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GENERAL CONDITIONS

GC 1 ENTIRE AGREEMENT

- 1.1 This Construction Manager at Risk Contract embodies the entire agreement between City and Construction Manager and supersedes all other writings, oral agreements, or representations. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of any of the terms or conditions of the Contract shall be valid unless reduced to writing and signed by both parties.

GC 2 TERM OF AGREEMENT

- 2.1 The initial contract period shall commence on _____ and shall end on _____. In the event the term of this Agreement extends beyond the end of any fiscal year of the City, to wit, September 30, the continuation of this Agreement beyond the end of such fiscal year shall be subject to both the appropriation and the availability of funds.

GC 3 SCHEDULE AND DELAYS

- 3.1 Time is of the essence in this Agreement. By signing, Contractor affirms that it believes the schedule to be reasonable; provided, however, the parties acknowledge that the schedule might be modified as the City directs.

GC 4 INDEPENDENT CONSTRUCTION MANAGER

- 4.1 Construction Manager represents that it is extensively experienced in the performance of streetscape and infrastructure construction Work as provided for herein, and that it is properly licensed as a General Contractor in the State of Florida, equipped, organized and financed to perform such Work. Construction Manager shall act as an independent contractor, and not as the agent of City, in performing the Contract, maintaining complete control over its employees, and all of its suppliers and subcontractors. Nothing contained in this Contract, or any subcontract awarded by Construction Manager, shall create any contractual relationship between any such supplier or subcontractor and the City. No partnership, joint venture or other joint relationship is created hereby. Construction Manager shall perform all work in accordance with its own means, methods, sequences and procedures, subject to compliance with the Contract. Construction Manager represents that all subcontractor agreements entered into shall incorporate by reference the terms and conditions of this Contract.

GC 5 AUTHORIZED REPRESENTATIVES

- 5.1 Before starting work, Construction Manager shall designate a competent, authorized representative acceptable to City to represent and act for Construction Manager and shall inform City in writing, of the name and address of such representative, together with a

clear definition of the scope of his/her authority to represent and act for Construction Manager, and shall specify any and all limitations of such authority. Such representative shall be present or duly represented at the site of work at all times when work is actually in progress. During periods when work is suspended, arrangements for an authorized representative acceptable to City shall be made for any emergency work that may be required. All notices, determinations, instructions and other communications given to the authorized representatives of the Construction Manager shall be binding upon Construction Manager. Nothing contained herein shall be construed as modifying the Construction Manager's duty of supervision and fiscal management as provided for by Florida law. The City shall designate an authorized representative who will have limited authority to act for the City. The City will notify the Construction Manager in writing of the name of such representative(s). The City's representative will be the Public Works Director, or his designee. Any work performed by the Construction Manager without proper authorization, is performed at the Construction Manager's risk, and the City of Fort Lauderdale shall have no obligation to compensate the Construction Manager for such work. The City has the right to assign various responsibilities of the City to the Design Professional of Record, and can do so at any time during the duration of this Contract with written notice to the Construction Manager.

- 5.2 The Construction Manager's Authorized Representative, Qualifying Agents, Project Managers, Superintendents and Supervisors are all subject to prior and continuous approval of the City. If, at any time during the term of the Contract, any individual nominally performing any of the positions named above is, for any reason, unacceptable to the City, Construction Manager shall replace the unacceptable personnel with personnel acceptable to the City.

GC 6 NOTICES

- 6.1 Any notices provided for hereunder shall be in writing and may be served either personally on the authorized representative of the receiving party at the job site, by certified mail, return receipt requested, or national overnight courier to that party at the addresses shown below:

CITY: The City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301
Attn.: City Manager

With copy to:
Tom Green, P.E.
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

City Attorney
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

CONSTRUCTION MANAGER: _____

GC 7 LAWS AND REGULATIONS

- 7.1 Construction Manager and its employees and representatives shall at all times comply with all applicable federal, state and local laws, codes, ordinances, statutes, rules and regulations in performing Construction Manager's duties, responsibilities and obligations pursuant to this Agreement.
- 7.2 It is recognized that the Construction Manager's review of the drawings and specifications is made in the Construction Manager's capacity as a contractor and not as a licensed design professional. If any discrepancy or inconsistency should be discovered by Construction Manager between the drawings and specifications and any law, ordinance, regulation, code or rule, Construction Manager shall immediately report the same in writing to City and Design Professional, who will issue such instructions as may be necessary. In such event, City shall reimburse Construction Manager for costs of all permits as well as costs for inspections or submittals required as a result of errors, inconsistencies, lack of coordination between City and Design Professional, code errors or omissions in the design documents, plans and Specifications for the Project, and general conditions costs as set forth herein.
- 7.3 City shall not be liable for any costs, delays or damages which Construction Manager incurs as a result of the actions or orders of any other governmental entity or agency that are caused by Construction Manager's failure to comply with the terms of this Contract.

GC8 STANDARDS AND CODES

- 8.1 Wherever references are made in the Contract to standards or codes in accordance with which Work is to be performed or tested, the edition or revision of the standards or codes current on the date of permit application shall apply, unless otherwise expressly set forth. Unless otherwise specified, reference to such standards or codes is solely for implementation of the technical portions of such standards and codes. In case of conflict among any referenced standards and codes, or between any referenced standards and codes which are later revised during the course of construction, the City will determine which shall govern. Construction Manager acknowledges that compliance with code requirements represents minimum standards for construction, and does not evidence that the Work has been completed in accordance with the Contract Documents.

GC 9 REGULATORY RELATED INSPECTIONS

- 9.1 The Construction Manager recognizes that The City of Fort Lauderdale, Florida Building, Fire and Planning and Zoning Departments are separate departments within the City that are charged with regulatory enforcement and the inspection of improvements to real property for compliance with the applicable regulatory codes with the respective Department's jurisdiction. The Construction Manager agrees that it will not assert, as an City caused delay, or as a defense of any delay on the part of the Construction Manager, any action or series of actions on the part of said Departments, including, but not limited to, any Department's refusal to accept any portion of the Construction Manager's Work. If it is ultimately determined by the Design Professional and City that such delay was not the result of Construction Manager's failure to comply with the Contract Documents, the Construction Manager may be entitled to make a claim for extension of Contract Time only as its exclusive remedy, not damages, in accordance with the terms of the Agreement.

GC 10 COOPERATION WITH OTHERS

- 10.1 City and other contractors may be working at the site during the performance of this Contract. Construction Manager shall fully cooperate with the City, City's designated Representative, and other separate contractors to avoid any delay or hindrance of their work. City may require that certain facilities be used concurrently by Construction Manager and other parties, and Construction Manager shall comply with such requirements. The City shall provide for coordination of the activities of the City's own forces, and of each separate contractor, with the Work of the Construction Manager, who shall cooperate and participate with other separate contractors and the City in reviewing their construction schedules.
- 10.2 If any part of the Construction Manager's work depends on proper execution or results from any work performed by the City or any separate contractor, the Construction Manager shall, prior to proceeding with the Work, promptly report to the City any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Construction Manager to report such discrepancies or defects shall constitute an acceptance of the City's separate contractor's work as fit and proper to receive Construction Manager's Work, except as to defects which are not then reasonably discoverable or which may subsequently become apparent in such work performed by others. Any costs caused by defective or ill-timed work of others shall be borne by the Construction Manager, unless Construction Manager gives written notice to City, if reasonably possible, prior to proceeding with the Work and in any event within three (3) days of commencement of Work. In no event shall City be liable to the Construction Manager for delay damages.

GC 11 PUBLIC RECORDS

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA

STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (telephone number, e-mail address and mailing address)

11.1 The Contractor shall:

- (1) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- (2) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2016), as may be amended or revised, or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of this contract if the Contractor does not transfer the records to the City.
- (4) Upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of this Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

GC 12 TAXES

- 12.1 Construction Manager shall pay all taxes, levies, duties and assessments of every nature which may be applicable to any Work under this Contract. The Contract Sum and any agreed variations thereof shall include all taxes imposed by law. Construction Manager shall make any and all payroll deductions required by law. Construction Manager herein indemnifies and holds the City harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

GC 13 SUCCESSORS, ASSIGNS AND ASSIGNMENT

- 13.1 The City and the Construction Manager each binds itself, its officers, directors, qualifying agents, partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Agreement. Construction Manager shall not assign, transfer, convey or otherwise hypothecate the Contract or its right, title or interest in or to the same or any part thereof, or allow legal action to be brought in its name for the benefit of others, without previous written consent of the City, and concurred with by the Construction Manager's Surety. Construction Manager acknowledges that the City has entered into this Contract with Construction Manager after a comprehensive competitive award process, and evaluation of Construction Manager's particular qualifications and skills to perform the Work. Therefore, Construction Manager agrees that the City may withhold the consent to assignment referred to herein for any reason the City deems appropriate, in its sole and exclusive discretion.

GC 14 AUDIT RIGHT AND RETENTION OF RECORDS

- 14.1 City shall have the right to audit the books, records, and accounts of Contractor and Contractor's subcontractors that are related to this Agreement. Contractor shall keep, and Contractor shall cause Contractor's subcontractors to keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of Contractor and Contractor's subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Contractor or Contractor's subcontractor, as applicable, shall make same available at no cost to City in written form.

Contractor and Contractor's subcontractors shall preserve and make available, at reasonable times for examination and audit by City in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida public records law is determined by City to be applicable to Contractor and Contractor's subcontractors' records, Contractor and Contractor's subcontractors shall comply with all requirements thereof; however, Contractor and Contractor's subcontractors shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Contractor shall, by written contract, require Contractor's subcontractors to agree to the requirements and obligations of this Section.

The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this Agreement.

GC 15 COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS

- 15.1 The Construction Manager represents that the Construction Manager, its Subcontractors, material and equipment suppliers have carefully and diligently compared Phasing, Demolition, Landscaping, Design Professional, Structural, Electrical, Underground, Civil and Site Drawings and Specifications, and have compared and reviewed all general and specific details on the Drawings. Based thereon, Construction Manager represents that all conflicts, discrepancies, errors, omissions, and constructability issues that are within the commonly accepted knowledge base of a licensed general contractor with expertise in marine piers and related infrastructure have been clarified during the performance of the Pre-Con Agreement, and are included in the GMP.
- 15.2 Construction Manager represents that the GMP embodies the total cost for a complete and functioning Project. The Construction Manager's review and comparison of all documents and things set forth in GC 15.1 above has taken into consideration the total and complete functioning of all systems as provided, and as are reasonably inferable from the Drawings and Specifications.

GC 16 PERMIT DRAWINGS AND SPECIFICATIONS

- 16.1 The Construction Manager shall provide the City with two (2) complete sets of the permitted drawings within five (5) days of issuance. If the permitted set of Drawings changes the scope of the Work to be performed, the Construction Manager shall notify the City and Design Professional, in writing, within ten (10) days after Construction Manager's receipt of the permitted Drawings, and such notification shall contain a written description of the change(s), and the estimated cost and time associated therewith, if any.
- 16.2 The Construction Manager shall perform work only in accordance with the permitted drawings, and any subsequent revisions thereto.

GC 17 CONTRACT INTERPRETATION

- 17.1 All claims of Construction Manager, and all questions the Construction Manager may have concerning interpretation or clarification of this Agreement or its acceptable fulfillment shall be submitted immediately, in writing, to City for resolution. City, or its representatives, will render its determination concerning such resolution within an appropriate period, not to exceed five (5) business days, unless additional time is needed

due to the novelty or complexity of the interpretation or clarification requested, which determination shall be considered final and conclusive unless Construction Manager files a timely written protest pursuant to GC 18 "Disputes." The Construction Manager's written protest shall state clearly and in detail the basis thereof, and the relief it seeks, if any. City will consider Construction Manager's protest, and render its decision thereon within five (5) business days. If Construction Manager does not agree with the City's decision, the Construction Manager shall immediately deliver written notice to that effect to the City. If questions of interpretation are not responded to by the Design Professional or City within the time frame above, and in a manner so as not to impede the natural progress of the Work as scheduled, and such delay impacts the critical path of the Work, Construction Manager shall be entitled to adjustment in the performance time as its exclusive remedy.

- 17.2 Construction Manager is solely responsible for requesting instructions or interpretations, and is solely liable for any cost and/or expenses arising from its failure to do so. Construction Manager's failure to protest City's determinations, instructions, clarifications or decisions within five (5) calendar days after receipt thereof shall constitute a waiver by Construction Manager of all its rights to further protest, judicially or otherwise.

GC 18 DISPUTES

- 18.1 Any and all disputes arising out of or in connection with this Agreement shall be resolved through good faith efforts upon the part of Construction Manager and City, or its representatives. At all times, Construction Manager shall carry on the Work and maintain its progress schedule in accordance with the requirements of the Contract and the determination of the City or its representatives, pending resolution of any dispute. Any dispute that is not disposed of by mutual agreement shall be decided by the City Manager, who shall reduce such decision to writing. The decision of the City Manager shall be final and conclusive. Construction Manager's failure to protest City's determinations, instructions, clarifications or decisions within thirty (30) calendar days after receipt thereof shall constitute a waiver by Construction Manager of all its rights to further protest, judicially or otherwise.

GC 19 JURISDICTION, VENUE AND WAIVER OF JURY TRIAL

- 19.1 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the Seventeenth Judicial Circuit in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.
- 19.2 The City and Construction Manager hereby expressly, knowingly and intentionally WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY in connection with, or in respect to, any litigation or claim based on or related to this Agreement, or with regard to performance of the Work, including, but without limitation, any to which the Design Professional may also be a party.

GC 20 SUSPENSION OF WORK

20.1 City may, at its sole option, suspend, at any time, the performance of all or any portion of Work to be performed under the Contract. City will notify Construction Manager of such decision, in writing.

20.1.1 Upon receipt of any such written notice, Construction Manager shall, unless the notice requires otherwise:

- (1) immediately discontinue work on the date and to the extent specified in the notice;
- (2) place no further orders or subcontracts for material, services, or facilities with respect to suspended work other than to the extent required in the notice;
- (3) promptly make every reasonable effort to obtain suspension, upon terms satisfactory to City, of all orders, subcontracts and rental agreements to the extent they relate to performance of work suspended;
- (4) continue to protect and maintain the Work including those portions on which work has been suspended, and
- (5) take any other reasonable steps to minimize costs associated with such suspension.

20.1.2 In addition to all amounts that would otherwise be due for Work performed prior to the suspension, as compensation for such suspension, Construction Manager will be reimbursed for the following verifiable costs (without profit) and without duplication of any item, to the extent that such costs directly result from such suspension of work:

- (1) A standby charge to be paid to Construction Manager during the period of suspension of work which standby charge shall be sufficient to compensate Construction Manager for keeping, to the extent required in the notice, its organization and equipment committed to the Work in a standby status;
- (2) All reasonable costs associated with mobilization and demobilization of Construction Manager's forces and equipment; and
- (3) An equitable amount to reimburse Construction Manager for the cost of maintaining and protecting that portion of the Work upon which work has been suspended.

20.2 In no event shall the Construction Manager be entitled to assert a claim for home office overhead, in the event of an City suspension. Upon receipt of notice to resume suspended

work, Construction Manager shall immediately resume performance of the suspended work to the extent required in the notice. Any claim on the part of Construction Manager for time and/or compensation arising from suspension shall be made within twenty-one (21) calendar days after receipt of notice to resume work and Construction Manager shall submit for review a revised construction schedule. No adjustment shall be made for any suspension to the extent that performance would have been suspended, delayed, or interrupted by any Construction Manager's non-compliance with the requirements of this Agreement.

GC 21 DECLARATION OF DEFAULT

- 21.1 The failure of the Construction Manager a) to supply enough properly skilled workers or materials, or b) its failure to make prompt payments to subcontractors, or for materials or labor, or c) to obey laws, ordinances, rules, regulations or orders of public agencies having jurisdiction, or d) to comply in any way with the Contract Documents, shall be sufficient grounds for the City to find the Construction Manager in material default, and that sufficient cause exists to terminate the Agreement for cause, and to withhold payment or any part thereof until the cause or causes giving rise to the default has/have been eliminated by the Construction Manager and approved by the City. If a finding of default is made by the City, the Construction Manager and its Surety shall remain responsible for performance of the requirements of the Contract Documents unless and until the City terminates the Contract. Upon a finding of default, the City shall set a reasonable time, but in no event in excess of ten (10) calendar days after written notice from City detailing the default, within which the Construction Manager and its Surety shall eliminate the cause or causes of default. When the basis for finding of default no longer exists, the City shall notify the Construction Manager and its Surety, in writing, that the default has been corrected, and that the Construction Manager is no longer in default. If the Construction Manager fails to correct the default within the time allowed, the City, without further notice to Construction Manager or its Surety, may immediately terminate the Contract and the employment of the Construction Manager, without otherwise waiving its rights against the Construction Manager or its Surety. To the extent that the time limits herein and in GC 22 conflict with those set forth in the Performance Bond, the time limits in GC 21 and GC 22 shall take precedence.

GC 22 TERMINATION FOR DEFAULT

- 22.1 Notwithstanding any other provisions of this Agreement, Construction Manager shall be considered in default of its contractual obligation under this Contract if the:
- a. Construction Manager fails or refuses to prosecute the Work or any severable part, with the diligence that will ensure its completion within the time specified in this Agreement;
 - b. Construction Manager fails or refuses to prosecute the Work on any severable part, with the diligence that will ensure its completion within the

time specified in construction schedules and related milestones issued in conjunction with this Agreement;

- c. Construction Manager fails to complete the Work within the time specified in this Agreement;
- d. Construction Manager abandons or refuses to proceed with any or all Work, including modifications directed by City pursuant to change directives issued under the Agreement;
- e. Construction Manager fails to provide the materials or perform the services required of the Construction Manager under this Agreement within the time specified in this Agreement;
- f. Construction Manager fails or refuses to provide sufficient, properly skilled, workmen or tradesmen;
- g. Construction Manager refuses or fails to supply materials, equipment or services meeting the requirements of this Agreement;
- h. Construction Manager fails to make payments for materials, labor or services to subcontractors, sub-subcontractors, suppliers or materialmen of any tier in accordance with such agreements that may exist among them;
- i. Construction Manager violates laws, ordinances, rules, regulations of any governmental authority having jurisdiction;
- j. Construction Manager materially breaches any of the provisions of this Agreement.

22.2 If Construction Manager or its Surety(ies) do(es) not cure such failure within ten (10) calendar days from receipt of notification, or sooner if consideration of safety to persons is involved, or if Construction Manager or its Surety(ies) fails to provide satisfactory evidence that such default will be corrected, City may, without further notice to Construction Manager, terminate in whole or in part Construction Manager's right to proceed with work by written notice and prosecute the Work to completion by contract or by any other method deemed expedient. City may take possession of and utilize any materials, plant, tools, equipment, and property of any kind furnished by Construction Manager and necessary to complete the Work.

22.3 Construction Manager, and its sureties, shall be liable, jointly and severally, to City for all costs in excess of the Contract price for such terminated work reasonably and necessarily incurred in the completion of the Work, as adjusted by Change Orders, if any, including costs of administration of any contract awarded to others for completion, design professional fees, plus Liquidated Damages.

22.4 Upon termination for default, Construction Manager shall:

- a. immediately discontinue work on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of work terminated;
- b. inventory, maintain and turn over to City all materials, plant, tools, equipment, and property furnished by Construction Manager or provided by City for performance of work;
- c. promptly obtain cancellation upon terms satisfactory to City of all purchase orders, subcontracts, rentals, or any other agreements existing for performance of the terminated work or assign those agreements to City as directed;
- d. cooperate with City in the transfer of information and disposition of work in progress so as to mitigate damages;
- e. comply with other reasonable requests from City regarding the terminated work; and
- f. continue to perform in accordance with all of the terms and conditions of the Agreement such portion of work that is not terminated.

22.5 If, upon termination pursuant to this GC 22, it is determined for any reason that Construction Manager was not in default, the rights and obligations of the parties shall be the same as if the default termination had been made pursuant to GC 23, "TERMINATION FOR CONVENIENCE."

GC 23 TERMINATION FOR CONVENIENCE

23.1 The City reserves the right, in its best interests, as determined solely by the City, at its option and convenience, terminate the Agreement, in whole or in part, at any time by written notice thereof to Construction Manager, whether or not Construction Manager is in default. The City shall provide written notice to Construction Manager at least 30 days prior to the effective date of such cancellation. Upon any such termination, Construction Manager hereby waives any claims for damages from the termination, including, without limiting the generality thereof, loss of anticipated profits on Work not performed on account thereof, home office overhead, lost bonding capacity, and consequential damages. As the sole right and remedy of Construction Manager, City shall pay Construction Manager in accordance with Subparagraphs below; provided, however, that those provisions of the Contract, which by their very nature survive final acceptance under the Contract, shall remain in full force and effect after such termination.

- a. Upon receipt of any such notice, Construction Manager and its Surety shall, unless the notice requires otherwise:
- (1) Immediately discontinue work on the date and to the extent specified in the notice;
 - (2) Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the Agreement that is not terminated;
 - (3) Promptly make every reasonable effort to obtain cancellation upon terms satisfactory to City of all orders and subcontracts to the extent they relate to the performance of work terminated;
 - (4) If requested by the City in writing, assign to the City, all right, title and interest of the Construction Manager under the subcontracts terminated. Such Assignment shall not include assumption of Construction Manager's obligations or liabilities under any subcontract. The City shall have the right (but not the obligation) to assume the Construction Manager's obligations under any subcontracts assigned. Neither this paragraph or any assignment of subcontracts, shall constitute the City's assumption of Construction Manager's or other obligations under any such subcontract absent a written document executed by the City and the subcontractor in which the City expressly acknowledges an assumption of Construction Manager's obligations, and then only to the extent specified. In no event will the City assume any obligation of the Construction Manager under the subcontracts that arise out of or relate to Construction Manager's default prior to such assignment;
 - (5) The Construction Manager shall include in all subcontracts, equipment leases and purchase orders, a provision requiring the subcontractor, equipment lessor, or supplier, to consent to the assignment of their subcontract or purchase order to the City;
 - (6) Assist City, as specifically requested in writing, in the maintenance, protection and disposition of property acquired by City under the Agreement; and,
 - (7) Complete performance of any work that is not terminated.
- b. Upon any such termination, City will pay to Construction Manager an amount determined in accordance with the following (without duplication of any item):
- (1) All amounts due and not previously paid to Construction Manager for work completed in accordance with the Agreement prior to such notice, and for work thereafter completed as specified in such notice.

- (2) The verifiable costs incurred pursuant to Subparagraph a(4) above.
 - (3) Any other reasonable costs which can be verified to be incidental to such termination of Work, including demobilization costs.
- 23.2 In the case of such termination for City's convenience, Construction Manager shall be entitled to receive payment for Work actually executed in accordance with GC _____.B.1 above, and verifiable costs incurred by reason of such termination, along with an amount not to exceed ten (10) percent for profit and overhead on such verifiable costs incurred.
- 23.3 The City's Termination for Convenience shall be without waiver or prejudice to, all of the City's claims, rights and remedies arising out of or related to any default, breach of contract, damages or other claims the City may have against Construction Manager, or Construction Manager's subcontractors, material suppliers of any tier, or any other person or entity at the time of termination, or arising thereafter.
 - 23.3.1 Construction Manager hereby acknowledges acceptance of the risk and cost of the foregoing, and acknowledges and agrees to the foregoing limitation on Construction Manager's claims or damages arising out of, or relating to, a termination for convenience by the City.
- 23.4 Construction Manager shall submit within 30 days after receipt of notice of Termination, for Convenience, a written proposal for payment, including all incurred costs and other entitlements described herein. City shall review, analyze, and verify such proposal, and negotiate an equitable adjustment.

GC 24 CANCELLATION FOR UNAPPROPRIATED FUNDS

- 24.1 The City reserves the right, in its best interest as determined by the City, to cancel this Agreement for unappropriated funds or unavailability of funds by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the Agreement into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.

GC 25 EXTENSION OF TIME/NO DAMAGES FOR DELAY

- 25.1 If the Construction Manager is delayed at any time in the progress of the Work by a written directive issued by the City or Architect, or any act, omission or neglect of the City or the Architect, or by a separate contractor employed by the City, or by any changes ordered in the Work, or by an act of God, severe though not unusual weather conditions, including named storms and tornadoes, labor disputes, unusual delay in deliveries, or other causes beyond Construction Manager's control, including discovery of unforeseen site conditions, and such delay extends the completion date, the date of Substantial Completion shall be extended by Change Order for such reasonable time as the City may determine.

- 25.2 The Construction Manager shall not be entitled to, and hereby expressly waives, any and all damages which it may suffer by reason of those instances set forth in Article 25.1 above (collectively “Noncompensable Events”), and further, hereby waives all damages which it may suffer by reason of these Noncompensable Events, including, but not limited to lost profits, overhead, home office expense, increased insurance costs, loss of bonding capacity or lost profits on alternate or unperformed contracts, supervision, material and labor escalation costs, and any other direct or consequential damages. Construction Manager hereby affirms that the extension of time granted herein is the Construction Manager's sole and exclusive remedy.
- 25.3 The Construction Manager must request the extension of time, in writing, and must provide the following information within the time periods stated hereafter. Failure to submit such information and in compliance with the time requirements hereinafter stated, shall constitute a waiver by the Construction Manager and a denial of the claim for extension of time:
- a. Nature of the delay or change in the Work;
 - b. Dates of commencement/cessation of the delay or change in the Work;
 - c. Activities on the progress schedule current as of the time of the delay or change in the work affected by the delay or change in the Work;
 - d. Identification and demonstration that the delay or change in work impacts on the CRITICAL PATH (submittal of an updated CPM schedule);
 - e. Identification of the source of delay or change in the Work;
 - f. Anticipated impact extent of the delay or change in the Work; and
 - g. Recommended action to minimize the delay.
- 25.4 The Construction Manager acknowledges and agrees that the evaluation of time extensions will be based upon the following criteria:
- (1) All schedule updates, submittals and other requirements of this General Condition have been met;
 - (2) The delay must be due to the City’s or Architect’s change in the Work, an Act of God, or for other causes set forth in GC____;
 - (3) The delay which is the subject of the time extension must result in a demonstrable impact to the Critical Path;
 - (4) If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be submitted within fifteen (15) days of occurrence and shall be

documented by data substantiating that weather conditions were abnormal for the period of time required for completion of the Work, could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

- 25.5 The City's determination as to the total number of days of Contract extension will be based upon the computer generated CPM construction schedule current at the time of the delay event, as revised in connection with the foregoing criteria.
- 25.6 The Construction Manager shall not be entitled to any extension of time for delays resulting from any cause unless it shall have notified the City in writing within twenty-four (24) hours after the commencement of such delay, or ninety-six (96) hours of knowledge of a potential delay, whichever is earlier. In any event, within seven (7) days of commencement of the delay, the Construction Manager shall provide in writing the information stated above.
- 25.7 The term "Force Majeure Event" means any action or event which occurs (i) outside City's and Construction Manager's reasonable control; and (ii) without the fault or negligence of either party, specifically, Acts of God, terrorism, war, riots, hurricanes, unusually severe weather (as substantiated by NOAA reports nearest to the jobsite location), floods, fires, civil disturbances, governmental restrictions, epidemics, explosions, acts of the public enemy, the enactment, imposition or modification of any applicable law which occurs after the date of this Agreement and which prohibits or materially interferes with the development or construction of the Project Improvements. Notwithstanding anything to the contrary, a "Force Majeure Event" shall not include acts, events, or other matters arising out of violations of any environmental laws with respect to or the presence or discharge of any hazardous substances on the lands comprising the Project. In the event of a Force Majeure Event which impacts the critical path, Construction Manager shall only be entitled to an extension of time and shall not be entitled to any compensation or any increase in the GMP, except to the extent that a Force Majeure Event causes damage to Work in place or causes the Work to be shut down for more than thirty (30) days. Such costs for damage to Work in place may be recoverable by insurance that is applicable to the Project. Notwithstanding, however, if such costs to correct the Work damaged by a Force Majeure Event or for shut down for more than thirty (30) days are not covered by insurance, then Construction Manager shall be entitled to recover only its actual direct plus reasonable General Conditions costs associated to correct the Work or to its unavoidable costs for shut down for more than thirty (30) days but no other compensation, and without fee markup. No recovery on any basis shall take place unless the Construction Manager has satisfied all of the following conditions:
- (1) Construction Manager has properly documented all such direct costs for the City and any insurance carrier; and
 - (2) Construction Manager shall have used reasonable and diligent efforts to avoid and minimize delays, regardless of cause; and

- (3) Construction Manager shall cooperate with City to mitigate the impact of any delays encountered by Construction Manager that would entitle it to such extension of time, even if its performance is unreasonably delayed by the City.

25.8 For all Changes in the Work in which the Construction Manager claims entitlement to a time extension, the Construction Manager shall provide to the City the same information as required above within seven (7) days of the issuance of the request for Change Order or direction to change the scope of the Work. Construction Manager's failure to provide such information shall constitute a waiver by the Construction Manager, and a denial of any time extension for that change in the Work. Further, upon execution by the City and Construction Manager of any Change Order where no time extension has been requested or granted, that Change Order shall constitute a complete waiver of all claims for damages or for any extension of time related to that work, or any work impacted by the change.

GC 26 LIMITATION OF LIABILITY

26.1 The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$1,000.00. Contractor hereby expresses its willingness to enter into this Agreement with Contractor's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of \$1,000 less the amount of all funds actually paid by the City to Contractor pursuant to this Agreement.

Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor hereby agrees that the City shall not be liable to Contractor for damages in an amount in excess of \$1,000 which amount shall be reduced by the amount actually paid by the City to Contractor pursuant to this Agreement, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Section 768.28, Florida Statutes.

GC 27 WARRANTY

27.1 Unless otherwise provided elsewhere in the Agreement, all materials and equipment incorporated into any Work covered by the Agreement shall be new and, where not specified, of the highest grade and quality for their intended use, and all workmanship shall be in accordance with construction practices acceptable to City. Unless otherwise provided in the Agreement, Construction Manager warrants all equipment, materials, and labor furnished or performed under this Agreement, against defects in design, materials and workmanship, for a period of twelve (12) months (unless longer guarantees or warranties are provided for elsewhere in the Agreement in which case the longer periods of time shall prevail) from and after Substantial Completion of the Work under the Agreement, regardless of whether the same were furnished or performed by Construction

Manager or by any of its subcontractors of any tier. Even in the event that the City assumes partial utilization of portions of the Work prior to completion of all Work, the Warranties for that portion shall also extend for twelve (12) months from Substantial Completion of the entire Work, so that all warranties are running concurrently upon Substantial Completion of the total Project.

- 27.2 Upon receipt of written notice from City of any defect in any such equipment, materials, or labor during the applicable warranty period due to defective design, materials or workmanship, the affected item or parts thereof shall be redesigned, repaired or replaced by Construction Manager at a time and in a manner acceptable to City in compliance with the Contract Documents, at its expense.
- 27.3 Construction Manager warrants such redesigned, repaired or replaced Work against defective design, materials and workmanship for a period of twelve (12) months from and after the date of acceptance thereof. Should Construction Manager fail to promptly make the necessary redesign, repair, replacement and tests, after written notice from City specifying the defects, City may perform or cause to be performed the same, at Construction Manager's sole cost and expense.
- 27.4 Construction Manager shall perform such tests as City may require to verify that such redesign, repairs and replacements comply with the requirements of this Agreement. All costs incidental to such redesign, repair, replacement, and testing, including the removal, replacement, and reinstallation of equipment and materials necessary to gain access, shall be borne exclusively by Construction Manager. However, if such testing determines that the Work is not defective, then City shall compensate Construction Manager for such costs of testing and any effects on previously completed work.
- 27.5 Construction Manager and its Surety shall be liable for the satisfaction and full performance of the warranties as set forth herein, and any damage to other parts of the Work caused by the Construction Manager's failure to perform pursuant to this GC 27.
- 27.6 The Construction Manager shall commence Work to remedy or replace the defective, deficient Work within five (5) calendar days after receiving written notice from the City, subject to allowance for long-lead items. If the Construction Manager fails to remedy or remove or replace that Work or material which has been found to be defective, or reasonably commence corrective action, then the City may remedy or replace the defective or deficient Work at the Construction Manager's expense; provided, however, all repairs to natural gas, telephone, radio, computer security, water, electric, air conditioning services and all emergency services shall be commenced within twelve (12) hours of notification, or by 7:00 a.m. whichever is earlier, and Construction Manager shall complete the repairs in an expeditious manner befitting the nature of the deficiency. The Construction Manager shall immediately pay the expenses incurred by the City for remedying the defects. If the City is not paid within ten (10) calendar days, the City may pursue any and all legal remedies it may have against the Construction Manager and its Surety.

- 27.7 The Construction Manager is required to provide a designated telephone number for warranty related emergencies which occur outside the normal workday. The Construction Manager is solely responsible for ensuring that all warranty Work is completed in the manner described above. If the City agrees, in writing, a subcontractor may be the point of contact for notices regarding warranty items, but such agreement shall not absolve the Construction Manager of its responsibility.

GC 28 PATENT INDEMNITY

- 28.1 Construction Manager hereby indemnifies and shall defend and hold City, Design Professional, and its representatives harmless from and against all claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by City, Design Professional and its representatives, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent and arising out of the use of the equipment or materials furnished under the Agreement by Construction Manager, or out of the processes or actions employed by, or on behalf of Construction Manager in connection with the performance of the Agreement, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the City or Design Professional. However, if the Construction Manager has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Construction Manager shall be responsible for such loss unless such information is promptly furnished to the Design Professional.
- 28.2 Construction Manager shall, at its sole expense, promptly defend against any such claim or action for which it is responsible under the prior paragraph unless directed otherwise by City or its representatives; provided that City or its representatives shall have notified Construction Manager upon becoming aware of such claims or actions, and provided further that Construction Manager's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by City or representatives. Construction Manager shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials, or processes, or to modify such infringing equipment, materials and processes so they become non-infringing, or obtain the necessary licenses to use the infringing equipment, material or processes, provided that such substituted and modified equipment, materials and processes shall meet all the requirements and be subject to all the provisions of this Agreement.

GC 29 INDEMNITY

- 29.1 To the fullest extent provided for by law, Construction Manager agrees to protect, defend, reimburse, indemnify and hold the City and the City's officers, its agents, employees, elected officers and representatives and each of them, (hereinafter collectively and for the purposes of this paragraph, referred to as "City"), free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including reasonable attorneys' fees, and causes of action of every kind and character against City

by reason of any damage to property (other than the Work itself) or the environment, economic losses, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, any agent or employee of any party hereto or of any party acquiring an interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or in incident to or in connection with Construction Manager's performance under this Agreement, the condition of the premises, Construction Manager's acts, or omissions or operations hereunder, or the performance, non-performance or purported performance of the Construction Manager of any breach of the terms of this Agreement.

- 29.2 Construction Manager further agrees to hold harmless and indemnify City for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from Construction Manager's acts or omissions on the Project, whether or not Construction Manager was negligent or even knowledgeable of any events precipitating a claim or arising as a result of any situation involving Construction Manager's activities.
- 29.3 Said indemnification by Construction Manager shall be extended to include all deliverers, suppliers, materialmen or anyone acting for, on behalf of, or at the request of Construction Manager. Construction Manager recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges consideration of one-hundred dollars (\$100.00) therefore, which amount is incorporated into the GMP, as well as such other good and valuable consideration provided by City in support of this indemnification in accordance with the laws of the State of Florida. This clause shall survive termination of this Contract.

GC 30 INSURANCE

- 30.1 The Contractor shall furnish proof of insurance requirements as indicated below. The coverage is to remain in force at all times during the contract period. The following minimum insurance coverage is required. The commercial general liability insurance policy shall name the City of Fort Lauderdale, a Florida municipality, as an "additional insured." This MUST be written in the description section of the insurance certificate, even if there is a check-off box on the insurance certificate. Any costs for adding the City as "additional insured" shall be at the Contractor's Expense.
- 30.2 The City of Fort Lauderdale shall be given notice 10 days prior to cancellation or modification of any required insurance. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Procurement Services Division.
- 30.3 The Contractor's insurance must be provided by an A.M. Best's A-rated or better insurance company authorized to issue insurance policies in the state of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the insurance

maintained by the contractor that excludes coverage for work contemplated in this solicitation shall be deemed unacceptable, and shall be considered breach of contract.

Workers' Compensation and Employers' Liability Insurance

Limits: Workers' Compensation – Per Chapter 440, Florida Statutes

Employers' Liability - \$500,000

Any firm performing work on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute. For additional information contact the Department of Financial Services, Workers' Compensation Division at 850-412-1601 or on the web at www.fldfs.com.

Commercial General Liability Insurance

Covering premises-operations, products-completed operations, independent contractors and contractual liability.

Limits: Combined single limit bodily injury/property damage \$1,000,000.

This coverage must include, but not limited to:

- a. Coverage for the liability assumed by the contractor under the indemnity provision of the contract.
- b. Coverage for Premises/Operations.
- c. Products/Completed Operations.
- d. Broad Form Contractual Liability.
- e. Independent Contractors.

Automobile Liability Insurance

Covering all owned, hired and non-owned automobile equipment.

Limits: Bodily injury \$250,000 each person

 \$500,000 each occurrence

Property damage \$100,000 each occurrence

Certificate holder should be addressed as follows:

City of Fort Lauderdale
Procurement Services Division
100 North Andrews Avenue, Room 619
Fort Lauderdale, FL 33301

- 30.4 The Construction Manager shall deliver the original of the initial Certificates of Insurance and five (5) copies to:

The City of Fort Lauderdale, Florida
100 N. Andrews Avenue
Fort Lauderdale, FL 33301
Attn.: Risk Manager

- 30.5 Notices, in original and five (5) copies, of cancellation, terminations and alterations of such policies shall be delivered to:

The City of Fort Lauderdale, Florida
100 N. Andrews Avenue
Fort Lauderdale, FL 33301
Attn.: Risk Manager

GC 31 SITE CONDITIONS

- 31.1 Construction Manager has the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, staging, parking, disposal, handling and storage of materials; availability, quantity and quality of labor, water and electric power; availability and condition of roads; climatic conditions, location of underground utilities as depicted on Agreement documents, and through verification with local utility companies and the City, physical conditions of existing construction, topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials to be encountered; the nature of the ground water conditions; equipment and facilities needed preliminary to and during performance of the Agreement; and all other matters which would be reasonably known a licensed general contractor with expertise in marine piers and related infrastructure construction as in any way affecting performance of the Agreement, or the cost associated with such performance. The failure of Construction Manager to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully and timely performing the Agreement.
- 31.2 The City shall not be responsible for any conclusions or interpretations made by the Construction Manager based on the information made available by the City. The City shall not be responsible for any understanding reached or representation made concerning conditions which can affect the Work by any of Construction Manager's officers, employees, agents, subcontractors, material men, or suppliers before execution of this Contract, unless that understanding or representation is expressly stated in this Agreement.

GC 32 ACCESS TO WORK AREAS

- 32.1 City, Design Professional, and their duly authorized representatives and employees, and all duly authorized representatives of governmental agencies having jurisdiction over Work areas or any part thereof shall, at all reasonable times, for the purpose of determining compliance with Agreement requirements and permits, have access to such areas and the premises used by Construction Manager. Construction Manager shall also arrange for City, Design Professional, and their said representatives and employees, to have access at all reasonable times to all places where equipment or materials are being manufactured, produced, or fabricated for use under the Agreement.
- 32.2 Construction Manager's access to the site and storage areas shall be as shown on the plans and as designated by the City. Access routes may also be used by City's employees, the public, and other separate City contractors. No other access points shall be allowed unless approved by the City, in writing. All Construction Manager traffic authorized to enter the site shall be experienced with the route or guided by Construction Manager personnel. The Construction Manager is responsible for immediate cleanup of any debris deposited along the access route as a result of its construction traffic.

GC 33 PRECONSTRUCTION CONFERENCE

- 33.1 As soon as practicable after execution of this Agreement, and prior to commencing any Work, a pre-construction conference will be coordinated by the Construction Manager and the City. In attendance at said conference will be City, Design Professional, and any of their representatives as may be deemed advisable. The purpose of said conference is to determine procedures related to the smooth progress of the Project, review of any items requiring clarification, maintenance of traffic, merchant and pedestrian accessibility, related safety issues, and procedures for the processing and distribution of all documents and correspondence related to the Agreement, among other things.

GC 34 MEETINGS

- 34.1 The Construction Manager shall, at its expense, as requested by City, attend any and all meetings called by City to discuss the Work under the Contract. Such meetings shall be conducted and documented by the City with typed minutes of each meeting distributed to all attendees.

GC 35 DELIVERY, UNLOADING AND STORAGE

- 35.1 Construction Manager shall, at its expense, receive, unload, store in a secure place, and deliver from storage to the construction site all materials, plant and equipment required for the performance of the Contract. The storage facilities, methods of storing and security provisions shall meet City's approval and manufacturer's recommendations. Materials and equipment subject to degradation by outside exposure shall be stored in a weather tight enclosure.

GC 36 WORK AREA

- 36.1 All Construction Manager's Work areas on the jobsite will be assigned by City. Construction Manager shall confine its office, shops, storage, assembly and equipment and vehicle parking to the areas so assigned. Before commencing Work, the Construction Manager shall provide a temporary office on the site of the Work, or as otherwise agreed to by the City, in writing, which shall have a telephone where a representative of the Construction Manager may be reached at all times during normal working hours. Should Construction Manager find it necessary or advantageous to use any additional land outside the Project site for any purpose whatever, Construction Manager shall, provide and make its own arrangements for the use of such additional land.

GC 37 PLANT, EQUIPMENT AND FACILITIES

- 37.1 Construction Manager shall provide and use on any Work only such construction plant and equipment as are capable of producing the quality and quantity of work and materials required by the Contract and within the time or times specified in the Contract. Before proceeding with any Contract Work or with erection of any facilities, including, but not limited to, temporary structures, machinery, equipment, offices and warehouses, Construction Manager shall furnish City such information and drawings relative to such equipment, plant facilities as City may request.
- 37.2 Upon written order of City, Construction Manager shall discontinue operation of unsatisfactory plant and equipment or facilities and shall either modify or remove the unsatisfactory items from the site.
- 37.3 Construction Manager shall not remove construction plant or equipment from the site before the Work is finally accepted without City's written approval. Such approval shall not be unreasonably withheld.

GC 38 CONSTRUCTION MANAGER-FURNISHED MATERIALS, EQUIPMENT AND WORKMANSHIP

- 38.1 Only new, unused items of recent manufacture, of designated quality, but in no event less than the standard quality for the improvements, free from defects, will be accepted. Rejected items shall be removed immediately from the Work and replaced with items of specified quality. Failure by City to order removal of rejected materials and equipment shall not relieve Construction Manager from responsibility for quality of the materials supplied or from any other obligation under the Contract Documents.
- 38.2 Construction Manager shall continuously check Design Professional clearances for accessibility of equipment and mechanical and electrical systems. No allowance of any kind will be made for Construction Manager's negligence to foresee means of installing equipment into position inside structures.

- 38.3 No Work defective in construction or quality, or deficient in meeting any requirement of the Contract Drawings and Specifications, will be acceptable regardless of City's failure to discover or to point out defects or deficiencies during construction; nor will the presence of field representatives at the Work or the satisfaction of the Work meeting applicable code requirements relieve Construction Manager from responsibility for the quality and securing progress of Work as required by the Contract Documents. The City shall notify the Construction Manager of defective or unacceptable Work if the City discovers such. Defective Work revealed within the time required by warranties (whether expressed or implied) shall be remedied in accordance with the GENERAL CONDITIONS Section entitled, WARRANTY. No payment, whether partial or final, shall be construed as an acceptance of defective Work or improper materials.
- 38.4 Construction Manager shall waive "common practice" and "common usage" as construction criteria wherever details and specifications or governing codes and ordinances require greater quantity or better quality than common practices and common usage would require. Construction Manager shall order and schedule delivery of materials in reasonable time to avoid delays in construction. Delays in delivery of equipment or material purchased by the Construction Manager or its Trade Contractors shall not be considered as a cause for an adjustment of the Contract Time or a basis for damages or compensation. The Construction Manager shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials. If an item is found to be unavailable, Construction Manager shall notify City immediately of recommended substitute(s) to permit City's selection of a suitable substitute.
- 38.5 City will exercise sole authority for determining conformance of workmanship, materials, equipment and systems with the requirements of the Contract. Review and approval of all items proposed by Construction Manager for incorporation into the Work will be by City. This function by City will apply both to approvals for the Contract as initially signed, and to approvals for changes to Contract by modifications during progress of the Work. Reference to manufacturers' names, brands and models is to establish the type and quality desired. Substitutions may be permitted unless specifically noted otherwise and in accordance with GC 39 below.
- 38.6 When materials, equipment, or systems are specified by performance only, without reference to specific manufacturer's brands or models, Construction Manager shall submit its own choice for City's review and approval, supported by sufficient evidence of conformity with the Contract Documents.

GC 39 SUBSTITUTIONS

- 39.1 Prior to proposing any substitute item, Construction Manager shall satisfy itself that the item proposed is, in fact, equal or better to that specified, that such item will fit into the space allocated, that such item affords comparable ease of operation, maintenance and service, that the appearance, longevity and suitability for the climate are comparable, and that by reason of cost savings, reduced construction time, or similar demonstrable benefit,

the substitution of such item will be in City's interest, and will in no way impact detrimentally upon the Project completion date and schedule.

- 39.2 The burden of proof of equality of a proposed substitution for a specified item shall be upon Construction Manager prior to City's decision on such substitution. Construction Manager shall support its request with sufficient test data and other means to permit City to make a fair and equitable decision on the merits of the proposal. Construction Manager shall submit drawings, samples, data, certificates, and additional information as may be required by the City for proposed substitute items as required by GC 41 CONSTRUCTION MANAGER FURNISHED DRAWINGS, DATA & SAMPLES.
- 39.3 Any item by a manufacturer other than those specified or of brand name or model number or of generic species other than those specified will be considered a substitution. City will be the sole judge of whether or not the substitution is equal in quality, utility and economy to that specified. Construction Manager shall allow an additional 7 days for City's review of substitution. All requests for substitutions with submittal data must be made at least fourteen (14) days prior to the time Construction Manager must order, purchase, or release for manufacture or fabrication. Materials and methods proposed as substitutions for specified items shall be supported by certification of their approval for use by all governmental agencies having jurisdiction over use of specific material or method. Substitutions may not be permitted in those instances where the products are designed to match artistic design, specific function or economy of maintenance. Approval of a substitution shall not relieve Construction Manager from responsibility for compliance with all requirements of the Contract. Construction Manager shall coordinate the change with all trades and bear the expense for any changes in other parts of the Work caused by any substitutions.
- 39.4 If City rejects Construction Manager's substitute item on the first submittal, Construction Manager may make only one additional request for substitution in the same category. On the second request, and all future requests, the Construction Manager shall be invoiced the expenses (including City's and Design Professionals' cost and overhead) involved in reviewing submittal data.

GC 40 FIELD LAYOUT OF WORK

- 40.1 All Work under this Contract shall be constructed in accordance with the lines and grades shown on the Contract Drawings or as approved by the City in writing. Elevation of existing ground, structures and appurtenances are believed to be reasonably correct but are not guaranteed to be absolute and therefore are presented only as an approximation.
- 40.2 All survey work for construction control purposes shall be made by a land surveyor registered in the State of Florida, with demonstrated experience in the Project area, and who shall be employed by the Construction Manager at Construction Manager's expense. The Construction Manager shall establish all base lines for the location of the principal component parts of the Work together with permanent benchmarks and temporary bench marks adjacent to the Work. Based upon the information provided by the Contract

Drawings, the Construction Manager's surveyor shall develop and make all detail surveys necessary for construction including establishment or construction of grid coordinates as shown on the Contract Drawings, location of property boundaries, stakes for all working points, lines and elevations. City shall provide surveys necessary for utility easements.

- 40.3 The Construction Manager shall have the responsibility to carefully preserve all bench marks, reference points and stakes. In case of destruction thereof by the Construction Manager resulting from his negligence, or for any other reason, it shall be held liable for any expense and damage resulting therefrom and shall be responsible for any mistakes that may be caused by the unnecessary loss or disturbance of such bench marks, reference points and stakes. Existing or new control points, property markers, and monuments that will be established or are destroyed during the normal course of construction shall be re-established by the Construction Manager, and all reference ties recorded therefor shall be furnished to the City. All computations necessary to establish the exact position of the Work shall be made and preserved by the Construction Manager.

GC 41 CONSTRUCTION MANAGER FURNISHED DRAWINGS, DATA AND SAMPLES

- 41.1 Review and permission to proceed by City as stated in this Contract does not constitute acceptance or approval of design details, calculations, analyses, test methods, certificates or materials developed or selected by the Construction Manager and does not relieve Construction Manager from full compliance with contractual obligations. Drawings, samples, catalogues, data and certificates required shall be submitted to the City for review.
- 41.2 All correspondence from the Construction Manager to the City shall be numbered sequentially and the submittal number shall be referenced. Submittal drawings (shop, erection or setting diagrams) and schedules, required for work of various trades, shall be checked before submission by technically qualified employees of Construction Manager for accuracy, completeness and compliance with Contract requirements. These drawings and schedules shall be stamped and signed by Construction Manager certifying to such check. The certification stamp shall read as follows:

"I certify that I have checked this submittal for accuracy, completeness and compliance with Contract requirements, and it has been coordinated with all other submittals and Contract Documents."

SIGN

DATE

- 41.3 Drawings

- 41.3.1 Where drawings are required for (a) fabrication of Construction Manager furnished equipment; (b) installing Construction Manager furnished material or

equipment; or (c) planning and performance of the Work under Contract; such drawings shall be originally generated and submitted by and at the expense of the Construction Manager before fabrication, installation or performance is commenced. Each submittal shall be made not less than fourteen (14) calendar days prior to the time that the drawings are required in accordance with the schedule. Allow at least seven (7) calendar days for review by the Engineer. Such drawings shall include, but not be limited to, matchmarks, erection diagrams and other details, such as field connections for proper installation, erection of the equipment, and performance of the Work.

- 41.3.2 For drawings greater in size than 11" x 17", one reproducible and four copies shall be submitted to the City by and at the expense of the Construction Manager. The City will be the sole judge of the adequacy of the quality of the reproducible and prints and may reject reproducibles and/or prints on the basis of quality alone. Such drawings will not be folded, but will be transmitted in mailer rolls manufactured expressly for that purpose. The reproducible with the City's review comments will be returned to the Construction Manager. A reproducible copy of drawings equal to or less than 11" x 17" is not necessary, but five copies of the unfolded drawings must be transmitted to the Design Professional and City.
- 41.3.3 If drawings show variations from the Contract requirements, the Construction Manager shall describe such variations in writing, separate from the drawings, at the time of submission. If the City approves any such variation(s), it will issue an appropriate Contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.
- 41.3.4 Drawings of a specific piece of equipment shall identify components with the manufacturer's part number or reference drawing clearly indicated. If reference drawing numbers are used, the review date of such drawings shall be included. Drawings shall indicate design dimensions, maximum and minimum allowable operating tolerances on all major wear fits, i.e. - rotating, reciprocating or intermittent sliding fits between shafts or stems and seals, guides and pivot pins. The sequence of submission of all drawings shall be such that all information is available for reviewing each drawing when it is received.
- 41.3.5 All drawings submitted by the Construction Manager shall be certified and dated by the Construction Manager on the face of each drawing to be correct, accurate and shall be furnished in accordance with requirements of the Specifications. The Design Professional and City will conduct a review of Construction Manager's drawings and a drawing marked with one of the following review comments will be returned to the Construction Manager:
 - 1. No exceptions taken.
 - 2. Make corrections noted. No resubmittal.

3. Not required for review.

41.3.6 The Construction Manager must incorporate the changes indicated, resubmit and obtain a Code 1 or 2 notation before release for shipment can be granted.

41.4 Samples.

41.4.1 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. Samples of all items of related systems (i.e., adjacent surfaces requiring similar colors but manufactured of different materials) must be submitted in the same time frame before the approval process can begin.

41.4.2 Where samples are required, they shall be submitted by and at the expense of the Construction Manager. Such submittal shall be made not less than thirty five (35) calendar days prior to the time that the materials represented by such samples need to be ordered for incorporation into any Work in accordance with the schedule. Allow at least five (5) calendar days for City's review. Materials represented by such samples shall not be manufactured, delivered to the site or incorporated into any Work without such review. Each sample shall bear a label showing the Construction Manager's name, date submitted, Project name, name of the item, manufacturer's name, brand name, model number, supplier's name, and reference to the appropriate drawing, Technical Specification section and paragraph number, all as applicable.

41.4.3 Samples that have been reviewed may, at Design Professional's and City's option, be returned to the Construction Manager for incorporation into the Work.

41.5 Catalogues, Data and Certificates.

41.5.1 Where catalogues, data or certificates are required, five (5) copies of each shall be submitted by and at the expense of the Construction Manager. Such submittal shall be made not less than fourteen (14) calendar days prior to the time that the materials represented by such catalogues, data or certificates must be ordered for incorporation into any Work in accordance with the approved Critical Path Method (CPM) schedule. Allow at least 7 calendar days for Design Professional and City's review. Material represented by such shall not be fabricated, delivered to the site or incorporated into any Work without such review.

41.5.2 Certificates shall clearly identify the material being certified and shall include but not be limited to providing the following information: Construction Manager's name, Project name, name of the item, manufacturer's name, and reference to the appropriate drawing, Technical Specification section and paragraph number all as applicable. All catalogues, data and certificates

submitted by the Construction Manager shall be certified and dated by the Construction Manager on the face of each catalogue, data and certificate to be correct and shall be furnished in accordance with these requirements and the requirements of the Technical Specifications. Design Professional and City will conduct a review of Construction Manager's catalogues, data, and certificates and one copy marked with the review comments listed in paragraph 46.3.5, above, will be returned to the Construction Manager.

GC 42 CONSTRUCTION SCHEDULE

42.1 Within ten (10) days after the date of the City's issuance of a Notice to Proceed, the Construction Manager shall prepare and submit to the City a CPM construction schedule in graphically depicting the activities contemplated to occur as a necessary incident to performance of the Work required to complete the Project, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The City's initial approval for the purposes of this GC 47.1, and any other provisions in the Contract Documents related to the Construction Manager's responsibility to prepare and submit schedules shall be limited to a determination that the activities, durations and logic are reasonable.

42.1.1 The construction schedule shall be complete in all respects, covering, in addition to activities and interfaces with other Construction Managers at the site of the Work, offsite activities such as design, fabrication, an allowance for weather delays, submittals, procurement and jobsite delivery of Construction Manager furnished material and equipment. The schedule shall be a Critical Path Method (CPM) drawn to a time scale using arrow or precedence type diagramming. The construction schedule activities shall mirror the payment application breakdown.

42.1.2 The construction schedule shall include the following:

- a. Brief description of each activity.
- b. All submittals, samples, approvals, fabrication, and deliveries for equipment and materials. Allow no more than 60 days float between submittal approval and beginning of fabrication, except as otherwise authorized by City in writing;
- c. Activities showing scheduled start and finish, late start and finish, and float.
- d. Relations between activities.
- e. Duration of activities. No activity should be scheduled for more than 20 workdays.
- f. Contractual and other major milestones including phasing.

- g. Schedule activities to include labor and material.
 - h. An allowance for delays due to weather. Contract Time extensions for weather delays will be granted only when all of the conditions and criteria for evaluation of time extensions have been met pursuant to the General Conditions.
- 42.1.3 Upon acceptance of the original CPM Schedule, the Early Start and Early Finish dates for all activities shall be fixed as Planned Start and Planned Finish dates. Any further revisions to the schedule must be submitted in writing and approved by the City.
- 42.1.4 The detailed CPM schedule submittal shall include five (5) color copies of the following:
- a. Time Scaled Diagram.
 - b. Bar Chart in the following formats:
 - c. Sorted by activity.
 - d. Sorted by early start.
 - e. Precedence and Successor report.
 - f. Narrative report.
 - g. Computer disc (one copy).
 - h. Submittals shall be organized under Standard CSI format.
- 42.1.5 The detailed CPM Schedule shall be updated monthly and submitted along with an updated CD accompanied by an Application for Payment. Construction Manager shall meet with the City and Design Professional of Record to review and verify:
- a) Actual start and finish dates for completed activities.
 - b) Remaining duration required to complete each activity started, scheduled to start, but not completed.
 - c) Logic and time, for change orders that are to be incorporated into the schedules.
 - d) Percentage for completed and partially completed activities.
- 42.2 Following development and submittal of the construction schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or will affect the progress of the performance of the Work yet to be performed in contrast with the planned progress of performance of such Work, as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction

schedule last submitted prior to submittal of each such monthly update and revision.

42.3 The Construction Manager shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules:

a. Subcontractor Construction (Subnetworks) - Upon the award of each subcontract, the Construction Manager shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the Specifications, taking into account the Work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.

b. Occupancy Schedule - The Construction Manager shall jointly develop with the Engineer and City a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to City occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final City occupancy.

42.4 The Construction Manager shall submit a written narrative report as a part of his monthly review and update in a form agreed upon by the Construction Manager and the City. The narrative report shall include a description of problem areas; current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates; and an explanation of corrective action taken or proposed.

42.5 The Construction Manager shall have in its employ for the length of this Project, at least one qualified scheduling specialist whose responsibility as to this Contract will be to prepare, plan and draft the construction schedules, monitor the construction progress, analyze scheduling problems for resolution, update the Construction Schedule as required in the Contract, and maintain updated information as required regarding the interface with other contracts. The costs associated herewith, and all scheduling activities, are included in the Lump Sum.

42.6 The Construction Manager agrees that whenever it becomes apparent from the current progress review meeting or the computer produced calendar dated schedule that the Contract completion date will not be met, the Construction Manager shall execute some or all of the following remedial actions at Construction Manager's sole cost and expense:

a) Increase construction manpower in such quantities and crafts as necessary to eliminate the backlog of Work.

b) Increase the number of working hours per shift, shifts per working day, working days per week, the amount of construction equipment, or any combination of the foregoing to eliminate the backlog of Work.

c) Reschedule the Work in conformance with the specification requirements.

42.7 Prior to proceeding with any of the above actions, the Construction Manager shall notify the City of the proposed schedule changes. Such actions shall be incorporated by the Construction Manager into the diagram before the next update, at no additional cost.

GC 43 RESPONSIBILITY FOR WORK SECURITY

43.1 Construction Manager shall, at its expense, at all times conduct all operations under the Contract in a manner to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any property. Construction Manager shall promptly take all reasonable precautions which are necessary and adequate against any conditions which involve a risk of loss, theft or damage to its property, at a minimum. Construction Manager shall continuously inspect all its Work, materials, equipment and facilities to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such condition.

GC 44 PROTECTION OF WORK IN PROGRESS, MATERIALS AND EQUIPMENT

44.1 Construction Manager shall be responsible for and shall bear any and all risk of loss or damage to Work in progress, all materials delivered to the site, and all materials and equipment involved in the Work until completion and final acceptance of Work under this Contract. Excluded from Construction Manager's responsibility is any loss or damage which results from acts or omissions of the City or its representatives or other contractors.

44.2 Permanent openings or thoroughfares for the introduction of work and materials to the structure and construction site shall be protected so that upon completion, the entire Work will be delivered to the City in proper, whole and unblemished condition.

GC 45 PROTECTION OF EXISTING PROPERTY

45.1 Construction Manager shall so conduct its operations as not to damage, close, or obstruct any utility installation, highway, road or other property until permits therefore have been obtained. If facilities are closed, obstructed, damaged or rendered unsafe by Construction Manager's operations, Construction Manager shall, at its expense, make such repairs and provide temporary guards, lights and other signals as necessary or required for safety and the welfare of persons on the jobsite and the general public.

45.2 Construction Manager shall conduct its operation so as not to damage any existing buildings or structures. The Construction Manager shall verify that means and methods

of construction used inside, adjacent to, under or over existing buildings will not cause damage. The Construction Manager shall provide protection methods which insure the safety of persons on the jobsite and the general public.

- 45.3 Unless otherwise specifically provided in the Contract, Construction Manager shall not do any Work that would disrupt or otherwise interfere with the operation of any pipeline, telephone, electric, radio, gas, transmission line, ditch or other structure, nor enter upon lands in their natural state until approved by City. Thereafter, and before it begins such Work, Construction Manager shall give due notice to City of its intention to start such Work. Construction Manager shall not be entitled to any extension of time or any extra compensation on account of any postponement, interference, or delay cause by any such line, ditch or structure on or adjacent to the site of the Work. If Construction Manager has exercised due diligence, such as, but not limited to, conducting soft digs, securing utility locates, as well as other activities both during its Pre-Con performance and thereafter, Construction Manager shall not be held responsible for any damages caused to any lines, cables, pipes, or pipelines which are not depicted on the surveys, studies, reports, investigations and legal descriptions of the site supplied to the Construction Manager.
- 45.4 Construction Manager shall preserve and protect all cultivated and planted areas and vegetation such as trees, plants, shrubs and grass on or adjacent to the Project, which, as determined by City, do not reasonably interfere with the performance of this Contract.
- 45.5 Construction Manager shall be responsible for damage to any such areas and vegetation and for unauthorized cutting of trees and vegetation, including, without limitation, damage arising from the performance of its work through operation of equipment or stockpiling of materials. All cost in connection with any repairs or restoration necessary or required by reason of any such damage or unauthorized cutting shall be borne by Construction Manager.

GC 46 LABOR

- 46.1 Construction Manager shall employ only competent and skilled personnel to perform the Work. Construction Manager shall, if requested to do so by City, remove from the jobsite any personnel of Construction Manager whom City determines unfit or acting or working in violation of any provision of this Contract.
- 46.2 The Construction Manager and subcontractors shall be bound by and comply with all Federal, State and local laws with regard to minimum wages, overtime work, hiring, and discrimination. All work necessary to be performed after regular working hours, on Saturdays, legal and Town holidays, shall be performed without additional expense to the City. The Construction Manager shall comply with the Copeland Anti-Kick Back Act (19 U.S.C. 874) as supplemented in the Department of Labor Regulations (29 CFR Part 3). This act provides that each Construction Manager or subcontractor shall be prohibited from inducing by any means, any person employed in the construction,

completion or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

GC 47 EQUAL EMPLOYMENT OPPORTUNITY

47.1 During the performance of this Contract, the Construction Manager agrees as follows:

- a. The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, or national origin. The Construction Manager will take affirmative action to ensure that applicants and employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth provisions of this nondiscrimination clause.
- b. In the event of the Construction Manager's noncompliance with the nondiscrimination clause of this Contract or with any of such rules, regulations, or orders, this Contract may be cancelled, terminated or suspended in whole or in part

GC 48 SAFETY & PROTECTION OF PERSONS & PROPERTY

48.1 RESPONSIBILITY FOR SAFETY AND HEALTH

- 48.1.1 The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to be performed under the terms of the Contract ("Work"). The Construction Manager shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the City and Users who may be affected thereby. The Construction Manager shall set forth in writing its safety precautions and programs in connection with the Work and submit the same to the City. The City may, but shall not be obligated to, make suggestions and recommendations to the Construction Manager with respect thereto.
- 48.1.2 All Work, whether performed by the Construction Manager, its Sub-Construction Managers or Sub-subcontractors, or anyone directly or indirectly employed by any of them, and all equipment, appliance, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with, and conform to:

- a. all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970, as amended and all State, Local, City and County rules and regulations now or hereafter in effect; and
 - b. all codes, rules, regulations and requirements of the City and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.
- 48.1.3 Should the Construction Manager fail to provide a safe area for the performance of the Work or any portion thereof, the City shall have the right, but not the obligation, to suspend Work in the unsafe area. All costs of any nature resulting from the suspension, by whosoever incurred, shall be borne by the Construction Manager.
- 48.1.4 The Construction Manager shall provide, or cause to be provided, to each worker on the Job Site the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Job Site who fails or refuses to use the same. The City shall have the right, but not the obligation, to order the Construction Manager to send a worker home for the day or to discharge a worker for his or her failure to comply with safe practices, with which order the Construction Manager shall promptly comply.
- 48.1.5 The Construction Manager shall defend, indemnify and hold the City, the City's Representative and their respective officers, directors, agents, employees and assigns, harmless from and against any and all liability, public or private, penalties, contractual or otherwise, losses, damages, costs, reasonable attorneys' fees, expenses, causes of action, claims or judgments to the extent resulting from any failure of the Construction Manager, its subcontractors or sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, to comply with the provisions of this General Condition.
- 48.1.6 In any and all claims against those indemnified hereunder by any employee of the Construction Manager, any subcontractor or sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way to any limit(s) on the amount or type of damage, compensation or benefits payable by or for the Construction Manager or any subcontractor or sub-subcontractor under any workers' compensation acts, disability benefit acts or other employee benefit acts.

49.2 UNCONTROLLABLE CIRCUMSTANCES

- 49.2.1 The City and Construction Manager will be excused from the performance of their respective obligations under this Agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, acts of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any

governmental authority, delay or failure or shortage of any type of transportation, equipment or service from a public utility needed for their performance, provided that:

- a. The non-performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;
- b. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- c. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and
- d. The non-performing party uses its best efforts to remedy its inability to perform. Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Contractor will not constitute Force Majeure. The term of the Agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

GC 50 FIRE PREVENTION

- 50.1 Construction Manager shall, at its expense, conform to all Federal, State, and local laws and regulations pertaining to burning, fire prevention and control within or adjacent to the Project. Necessary precautions to avoid and eliminate fire hazards shall be the responsibility of the Construction Manager. This includes keeping the Contract Work area clear of all trash at all times.
- 50.2 All tarpaulins used for any purpose during construction of any Work shall be made of material resistant to fire, water and weather and shall bear UL labels. Lighting of any fires on premises is strictly forbidden. Controlled burning shall be with the consent of the City. Construction Manager shall provide portable fire extinguishers properly labeled, located and compatible with the hazard of each work area and shall instruct its personnel in their use. Wherever welding and burning are conducted, inflammable materials shall be protected and a fire watch shall be provided by Construction Manager to be present during the burning and welding operation to ensure that protective measures are taken and that no fires result from such operation. The fire watch shall have fire extinguisher equipment readily available and know-how for proper use.

GC 51 BEST MANAGEMENT PRACTICES

- 51.1 Construction Manager shall be responsible for evaluating the site before construction is initiated to determine if any site conditions may pose particular problems for the handling of any Regulated Substances. For example, handling Regulated Substances in the proximity of water bodies or wetlands may be improper.
- 51.2 Regulated Substances are substances that are known to cause significant harm to human health and the environment (including surface and groundwater). The Unified Land

Development Code (ULDA) Section 9.3, Wellfield Protection, regulates the storage, handling, use and production of Regulated Substances within Wellfield zones which may impair present and future drinking water suppliers. In addition, the ULDC, Section 9.6, Excavation, requires that Best Management Practices for the Construction industries be followed for Agricultural Area, TYPE II, TYPE IIIA and TYPE IIIB excavation activities.

- 51.3 If any Regulated Substances are stored on the construction site, they shall be stored in a location and manner which will minimize any possible risk of release to the environment. Any storage container of 55 gallons, or 440 pounds, or more containing Regulated Substances shall have constructed below it an impervious containment system constructed of materials of sufficient thickness, density and composition that will prevent the discharge to the land, ground waters, or surface waters, of any pollutant which may emanate from said storage container or containers. Each containment system shall be able to contain 150% of the contents of all storage containers above the containment system.
- 51.4 Construction Manager shall familiarize itself with the manufacturer's safety data sheet supplied with each material containing a Regulated Substance and shall be familiar with procedures required to contain and clean up any releases of the Regulated Substance. Any tools or equipment necessary to accomplish same shall be available in case of a release.
- 51.5 Upon completion of construction, all unused and waste Regulated Substances and containment systems shall be removed from the construction site and shall be disposed of in a proper manner as prescribed by law.

GC 52 ENVIRONMENTAL, HEALTH AND SAFETY

- 52.1 The Construction Manager shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the Work. Construction Manager shall comply, and shall secure compliance by its employees, agents, and subcontractors, with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of Construction Manager. Construction Manager shall be responsible for examining all requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the Work. Construction Manager agrees to use protective devices as required by applicable laws, regulations, and any industry or Construction Manager's health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all such persons shall be fit and qualified to carry out the Work.

GC 53 INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP

- 53.1 All materials and equipment furnished and work performed shall be properly inspected by Construction Manager, at its expense, and shall at all times be subject to quality

surveillance, observations or quality audit by City. Construction Manager shall provide safe and adequate facilities and all samples, drawings, lists and documents necessary for such quality surveillance, observation or quality audit. For this purpose City shall be afforded full and free access to the shops, factories or places of business of Construction Manager and its subcontractors and suppliers for such quality surveillance, observation or quality audit and to determine the status of the Work. If Construction Manager covers all or any portion of the Work prior to any quality surveillance or test by City, the cost of any necessary uncovering and replacing shall be borne by Construction Manager. Neither the failure to make such quality surveillance, observance or quality audit, nor to discover defective workmanship, materials, or equipment, nor acceptance of or payment to Construction Manager for such work, materials or equipment shall prejudice the rights of City thereafter to correct or reject the same as hereinafter provided.

- 53.2 If any material, equipment or workmanship is determined by City, either during performance of the Work or on final quality surveillance, or during any applicable warranty period (expressed or implied), to be defective or not complying with the requirements of this Contract, City shall notify Construction Manager in writing that such material, equipment or work is rejected and the City reserves the right to withhold payment on any such item. Thereupon, Construction Manager shall, at its own expense, immediately remove and replace or correct such defective material, equipment or work by making the same comply strictly with all requirements of the Contract.

GC 54 TESTING

- 54.1 Unless otherwise provided in the Contract, Drawings and Specifications shop testing of materials or work shall be performed by the Construction Manager and in accordance with the Technical Specifications. Field testing of materials or work shall be performed by City. Should tests in addition to those required by the Specifications be desired by City, Construction Manager will be advised in reasonable time to permit such testing. Such additional tests will be at City's expense unless such additional tests are required due to Construction Manager's work or materials having failed any initial test. In this event, such additional (re-test) tests shall be at Construction Manager's expense. Construction Manager shall furnish samples as requested and shall provide reasonable assistance and cooperation as necessary to permit tests to be performed on materials or work in place including reasonable stoppage of work during testing. Construction Manager shall provide reasonable and accurate notice of when construction activities which require City's testing services are required. Construction Manager shall be responsible for stand-by and other costs associated with the testing agency if that construction activity is delayed or canceled.

GC 55 PROGRESS

- 55.1 Construction Manager shall give City full information in advance as to its plans for performing each part of the Work. If at any time during the progress of work, Construction Manager's actual progress is inadequate to meet the requirements of the Contract, City may so notify Construction Manager who shall thereupon take such steps as may be necessary to improve its progress. If within a reasonable period as determined solely by City, Construction Manager does not improve performance to meet the currently approved Contract construction schedule, City may require an increase in Construction Manager's labor force, the number of shifts, overtime operations, additional days of work per week and an increase in the amount of construction plant; all without additional cost to City. Neither such notice by City nor City's failure to issue such notice shall relieve Construction Manager of its obligation to achieve the quality of work and rate of progress required by the Contract.
- 55.2 Failure of Construction Manager to comply with the reasonable instructions of City may be grounds for determination by City that Construction Manager is not prosecuting its work with such diligence as will assure completion within times specified. Upon such determination, City may terminate Construction Manager's right to proceed with the performance of the Contract, or any separable part thereof, in accordance with the applicable provisions of this Contract.

GC 56 CHANGES

- 56.1 City may, at any time, without invalidating the Contract and without notice to the Surety(ies), make changes in the Work by issuing Change Orders, as well as Contingency Fund Change Orders addressed elsewhere in the Contract Documents (and which are not subject to this GC 56 and its subparts).
- 56.2 City will issue written orders to Construction Manager for any changes, except that in the event of an emergency which City determines immediately endangers life or property, City may issue oral orders to Construction Manager for any work required by reason of such emergency. Such orders will be confirmed in writing as soon as practicable. Such orders, whether written or oral, may be accompanied by drawings and data as are necessary to show the extent of such ordered work.
- 56.3 Construction Manager shall commence such changed work so that all dates set forth in Construction Manager's current construction schedule, as accepted by City, will be met. In the event of an emergency which City determines immediately endangers life or property, Construction Manager shall immediately commence such changes as required by City in order to mitigate or remove the emergency condition. Failure to commence any such change in timely fashion shall entitle City to invoke the provisions of section entitled TERMINATION FOR DEFAULT.
- 56.4 Unless otherwise required, Construction Manager shall, within twenty-one (21) calendar days following receipt of a written Change request from City, submit in writing to City a

Contract Change Proposal for accomplishing such change, which proposal shall reflect the increase or decrease, if any, in cost to City of performing the change under the Contract in comparison to what the cost would have been, had such change not been offered.

- 56.5. The proposal shall state the Construction Manager's added and/or deleted compensation in detail, including, but not limited to:
- a. Material quantities and unit prices;
 - b. Labor man-hours and wages by craft;
 - c. Equipment type and size and rental rate;
 - d. Overhead, profit, and bond allowance of 5% for those portions subcontracted, and 15% of those portions that are self-performed by the Construction Manager;
 - e. Subcontract costs with back-up detail as specified (in items a, b, c), and a markup for Subcontractor overhead and profit not to exceed 10% in the aggregate;
 - f. Time extension, if any;
 - g. A detailed description of any impacts this change will have on any activities on the Critical Path which would affect any of the Milestone Dates;
 - h. Proof of payment of any tax liability resulting from a specific change (if requested by City);
 - i. General Condition costs: provided however, that said costs shall be compensable *only in the event that the Change Order results in an extension in excess of thirty (30) calendar days of the Substantial Completion Date, as extended by Change Orders, if any*, and at a daily rate that shall be extrapolated from the amount of the General Conditions items specifically applicable to the Change Order.
- 56.6 Under no circumstances shall Construction Manager apply for or be entitled to recover extended home office overhead costs associated with a change in the Work, whether or not calculated in accordance with the Eichleay Formula. The Parties may agree, if justified in accordance with GC 27, to an extension of time in connection with any changes to the Work. Any time extension request submitted after the twenty-one (21) calendar day time period noted above, will not be considered and deemed waived by the Construction Manager.
- 56.7 If Construction Manager does not propose the method of compensation for such change, or any part thereof, within the time required, or if any proposed method is not acceptable to City, or if a method of compensation for such change, or any part thereof cannot be agreed upon, Construction Manager shall proceed upon direction ("Construction Change Directive") with such change.
- 56.8 A Construction Change Directive (CCD) is a written order prepared by the Design Professional of Record and signed by the City, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. A CCD may be used in the absence of total agreement on the terms of Change Order or to

complete work which, if not accomplished, could adversely affect a critical path activity. Upon receipt of the CCD, the Construction Manager shall promptly proceed with the change in the Work involved and advise the Design Professional of Record of the Construction Manager's agreement or disagreement with the method, if any, provided in the CCD for determining the proposed adjustment in the Contract Sum or Contract Time. When the City and Construction Manager agree with the determination made by the Design Professional of Record concerning the adjustments in the Contract Sum and/or Time, or otherwise reach agreement upon the adjustments, such agreement shall be recorded by the preparation of a Change Order. The Construction Manager shall not seek payment for work performed pursuant to a CCD until it has been converted to a Change Order.

56.8.1 If, at any time after Construction Manager commences such change, and a method of compensation other than verifiable cost of the changed Work plus the markups allowed in GC 56.5 is agreed upon, such compensation will be made in accordance with such agreement. In any event, Construction Manager shall keep accurate records of the actual cost to Construction Manager for such change. Costs for which Construction Manager shall be entitled to compensation on a cost of the changed Work plus markup basis as described above, are as follows:

- a. Direct Labor Cost - Payment will be made for all manual classifications up to and including foremen, but shall not include superintendents, assistant superintendents, general foremen, office personnel, time-keepers and maintenance mechanics, and those personnel categorized in the Lump Sum. The time charged to changes will be subject to the daily approval of City, and no charges shall be accepted unless evidence of such approval is submitted by Construction Manager with its billing.

Labor rates used to calculate the direct labor costs shall be those rates in effect during the accomplishment of the change, excluding those employees catalogued above. In addition to the direct payroll costs, the direct labor costs shall include payroll taxes and insurance, vacation allowance, subsistence, travel time and overtime premium and any other payroll additives required to be paid by Construction Manager by law or collective bargaining agreements, excluding those employees catalogued I (a) above. Copies of certified pertinent payrolls shall be submitted to City.

- b. Equipment Costs - Payment for the rental and operation of the equipment furnished and used by Construction Manager shall be made for all construction and automotive equipment or tools with a new cost at point of origin of one thousand dollars or less each. Equipment time charged to changes will be subject to daily written approval of City and no charges will be accepted unless evidence of such approval is submitted with Construction Manager's billing.

The equipment rental and operation rates include costs for rental, fuel, oil, grease, repair parts, service and maintenance of any kind, and necessary attachments. Such charges do not include costs for operating labor and transportation to and

from the location of the change. Equipment rental rates for Construction Manager-owned equipment used in this Contract shall be those contained in the RENTAL RATE BLUE BOOK as published by K-III Directory Corporation, 1735 Technology Drive, Suite 410, San Jose, California 95110-1313, (800-669-3282) and current at the time that work for any specific Change is performed, less 30%. When equipment is used for cost of the work changes which do not reasonably resemble adjusted Blue Book rental rates, the rental rate shall be negotiated and agreed upon in writing.

If Construction Manager-owned equipment is not available and equipment is rented from outside sources, payment will be computed on the basis of actual invoice cost. Rental rates for non-owned equipment must be approved in advance by City.

When the operated use of equipment is infrequent and, as determined by City, such equipment need not remain at the site of the Work continuously, payment shall be limited to actual hours of use. Equipment not operating but retained at the location of changes at City's direction shall be paid for at a standby rate.

Unless otherwise provided in the Contract, all equipment rental rates shall be agreed upon in writing before commencing any change. When a specific piece of rental equipment, normally used to perform unchanged Contract Work is used for cost of the Work Changes, the applicable rental rate shall be the actual rate paid by the Construction Manager at the time the Work is performed.

Transportation costs for bringing equipment to the jobsite and for returning equipment to the point of origin, exclusively for use on time and material work, will be reimbursed to Construction Manager based on invoices, provided that prior written approval has been given to Construction Manager.

Overtime shall be paid as per Method 2 described in said RENTAL RATE BLUE BOOK.

No compensation will be made to the Construction Manager for equipment repair, equipment maintenance or idle equipment time.

- c. Material Costs - Payment for the cost of materials furnished by Construction Manager for use in performing the change will be made, provided such furnishing and use of materials was as specifically authorized and the actual use was verified by City. Payment will be the net cost to Construction Manager delivered at the job and vendor's invoice shall accompany the billing along with the verification by City of such use of such materials.
- d. Contract and Outside Service Costs - Payment for work and services subcontracted by Construction Manager in the performance or completion of the change will be made only when both the subcontractor and the terms of payment

to such subcontractor have been approved in writing by City before the subcontractor starts to work on the change.

- e. Tools and Equipment - Payment will be made for tools and equipment with a new cost of One Thousand Dollars, or less, each, only upon approval by the City.

56.9 For any changes involving deductive items, the following shall apply to the amount of allowable overhead, profit and bond allowance:

- a. For deductive changes only (those which contain no additive items), there will be no reduction in overhead and profit and, likewise, no addition by the Construction Manager for processing.
- b. For changes containing both additions and deductions covering related work or substitutions, the overhead and profit shall be figured on the net increase if any, with respect to that change, plus nine (9) percent thereof covering overhead, profit, and bond allowance.

56.10 No change order or CCD shall be valid until approved and signed by the City. The Design Professional of Record is not authorized to bind the City to changes relative to changes in Contract cost and or time. The Design Professional may only recommend acceptance or rejection. If a proposed change is deemed beneficial to the Project and is within the limits set forth in the Contract, the City may cause to be issued an appropriate change order to the Contract with or without the Construction Manager's signature.

56.11 The Design Professional of Record will have the authority to order minor changes in the Work which do not involve adjustment to the GMP or Time and are not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the City and Construction Manager. The Construction Manager shall carry out such written orders promptly, and the Construction Manager shall receive no additional compensation therefore, nor shall there be any change in the Contract Time. The Design Professional shall immediately provide notices of all minor changes in the Work to the City.

56.12 Execution of a change order acknowledges final settlement of, and releases, all claims for costs and time associated, directly or indirectly, with the stated modification(s), including all claims for cumulative delays or disruptions resulting from, caused by, or incident to such modification(s), and including any claim that the modification(s) constitutes, in whole or part, a cardinal change to the Contract.

GC 57 RECORD DRAWINGS AND SPECIFICATIONS

57.1 a. Drawings:

- 1. Conformed Documents - Prior to the first application for payment, Construction Manager shall show proof of conformed documents with all Bid addenda identified on the record drawings and on his field set of drawings. Supplemental

information following the bid shall be included and updated monthly for review with the application for payment.

2. Progress Records - During construction, Construction Manager shall keep a marked-up and up-to-date set of drawings showing as-built conditions on the site as an accurate record of all deviations between work as shown and work as installed. These drawings shall be available to City for inspection at any time.
3. Final Records - The Construction Manager shall furnish to City a complete set of marked-up as-builts with RECORD clearly printed on each sheet. City, at its expense, will furnish Construction Manager with drawings for mark-up by Construction Manager. Construction Manager shall, by use of professional draftsman, accurately and neatly transfer all deviations from progress as-builts to final as-builts.

b. Specifications:

1. Progress Records - During construction, Construction Manager shall keep a marked-up and up-to-date set of Specifications showing as-is conditions on the site annotated to clearly indicate all substitutions that are incorporated into the Work. Where selection of more than one product is specified, annotation shall show which product was installed. These Specifications shall be available to City for inspection at any time.
2. Final Records - The Construction Manager shall furnish to City a complete set of marked-up as-built Specifications with RECORD clearly printed on cover. City, at its expense, will furnish Construction Manager a set of Specifications for mark-up by Construction Manager. Construction Manager shall accurately and neatly transfer all annotations from progress as-builts to final as-builts.

c. Manuals:

1. Manuals - As a condition precedent to Substantial Completion, the Construction Manager shall furnish to City three complete sets of manuals and applicable operating instructions as referenced in Technical Specifications.
2. Unless otherwise specified, manuals to be bound in 3-ring binder with contents clearly indicated on outside cover.

d. Endorsement:

1. Construction Manager shall sign each final record drawing and the cover of the record Specifications and shall note thereon that deviations and annotations are complete and accurate.

2. The Construction Manager shall provide a signed and notarized affidavit indicating that no asbestos containing materials were used or installed during the course of construction as a condition precedent to Final Acceptance.

e. Fixed Asset Equipment and Fixture Information:

1. Construction Manager shall provide the City with a list (in electronic format and hard copy) of each piece of equipment having an individual value greater than \$500.00 prior to Final Acceptance. The list shall include, at a minimum; a) the name, make and model number, b) the quantity installed, and 3) the value of the equipment.

57.2 Rights in Documents and Work

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City; and Construction Manager disclaims any copyright in such materials. In the event of and upon termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Construction Manager, whether finished or unfinished, shall become the property of the City and shall be delivered by Construction Manager within seven (7) days of termination of this Agreement by either party. Any compensation due to Construction Manager shall be withheld until Construction Manager delivers all documents to the City as provided herein.

GC 58 MEASUREMENT OF AND PAYMENT FOR WORK

- 58.1 Estimates and all support data shall be prepared by Construction Manager and submitted in writing for City's approval on or about the end of each month covering the amount and value of work satisfactorily performed by Construction Manager up to the date of such estimate. Such estimates shall be based on the construction schedule completed activity cost, as approved, and may be confirmed by actual measurement of the Work in place. Estimates shall be based on cumulative total quantities of work performed. Estimates may include materials or equipment not incorporated into the Work provided the requirements set forth below are met. A format for such estimates shall be determined by the City according to type of Contract Work and shall be agreed upon prior to, or no later than, application for the first progress payment.

The quantity of work to be paid for under any item for which a unit price is fixed in the Contract shall be the amount or number, approved by City, of units of work satisfactorily completed with the Contract and computed in accordance with applicable measurement for payment provisions of the Contract.

- 58.2 Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the Work, provided such materials meet the requirements of this Contract, plans, and Specifications and are delivered to acceptable locations at the Project Site or to other sites in Palm Beach County that are acceptable to the City (bonded warehouse). Such material must be stored in a secure manner, acceptable to the City, and in accordance with any manufacturer's recommendations.

- 58.3 Delivered cost of such stored or stockpiled materials may be included in any subsequent payment request once the Construction Manager meets the following conditions:
- a. An applicable purchase order or supplier's invoice is provided listing the materials in detail, cost of materials and identifying this specific Contract, by name.
 - b. The material is insured against loss or damage (from whatever source) or disappearance prior to incorporation into the Work.
 - c. Once any stored material is paid for by City, it shall not be removed from the designated storage area except for incorporation into the Work.
 - d. Evidence that Construction Manager has verified quantity and quality of materials delivered (verified packing list).
- 58.4 It is further agreed between the parties that the transfer of title and the City's payment for any stored or stockpiled materials pursuant to this General Condition shall in no way relieve the Construction Manager of the responsibility of ensuring the correctness of those materials and for furnishing and placing such materials in accordance with the requirements of this Contract, plans and Specifications. Construction Manager shall make all surveys necessary for determining all quantities of work to be paid for under the Contract. Copies of field notes, computations, and other records made by Construction Manager for the purpose of determining quantities shall be furnished to City upon request. Construction Manager shall notify City prior to the time such surveys are made. City, at its discretion, may arrange to have its representative witness and verify all surveys made by Construction Manager for determining quantities of work to be paid for under the Contract. Measurements and computations shall be made by such methods as City may consider appropriate for the class of work measured.
- 58.5 The dividing limits, lines or planes between adjacent items or classes of excavation, concrete, or other types of work where not definitely indicated on the drawings or in the Specifications, shall be determined by City.
- 58.6 No payments of invoices (or portions thereof) shall at any time constitute approval or acceptance of the Work under this Contract, nor be a waiver by City of any of the terms contained herein.

GC 59 PROGRESS PAYMENT PROCEDURES

- 59.1 The Construction Manager shall prepare a schedule of values by phases of work to show a breakdown of the Contract Sum corresponding to the payment request breakdown and progress schedule line items. The schedule of values must also show dollar value for each unit of work scheduled. Change Orders shall be added as separate line items. The schedule of values shall be submitted to the City and Design Professional of Record for review and approval prior to "Commencement of Work."
- 59.2 The Construction Manager will prepare and submit three (3) original copies of monthly invoices for work completed during the one month period. Pay Applications shall be

submitted in the format of the sample form given to the Construction Manager at the Pre-Construction meeting. All information must be completed for the pay application to be accepted. City's account number(s) for the Project will be given at the Pre-Construction meeting and will be placed at the top right hand corner of each application. These payment applications will be reviewed by all parties in attendance at the monthly pay application meetings. Prior to formal submission of the Application the Construction Manager shall submit a rough draft plus two extra copies for the City and Design Professional of Record to review. Submit final approved copies (3) to: the Design Professional of Record, whose approval is required prior to submission to the City.

- 59.3 If the pay estimate and support data are not approved, the Construction Manager is required to submit new, revised or missing information according to the City's instructions. Otherwise, the Construction Manager shall prepare and submit to City an invoice in accordance with the estimate as approved. City will pay Construction Manager, in accordance with Florida Local Government Prompt Payment Act (Fla. Stat. § 218.70). Retainage, in the amount of 10%, will be withheld on the calculated value of any work, with the exception of stored materials which may be paid at the supplier's invoiced cost. After 50% completion of the Work has been achieved, the City may, at its sole discretion and with consent of Surety, implement a reduction in retainage. However, in no instance can the amount retained be less than the value of the Work the City determines remains to be put in place or required to be performed as remedial activities.
- 59.4 Each application for payment shall be accompanied by the following:
- a. A notarized "Affidavit of Disbursement of Previous Periodic Payments to subcontractors" from the Construction Manager for the portion of work up to the date of that particular pay application.
 - b. A City approved construction schedule update.
- 59.5 If one or more "Notice of Non-Payment" is received by the City, no further payments will be approved until non-payment(s) have been satisfied and a "Release of Claim" for each "Notice" has been submitted to the City. Upon request, Construction Manager shall furnish acceptable evidence that all such claims or liens have been satisfied. On bonded projects only, the City may allow, with consent of Surety and indemnification of the County against any claims, payment for work which there is an outstanding Notice of Non-Payment.
- 59.6 Any amount otherwise payable under the Contract may be withheld, in whole or in part, if:
- a. Any claims are filed against Construction Manager by City or third parties; or if reasonable evidence indicates the probability of filing any such claim; or
 - b. Construction Manager is in default of any Contract condition; or
 - c. There is reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum
 - d. Damage to the City or a separate contractor;

- e. Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay
 - f. Defective work or material is not remedied; or
 - g. Construction Manager repeatedly fails to carry out the Work in accordance with the Contract Documents; or
 - h. Construction Manager fails to timely submit an City-approved updated Schedule with each Application for Payment.
- 59.7 If claims or liens filed against Construction Manager or property of City connected with performance under this Contract are not promptly removed by Construction Manager after receipt of written notice from City to do so, City may remove such claims or liens and all costs in connection with such removal shall be deducted from withheld payments or other monies due, or which may become due, to Construction Manager. Construction Manager shall have no less than thirty (30) days to remove or bond off such lien after notice. If the amount of such withheld payments or other monies due Construction Manager under the Contract is insufficient to meet such cost, or if any claim or lien against Construction Manager is discharged by City after final payment is made, Construction Manager and its surety or sureties shall promptly pay City all costs (including attorneys' fees) incurred thereby regardless of when such claim or lien arose.
- 59.8 Following issuance, by the Design Professional of Record, of a Certificate of Substantial Completion, Construction Manager may submit special payment request, provided the following have been completed:
- a. Obtain permits, certificates of inspection and other approvals and releases by governing authorities, required for the City's occupancy and use of the Project.
 - b. Complete final cleaning of the Work.
 - c. Submit record documents (record drawings).
 - d. Submit listing of work to be completed before final acceptance.
 - e. Settle liens and other claims.
 - f. Obtain Consent of Surety for partial release of retainage.
 - g. Settle Liquidated Damages due to City, if any.
- 59.9 Upon receipt by City of Construction Manager's written Notice of Final Completion of its work under this Contract, in accordance with GC 72, City shall verify all work has been completed on the Project. When all work has been verified as complete, and the Construction Manager completes and submits the items listed below, the Construction Manager may submit a final invoice.
- a. Complete work listed as incomplete at the time of Substantial Completion and obtain Design Professional certification of completed Work.
 - b. Submit proof of payment on fees, taxes or similar obligations.
 - c. Transfer operational, access, security and similar provisions to City; remove temporary facilities, tools and similar items.
 - d. Obtain Consent of Surety for final payment and/or partial release of retainage.

- e. All information required by GC 66.
- f. Obtain certification of as-built (record) drawings from Design Professional of Record.

GC 60 USE OF COMPLETED PORTIONS OF WORK

- 60.1 Whenever, as determined by City, any portion of work performed by Construction Manager is in a condition suitable for use, City may initiate certificate of Substantial Completion (Partial Utilization) for that portion and take possession of or use such portion. Such use by City shall in no case be construed as constituting final acceptance, and shall neither relieve Construction Manager of any of its responsibilities under the Contract, nor act as a Waiver by City of any of the conditions thereof, provided, that Construction Manager shall not be liable for the cost of repairs, rework, or renewals which may be required due to ordinary wear and tear resulting from such use. However, if such use increases the cost or delays the completion of remaining portions of work, Construction Manager shall be entitled to an equitable adjustment in its compensation and/or schedule under this Contract.
- 60.2 If, as a result of Construction Manager's failure to comply with the provisions of the Contract, such use proves to be unsatisfactory to City, City shall have the right to continue such use until such portion of work can, without injury to City, be taken out of service for correction of defects, errors, omissions, or replacement of unsatisfactory materials or equipment, as necessary for such work to comply with the Contract; provided that the period of such operation or use pending completion of appropriate remedial action shall not exceed twelve months unless otherwise mutually agreed upon in writing between the parties.
- 60.3 Construction Manager shall not use any permanently installed equipment unless such use is approved by City in writing. Where Construction Manager's written request is granted for the use of certain equipment, Construction Manager shall properly use and maintain, and upon completion of its use, and at its expense, recondition such equipment to the satisfaction of City. If City furnishes an operator for such equipment, such operator's services shall be performed under the complete direction and control of Construction Manager and shall be considered Construction Manager's employee for all purposes other than the payment of such operator's wages, workmen's compensation or other benefits paid directly or indirectly by City.

GC 61 ALLOWANCES AND UNIT PRICES

- 61.1 Construction Manager has included in the GMP all unit prices and allowances. Items covered by unit prices shall be supplied for such amounts as the City may direct.
- 61.2 Unit prices shall apply to revisions to the Work as applicable. Unit Prices are "all inclusive", including labor, material, supervision, tools, equipment, insurance taxes, fringe benefits, coordination, engineering, overhead, profit, performance and payment bonds, and all other things necessary.

GC 62 SUBSTANTIAL COMPLETION

- 62.1 The date of Substantial Completion is the date established by the Design Professional and approved by the City when the Project is sufficiently complete to permit the City to use it for its intended purpose and the items listed below in 63.4 are complete. Liquidated damages shall be assessed from the date of substantial completion of the entire Project.
- 62.2 The Construction Manager shall notify the Design Professional, in writing, when the Construction Manager considers the Project Substantially Complete and attach a comprehensive list of incomplete work and items needing correction with dates indicating when the items listed will be completed.
- 62.3 Once the Design Professional has received notice from the Construction Manager, the Design Professional will promptly inspect the Work. The Design Professional may refuse to inspect the Work if the Work is obviously not substantially complete or when the Construction Manager's list is not complete.
- 62.4 The following items shall be completed prior to a request by the Construction Manager for inspection for Substantial Completion of a particular phase of the Project
- a. Temporary Certificate(s) of Completion shall be obtained from the proper Building Official.
 - b. All general construction completed.
 - c. All electrical work complete, equipment and fixtures in place, connected, cleaned and ready for use.
 - d. All electrical circuits shall be scheduled in panels, and all panels and disconnect switches properly labeled.
 - e. Project site shall be cleared of the Construction Manager's excess equipment, storage shacks, trailers, and/or building supplies. All temporary construction shall be removed.
 - f. All electrical systems shall be complete, fully functional, and demonstrated to the City.
 - g. All operations and maintenance manuals for all equipment shall have been submitted.
 - h. Manufacturers' certifications and warranties shall be delivered to City.
 - i. All operations and maintenance training related literature, software and back-up disks shall have been provided. A video tape of the training shall be provided.

- j. All required spare parts as well as any special tools shall have been provided.
 - k. The Project record Drawings and Specifications shall be submitted in accordance with this Agreement.
- 62.5 If Substantial Completion is not obtained at the inspection, called by the Construction Manager, for reasons which are the fault of the Construction Manager, the cost of any subsequent inspections requested by the Construction Manager for the purpose of determining Substantial Completion shall be the responsibility of the Construction Manager and shall be assessed against the final payment application.
- 62.6 Punch list items recorded as a result of inspections for Substantial Completion are to be corrected by the Construction Manager within fourteen (14) calendar days and in any event prior to any request for Final Inspection and Acceptance.

GC 63 FINAL INSPECTION AND ACCEPTANCE

- 63.1 When the Construction Manager considers that all work under the Contract is complete as previously referenced in GC 71, Construction Manager shall so inform City and Design Professional, in writing. In addition, when items on the punch list as recorded at the Substantial Completion inspection have been corrected and the City is satisfied that all work under the Contract is completed and is in accordance with the requirements of this Contract, City shall notify Construction Manager in writing of final acceptance of its work under this Contract.
- 63.2 The City will make final payment to the Construction Manager of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, including the following items, for which a Change Order will be issued:
- a. Liquidated Damages, as applicable.
 - b. At the discretion of the City, one hundred and fifty percent (150%) of the value of outstanding items, corrective Work, or "punch list" items indicated on the Certificate of Substantial Completion, "final punch list", or any other "punch list" as being yet uncompleted or uncorrected, as applicable. All such Work shall be completed or corrected to the satisfaction of the City within the time stated on the Certificate of Substantial Completion, or on the "final punch list", or any other "punch list", otherwise the Construction Manager does hereby waive any and all claims to all monies withheld by the City to cover the value of all such uncompleted or uncorrected items.
- 63.3 Neither final acceptance of the Work, nor payment therefor, nor any provision of the Contract Documents shall relieve the Construction Manager of responsibility for defective or deficient materials or work. If, within one (1) year or as provided for elsewhere in the General Conditions or Technical Specifications after Substantial

Completion, any of the Work is found to be defective, deficient or not in accordance with the Contract Documents, the Construction Manager shall correct, remove and replace it promptly after receipt of a written notice from the City and correct and pay for any damage to other Work resulting in therefrom.

GC64 REPRESENTATION OF AUTHORITY

- 64.1 Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

GC65 SEVERANCE

- 65.1 In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the provisions not having been found by a court of competent jurisdiction to be invalid or unenforceable shall continue to be effective.

GC66 SCRUTINIZED COMPANIES

- 66.1 Subject to *Odebrecht Construction v. Prasad*, 876 F. Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the “Cuba Amendment,” the Construction Manager certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2016), that it is not engaged in a boycott of Israel, that it does not have business operations in Cuba or Syria, as provided in Section 287.135, Florida Statutes (2016), as may be amended or revised. The City may terminate this Agreement at the City’s option if the Construction Manager is found to have submitted a false certification as provided under subsection (5) of Section 287.135, Florida Statutes (2016), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2016), or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2016), as may be amended or revised.