

CONSTRUCTION MANAGER-AT-RISK CONTRACT

This Agreement made and entered into this 5th day of May, 2017 between the City of Fort Lauderdale, a Florida municipal corporation ("City"), and Skanska USA Building Inc., a Delaware Corporation ("Construction Manager"), authorized to do business in the state of Florida, whose offices are located at 330 S.W. 2nd Street, Fort Lauderdale, Florida 33312.

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

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

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

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

ARTICLE 1 - PROJECT TEAM AND EXTENT OF AGREEMENT

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

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

- 1.1 **The Project Team.** The Project Team shall work jointly during design and through Final Acceptance and shall be available thereafter should additional services be required. The EDSA Design Team will provide leadership on all matters relating to design of the Project, with support from the Construction Manager, and the Construction Manager shall provide leadership to the Project Team on all matters relating to construction.
- 1.2 **Intent.** The intent of the Contract Documents is to require all items and services necessary for the proper execution and completion of the Work, as necessary to provide the City with a fully functional and functioning Project within the scope and intent of the Contract Documents and within the Guaranteed Maximum Price and the Project Schedule, including any and all such necessary items and services consistent with, contemplated by, and reasonably inferable from the Contract Documents, whether or not such items and services are specifically mentioned therein. The City may at a later date issue one or more Notices to Proceed for the Construction Phase for the Project to be covered under the scope of this Agreement, if the City Commission, at its sole and absolute discretion, accepts the Construction Manager's proposed GMP. The GMP shall set forth the General Conditions Fee and the Construction Overhead and Profit Fee, as well as any other terms and conditions specific to the Project. The Construction Manager shall not commence any Work until authorized in writing by the City. City shall have no duties other than those duties and obligations expressly set forth within the Contract Documents. The Construction Manager shall be responsible for the performance of all duties called for by this Agreement with regard to the Project. The services under this Agreement shall be completed when the Construction Manager fully and completely satisfies the requirements of the Contract Documents.
- 1.3 **Extent of Agreement.** The "Contract Documents" comprise the entire Agreement between the City and the Construction Manager supersede any prior negotiations, representations or agreements and consist of the following:
- Construction Manager's GMP Proposal upon approval by the City and the execution of a GMP Amendment;
 - This Agreement;
 - General Conditions, Exhibit 1;
 - All other exhibits to this Agreement which include the following:
 - Construction Manager Staffing Plan and Billing Rate Sheet, Exhibit 2;
 - Schedule of Values, Exhibit 3;
 - Owner Direct Purchase Program, Exhibit 4;
 - Contractor Controlled Insurance Program (CCIP) Manual, Exhibit 5;
 - Public Construction Bond, Performance Bond, Payment Bond and Certificates of Insurance;
 - Notice of Award and Notice to Proceed;
 - Technical Specifications. Plans/Drawings. The Construction Manager understands that the GMP has been prepared based on the 90% Drawings dated October 17, 2016 and submitted for permit and Addendum #1, dated November 22, 2016;
 - Addenda (if applicable), inclusive;
 - Bid Form and supplement Affidavits and Agreements;
 - All applicable provisions of City, County, State and Federal Law;

- RFQ #225-11497, Instructions to Bidders, and Bid Bond;
- Construction Manager's response to City's RFQ #255-11497;
- Schedule of Completions and Schedule of Values;
- All bid tabulations and bid forms from all subcontractors;
- All amendments, modifications, and supplements, change orders based on project program changes and work directive changes issued on or after the Effective Date of the Agreement;
- Any additional documents that are required to be submitted under the Agreement;
- Permits on file with the City and/or those permits to be obtained shall be considered directive in nature and will be considered a part of this Agreement and GMP. A copy of all permits shall be given to the City for inclusion in the Contract Documents. Terms of permits shall be met prior to acceptance of the Work and release of the final payment.

All terms within the Agreement take precedence over any conflicting terms within the Division 01 Specifications or any other Contract Document.

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

- a. Specific written direction from the City Manager (or designee) pursuant to the terms of this Agreement.
- b. Change Orders (based on program changes to the project) and other Contract Modifications to this Agreement (excluding the construction documents).
- c. The GMP Proposal, as accepted by the City.
- d. Specifications as to quality and drawings as to location and quantity.
- e. Supplemental conditions or special terms.
- f. General Terms and Conditions (Exhibit 1 to this Agreement).
- g. This Agreement and any attachments.
- h. The completed construction documents, as approved in writing by the City.
- i. Schedule of Values.
- j. Schedule of Completion.

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

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

Detailed plans shall take precedence over general plans for the same part of the Work. Specifications and detail plans which may be prepared or approved by City after the execution of the Agreement and which may be fairly inferred from the original specifications and plans are to

be deemed a part of such specifications and plans, and that portion of the Work shown thereby shall be performed without any change in the Contract Price or Project Schedule.

With respect to conflicts between large-scale drawings and small-scale drawings, the larger scale drawing shall govern.

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

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

ARTICLE 2 – DEFINITIONS

- 2.1 “Applicable Laws” means all laws, statutes, ordinances, codes, building codes, regulations, rules, orders and resolutions of all national, administrative, state, local, municipal, and other governing bodies relating to the Project or to the performance of the Services or the Work.
- 2.2 “EDSA Design Team” means EDSA, Inc. and its design team, including Arquitectonica, Walker Parking, Kimley Horn and Associates, Aquatic Design and Engineering, EXP, Langan Engineering, Coastal Systems and any successor design firm that may be retained in connection with the Project.
- 2.3 “Change Order” means a written order to Construction Manager executed by the City in accordance with the contract authorizing and directing a program change to the project, which may include an addition to, deletion from, or adjustment or revision to the requirements of the Contract Documents, or an adjustment to the compensation payable to Construction Manager, or to the time for performance of the contract and completion of the Project, or any combination thereof.
- 2.4 “Constructability” means the creative, organized process of analyzing the Construction Documents minimizing design, detailing, and specifications problems, which might render the Construction Documents unbuildable or require changes to the Work to make them buildable.
- 2.5 “General Conditions” means all costs and expenses, referred to as “General Conditions and General Requirements” identified in the GMP Amendment, including Construction Manager’s personnel, trailers, office supplies and site security for the purposes of this Agreement.

- 2.6 "Construction Documents" means all technical drawings, other documents issued by the EDSA Design Team and all permits identifying, among other things, the design, location and dimensions of the Work and which set forth in detail the requirements for the construction of the Project, and generally including plans, elevations, sections, details, schedules, diagrams, Shop Drawings, and the specifications with the written requirements for materials, equipment, systems, standards and workmanship for the Work.
- 2.7 "Construction Manager" means Skanska USA Building Inc., the firm that shall provide comprehensive construction management services for the Project pursuant to the Contract Documents. The Construction Manager shall serve as the General Contractor under the Contract Documents, and shall construct the Project and be liable for the acceptable performance of the Work and payment of all debts pertaining to the Work.
- 2.8 "Construction Phase" means that period set forth in the Project Schedule beginning on the effective date as set forth in a Notice to Proceed directing the Construction Manager to proceed with the Construction Work and other activities necessary to complete the Project or specified portions thereof, and ending on the date of Final Completion of the Project. The Construction Phase may include the period required to complete the Construction Documents following the issuance of the Notice to Proceed, to the extent such documents remain incomplete.
- 2.9 "Construction Phase Services" means the services to be performed through the Construction Manager during the Construction Phase of the Project, including, the performance of all the Work required by this Contract Documents or reasonably inferable herein for the Construction Phase of the Project.
- 2.10 "Design for Construction" means the complete and final design and construction documents provided by the EDSA Design Team which shall include the plans, specifications, and all changes and modifications thereto, prepared by or on behalf of the EDSA Design Team for use in constructing the Project, performing the Work, and rendering the Project fully operational.
- 2.11 "Final Completion" means satisfaction of all conditions set forth in GC 61 at which time all conditions and requirements of the Contract Documents, permits and regulatory agencies have been satisfied; any documents required by the Contract Documents have been received by the City; any other documents required to be provided to the City have been received by the City; and the Work has been fully completed in accordance with the Contract Documents.
- 2.12 "GMP" or "Guaranteed Maximum Price" means the contract time and the sum agreed to between the Construction Manager and the City and set forth in the GMP Contract Amendment as the maximum total amount that the Construction Manager guarantees not to exceed for the completion of all Work required by or reasonably inferable from the Contract Documents, plus the Construction Manager's Fee and General Conditions, the Construction Manager's Contingency, as such amount may be adjusted by Change Order or Construction Change Directive pursuant to the Contract Documents.

- 2.13 "Notice to Proceed" means a written letter or directive issued by the City's Representative or Project Manager (Mr. Thomas Green, P.E.) to Construction Manager to commence and proceed with portions of the Work as specified therein or a specific task of the Project, and stating any further limitations on the extent to which Construction Manager may commence and proceed with the Work. Prior to issuing the Notice to Proceed, City shall (i) provide unfettered access to the Project Site, and (ii) provide evidence of any insurance to be provided by City. It is understood that the start of construction may not begin in the field before all necessary permits are in place. The Notice to Proceed shall only apply to Work in the field. Construction Manager shall commence with preparatory Work upon the execution of this Agreement.
- 2.14 "City's Representative or Project Manager" means the individual named by the City, in writing and as such writing may be amended from time to time, to act on City's behalf in the administration of this Agreement. City's Representative does not have the authority to waive or modify any condition or term of the Contract Documents, unless a modification is in writing.
- 2.15 "Project" means the Las Olas Boulevard Corridor Improvement Project as specified in the EDSA Design Team's Contract Documents or City CRA Project P11900.
- 2.16 "Punch List" means the list or lists prepared by Construction Manager, the City and the EDSA Design Team, identifying matters that remain to be completed after Substantial Completion in order that Final Completion can be declared by City to have occurred.
- 2.17 "Reimbursable Expenses or General Requirements" means those items, and only those items, set forth in this Agreement properly documented and reasonably, necessarily, and actually incurred in the performance of the Services and the Work. All of these expenses have been budgeted for as part of the GMP. Additional Reimbursable Expenses or General Requirements that will be considered as part of a Change Order due to a program change to the project.
- 2.18 "Schedule of Values" means a written schedule setting forth the detailed and itemized cost breakdown, inclusive of labor, materials and taxes of all elements comprising the GMP set forth in the GMP Amendment.
- 2.19 "Services" means those services, functions, roles, responsibilities, obligations and duties required of Construction Manager pursuant to the terms of the Contract Documents.
- 2.20 "Shop Drawings" means plans, drawings, prints, diagrams, illustrations, brochures, schedules and other data that are prepared by Construction Manager or any of its Subcontractors or Suppliers, and which illustrate how specific portions of the Work will be fabricated or installed.

- 2.21 "Subcontractor" means any person or entity with whom the Construction Manager contracts to perform any part of the Work or to supply materials in relation to the Work. In addition, the term Subcontractor shall apply to Subcontractors of any tier and suppliers and materialmen employed on or for the Project pursuant to a subcontract or other agreement with a Subcontractor or lower-tier Subcontractor.
- 2.22 "Substantial Completion" shall be deemed to have occurred when the Work, as certified in writing by the EDSA Design Team and determined by the City in its sole discretion, has been constructed in accordance with the Contract Documents such that all conditions of permits and regulatory agencies have been satisfied and the Project is ready for occupancy, use and continuous commercial operation for the uses and purposes intended by the City, without material interference from incomplete or improperly completed Work, and with only Final Punch List items remaining to be completed, all as reasonably determined by the City and evidenced by the issuance of a certificate of occupancy or completion by the authority having jurisdiction, and a Certificate of Substantial Completion by the EDSA Design Team and acceptance of such certificate by the City.
- 2.23 "Program Change" shall be defined as an addition or deletion to the project program, such as adding a level to the garage or a significant enhancement to the materials currently specified, e.g. modifying concrete to granite. A program change would be administered through an additive or deductive change order to the GMP. However, for example, if the Contract Documents specify a specific number of light fixtures to light a portion of the project, and the Construction Manager makes an error in the ordering the required number of light fixtures, this does not constitute a program change or a change in the GMP.
- 2.24 "Value Engineering" means the detailed analysis of systems, equipment, materials, services, facilities and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions at the lowest cost consistent with required and necessary performance, reliability, quality and safety through the elimination or modification of those features which add cost without contributing to the facility's required function or design value. The City and EDSA Design Team shall approve any material value engineering prior to implementation.
- 2.25 "Work" means the totality of the obligations, including construction and other services, imposed on the Construction Manager by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, services, fees, expertise and incidentals provided or to be provided by the Construction Manager to fulfill the Construction Manager's obligations.

ARTICLE 3 – CONSTRUCTION

- 3.1 The performance of the work described herein shall be substantially completed by the Construction Manager on or before the date as later set forth in this contract, as it may be adjusted, time being of the essence in this Contract for the milestone of Substantial Completion.

- 3.2 The Construction Manager agrees to complete the Work in accordance with the agreed upon Final Completion date as it may be adjusted, which is currently 26 calendar months from the Notice to Proceed. The Construction Manager acknowledges that time is of the essence throughout this Contract for the achievement of Substantial Completion, and that failure to complete the Project within the time set forth in the approved schedule will result in substantial damages to the City that are impossible to precisely ascertain. Upon failure of the Construction Manager to complete the Project within the specified period of time, plus approved time extensions, if any, Construction Manager shall pay to the City, as liquidated damages and not as a penalty, the sum of \$5,000 for each calendar day in excess of the established contract completion date, plus approved time extensions. The liquidated damages shall be capped at not more than 50% of Construction Manager's Fee. After achieving substantial completion, as more particularly addressed in GC 60 and its several subparts, should Construction Manager fail to complete the remaining Work within the time specified for final completion in the approved project schedule, as described herein, plus approved time extensions, if any, and after providing Construction Manager with seven (7) days advance written notice, City shall have the right to complete the work through other means, and the costs therefore shall be set-off against retainage remaining in the contract balances, which, if insufficient, the balance shall be paid to City by Construction Manager, or its performance bond Surety.
- 3.3 The City may direct the Construction Manager to expedite the Work by whatever means the Construction Manager may use, including, without limitation, increasing staffing or working overtime to bring the Work back within the agreed construction schedule. If expediting the Work is required due to reasons within the control or responsibility of the Construction Manager, then the additional costs incurred shall be chargeable to the Cost of the Work as part of, and subject to the original GMP. If the expediting of the Work is required due to reasons outside the control or responsibility of the Construction Manager, then in such event, the additional costs incurred shall be the subject of an appropriate adjustment through a change order or change directive or use of the City Contingency, as elsewhere provided for in the General Conditions.
- 3.4 The City shall have the right to occupy, or use, any portion of the Work prior to completion of the Project. If use or occupancy ahead of schedule affects the cost of the Project or the schedule for the Work, the Construction Manager shall so notify the City, in writing, and the use or occupancy will be treated as a Change to the Work. In accordance with Article 9 herein.
- 3.5 Once City occupies or begins to use a portion of the Work the City shall be responsible for all necessary property or other insurance and the warranty period for any area turned over to the City shall begin upon the turnover. City is also responsible for the maintenance of any portion of the Work upon occupying that portion of the Work with the exception of the maintenance work included in any maintenance plan(s) that are specifically included in the GMP Amendment. Payment for the work subject to any extended maintenance plans shall be made by City when that work is complete and accepted such that the extended maintenance plans do not impact substantial or final completion and shall not be subject to retainage or any other withholding.

ARTICLE 4 – CONSTRUCTION MANAGER’S BASIC SERVICES

- 4.1 The Construction Manager’s services shall be those necessary and appropriate to the successful completion of the Project in a timely and cost-effective manner and shall include, but are not limited to, those described or specified herein. The Construction Manager shall provide all requested services according to the capabilities reflected in its RFQ Proposal Submission. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned. Unless otherwise provided in this Agreement, or as agreed in writing between City and Construction Manager, the form and content of all systems, reports, forms and regular submittals by Construction Manager to City shall be through Prolog and samples shall be available to the City and EDSA Design Team. City’s and or the EDSA Design Team approval thereof shall not limit City’s right to thereafter require reasonable changes or additions to approved systems, reports, forms and regular submittals by Construction Manager to City. Except as to Shop Drawings and other design work performed by Construction Manager, its Subcontractors or agents pursuant to this Agreement, Construction Manager’s services hereunder are not intended to include the performance of design work and Construction Manager does not assume any responsibility for the design of any Work, except for Construction Manager-initiated design such as subcontracted delegated design work. Construction Manager’s delegated design work does not include responsibility for the design criteria of any delegated design.
- 4.2 Construction Phase. Unless otherwise authorized by the Owner, in writing, all Work shall be performed under Trade Contracts with the Construction Manager. The Construction Manager shall not bid on any of the Trade Contractor Work, or perform such Work with its own forces, without prior written notification and consent of the Owner. THE CONSTRUCTION MANAGER SHALL, WITHOUT LIMITATION:
- 4.2.1 Administer the Construction Phase as provided herein and in the General Conditions of the Contract.
- 4.2.2. Commence the Work within ten (10) days after receipt of a written Notice to Proceed from the Owner.
- 4.2.3 Not used.
- 4.2.4 With respect to the scheduling, sequencing, and coordination of the Work: a) Manage, schedule and coordinate the Work, including the Work of the Trade Contractors, and coordinate the Work with the activities and responsibilities of the Owner, EDSA Design Team and Construction Manager in order to complete the Project in accordance with the Contract Documents; b) Develop and maintain a program, acceptable to the Owner and EDSA Design Team, to assure quality control of the Work; c) Supervise the Work of all Trade Contractors so that the work conforms to the requirements of the plans and specifications; d) Provide

notification to each Trade Contractor when its Work does not conform to the requirements of the plans and specifications so that the work conforms to the requirements of the plans and specifications, and continue to manage each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the progress of the Work; e) Should disagreement occur between the Construction Manager and the EDSA Design Team over acceptability of Work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability, and the Owner's decision thereon shall be final and binding.

4.2.5 Maintain exclusively for this Project a competent full-time staff at the Project site to coordinate and direct the Work and progress of the Trade Contractors on the Project. The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the work and progress of the Subcontractors and shall provide no less than those personnel during the respective phases of construction that are set forth in an exhibit naming such individuals. Construction Manager shall not change any of those persons named unless mutually agreed to by the Owner and Construction Manager, in writing. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. All of the Construction Manager's on-site management and supervisory personnel shall be consistent with the personnel listed in Exhibit 2. Owner's consent shall not be unreasonably withheld if a change in personnel is required due to events beyond Construction Manager's control. The Owner shall have the right to direct the Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event, the Construction Manager shall promptly replace such personnel, without entitlement to additional compensation or additional time for the replacement.

4.2.5.1 Establish and maintain a) on-site organization and lines of authority in order to carry out the overall plans of the Construction Team; b) Identify an on-site staff member to represent the Construction Manager, on a daily basis, with authority to negotiate changes to the contract on behalf of the Construction Manager; c) Make available such executive personnel as necessary to execute Change Orders on behalf of the Construction Manager so as not to delay the progress of the Work.

4.2.5.2 Establish and maintain a) procedures for coordination among the Owner, EDSA Design Team, Trade Contractors and Construction Manager with respect to all aspects of the Work; b) Implement such procedures, incorporate them into a Project Execution Plan, and distribute manuals to the Construction Team.

4.2.5.3 Require of the various Trade Contractors such coordination drawings as may be necessary to properly coordinate the Work among the Trade

Contractors.

- 4.2.5.4 In collaboration with the EDSA Design Team, establish and implement procedures for tracking and expediting the processing of shop drawings, samples, Requests for Information ("RFI"), and other submittals as required by the General Conditions of the Contract.
- 4.2.6 Schedule and conduct weekly or more frequent progress meetings with Trade Contractors to review such matters as job procedures, job safety, construction progress, schedule, shop drawing status and other information as necessary. Construction Manager shall provide prior notice to Owner and the EDSA Design Team of all such meetings, and prepare and distribute minutes. Additionally, Construction Manager shall schedule and attend Team meetings with the EDSA Design Team and Owner.
- 4.2.7 Review the Project schedule with the various Trade Contractors and review, or expand, the level of detail to incorporate specific Trade Contractor input consistent with the overall completion requirements. Construction Manager shall regularly monitor and update the Project Schedule and various sub-networks as construction progresses, identify potential variances between scheduled and probable completion dates, review schedule for Work not started, or incomplete, and make adjustments in the schedule to meet the scheduled completion date. Construction Manager shall provide summary reports of each monitoring and document all changes in schedule, and prepare regular schedule updates and reporting which shall be included as part of the monthly Project report.
- 4.2.8 Determine the adequacy of the Trade Contractors' personnel and equipment, and the availability of materials and supplies to meet the schedule. In consultation with the Owner and the EDSA Design Team, take necessary corrective actions when requirements of a Trade Contract or a Trade Contract Schedule are not being met.
- 4.2.9 If applicable, whenever Owner-Furnished Contractor-Installed ("OFCI") materials or equipment are shipped to the Project site, the Construction Manager shall notify the Owner and shall be responsible for their inspection, proper storage, and incorporation into the Work.
- 4.2.10 Develop and maintain an effective system of Project cost control which is satisfactory to the Owner. Revise and refine the initially approved Project Construction budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise Owner and the EDSA Design Team whenever projected costs exceed budgets or estimates. Cost Control reports shall be included as part of the monthly Project report.
- 4.2.11 Maintain a system of accounting satisfactory to Owner and consistent with

generally accepted construction accounting principles. The Construction Manager shall preserve all accounting records for a period of four (4) years after final acceptance of the Work or as otherwise requested in writing by the Owner. The Owner, or the Owner's auditors shall have access to all such accounting records, supporting documentation, correspondence, subcontracts, purchase orders, and other things relating to this Contract, at any time during regular business hours, both throughout the performance of the Work, and for a period of four (4) years after final payment of the Work.

4.2.12 Develop and implement a system for the preparation, review and processing of Change Orders. Without assuming any of the EDSA Design Team's responsibilities for, among other things, design, recommend necessary or desirable changes to the Owner and the EDSA Design Team, review requests for changes and submit recommendations to the Owner and EDSA Design Team.

4.2.12.1 When requested by the Owner or the EDSA Design Team, promptly prepare and submit informal estimates of probable cost for changes proposed in the Work including similar estimates from the Trade Contractors. If directed by the Owner, promptly secure formal written Change Order Proposals from such Trade Contractors.

4.2.13 Be responsible for initiating, maintaining and supervising effective safety programs and require similar programs of the Trade Contractors and Sub-subcontractors. The OSHA guidelines shall serve as the basis for the construction safety program.

4.2.13.1 Promptly notify the Owner in writing, upon receiving notice of filing of any charge of non-compliance from OSHA, or upon receiving notification that a federal or state inspector shall visit or is visiting the Project site.

4.2.13.2 At progress meetings with Trade Contractors, conduct a review of job safety and accident prevention, and prepare minutes of such meetings that will be available to the Owner's Representative on request. The minutes of job safety and accident prevention portion of such progress meetings shall be made available to the Owner's Insurance Administrator, where applicable, upon request.

4.2.13.3 Designate Construction Manager's on-site superintendent as the Project safety director who shall (with the assistance of others) oversee job safety and accident prevention for the Construction Manager, Trade Contractors and Sub-subcontractors involved in the Work, in addition to any other responsibilities assigned to such staff member.

- 4.2.14 Make provisions for Project security acceptable to the Owner, to protect the Project site and materials stored off-site, or on-site, against theft, vandalism, fire and accidents, damage, or injury to person(s) or property, etc., as required by job and location conditions.
- 4.2.15 Record the progress of the Project. Submit written monthly progress reports to the Owner and the EDSA Design Team including information on the Trade Contractors' Work, the percentage of completion, current estimating, computerized updated monthly Critical Path Method scheduling and Project accounting reports, including Estimated Time to Completion and Estimated Cost to Complete. Keep a daily log available to the Owner and the EDSA Design Team.
- 4.2.16 Any hazardous material not specifically shown on the documents, or which was not discovered or should have been discovered during performance of the Pre-Con Agreement, shall be considered a concealed condition and may become the responsibility of the Construction Manager in a Change Order increasing the Guaranteed Maximum Price for any additional costs incurred in connection therewith. Such Change Order shall be submitted in as timely a manner as is reasonably possible after discovery of the concealed condition, as more particularly set forth in the General Conditions. Owner is not aware of any hazardous materials located on the Project site.
- 4.2.17 The Construction Manager shall prepare a Project Execution Plan.

ARTICLE 5 – CITY'S RESPONSIBILITIES

- 5.1 The City will designate a representative to act in its behalf. This representative, or his/her designee will receive progress reports of the Work from the Construction Manager, serve as liaison with the Construction Manager and the EDSA Design Team, receive and process communications and paperwork, and represent the City in the day-to-day conduct of the Project. The Construction Manager will be notified in writing of the representative and of his/her designee, or any changes thereto.
- 5.2 The City and or the EDSA Design Team have furnished the existing conditions geotechnical report and the Marina Building asbestos abatement survey. During construction, the City shall be responsible for providing threshold inspection (as required by law) quality material testing (e.g. compaction tests, slump tests, nuclear density, welding, etc.). Typical materials testing costs for verification shall be borne by the Construction Manager, as part of the GMP.
- 5.3 During the Construction Phase, the City shall furnish information or services required of the City by the Contract Documents with reasonable promptness. The City shall also furnish any other information or services under the City's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

- 5.4 Owner's Designated Representative; The City's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. The term "City" means the City or the City's authorized representative. Unless City later notifies Construction Manager in writing, the following individual shall be authorized to act as the City's authorized representative:

Name: Thomas Green, P.E.

Title: Project Manager

- 5.5 Design Team; The City has retained the EDSA Design Team to provide design and construction administrative related services, duties and responsibilities with respect to this Project. Such services shall be performed in a timely manner and the EDSA Design Team shall render decisions and responses promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager.
- 5.6 Master Building Permit; The City is responsible for obtaining the master building permit and for any associated costs. The City is also responsible for the permit fees for any trade specific permits that may be required.

ARTICLE 6 – Guaranteed Maximum Price Contract

- 6.1 The "Guaranteed Maximum Price" (GMP), also referred to as the Contract Sum, includes Cost of the Work required by the Contract Documents, the Construction Manager's Fixed Fee, the Construction Manager's Contingency Fund, and Construction Manager's General Conditions. The GMP has been established based on 90% construction documents prepared by the EDSA Design Team as defined herein. The GMP is guaranteed by the Construction Manager not to exceed the amount established herein, subject to additions and deductions by Change Order as provided for elsewhere in this Contract. Cost which would cause the final GMP as adjusted by Change Orders to be exceeded shall be paid by the Construction Manager without recourse or reimbursement by the City.
- 6.2 Use of the Construction Manager Contingency shall be as provided herein. Use of the City Contingency shall be requested through the Contingency Use Directive process and must be approved in writing by the City and EDSA Design Team prior to the prosecution of the related Work.
- 6.3 The GMP shall include an agreed upon sum as the "Construction Contingency Fund" which may be utilized, upon written approval beforehand by Owner, which approval shall not be unreasonably denied, for the purpose of defraying the expenses due to the risks associated with construction under a GMP. This shall include unforeseen circumstances relating to construction such as, but not necessarily limited to, increases in Subcontractor costs due to insolvency, correction of defective work (provided that such defective Work was not caused by the negligence or failure to fulfill a specific responsibility of the Construction Manager), and only to the extent that the costs therefore are not recoverable

- by Construction Manager from insurance, sureties, Subcontractors or suppliers, through commercially reasonable efforts), overtime approved by the City to improve the schedule, including overtime to make up for lost time due to Construction Manager's delays, field issues/conditions, and including any additional staff costs or other General Conditions costs necessary to manage any work performed during overtime. The Contractor shall furnish documentation evidencing expenditures charged to this Contingency prior to the release of funds by the Owner. The necessary documentation, and the sufficiency thereof, required for using the Construction Contingency fund shall be reasonably determined by the City. The EDSA Design Team shall verify the actual costs, if requested by Owner.
- 6.4 Without limiting the reasons for Owner denying a request for funding from the Construction Contingency, and by way of illustration only, the Construction Contingency shall not be used for liquidated damages.
- 6.5 Upon execution of the GMP Contract, the GMP for the Project will be fixed and firm for the duration of the Work and shall include the maximum compensation payable to Construction Manager for all costs, expenses, taxes, overhead and profit for the full and complete performance of all Work required by or reasonably inferable from the Contract Documents. The GMP is not subject to price escalation or de-escalation and is not subject to increase or decrease, except for changes in the Work program or adjustments as approved by Change Order and in accordance with the Contract Documents. The GMP shall be construed at any given point in time to include any fixed firm adjustments thereto made by Change Order in accordance with the Contract Documents. In the event the Construction Manager's total expenditures for the Project exceed the Guaranteed Maximum Price as may be adjusted pursuant to the Contract Documents, the Construction Manager shall pay such excess from its own funds without any reimbursement by the City. City shall not be required to pay any amount that exceeds the Guaranteed Maximum Price, as may be adjusted pursuant to the Contract Documents, and the Construction Manager shall have no Claim against the City on account thereof.
- 6.6 As the City Commission has accepted the proposed budget supporting the GMP described herein, and subject to mutually agreeable contract terms, any mistakes by Construction Manager in estimating costs or Work in its preparation of a GMP shall not serve as the basis for a Claim by Construction Manager or upward adjustment to the GMP. Adjustments to the GMP will be made as described in the General Conditions of the Contract.

6.7 The Construction Manager's Contingency shall be for the Construction Manager's use against risks assumed by Construction Manager, in providing the GMP with uncertainties that are beyond the control of the Construction Manager, including the reasonable and necessary costs incurred by the Construction Manager due to (1) costs of the Project that were not specifically foreseeable or quantifiable as part of the GMP or unforeseen circumstances relating to construction of the Work not directly or indirectly attributable to Construction Manager's (or its Subcontractors or Suppliers) noncompliance with the Contract Documents, and which result in unavoidable increases in the Cost of the Project; and (2) increased Costs of the Project resulting from questions of conflicts, clarity or coordination of the Construction Documents.

6.7.1 The GMP Proposal provided by Construction Manager is not a line item GMP and Construction Manager does not guarantee the estimated cost of each line item. During the buyout of the Project any savings from a particular line item will be tracked as "buyout savings" and buyout savings shall be available to cover the cost of any line items that exceed the estimated cost. Upon completion of the buyout, the buyout savings shall be reconciled and distributed in equal parts to the Construction Contingency and City Contingency so that each contingency account shall receive fifty percent (50%) of the buyout savings.

The Construction Contingency shall not be used to fund any Work which would otherwise be subject to a Program Change;

All payments hereunder shall be made in accordance with this Agreement. Upon making a draw against the Construction Manager's Contingency, the Construction Manager shall increase the relevant line items in the Schedule of Values by the amount of the draw, and shall decrease the respective Construction Manager's Contingency line item accordingly. Construction Manager's draws made against the Construction Manager's Contingency shall be reported to the Project Coordinator on a monthly basis with all associated supporting documentation sufficient to evidence each draw against the Construction Manager's Contingency.

The Project Coordinator and/or EDSA Design Team shall have the authority to verify all actual costs charged to the Construction Manager's Contingency. The City, through the Project Coordinator, may at any time dispute the legitimacy or reasonableness of any draws made or costs charged to the Construction Manager's Contingency, and the City may withhold such disputed amounts from any other amounts otherwise due the Construction Manager. Any dispute with regard to the legitimacy or reasonableness of such expenditures (or City's withholding thereof) may be the subject of a Claim.

In no event shall the use of the Construction Manager's Contingency cause for the GMP to be exceeded, and the Construction Manager shall be solely responsible for all costs that exceed the GMP (as adjusted by Program Change that results in a Change Order) or without any reimbursement from the City. Construction Manager shall use all diligent, good-faith efforts to maximize cost savings and minimize use of the Construction Manager's Contingency. Use of the Construction Manager's Contingency shall be requested through the Contingency Use Directive

process and must be approved in writing by the City and the EDSA Design Team Leader prior to the prosecution of the related Work.

- 6.8 City Contingency. The City's Contingency for this improvement project will be further funded from any sales tax savings resulting from the Owner Direct Purchase Contractor Installed (ODPCI) program and from the City's 50% share of any buyout savings. These surplus ODPCI and buyout savings funds will be tracked as the City Contingency Fund, which will be available to the City to pay for Project costs which are expressly chargeable to the City or determined to be the City's responsibility under the Contract Documents, including, as it relates to the Construction Manager, the following increased Costs of the Project incurred by Construction Manager:
- 6.8.1 Express written changes in the Work made in the discretion of the City after issuance of a Change Order or Construction Change Directive relating thereto. The decision to make such changes, and to incur the costs that arise therefrom, shall be in the sole discretion of the City. No costs may be charged to the City's Contingency under this subsection without express approval of City and EDSA Design Team;
 - 6.8.2 Post-hurricane or storm-related Construction Change Directives;
 - 6.8.3 Increased Costs of the Project resulting from other actions of the city deemed to be City's responsibility and/or compensable under the Contract Documents.
 - 6.8.4 Unless Construction Manager secures City's written consent that such costs are City's responsibility, documentation of responsibility for such costs shall be submitted with the Construction Manager's claim. When Construction Manager has reason to anticipate that such costs may be incurred, it shall be the Construction Manager's responsibility, when feasible, to provide the City with sufficient advance notice as described within this agreement herein, or as otherwise provided in the Contract Documents, so as to provide the City with a reasonable opportunity to avoid such costs. Such costs shall be deemed the City's responsibility if City subsequently agrees in writing to grant the claim and accept such responsibility, or if the claim is granted and responsibility assigned to City pursuant to the dispute resolution process as described in this agreement herein and all reviews thereof are exhausted or waived by City. The Construction Manager has no right or entitlement whatsoever to the City's Contingency, and use of such funds are subject to the City's prior written approval and issuance of a Change Order by the City and EDSA Design Team at its sole and absolute discretion. Any unused City Contingency remaining at the completion of the Project shall accrue solely to the City
 - 6.8.5 If it has been determined solely by the City and the EDSA Design team to utilize the City Contingency, the Construction Manager will be required to furnish

documentation evidencing all expenditures charged to the City Contingency, and demonstrating that the costs incurred were necessary for the Work. Construction Manager shall identify the amounts sought to be charged to the City Contingency, whether the charge is to be applied to the Construction Manager's Contingency or the City's Contingency, and the reasons why the amount should be charged to either the Construction Manager's Contingency or City's Contingency. Documentation for use of the Construction Contingency shall be determined by the EDSA Design Team. The EDSA Design Team and/or the Project Coordinator shall have the authority to verify the actual costs.

6.8.6 The grant of a claim shall not result in a charge against the City's Contingency unless the claim expressly requests a charge against the City's Contingency and at the sole discretion of the City and the EDSA Design team such grant of the claim is approved and the charge can be made against the City's Contingency.

6.9 When a Contingency is to be used for the project, the:

6.9.1 Construction Manager's Contingency use shall not include any additional costs associated with Contractor's fee or costs associated with insurance, as all of these budgets have already been established as part of the overall GMP.

6.9.2 With respect to the Construction Manager's Contingency, the application of such shall be paid to the Construction Manager as part of the Construction Manager's Contingency with the Schedule of Values to be adjusted accordingly.

6.9.3 The funding for the City Contingency will be funded, as described above by savings associated with ODPCI program and the City's share of any buyout savings available at the completion of the buyout phase of the project.

6.9.4 With respect to the use of the City Contingency, the application of such shall be paid to the Construction Manager as part of the Construction Manager's Contingency with the Schedule of Values to be adjusted accordingly.

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

6.9.6 The GMP shall be reduced by the amount of the Contingency fund, if any, remaining at the time of Final Completion of the Project.

ARTICLE 7 – CONSTRUCTION MANAGER'S GENERAL CONDITIONS AND FEE

7.1 In consideration of the performance of the services specified in this Agreement with

respect to the Project on which the City will issue a Notice to Proceed, the City agrees to pay the Construction Manager as compensation for its services relating to the Project, fees as set forth below.

7.1.1 Construction Phase General Conditions and General Requirements (hereinafter referred to as "General Conditions").

Prior to commencing the Construction Phase of the Project, the City will issue a Notice to Proceed directing the Construction Manager to proceed with the Construction Phase. The Construction Manager's compensation for General Conditions or services performed during the Construction Phase shall be based on the actual time spent. Construction Manager to provide back-up (monthly accounts payable report and time analysis report) in order to substantiate all costs applied at the General Conditions, based on the detailed schedule of General Conditions costs and services that have been included as part of the GMP Agreement and back-up. The General Conditions shall be invoiced and paid each month, based on actual costs at the agreed-upon billing rates attached hereto as Exhibit 2. It is understood by the City that the Construction Manager has spent time during the Contract negotiation, and the City will allow the Construction Manager to invoice for this time under General Conditions from a time period starting March 1, 2017 up to the issuance of Notice to Proceed. The Construction Manager can invoice for the actual costs of the General Conditions upon execution of this Agreement (and the submission by the Construction Manager of a complete and approved Application for Payment) and the final monthly payment shall be paid only when construction of the Project is finally completed and occupancy of the Project is accepted by the City.

7.2 For changes in the Project as provided herein, the General Conditions for the Project shall be adjusted under the following circumstances:

7.2.1 The Construction Manager shall be paid additional General Conditions subject to negotiation with the City if the Construction Manager is placed in charge of reconstruction of an uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager, its employees, agents, Subcontractors and others for whom Construction Manager may be responsible.

7.2.2 Should the Contract Time set forth in the GMP Amendment be contractually extended for an Excusable Delay or for a Program Change resulting in an extension of time or for additional Work due no fault of the Construction Manager or its Subcontractors, the Construction Manager's additional General Conditions will be negotiated and set forth in a Change Order, estimated initially on the General Conditions Schedule of Values as provided as back-up to the GMP contract and subsequently billed to the City based on actual costs expended.

7.2.3 Costs and Expenses included in General Conditions. The direct and indirect costs and expenses for facilities or performance of Work by the Construction Manager for items which do not lend themselves readily to inclusion in one of the separate trade contracts and within this Subsection below, are included in the General



Conditions during the Construction Phase and not otherwise reimbursable:

- 7.2.3.1. Onsite and Local Project Management Staff: Wages, salaries, benefits and costs associated with Construction Manager's supervisory and other technical, administrative and clerical Project personnel engaged in supervision and management of the work on the Project Site, at the agreed-upon billing rates attached hereto as Exhibit 2, but only to the extent not already included as Cost of the Work under Article 9, and specifically attributable to the Work performed in connection with the Project, including the Project Manager, Construction Superintendent, structural superintendent, assistant superintendent, shop drawing checker, secretary, layout foreman, consultants, estimators, cost controllers, accountants, office administrative personnel, time keepers, clerks, safety director, safety coordinator, safety labor, overall project schedule preparation, scheduler costs, cost of periodic site visits for supervisory, inspection, oversight, or management of the Project by specific "home office" personnel identified in Exhibit 2.
- 7.2.3.2. Field/Onsite Construction Offices and Supplies including transportation and set-up of onsite construction office trailers, construction of ramps and stairs for onsite construction office, interior build-out of onsite construction office, onsite construction office trailer rental, first aid supplies, reproduction services, monthly office supplies, Project reference manuals, field office postage, field office furniture, onsite construction office computer system and software, installation and equipment of field computer ISDN line, monthly cost for field ISDN/computer line, onsite construction office photocopier rental and supplies, plan printing or document reproduction used for bidding of information purposes required by the Contract Documents, long-distance telephone calls, telegrams, postage, package delivery and courier service, hardwired telephone service, and reasonable expenses of Construction Manager's Jobsite office if incurred at the Project Site and directly and solely in support of the Work, Project Site photographs, field office express mail/courier charges, miscellaneous onsite construction office supplies, safety material and equipment, small tools, equipment or machinery, miscellaneous hand tool rental equipment (other than that of the subcontractors), hand tool purchase, hand tool repair, hand tool rental, job radios, jobsite cleaning labor and material, trash containers, final exterior and interior cleaning materials and labor other than subcontractors, miscellaneous cutting and patching, traffic control, off duty police officer(s), alarm system and monitoring for trailers;
- 7.2.3.3. Surveys, measurements and layout work reasonably required to perform the Work;
- 7.2.3.4. Retention/storage of Project Records;
- 7.2.3.5. Off-site storage space or facilities approved in advance by the City;
- 7.2.3.6. Miscellaneous expendable items, extended jobsite General Conditions (unless such extended jobsite General Conditions are compensable as expressly stated

herein, in which case Construction Manager shall be entitled to a Change Order for those costs), interest on monies retained by the City, escalated costs of materials and labor, home office expenses or any cost incurred that may be allocated from offices of the Construction Manager or any of its Subcontractors;

7.2.3.7. Other expenses or charges properly incurred and paid in the prosecution of the work and services required of Construction Manager pursuant to this Agreement, with the prior written approval of the city, for the provision of management and other related services necessary to complete the Project in an expeditious and economical manner consistent with this Agreement and in the best interests of the City, but specifically excluding legal costs, attorney's fees, court costs and any other fees, costs or expenses already included as a Cost of the Work in Article 8; and

7.2.3.8. Other costs as may be specified in the GMP herein.

Construction Manager agrees that no payment or reimbursement beyond the General Conditions shall be made for any of the general conditions items set forth in this section, unless such general conditions costs and expenses are actually incurred and arise from Changes in the Work approved by the City. Construction Manager covenants and agrees that it shall not seek, nor is it entitled to, reimbursements or payments as part of the General Conditions, for any items it has already included as a Cost of the Work in Section 8.

7.2.4 Construction Manager's Fee shall equal three percent (3%) of the GMP. An equal portion of the Fee shall be included in each monthly payment application based upon the anticipated 26 month duration of the Project.

7.2.5 The cost of Subcontractor Default Insurance (SDI) shall be 1.25% of the direct trade cost of the work plus contingency, and the cost of CCIP shall be 2.25% of the GMP amount minus Builders Risk and Bond. Builders Risk insurance shall be provided by Construction Manager as a pass-through cost for the convenience of the City.

ARTICLE 8 – COST OF THE WORK

8.1 Based on the Contract Documents described herein, the Guaranteed Maximum Price for the project shall be \$49,379,324.00 (Forty-Nine Million Three Hundred and Seventy-Nine Thousand Three Hundred and Twenty-Four dollars unless amended by the GMP Amendment). With respect to this Project, the City agrees to pay the Construction Manager for the Cost of the Project as defined in this Article 8.

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

- 8.2.1 Wages paid for labor of construction workers directly employed by the Construction Manager to perform the construction of the Work at the Project Site or, with Project Coordinator's advance written approval, at off site meetings or workshops;
- 8.2.2 Wages paid for labor of supervisory or administrative personnel not included in the Construction Manager's fees stipulated in Article 7, but who are in the direct employ of the Construction Manager in the performance of the construction Work at the Project Site, provided Construction Manager has obtained the advance written approval of the Project Coordinator for such personnel;
- 8.2.3 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions (excluding bonuses), provided such costs are based on wages and salaries included in the Cost of the Work;
- 8.2.4 Temporary Project utilities including the portion of temporary electric hookup not typically paid by the electrical subcontractor, temporary electrical distribution and meters, monthly temporary electric charge by Florida Power & Light, HVAC testing electrical charges, temporary water connection not typically provided by the plumbing subcontractor, temporary water meter, temporary water deposit, fire hydrant service, temporary fire protection monthly temporary water service, temporary toilets, temporary construction phone hookup and installation, temporary construction phone monthly charges, construction phone long distance charges, cellular phones, site erosion control and Project entrance(s), fencing and covered walkways, storage containers, storage rental costs, temporary onsite roads, temporary onsite fencing, temporary onsite gates, street barricades, construction temporary signage, pedestrian walkway and street occupation fees for construction activities, temporary trash chute and dumpsters;
- 8.2.5 Cost of all materials, supplies and equipment incorporated in or to be incorporated in the completed construction of the Project; including costs of transportation and storage thereof, and cost of materials in excess of those actually installed (but only to the limited extent to allow for reasonable waste and spoilage);
- 8.2.6 Payments due to Subcontractors and Suppliers from the Construction Manager or made by the Construction Manager to Subcontractors for their Work performed pursuant to subcontracts or agreements issued in accordance with the Contract Documents;
- 8.2.7 Costs, including transportation and storage, maintenance, installation, dismantling and removal of materials, supplies, of all temporary facilities, machinery, equipment, and hand tools (except hand tools customarily owned by construction workers) which are provided by the Construction Manager at the Project Site and are fully consumed in the performance of the Work Cost of items previously used

by the Construction Manager shall mean fair market value;

- 8.2.8 Cost of bond premiums, insurance premiums for coverage required by the Contract Documents, including costs of City-authorized additional coverage (such authorization not to be unreasonably withheld) and/or self-insured retentions in connection with claims against such coverage, which are directly attributed to this Agreement, subject to the review and approval of the City, which shall not be unreasonably withheld;
- 8.2.9 Sales, use or similar taxes imposed by any governmental authority and paid by the Construction Manager or its subcontractors that are related to the Work and for which the Construction Manager is liable;
- 8.2.10 The building permit fees that the City is responsible for obtaining are not the responsibility of the Construction Manager. However the administrative costs included within the General Conditions associated with obtaining a Park Smart Certification, as designed and part of the Contract Documents. Construction Manager shall include the necessary information in the Project Manual and Project Execution Plan;
- 8.2.11 The cost of corrective Work subject to the provisions of Article 6, and except for any corrective Work made necessary because of defective workmanship or other causes contributed to by the Construction Manager or its Subcontractors or suppliers. No costs shall be paid by the city or schedule adjustments made to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any Work not in conformance with the Construction Documents or applicable construction-related codes or to correct any deficiency or damage caused by negligent acts by the Construction Manager or its Subcontractors and suppliers, unless approved subject to Article 6.
- 8.2.12 Costs for trash and debris control and removal from the Project Site;
- 8.2.13 That portion of the reasonable expenses of Construction Manager's supervisory or administrative personnel incurred while traveling in the discharge of duties connected with the Work, to the extent and reimbursement limits permitted by Fla. Stat. Sec. 112.061 and subject to the advance written approval of the Project Coordinator;
- 8.2.14 Costs incurred due to an emergency affecting the safety of persons and property, not directly or indirectly attributable to the acts or omissions of the Construction Manager or its Subcontractors or Suppliers;
- 8.2.15 Costs for watchman, security services and temporary fencing for the Project;
- 8.2.16 Costs for efficient logistical control of the Project Site, including horizontal and vertical transportation of materials and personnel; adequate storage; temporary roads; maintenance of traffic, and off-site parking for and busing of construction workers and personnel to and from the Project Site, net of any value or

remuneration received from Subcontractors with regard to such parking or transportation. The foregoing costs may be included in the GMP Amendment as part of the General Conditions Fee;

- 8.2.17 Costs of materials and equipment suitably stored off-site at a mutually acceptable location, subject to the City's prior approval;
 - 8.2.18 Costs for any Project jobsite items not referenced herein, not normally provided by the Subcontractors, which will be provided by the Construction Manager as required to complete the Work;
 - 8.2.19 Cost of providing one set of as-built documents to the City, one (1) paper copy and one (1) readable electronic copy;
 - 8.2.20 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents, with the exception of the Green Garage Certification application process and fees;
 - 8.2.21 Costs for electronic equipment and software directly related to the Work, with the City's advance written approval;
 - 8.2.22 Costs of third-party data processing or information technology support for the Project;
 - 8.2.23 Costs associated with employee drug screen or other background check related expenses;
 - 8.2.24 Costs of overtime premium expense, if the City directs the Construction Manager to expedite the work. However, any costs due to Construction Manager's schedule delays will not be reimbursed, subject to provisions elsewhere in this Agreement. In no event, said costs shall not cause the GMP to be exceeded, unless such overtime work is necessary to mitigate the impact of an Excusable Delay;
 - 8.2.25 Notwithstanding anything to the contrary contained in the Contract Documents, the City-approved Cost of the Project and the Guaranteed Maximum Price shall only be increased or decreased by reason of the issuance of a Change Order due to a Program Change or as approved in accordance with this Agreement.
- 8.3 Costs Not to be Reimbursed. The Cost of the Work shall not include the items listed below, as such items are either expressly not to be reimbursed or are otherwise contemplated as part of the Construction Manager's fees.
- 8.3.1. Salaries and other compensation of the Construction Manager's principals (with the exception of direct oversight by individuals identified in Exhibit 2, such as operations manager time spent on the Project) and branch office or departmental heads, non-line staff personnel (including legal, corporate, insurance/risk management and similar personnel) and other personnel stationed at the

Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 8.2;

- 8.3.2. Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 8.2;
- 8.3.3. Overhead and general expenses, except as may be expressly included in Section 8.2;
- 8.3.4. The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- 8.3.5. Costs due to the fault, negligence or failure to fulfill a specific responsibility of the Construction Manager, Subcontractors of all tiers, and Suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and correcting damage to property not forming part of the Work;
- 8.3.6. Costs, other than costs included in Change Orders approved by the City, that would cause the Guaranteed Maximum Price to be exceeded;
- 8.3.7. Losses and expenses sustained by the Construction Manager or any Subcontractors at any tier, not compensated by insurance or otherwise, if such losses and expenses are due to infidelity on the part of any employee of Construction Manager, any Subcontractor or Supplier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, or others to whom the property may be entrusted;
- 8.3.8. Except to the extent specifically permitted under any other provisions of the Contract Documents, costs and expenses due to the willful misconduct or gross negligence of Construction Manager, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable;
- 8.3.9. Losses and expenses not covered by insurance where the Construction Manager, or any Subcontractor, failed to obtain and/or maintain in effect the insurance required to be carried by the Contract Documents, or where Construction Manager, or any Subcontractor or Supplier, failed to obtain and/or maintain such insurance in limits and amounts required by the Contract Documents except to the extent any deductible provided in such required insurance;
- 8.3.10. Costs and expenses incurred by Construction Manager upon breach of its warranties or guarantees;
- 8.3.11. Costs associated with the relocation of employees, and any travel costs not expressly permitted in Section 8.2 (including costs for long-distance travel, costs

for travel between the Project Site and the Construction Manager's office(s), and hotel, car rental and airfare costs);

- 8.3.12. Any amounts to be paid by the Construction Manager for federal, state or local income or franchise taxes;
- 8.3.13. Rental costs of machinery and equipment or licensing charges for software and other items, which are paid or payable to the Construction Manager or a related party, except as specifically consented by the City in writing, which consent shall not be unreasonably withheld;
- 8.3.14. Labor, material, and equipment costs or any other costs incurred which should be back- charged to any Subcontractor, any Sub-Subcontractor, or any direct or lower tier supplier, or any other party for whom the Construction Manager is responsible;
- 8.3.15. Costs or losses resulting from lost, damaged by misuse or stolen tools and equipment;
- 8.3.16. Costs of bonding or securing liens or defending claims filed by any Subcontractor of any tier, any Supplier, any direct or lower tier supplier or any other party for whom any of such parties or the Construction Manager is responsible arising from nonpayment, unless such nonpayment is the result of the City's unexcused or wrongful failure to pay the Construction Manager undisputed amounts as and when due under the Contract Documents;
- 8.3.17. Costs of self-insured losses (i.e., losses within the deductible limits maintained by the Construction Manager or any direct or indirect subcontractor), costs covered by any insurance carried by Construction Manager or a direct or lower tier subcontractor, costs which would have been covered by the insurance required to be carried by a Construction Manager or a direct or lower tier subcontractor under the Contract Documents, and costs which would have been covered by insurance but for failure of the Construction Manager or direct or lower tier subcontractor to properly submit, process or give notice to the occurrence or claim;
- 8.3.18. Costs of employee bonuses and executive bonuses whether or not based in whole or in part on performance related to the Work;
- 8.3.19. Costs incurred or paid for recruiting employees (whether to third party recruiters or to employees);
- 8.3.20. Severance or similar payments on account of terminated employees;
- 8.3.21. Costs incurred after the Construction Manager's application for final payment,

unless such Costs are for work outside the GMP scope and are incurred at the direction of City;

8.3.22. Any outside legal fees incurred without prior written approval from the City Attorney, which approval is at the discretion of the City Attorney;

8.3.23. Any costs not specifically and expressly described in Section 8.2.

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

ARTICLE 9 – CHANGES IN THE WORK

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

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

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

9.3.1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the City designated representative, Project EDSA Design Team;

9.3.2 by unit prices stated in the GMP or subsequently agreed upon; or

9.3.3 by times and materials cost and a mutually acceptable fixed or percentage fee for

the Subcontractor.

- 9.4 Increases in the Cost of the Project due to a change in the Project attributable to the City, either by City's agreement thereto or the grant of a Claim under Article, may either be charged to the City's Contingency or result in an increase to the GMP, in the sole discretion of the City. Decreases in the Cost of the Project due to a change in the Project shall result in a decrease to the GMP. In the event of a decrease in the GMP as herein provided, Construction Manager's Contingency will be decreased proportionately.
- 9.5 The Construction Manager's fee for all Change Order or shall be three percent (3%) of the net increase in the Cost of the Project. Subcontractors and Suppliers' overhead and profit markup or fee for Change Order or Construction Change Directives shall be in accordance with General Conditions 55.5, but in no event shall the aggregate limitation on the amount of overhead and profit that each Subcontractor and all lower tier subcontractors and Suppliers can charge for Work performed pursuant to Change Orders and Construction Change Directives exceed the overhead and profit fee as provided for the performance of the original scope of Work set forth in each Subcontract and specified as part of the GMP Amendment. For deductive Change Orders Construction Manager's Profit Fee shall not be reduced.
- 9.6 Waiver of Claims. By executing a Change Order, the Construction Manager thereafter waives the right to assert any further Claim for an increase in the Cost of the Project and the Guaranteed Maximum Price or an extension in the Contract Time based on the subject matter of, or the Claim addressed by, such Change Order; it being acknowledged and agreed by the Construction Manager that any such Change Order shall completely address any schedule or cost impact associated with the subject matter of, or the Claim addressed by, such Change Order.
- 9.7 Approval of Change Orders/Modifications. The City Commission may approve any Change Order or other Contract Modification to the Contract Documents.

ARTICLE 10 – BONDS AND INSURANCE

- 10.1 Construction Manager shall provide the insurance required in the General Conditions and City agrees that Construction Manager may provide some or all of the insurance required to be provided by Construction Manager and its subcontractors and suppliers through a Contractor Controlled Insurance Program ("CCIP). See Exhibit 5 for the CCIP Manual.
- 10.2 Construction Manager shall provide a Payment & Performance bond consistent with the requirements of the Florida Statutes.

ARTICLE 11 – CONFLICTS

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

IN WITNESS WHEREOF, the City and the Construction Manager execute this Agreement as follows:

ATTEST:

By: 

Jeffrey A. Modarelli, City Clerk

, Asst.



CITY OF FORT LAUDERDALE

By: 

John P. "Jack" Seiler, Mayor

By: 

Lee R. Feldman, City Manager

Approved as to form:

Cynthia A. Everett, City Attorney

By: 

Rhonda Montoya Hasan

Assistant City Attorney

ATTEST:

By: 

Print Name: Ronald J. Murtha, Jr., P.E.

Title: Project Executive

SKANSKA USA BUILDING INC.

By: 

MacAdam Glinn

Senior Vice President

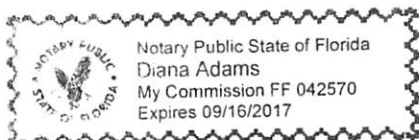
(CORPORATE SEAL)

STATE OF Florida:

COUNTY OF Hillsborough:

The foregoing instrument was acknowledged before me this 4th day of May, 2017, by MacAdam Glinn as Senior Vice President for Skanska USA Building Inc., a Delaware corporation, authorized to transact business in the state of Florida.

(SEAL)



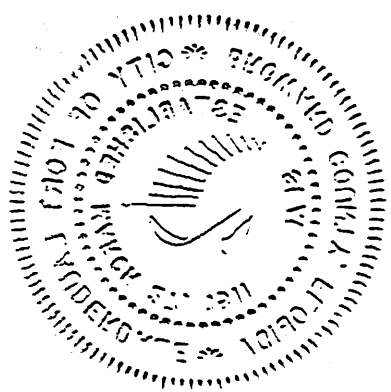


Notary Public, State of Florida

(Signature of Notary Public)

Diana Adams

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





LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that Skanska USA Building Inc., a corporation duly organized and existing under the laws of the State of Delaware, and having its principal office at 389 Interpace Parkway, 5th Floor, Parsippany, New Jersey 07054, does hereby make, constitute and appoint the below listed representative

MacAdam Glinn Senior Vice President – Account Manager

its true and lawful Attorney-In-Fact, with full power and authority hereby conferred to sign and deliver the following:

Any document(s), contract(s) or other instrument(s) necessary to or required to bind Skanska USA Building Inc. thereby with the **City of Fort Lauderdale** relating to the **Las Olas Improvement project** located in the **City of Fort Lauderdale, State of Florida** or any division thereof as fully and to the same extent as if the same were signed by any other duly authorized officer of Skanska USA Building Inc., and all acts of said Attorney-In-Fact are hereby ratified and confirmed.

This appointment is made under and by the authority of a Power of Attorney issued by the Secretary of Skanska USA Building Inc. on the 8th day of March, 2016 and that this Power of Attorney was issued in accordance with the corporate resolution adopted by written consent in lieu of a formal meeting of the Board of Directors of Skanska USA Building Inc. on the 26th day of October, 2004 and is now in full force and effect.

IN WITNESS WHEREOF, Skanska USA Building Inc. has caused this instrument to be signed by its Corporate Counsel and Assistant Secretary and its corporate seal to be hereto affixed this 1st day of May, 2017.

SEAL

Linda A. Turteltaub
Corporate Counsel and Assistant Secretary



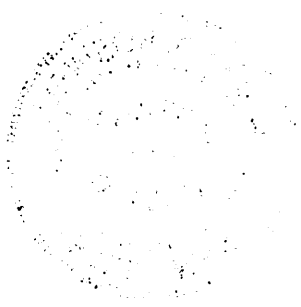
STATE OF NEW JERSEY
COUNTY OF MORRIS

On this 1st day of May, 2017, before me personally came Linda A. Turteltaub, to me known, who, being duly sworn, did depose and say that she is Corporate Counsel and Assistant Secretary of Skanska USA Building Inc., the corporation described in and which executed the above instrument; that she knows the seal of said corporation; that said seal affixed to said instrument is such corporate seal and that she executed the said instrument on behalf of the corporation by authority of the above referenced Power of Attorney.

LAURAA. BOSWELL
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 1/12/2021



My Commission Expires 1/12/2021
NOTARY PUBLIC OF NEW JERSEY
LAURA A BOSWELL





CORPORATE CERTIFICATION

I, Linda A. Turteltaub, hereby certify that I am Corporate Counsel and Assistant Secretary of Skanska USA Building Inc., that the attached Limited Power of Attorney is a true and accurate copy of a Limited Power of Attorney issued to:

MacAdam Glinn Senior Vice President – Account Manager

authorizing him to receive any documents on behalf of the Corporation, to bind it to its bids and to the contracts it receives, that said Limited Power of Attorney was issued by me as Corporate Counsel and Assistant Secretary of the Corporation as authorized by the Power of Attorney issued by the Secretary of Skanska USA Building Inc.

IN WITNESS WHEREOF I have hereunto set my hand and the corporation seal of this Corporation, this 1st day of May, 2017.

By:

A handwritten signature in blue ink, appearing to read "Linda A. Turteltaub", written over a horizontal line.

Linda A. Turteltaub

Title: Corporate Counsel and Assistant Secretary

SEAL





COMMISSION AGENDA ITEM
DOCUMENT ROUTING FORM

③ ④
5/10/17

Today's Date: 05/10/2017

DOCUMENT TITLE: SKANSKA USA BUILDING INC. – LAS OLAS CORRIDOR IMPROVEMENT PROJECT CONSTRUCTION MANAGER-AT-RISK CONTRACT

COMM. MTG. DATE: 05/02/2017 **CAM #:** 17-0538 **ITEM #:** CM-4 **CAM attached:** ☒ YES ☐ NO

Routing Origin: CAO **Router Name/Ext:** J. Larregui/5106 **Action Summary attached:** ☒ YES ☐ NO

CIP FUNDED: ☐ YES ☒ NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

1) Dept: City Clerk **Router Name/Ext:** J. Modarelli/5006 **# of originals routed:** 3 **Date to CAO:** 5/10/2017

2) City Attorney's Office: Documents to be signed/routed? ☒ YES ☐ NO **# of originals attached:** 3

Is attached Granicus document Final? ☒ YES ☐ NO

Approved as to Form: ☒ YES ☐ NO

Date to CCO: 5/10/17

Rhonda M. Hasan
Attorney's Name

RMR/JL
Initials

3) City Clerk's Office: # of originals: 3 **Routed to:** Gina Ri/CMO/X5013 **Date:** 5/10/17

4) City Manager's Office: **CMO LOG #:** _____ **Document received from:** _____

Assigned to: L. FELDMAN ☐ S. HAWTHORNE ☐ C. LAGERBLOOM ☐
L. FELDMAN as CRA Executive Director ☐

☐ APPROVED FOR LEE FELDMAN'S SIGNATURE ☐ N/A FOR L. FELDMAN TO SIGN

PER ACM: S. HAWTHORNE _____ (Initial/Date) **C. LAGERBLOOM** _____
(Initial/Date) ☐ **PENDING APPROVAL** (See comments below)

Comments/Questions: _____

Forward _____ **originals to** ☐ Mayor ☐ CCO **Date:** _____

5) Mayor/CRA Chairman: Please sign as indicated. Forward _____ originals to CCO for attestation/City seal (as applicable) **Date:** _____

6) City Clerk's Office: Retains 1 Original and forwards 2 Originals to: Tom Green/CRA/4008

Attach _____ certified Reso # _____ ☒ YES ☐ NO

Original Route form to CAO/J. Larregui

Rev. 12/22/16