incurred while traveling in the discharge of duties connected with the Work, to the extent and reimbursement limits permitted by Fla. Stat. Sec. 112.061 and subject to the advance written approval of the Project Coordinator;

9.2.18 Costs incurred due to an emergency affecting the safety of persons and property, not directly or indirectly attributable to the acts or omissions of the Construction Manager or its Subcontractors or Suppliers;

9.2.19 Costs for watchman, security services and temporary fencing for the Project;

9.2.20 Costs for efficient logistical control of the Project Site, including horizontal and vertical transportation of materials and personnel; adequate storage; temporary roads; maintenance of

traffic, and off-site parking for and busing of construction workers and personnel to and from the Project Site, net of any value or remuneration received from Subcontractors with regard to such parking or transportation. The foregoing costs in Subsection 9.2.20 may be included in the GMP Amendment as part of the General Conditions Fee;

9.2.21 Costs of materials and equipment suitably stored off-site at a mutually acceptable location, subject to the City's prior approval;

9.2.22 Costs for any Project jobsite items not referenced herein, not normally provided by the Subcontractors, which will be provided by the Construction Manager as required to complete the Work;

9.2.23 Cost of providing one set of as-built documents to the City;

9.2.24 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents;

9.2.25 Costs for electronic equipment and software directly related to the Work, with the City's advance written approval;

9.2.26 Costs of third-party data processing or information technology support for the Project;

9.2.27 Costs of Quality Control and materials testing, unless such costs are incurred to inspect or test defective or non-conforming Work;

9.2.28 Costs associated with employee drug screen or other background check related expenses;

9.2.29 Costs of overtime premium expense if overtime work is necessary to maintain or improve the Schedule, provided, however, that such costs shall (1) solely be chargeable to the Construction Manager's Contingency; (2) be limited to any remaining amounts available in the Construction Manager Contingency; and (3) in no event cause for the GMP to be exceeded;

Notwithstanding anything to the contrary contained in the Contract Documents, the City-approved Cost of the Project and the Guaranteed Maximum Price shall only be increased or decreased by reason of the issuance of a Construction Change Directive or Change Order approved in accordance with this Agreement.

9.3 Costs Not to be Reimbursed. The Cost of the Work shall not include the items listed below, as such items are either expressly not to be reimbursed or are otherwise contemplated as part of the Construction Manager's fees.

9.3.1 Salaries and other compensation of the Construction Manager's principals (exclusive of loss prevention oversight and operations manager time spent on the Project) and branch office or departmental heads, non-line staff personnel (including legal, corporate, insurance/risk management and similar personnel) and other personnel stationed at the Construction Manager's

principal office or offices other than the site office, except as specifically provided in Section 9.2;

9.3.2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 9.2;

9.3.3 Overhead and general expenses, except as may be expressly included in Section 9.2;

9.3.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

9.3.5 Costs due to the fault, negligence or failure to fulfill a specific responsibility of the Construction Manager, Subcontractors of all tiers, and Suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and correcting damage to property not forming part of the Work;

9.3.6 The Construction Overhead and Profit Fee;

9.3.7 Costs, other than costs included in Change Orders approved by the City, that would cause the Guaranteed Maximum Price to be exceeded;

9.3.8 Costs for Preconstruction Phase Services;

9.3.9 Losses and expenses sustained by the Construction Manager or any Subcontractors at any tier, not compensated by insurance or otherwise, if such losses and expenses are due to infidelity on the part of any employee of Construction Manager, any Subcontractor or Supplier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, or others to whom the property may be entrusted;

9.3.10 Except to the extent specifically permitted under any other provisions of the Contract Documents, costs and expenses due to the willful misconduct or gross negligence of Construction Manager, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable;

9.3.11 Losses and expenses not covered by insurance where the Construction Manager, or any Subcontractor, failed to obtain and/or maintain in effect the insurance required to be carried by the Contract Documents, or where Construction Manager, or any Subcontractor or Supplier, failed to obtain and/or maintain such insurance in limits and amounts required by the Contract Documents except to the extent any deductible provided in such required insurance;

9.3.12 Costs and expenses incurred by Construction Manager upon breach of its warranties or guarantees;

9.3.13 Costs associated with the relocation of employees, and any travel costs not expressly permitted in Section 9.2 (including costs for long-distance travel, costs for travel between the Project Site and the Construction Manager's office(s), and hotel, car rental and airfare costs);

9.3.14 Any amounts to be paid by the Construction Manager for federal, state or local income or franchise taxes;

9.3.15 Any costs covered as part of the General Conditions Fee;

9.3.16 Rental costs of machinery and equipment or licensing charges for software and other items, which are paid or payable to the Construction Manager or a related party, except as specifically consented by the City in writing, which consent shall not be unreasonably withheld;

9.3.17 Labor, material, and equipment costs or any other costs incurred which should be back-charged to any Subcontractor, any Sub-Subcontractor, or any direct or lower tier supplier, or any other party for whom the Construction Manager is responsible;

9.3.18 Costs or losses resulting from lost, damaged by misuse or stolen tools and equipment;

9.3.19 Costs of bonding or securing liens or defending claims filed by any Subcontractor of any tier, any Supplier, any direct or lower tier supplier or any other party for whom any of such parties or the Construction Manager is responsible arising from nonpayment, unless such nonpayment is the result of the City's unexcused or wrongful failure to pay the Construction Manager undisputed amounts as and when due under the Contract Documents;

9.3.20 Costs of self-insured losses (i.e., losses within the deductible limits maintained by the Construction Manager or any direct or indirect subcontractor), costs covered by any insurance carried by Construction Manager or a direct or lower tier subcontractor, costs which would have been covered by the insurance required to be carried by a Construction Manager or a direct or lower tier subcontractor under the Contract Documents, and costs which would have been covered by insurance but for failure of the Construction Manager or direct or lower tier subcontractor to properly submit, process or give notice to the occurrence or claim;

9.3.21 Costs of employee bonuses and executive bonuses whether or not based in whole or in part on performance related to the Work;

9.3.22 Costs incurred or paid for recruiting employees (whether to third party recruiters or to employees);

9.3.23 Severance or similar payments on account of terminated employees;

9.3.24 Costs incurred after the Construction Manager's application for final payment;

9.3.25 Any outside legal fees incurred without prior written approval from the City Attorney, which approval is at the sole and absolute discretion of the City Attorney;

9.3.26 Any costs not specifically and expressly described in Section 9.2.

9.4 No Duplication. Construction Manager hereby covenants and agrees that there shall be no duplication of payments for any items comprising the Cost of the Project, including any costs related to General Conditions, notwithstanding any itemization, breakdown or provision contained in the Contract Documents to the contrary.

ARTICLE 10 – CHANGES IN THE WORK

10.1 The City, without invalidating this Contract, may order Changes in the Work within the general scope of this Contract consisting of additions, deletions, or other revisions. All changes in the Work shall be authorized as described in the General Conditions of the Contract. Except in cases of emergency endangering life or property, the Construction Manager shall allow no Changes in the Work without the prior written approval of the City.

10.1.1 Changes in the Work may be accomplished after execution of this Agreement, and without invalidating this Agreement, by Change Order or Construction Change Directive. A Change Order shall be based upon agreement between the City and the Construction Manager; a Construction Change Directive may be issued by the City alone and may or may not be agreed to by the Construction Manager. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Construction Manager shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive. No Change Order shall take effect until Construction Manager delivers a Consent of Surety increasing the Performance Bond and Payment Bond by the amount of the Change Order.

10.1.2 The increase or decrease in the Cost of the Project resulting from a change in the Project shall be determined in one or more of the following ways, subject to the Provisions of Section 8:

- a. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Project Coordinator, Architect-Engineer and City;
- b. by unit prices stated in the GMP or subsequently agreed upon; or
- c. by times and materials cost and a mutually acceptable fixed or percentage fee for the Subcontractor.

10.1.3 Increases in the Cost of the Project due to a change in the Project attributable to the City, either by City's agreement thereto or the grant of a Claim under Article ____, may either be charged to the City's Contingency or result in an increase to the base GMP, in the sole discretion of the City. Decreases in the Cost of the Project due to a change in the Project shall result in a decrease to the Base GMP. In the event of a decrease in the Base GMP as herein provided, Construction Manager's Contingency will be decreased proportionately.

10.1.4 The Construction Manager's fee for Construction Overhead and Profit for all Change Order or Construction Change Directives shall not exceed ____% of the net change in the Cost

of the Project. Subcontractors and Suppliers' overhead and profit markup or fee for Change Order or Construction Change Directives shall be reasonable, but in no event shall the aggregate limitation on the amount of overhead and profit that each Subcontractor and all lower tier subcontractors and Suppliers can charge for Work performed pursuant to Change Orders and Construction Change Directives exceed the overhead and profit fee as provided for the performance of the original scope of Work set forth in each Subcontract and specified as part of the GMP Amendment.

10.1.5 **Waiver of Claims.** By executing a Change Order, the Construction Manager thereafter waives the right to assert any further Claim for an increase in the Cost of the Project and the Guaranteed Maximum Price or an extension in the Contract Time based on the subject matter of, or the Claim addressed by, such Change Order; it being acknowledged and agreed by the Construction Manager that any such Change Order shall completely address any schedule or cost impact associated with the subject matter of, or the Claim addressed by, such Change Order.

10.1.6 **Approval of Change Orders/Modifications.** The City Commission may approve any Change Order or other Contract Modification to the Contract Documents.

ARTICLE 11 – BONDS AND INSURANCE

11.1 The Construction Manager and subcontractors shall provide insurance as required and addressed in the RFQ #255-11497 and as set forth in the General Conditions.

ARTICLE 12 –CONFLICTS

12.1 In the event that the terms and provisions of all attached Exhibits conflict with or are omitted from the terms and provisions of this Agreement and the General Conditions, the terms and provisions of the attached Exhibits shall govern with respect to the performance of the Work.

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IN WITNESS WHEREOF, the City and the Contractor execute this Contract as follows:

ATTEST:

CITY OF FORT LAUDERDALE

Jeffrey A. Modarelli, City Clerk

By: _____
John P. "Jack" Seiler, Mayor

By: _____
Lee R. Feldman, City Manager

Approved as to form:
Cynthia A. Everett, City Attorney

By: _____
Rhonda Montoya Hasan
Assistant City Attorney

ATTEST:

SKANSKA USA BUILDING INC.

Print Name:
Title:

By: _____
Richard Kennedy, President

(CORPORATE SEAL)

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me this ____ day of _____, 2017,
by Richard Kennedy as President for Skanska USA Building Inc., a Delaware corporation,
authorized to transact business in the state of Florida.

(SEAL)

Notary Public, State of _____
(Signature of Notary Public)

(Print, Type, or Stamp Commissioned Name of
Notary Public)

Personally Known ____ OR Produced Identification ____
Type of Identification Produced _____