


**RESOLUTION NO. 15-90**

**BE IT RESOLVED** that the appropriate officers of the City are authorized but not required to execute and deliver on behalf of the City that certain Construction Management Agreement between the City and GAC Contractors, Inc., relating to construction of the Administrative Campus Police Building and Public Works Building, in the amount of not-to-exceed Ninety Thousand Dollars (\$90,000) for Pre-Construction Phase Services and development of a Guaranteed Maximum Price proposal through City Charter procurement processes, in substantially the form attached and presented to the Council today, draft dated April 16, 2015, with such changes, insertions or omissions as may be approved by the City Manager, whose execution of such agreement shall be conclusive evidence of such approval.

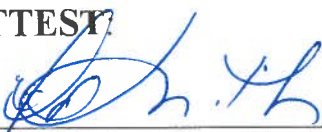

**THIS RESOLUTION** shall be effective immediately upon passage.

**PASSED** in regular session this 23<sup>rd</sup> day of April, 2015.

**CITY OF PANAMA CITY BEACH**

By:   
Gayle F. Oberst, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Holly White, City Clerk  
  
Jo Smith, Deputy City Clerk

PANAMA CITY BEACH – ADMINISTRATIVE CAMPUS

SECTION 00050

AGREEMENT

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between THE CITY OF PANAMA CITY BEACH, FLORIDA, (hereinafter called "OWNER") and GAC CONTRACTORS, INC., doing business as a corporation (an individual), or (a partnership), or (a corporation), having a business address of 4116 N. Hwy 231, Panama City, Florida 32405 (hereinafter called "CONSTRUCTION MANAGER"), for the performance of the Work (as that term is defined below) in connection with the construction of ADMINISTRATIVE CAMPUS ("Project"), to be located at 110 S. Arnold Road, Panama City Beach, Florida 32413, in accordance with the Drawings and Specifications prepared by VBA DESIGN, INC., the Architect of Record (hereinafter called "Architect") and all other Contract Documents hereafter specified.

OWNER and CONSTRUCTION MANAGER, for the consideration herein set forth, agree as follows:

1. **The Work.** The "Work" to be provided by CONSTRUCTION MANAGER pursuant to this Agreement shall be performed essentially in two phases. Those phases being Pre-Construction Phase Services and Construction Phase Services. At the discretion of OWNER, those two phases may overlap.
  - A. **Pre-Construction Phase Services – REVIEW AND ESTIMATION.** CONSTRUCTION MANAGER shall provide review and estimation services identified in the Scope of Pre-Construction Services set forth in Section 00093, including without limitation, reviewing and commenting upon the Drawings and Specifications developed by Architect and estimating project costs. The scope of that review shall include, but not be limited to, reviewing those various documents for value engineering and constructability. CONSTRUCTION MANAGER shall provide OWNER with detailed construction cost estimates with

respect to the Drawings and Specifications developed by Architect. CONSTRUCTION MANAGER agrees to attend any and all design and preconstruction conferences and to otherwise assist and cooperate with Architect with respect to the design of the Project. CONSTRUCTION MANAGER shall provide all other services during the Pre-Construction Phase of the Project as set forth in the Contract Documents.

- B. **Pre-Construction Phase Services- GMP Proposal and Logistics Plan.** After the Drawings and Specifications have been revised and completed by Architect as may be required and approved by OWNER for all of the Work (or such portions thereof as may be designated by OWNER in writing), the CONSTRUCTION MANAGER shall solicit bids and prepare a Guaranteed Maximum Price proposal for the OWNER'S review and acceptance as identified in the Scope of Pre-Construction Services set forth in Section 00093. The Guaranteed Maximum Price proposal shall be in substantially the Form of the Guaranteed Maximum Price Amendment, Section 00091 ("GMP Amendment"). In addition, the CONSTRUCTION MANAGER shall submit to the OWNER along with the GMP Amendment a comprehensive jobsite and campus relocation and logistics plan. If the OWNER notifies the CONSTRUCTION MANAGER in writing that OWNER has accepted the Guaranteed Maximum Price proposal, the OWNER and CONSTRUCTION MANAGER shall execute the GMP Amendment amending this Agreement. OWNER and CONSTRUCTION MANAGER may negotiate the terms and conditions of the GMP Amendment. CONSTRUCTION MANAGER agrees that all of its books, records and files, with respect to its development of the Guaranteed Maximum Price proposal, shall be open to OWNER for review and copying. CONSTRUCTION MANAGER shall provide a detailed breakdown acceptable to

OWNER of its Guaranteed Maximum Price proposal, as well as for the Contract Price and execute and deliver to Owner with the GMP Proposal and the breakdown the Truth In Negotiation Certificate, Section 00098 . CONSTRUCTION MANAGER guarantees that in no event shall the CONSTRUCTION MANAGER'S Fee, the total Cost of the Work or the General Conditions Expense or the Contingency Expense exceed the respective amount thereof comprising the Guaranteed Maximum Price agreed upon in the GMP Amendment, as such amount only may be adjusted pursuant to the terms of this Agreement. If OWNER rejects the Guaranteed Maximum Price proposal or the parties otherwise are unable to reach agreement on a GMP Amendment, OWNER may elect to terminate this Agreement. In the event of any such termination, CONSTRUCTION MANAGER shall be entitled to receive that portion of the Contract Price attributable to the Pre-Construction Phase Services properly performed through the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance and in writing by OWNER; but CONSTRUCTION MANAGER shall not be entitled to any further or additional compensation from OWNER, including but not limited to damages or lost profits on portions of the Work not performed.

- C. **Construction Phase Services.** If the GMP Agreement is entered, the CONSTRUCTION MANAGER shall furnish, at its sole expense, all management and supervision, and cause to be furnished all labor, equipment, tools, material, and supplies to properly and efficiently perform all of the Work required under the Contract Documents and shall be solely responsible for the payment of all taxes, permits and license fees, labor fringe benefits, insurance and bond premiums, and all other expenses and costs required to complete such work in

accordance with the Contract Documents. Notwithstanding anything herein to the contrary, as and to the extent expressly directed and authorized by OWNER in writing, CONSTRUCTION MANAGER shall commence to construct those portions of the Work designated by OWNER even though the Contract Price and/or Contract Time for the entire Work has not yet been agreed to by the parties, so long as they have agreed in writing upon the compensation to be paid CONSTRUCTION MANAGER and the performance time for such portion of the Work.

- D. CONSTRUCTION MANAGER shall use its best efforts to pre-qualify and determine the competency and reliability of all Subcontractors and allowed sub-sub-contractors and Suppliers, and the suitability of all items supplied, and to monitor the performance of each throughout the Project.
- E. CONSTRUCTION MANAGER'S employees and personnel shall be qualified and experienced to perform the portions of the Work to which they have been assigned. CONSTRUCTION MANAGER acknowledges that its primary role during the Construction Services Phase is to manage the Project for the benefit of the Owner and that Self Performance of Construction Phase Work is prohibited unless the Owner, in its sole and unfettered discretion, shall agree.
- F. In managing and performing the Work hereunder, CONSTRUCTION MANAGER shall be an independent contractor, maintaining control over and having sole responsibility for CONSTRUCTION MANAGER'S employees and other personnel and all Subcontractors, sub-sub-contractors and Suppliers. Neither CONSTRUCTION MANAGER, nor any of CONSTRUCTION MANAGER'S Subcontractors or sub-subcontractors or Suppliers, nor any of their respective employees or personnel, shall be deemed servants,

employees, or agents of OWNER.

2. **Contract Time.**

- A. Time is of the essence in the performance of the Work under this Agreement. The "Pre-Construction Commencement Date" shall be established in a Notice to Proceed with Pre-Construction Phase Services to be issued by OWNER. CONSTRUCTION MANAGER shall commence the Pre-Construction Phase Services portion of the Work within five (5) calendar days after the Pre-Construction Phase Commencement Date. Any Work performed by CONSTRUCTION MANAGER prior to the Pre-Construction Phase Commencement Date shall be at the sole risk of CONSTRUCTION MANAGER. The "Construction Phase Commencement Date" shall be established in the GMP Amendment. CONSTRUCTION MANAGER shall commence the Construction Phase Services portion of the Work within five (5) calendar days after the Construction Phase Commencement Date. No portion of the Work, with respect to the Construction Phase Services to be provided hereunder, shall be performed prior to the Construction Phase Commencement Date, unless expressly approved in advance by OWNER in writing. The total period of time beginning with the Construction Phase Commencement Date and ending on the date of Substantial Completion of the Work is referred to hereafter as the "Contract Time". Final Completion of the Work shall be achieved by CONSTRUCTION MANAGER within the time period set forth in Section 15.2 of Section 00100, General Conditions.
- B. Because the Work is to be completed in two phases, the timely completion of the first phase is critical to the timely completion of the second phase and, therefore, completion of the entire Project. Accordingly, CONSTRUCTION MANAGER agrees to provide the Pre-

Construction Phase Services in a timely manner so as not to delay completion of the Drawings and Specifications or the commencement of the Construction Phase Services. With respect to the Construction Phase Services, the GMP Amendment shall include the date that portion of the Work associated with the Construction Phase Services must be substantially completed by CONSTRUCTION MANAGER. That Substantial Completion date shall be established in terms of calendar days after the Construction Phase Commencement Date.

3. **Liquidated Damages.** OWNER and CONSTRUCTION MANAGER recognize that, since time is of the essence for this Agreement, OWNER will suffer financial loss if each of the three major components (set forth below) of the Work associated with the Construction Phase is not, severally, substantially completed within the respective times specified in the GMP Amendment, as said times may be severally or jointly adjusted as provided for herein. In such event, the total amount of OWNER's damages, will be difficult, if not impossible, to definitely ascertain and quantify, because this is a public construction project that will, when completed, benefit the public.

3.1 It is hereby agreed that it is appropriate and fair that OWNER receive liquidated damages from CONSTRUCTION MANAGER, if CONSTRUCTION MANAGER fails to achieve Substantial Completion of the police building and necessarily associated campus infrastructure, which in this case means that the building is AVAILABLE FOR FULL OCCUPANCY AND ALL INTENDED USES and entitled to a Certificate of Occupancy, within the required Police Building Time. Should CONSTRUCTION MANAGER fail to substantially complete the police building and necessarily associated campus infrastructure within the required time period, OWNER shall be entitled to assess, as liquidated damages, but not as a penalty, Two Hundred and Fifty dollars (\$250) for each calendar day that expires after expiration of the the Police Building Time, as more fully set forth in Section 15 of the General

Conditions, substituting the term “police building and necessarily associated campus infrastructure” for the term Work, and the term “Police Building Time” for Contract Time.

3.2 It is hereby agreed that it is appropriate and fair that OWNER receive liquidated damages from CONSTRUCTION MANAGER, if CONSTRUCTION MANAGER fails to achieve Substantial Completion of the public works building and necessarily associated campus infrastructure, which in this case means that the building is AVAILABLE FOR FULL OCCUPANCY AND ALL INTENDED USES and entitled to a Certificate of Occupancy, within the required Public Works Building Time. Should CONSTRUCTION MANAGER fail to substantially complete the public works building and necessarily associated campus infrastructure within the required time period, OWNER shall be entitled to assess, as liquidated damages, but not as a penalty, Two Hundred and Fifty dollars (\$250) for each calendar day that expires after the Public Works Building Time, as more fully set forth in Section 15 of the General Conditions, substituting the term “public works building and necessarily associated campus infrastructure” for the term Work, and the term “Public Works Building Time” for Contract Time.

3.3 It is hereby agreed that it is appropriate and fair that OWNER receive liquidated damages from CONSTRUCTION MANAGER, if CONSTRUCTION MANAGER fails to achieve Substantial Completion of all the remaining portions of the Work, including by way of example and not limitation, demolition and removal, parking lots and landscaping, within the required Contract Time. Should CONSTRUCTION MANAGER fail to substantially complete the remaining portions of the Work within the required time period, OWNER shall be entitled to assess, as liquidated damages, but not as a penalty, Two Hundred and Fifty dollars (\$250) for each calendar day that expires after the Contract Time for Substantial Completion as more fully set forth in Section 15 of the General Conditions.



3.3 CONSTRUCTION MANAGER hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of OWNER's actual damages at the time of contracting if CONSTRUCTION MANAGER fails to substantially complete any one or more of the forgoing, three substantial portions of the Work, severally, in a timely manner.

4. **Compensation / Contract Price.**

A. **Pre-Construction Phase Services.** As total and final compensation for all Pre-Construction Phase Services, including, but not limited to, providing value engineering services, reviewing Drawings and Specifications for constructability, assisting and meeting with Architect, and preparing cost estimates, CONSTRUCTION MANAGER shall be reimbursed monthly, in arrears, for the actual wages paid to the individuals for the time spent performing the Pre-Construction Phase Services at the rates listed upon Exhibit A attached and incorporated in the Description of Cost of the Work and General Conditions Expense, Section 00092, plus the fixed markup specified in that Section, plus direct out-of-pocket expenses incurred by the CONSTRUCTION MANAGER required to perform those services, based upon time records and invoices/receipts concurrently made and submitted to Owner in an itemized statement in a form reasonably acceptable to OWNER, not to exceed in the aggregate the sum of Ninety Thousand Dollars (\$90,000). Unless otherwise agreed to in writing by OWNER, the final, monthly invoice shall not be submitted until either (i) the GMP Amendment is executed for the entire Work, or (ii) the parties fail to reach agreement on the GMP Amendment and OWNER elects to terminate this Contract as provided in section 1.B, whichever occurs first.

B. **Construction Phase.** With respect to the Construction Phase Services to be provided by CONSTRUCTION MANAGER hereunder, OWNER shall (1) reimburse CONSTRUCTION MANAGER for the actual Cost of the Work incurred by CONSTRUCTION MANAGER not exceeding the amount thereof specified in the GMP Amendment, and (2) reimburse CONSTRUCTION MANAGER for the actual General Conditions Expense incurred by Construction Manager not exceeding the amount thereof specified in the GMP Amendment, (3) reimburse CONSTRUCTION MANAGER for the actual Contingency Expense incurred by CONSTRUCTION MANAGER not exceeding the amount thereof specified in the GMP Amendment, and (4) pay CONSTRUCTION MANAGER a fixed CONSTRUCTION MANAGER'S Fee in an amount equal to Five and One-Half percent (5.5%) of the estimated Cost of the Work as that estimate is established in the GMP Amendment (the aggregate amount of such sums due to be paid being collectively referred to herein as the "Contract Price"). The CONSTRUCTION MANAGER's Fee shall be CONSTRUCTION MANAGER's total compensation for all overhead, administrative and other costs not reimbursable as Cost of the Work or as a General Conditions Expense, as well as CONSTRUCTION MANAGER's total profit for Construction Phase Services. For approved changes in the Construction Phase Services (Change Orders, Construction Change Directives and Field Orders) which materially increase the size and scope of the Work, the CONSTRUCTION MANAGER's Fee shall be increased by an amount equal to Five and One-Half percent (5.5%) of the Cost of the Work directly attributable to any such change that is incurred or paid by the CONSTRUCTION MANAGER during performance of such change work. Provided, however, CONSTRUCTION MANAGER's Fee will not be adjusted for net deductive Change Orders. Costs which would

cause the Guaranteed Maximum Price amount agreed upon in the GMP Amendment to be exceeded shall be paid by the CONSTRUCTION MANAGER without reimbursement by the OWNER.

5. The term "Contract Documents" means and includes the following documents, all of which are incorporated into this Agreement by this reference:

Section 00050	AGREEMENT
Section 00060	PERFORMANCE BOND
Section 00070	PAYMENT BOND
Section 00090	NOTICE TO PROCEED WITH PRE-CONSTRUCTION PHASE SERVICES
Section 00091	FORM OF GMP AMENDMENT
Section 00092	DESCRIPTION OF THE COST OF THE WORK
Section 00093	SCOPE OF PRE-CONSTRUCTION PHASE SERVICES
Section 00096	TRENCH SAFETY ACT CERTIFICATE OF COMPLIANCE
Section 00097	PUBLIC ENTITY CRIMES STATEMENT
Section 00098	TRUTH IN NEGOTIATION CERTIFICATION
Section 00100	GENERAL CONDITIONS
Section 00800	SUPPLEMENTAL CONDITIONS
Section 00808	SALES TAX EXEMPTION ADDENDUM

The Contract Documents also includes any written amendments to any of the above signed by the party to be bound by such amendment. The Contract Documents are sometimes referred to herein as the "Agreement".

6. The OWNER will pay the Contract Price to the CONSTRUCTION MANAGER in the manner and at such times as set forth in Contract Documents.

7. This Agreement shall be binding upon all parties hereto and their respective

heirs, executors, administrators, successors, and assigns.

8. This Agreement shall be governed by the laws of the State of Florida.
9. All notices required or made pursuant to this Agreement shall be in writing and, unless otherwise required by the express terms of this Agreement, may be given either (i) by mailing same by United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) by sending same by Federal Express, Express Mail, Airborne, Emery, Purolator or other expedited mail or package delivery, or (iii) by hand delivery to the appropriate address as herein provided. Notices to OWNER required hereunder shall be directed to the following address:

If to OWNER:

\_\_\_\_\_  
City of Panama City Beach  
\_\_\_\_\_  
110 South Arnold Road  
\_\_\_\_\_  
Panama City Beach, FL 32413  
ATTENTION: \_\_\_\_\_  
Mario Gisbert, City Manager  
Fax No.: \_\_\_\_\_  
(850) 233-5108

If to CONSTRUCTION MANAGER:

\_\_\_\_\_  
GAC Contractors, Inc.  
\_\_\_\_\_  
4116 N. Hwy 231  
\_\_\_\_\_  
Panama City, FL 32405  
ATTENTION: \_\_\_\_\_  
Derwin R. White, Vice-President  
Fax No.: \_\_\_\_\_  
(850) 769-3456

Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

10. CONSTRUCTION MANAGER recognizes that OWNER is exempt from sales tax and may wish to generate sales tax savings for the Project. Accordingly, to the extent directed by and without additional charge to OWNER, CONSTRUCTION MANAGER shall comply with and fully implement the sales tax savings program as more fully described in the Sales Tax Exemption Addendum, Section 00808. 11. The failure of OWNER to enforce at any time or for any period of time any one or more of the

provisions of the Agreement shall not be construed to be and shall not be a continuing waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

12. Each of the parties hereto agrees and represents that the Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by this Agreement.
13. Should any provision of the Agreement be determined by a court with jurisdiction to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.
14. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural. The term "including" is not limiting, and the terms "hereof", "herein", "hereunder", and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.
15. For this Project, OWNER has designated a Project Representative to assist OWNER with respect to the administration of this Agreement. The Project Representative to be utilized by OWNER for this Project, shall be Mario Gisbert, City Manager.
16. CONSTRUCTION MANAGER acknowledges and agrees that no interruption, interference, inefficiency, suspension or delay in the commencement or progress

of the Work from any cause whatever, including those for which the OWNER, PROJECT REPRESENTATIVE, or ARCHITECT may be responsible, in whole or in part, shall relieve CONSTRUCTION MANAGER of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONSTRUCTION MANAGER expressly acknowledges and agrees that it shall receive no damages for delay. CONSTRUCTION MANAGER's sole remedy, if any, against OWNER will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This section shall expressly apply to claims for early completion, as well as to claims based on late completion. Notwithstanding the foregoing, if the Work is delayed due to the fault or neglect of OWNER or anyone for whom OWNER is liable, and such delays have a cumulative total of more than 90 calendar days, CONSTRUCTION MANAGER may make a claim for its actual and direct delay damages accruing after said 90 calendar days as provided in the Contract Documents. Except as expressly set forth in this section, in no event shall OWNER be liable to CONSTRUCTION MANAGER whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, special, indirect, incidental, or consequential damages of any kind or nature whatsoever.

17. INSURANCE - BASIC COVERAGES REQUIRED

The CONSTRUCTION MANAGER shall procure and maintain the following described insurance on policies and with insurers acceptable to OWNER. Current Insurance Service Office (ISO) policies, forms, and endorsements or equivalents, or broader, shall be used where applicable.

These insurance requirements shall not limit the liability of the CONSTRUCTION MANAGER. The insurance coverages and limits required of CONSTRUCTION MANAGER under this Agreement are designed to meet the minimum requirements of OWNER and the OWNER does not represent these types or

amounts of insurance to be sufficient or adequate to protect the CONSTRUCTION MANAGER'S interests or liabilities. CONSTRUCTION MANAGER alone shall be responsible to the sufficiency of its own insurance program.

The CONSTRUCTION MANAGER and the CONSTRUCTION MANAGER'S Subcontractors and sub-subcontractors shall be solely responsible for all of their property, including but not limited to any materials, temporary facilities, equipment and vehicles, and for obtaining adequate and appropriate insurance covering any damage or loss to such property. The CONSTRUCTION MANAGER and the CONSTRUCTION MANAGER'S Subcontractors and sub-subcontractors expressly waive any claim against OWNER arising out of or relating to any damage or loss of such property, even if such damage or loss is due to the fault or neglect of the OWNER or anyone for whom the OWNER is responsible. The CONSTRUCTION MANAGER is obligated to include, or cause to be included, provisions similar to this paragraph in all of the CONSTRUCTION MANAGER'S subcontracts and its Subcontractors' contracts with their sub-subcontractors.

The CONSTRUCTION MANAGER'S deductibles/self-insured retention's shall be disclosed to OWNER and are subject to OWNER'S approval. They may be reduced or eliminated at the option of OWNER. The CONSTRUCTION MANAGER is responsible for the amount of any deductible or self-insured retention. Any deductible or retention applicable to any claim or loss shall be the responsibility of CONSTRUCTION MANAGER and shall not be greater than \$25,000, unless otherwise agreed to, in writing, by OWNER.

Insurance required of the CONSTRUCTION MANAGER or any other insurance of the CONSTRUCTION MANAGER shall be considered primary, and insurance of OWNER shall be considered excess, as may be applicable to claims or losses which arise out of the Hold Harmless, Payment on Behalf of OWNER, Insurance,

Certificates of Insurance and any Additional Insurance provisions of this agreement, contract or lease.

Except with respect to the workers' compensation insurance, CONSTRUCTION MANAGER shall name the OWNER as an additional insured on all required insurance using Additional Insured Endorsement ISO Form CG 20 10 11 85 or if not available, ISO Forms CG 20 10 10 01 and CG 20 37 10 01 or if not available, their equivalent acceptable to OWNER. In the event CONSTRUCTION MANAGER's insurance policy(ies) provide greater coverage and/or greater limits than the minimum requirements set forth herein, then the OWNER and the other additional insureds shall be entitled to the full coverage and limits of such policy(ies), and these insurance requirements will be deemed to require such greater coverage and/or greater limits.

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE COVERAGE

The CONSTRUCTION MANAGER shall purchase and maintain workers' compensation and employers' liability insurance for all employees engaged in the Work, in accordance with the laws of the State of Florida, and, if applicable to the Work, shall purchase and maintain Federal Longshoremen's and Harbor Workers' Compensation Act Coverage. Limits of coverage shall not be less than:

\$1,000,000	Limit Each Accident
\$1,000,000	Limit Disease Aggregate
\$1,000,000	Limit Disease Each Employee

The CONSTRUCTION MANAGER shall also purchase any other coverage required by law for the benefit of employees.

The CONSTRUCTION MANAGER shall provide to OWNER an Affidavit stating that it meets all the requirements of Florida Statute 440.02 (15) (d).

COMMERCIAL GENERAL LIABILITY COVERAGE

CONSTRUCTION MANAGER shall purchase and maintain Project Specific



Commercial General Liability Insurance on a full occurrence form. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual for this Agreement, Independent Contractors, Broad Form Property Damage, Products and Completed Operation Liability Coverages and shall not exclude coverage for the "X" (Explosion), "C" (Collapse) and "U" (Underground) Property Damage Liability exposures. Limits of coverage shall not be less than:

Bodily Injury, Property Damage & Personal Injury Liability	\$1,000,000 Combined Single Limit Each Occurrence, and
	\$2,000,000 Aggregate Limit

The General Aggregate Limit shall be specifically applicable to this Project. The Completed Operations Liability Coverages must be maintained for a period of not less than ten (10) years following OWNER'S final acceptance of the project.

**BUSINESS AUTOMOBILE LIABILITY COVERAGE**

The CONSTRUCTION MANAGER shall purchase and maintain Business Automobile Liability Insurance as to ownership, maintenance, use, loading and unloading of all of CONSTRUCTION MANAGER'S owned, non-owned, leased, rented or hired vehicles with limits not less than:

Bodily Injury & Property Damage	\$1,000,000 Combined Single Limit Each Accident
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**EXCESS OR UMBRELLA LIABILITY COVERAGE**

CONSTRUCTION MANAGER shall purchase and maintain Excess Umbrella Liability Insurance or Excess Liability Insurance on a full occurrence form providing the same continuous coverages as required for the underlying Commercial General, Business Automobile and Employers' Liability Coverages with no gaps in continuity of coverages or limits with OWNER added by endorsement to the policy as an additional insured in the same manner as is required under the primary policies, and shall not be less than \$10,000,000,each

occurrence and aggregate as required by OWNER.

BUILDER'S RISK

CONSTRUCTION MANAGER shall purchase and maintain Builder's Risk Insurance on all materials which are or become part of the sales tax savings program as more fully described in the Sales Tax Exemption Addendum (Section 00808) naming Owner as an additional insured.

ADDITIONAL INSURANCE

None is required at this time

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement in two (2) copies each of which shall be deemed an original on the date first written above.

(SEAL)

OWNER:

CITY OF PANAMA CITY BEACH,  
FLORIDA

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

NAME: Mario Gisbert  
(Please type)

TITLE: City Manager

\_\_\_\_\_  
City Attorney (as to form only)

CONSTRUCTION MANAGER:

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

NAME: Derwin R. White  
(Please Type)

NAME \_\_\_\_\_

ADDRESS: 416 N. Hwy 231,  
Panama City, FL 32404

(Please Type)

[END OF SECTION 00050]

## PANAMA CITY BEACH – ADMINISTRATIVE CAMPUS

### SECTION 00093

#### SCOPE OF PRE-CONSTRUCTION SERVICES

**A. Review of Drawings and Specifications.** The Architect has developed Drawings and Specifications for the Owner's use in implementing the first phase of the Administrative Campus Master Plan. The general scope of pre-construction services required from the Construction Manager includes, but is not limited to:

1. Conduct a thorough review of the Drawings and Specifications to:
  - a. Identify potential missing information necessary to complete the work as planned;
  - b. Review project materials and details with regards to the integrity and weather tightness of the building envelopes;
  - c. Review overall constructability;
  - d. Develop value engineering recommendations. These may include items that add construction cost, have no cost change, or reduce cost. All are to provide equivalent or better performance to the project, or lower life cycle costs over the life of the facilities; and
  - e. Develop an initial cost estimate of the Work, divided between:
    - i) Police Department facility and parking lot with associated entrance drive, lighting and stormwater collection;
    - ii) Public Works facility, including plaza and parking lot with associated lighting and stormwater collection;
    - iii) Fueling facility, stormwater basin facilities, and all remaining utilities (water, wastewater, reclaimed water, gas, electric, communications, etc.);
    - iv) Demolition of abandoned facilities.
2. The current construction budget for the Guaranteed Maximum Price is \$8,865,000. In the event the initial cost estimate exceeds that amount,

SCOPE OF PRE-CONSTRUCTION SERVICES

00093-1

itemized recommendations to help bring the project into budget are to be developed

3. Present the written results of the review, and recommendations, to the Owner and the Architect.

4. Subsequent to the Owner's and Architect's review of the Construction Manager's findings, attend any and all design and preconstruction conferences with the Owner and Architect. The conference(s) mission will be to assist the Owner in making final selections related to the Construction Manager's, and subsequent Architect's recommendations.

**B. Development of Guaranteed Maximum Price (GMP).** After the Owner has approved the final form of the Drawings and Specifications, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the OWNER's review and acceptance, as follows:

1. CONSTRUCTION MANAGER shall solicit bids in accordance with the City's Charter and Florida Law, including without limitation public meetings to open bids and public records retention for all Subcontracts and Supply Contracts needed to complete the Work (excepting such items as the OWNER shall agree in writing and in its unfettered discretion to postpone as impractical at this early stage), including the minimum bid procedures specified in the GENERAL CONDITIONS, Section 00100.
2. CONSTRUCTION MANAGER shall tabulate all bids and recommend the award of each contract as described in the GENERAL CONDITIONS, Section 00100.
3. Based upon the CONSTRUCTION MANAGER'S recommended contract awards and, where the Owner shall have agreed in writing to postpone bidding, based upon the CONSTRUCTION MANAGER'S detailed cost estimate, the CONSTRUCTION MANAGER shall prepare a Guaranteed Maximum Price proposal
4. If the Owner and Construction Manager fail to agree on the proposed GMP, the Owner may elect to terminate the Agreement.

**C. Jobsite and Campus Relocation and Logistics Plan.** The Owner has prepared and submitted to the Construction Manager a preliminary campus relocation plan. Based initially upon that plan, the Construction Manager shall prepare and submit to the Owner for review along with its Guaranteed Maximum Price proposal a comprehensive jobsite and campus relocation and logistics plan containing, at a minimum the following elements. The purpose of this exercise is to minimize the potential of conflict between the space, access and utilities needs of the Construction

Manager in pursuing the Work and the Owner and public conducting business on the campus.

1. Lay down areas, by location and times needed.
2. Public and Owner Staff, including Bay County Tax Collector Staff, on campus parking and vehicular access, by location and times available.
3. Owner utility outages by approximate week in critical path schedule and length of time. NOTE: all planned outages must be outside regular business hours with at least 72 hours' notice.
4. Vacation of existing buildings by approximate week timeframe in critical path schedule. NOTE: Construction Manager must allow a minimum of twenty days after new facilities are available for occupancy to allow Owner staff to vacate buildings to be demolished.

[END OF SECTION 00093]

PANAMA CITY BEACH – ADMINISTRATIVE CAMPUS

SECTION 00092

DESCRIPTION OF THE COST OF THE WORK  
And  
GENERAL CONDITIONS EXPENSE

**A. Cost Of The Work To Be Reimbursed.** The term Cost of the Work shall mean all costs necessarily and reasonably incurred by Construction Manager in the proper performance of the Construction Phase Services portion of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with the prior written consent of Owner only after Construction Manager has provided sufficient support in writing that exceptional circumstances exist, which justify the payment of rates higher than the standard. The Cost of the Work to be reimbursed shall include only those items set forth below in this subsection A:

**1. Subcontract and Supply Contract Costs.**

- a. Payments made by Construction Manager to Subcontractors and Suppliers in accordance with the requirements of the applicable written Subcontracts and Supply Contracts.
- b. Supply costs shall include a reasonable allowance for waste and spoilage. Unused excess materials, if any, shall be handed over to Owner at the completion of the Work, or, at Owner's option, shall be sold by Construction Manager and amounts realized from such sales shall be paid over to Owner or credited to Owner as a deduction from other Costs of the Work.
- c. Self-Performance duly authorized under the Agreement in lieu of a Subcontract

**2. Self-Performance Labor Costs.**

- a. Where Self-Performance of a labor-only task has been duly authorized under the Agreement, wages of construction workers directly employed by Construction Manager to perform the construction of the Work at the Project site or, with Owner's written agreement, at off-site workshops. Costs to be reimbursed will be the actual wages paid to the individuals for the time spent performing the work at the rates listed upon attached and incorporated Exhibit A based

DESCRIPTION OF THE COST OF THE WORK

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upon time records concurrently made and submitted to Owner in an itemized statement in a form reasonably acceptable to Owner.

- b. The parties hereby establish the fixed markup rate of thirty-five percent (35%) for all labor burden, to cover and include all taxes, insurance (except workers compensation and general liability), contributions, assessments and benefits required by law and collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such markup is to apply only upon those wages and salaries included in the Cost of the Work under subsection (a) above.

**3. Allowances.**

- a. The Owner has allocated the sum of Thirty Thousand Dollars (\$30,000) as a furnishings and appliance allowance for the POLICE BUILDING. The City, or the Construction Manager if requested by the City, shall secure pricing for public area furnishings (lobby, waiting, reception, conference, etc.) and employee area appliances (i.e. refrigerators, ranges, ice makers, etc.) based upon specifications provided by the City. Pricing for these furnishings shall be applied against the allowance via Owner Direct Purchase by the City without any Construction Manager mark-up or taxes of any kind. Construction manager shall deliver and install all furnishings and appliances.
- b. The Owner has allocated the sum of Thirty Thousand Dollars (\$30,000) as a furnishings and appliance allowance for the PUBLIC WORKS BUILDING. The City, or the Construction Manager if requested by the City, shall secure pricing for public area furnishings (lobby, waiting, reception, conference, etc.) and employee area appliances (i.e. refrigerators, ranges, ice makers, etc.) based upon specifications provided by the City. Pricing for these furnishings shall be applied against the allowance via Owner Direct Purchase by the City without any Construction Manager mark-up or taxes of any kind. Construction manager shall deliver and install all furnishings and appliances.
- c. The Owner has allocated the sum of Thirty Five Thousand Dollars (\$35,000) to compensate Gulf Power Company for

DESCRIPTION OF THE COST OF THE WORK

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undergrounding electrical utilities to and on site. The undergrounding cost shall be applied against the allowance without any Construction Manager mark-up or taxes of any kind.

- d. The Owner has allocated the sum of Sixty Thousand Dollars (\$60,000) as allowance for inside coper wiring, fiber optic cable and telecommunication equipment for both the POLICE and the PUBLIC WORKS BUILDINGS. The City, or the Construction Manager if requested by the City, shall secure pricing from one or more third parties based upon specifications provided by the City. Pricing for these furnishings shall be applied against the allowance via Owner Direct Purchase by the City without any Construction Manager mark-up or taxes of any kind. Construction manager shall coordinate delivery and installation of all wiring, cable and equipment.
- e. Unused portion of each of the forgoing allowances remaining at the end of the job will be transferred to the Owner and deducted from the Guaranteed Maximum Price. Construction Manager has no entitlement to any portion of any unused Allowance.

**B. General Conditions Expense To Be Reimbursed.** The term General Conditions Expense shall mean all expenses necessarily and reasonably incurred by Construction Manager in the proper performance of the Construction Phase portion of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with the prior written consent of Owner only after Construction Manager has provided sufficient support in writing that exceptional circumstances exist, which justify the payment of rates higher than the standard. General Conditions Expense to be reimbursed shall include only those items set forth below in this subsection B:

- 1. **Costs of support activities and services and temporary facilities necessary to carry out construction that do not ultimately remain part of the building.**
  - a. Wages or salaries of Construction Manager's supervisory and administrative personnel who are stationed at the Project site with Owner's prior written agreement. Costs to be reimbursed will be the actual wages paid to the individuals for the time spent performing the work at the

DESCRIPTION OF THE COST OF THE WORK

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rates listed upon attached and incorporated Exhibit A based upon time records concurrently made and submitted to Owner in an itemized statement in a form reasonably acceptable to Owner.

- b. Wages or salaries of Construction Manager's supervisory and administrative personnel engaged at factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with Owner's prior written agreement. Costs to be reimbursed will be the actual wages paid to the individuals for the time spent performing the work at the rates listed upon attached and incorporated Exhibit A based upon time records concurrently made and submitted to Owner in an itemized statement in a form reasonably acceptable to Owner.
- c. The parties hereby establish the fixed markup rate of thirty-five percent (35%) for all labor burden, to cover and include all taxes, insurance (except workers compensation and general liability), contributions, assessments and benefits required by law and collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such markup is to apply only upon those wages and salaries included in the General Conditions under subsections (a) and (b) above.
- d. Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities (including project field offices, furniture and fixtures), temporary utilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Construction Manager.
- e. Rental charges, at standard industry rates for the area, for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site, whether rented from Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and

DESCRIPTION OF THE COST OF THE WORK

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quantities of all equipment rented, whether from Construction Manager or others, shall be subject to Owner's prior written approval.

- f. Cost of removal and proper disposal of debris from the Project site.
- g. Costs of postage and parcel delivery charges and telephone service at the Project site and reasonable petty cash expenses of the Project site office.

**2. Miscellaneous Costs.**

- a. That portion of any separate premiums for (i) bonds directly attributable to this Contract and (ii) any additional insurance coverages which are purchased by Construction Manager, with Owner's prior written approval, beyond the level of coverage specified herein.
- b. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Construction Manager is liable.
- c. Fees and assessments for the building permit and for other permits, licenses and inspections for which Construction Manager is required by the Contract Documents to pay.
- d. Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of this Contract.
- e. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.
- f. Deposits lost for causes other than Construction Manager's fault or negligence.
- g. Legal, mediation and arbitration costs, other than those arising from disputes between Owner and Construction Manager, reasonably incurred by Construction Manager in performance of the Work and with Owner's prior written consent, said consent to be given or denied in Owner's sole and unfettered discretion.

- h. Fees of the P.L.S. for preparation of the certified as-built survey.
  - i. Costs reasonably incurred in repairing or correcting damage or nonconforming Work executed by Construction Manager, or its subcontractors or suppliers, provided that such damage or nonconforming Work was not caused by (i) the negligence or failure to fulfill a specific responsibility of Construction Manager to Owner set forth in the Contract Documents, or (ii) Construction Manager's foremen, engineers, superintendents or other supervisory, administrative or managerial personnel, or (iii) the failure of Construction Manager's personnel to supervise adequately those portions of the Work to be performed by Construction Manager's subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by Construction Manager from (i) insurance or bonds, (ii) any of the subcontractors or suppliers, or (iii) some other appropriate source.
3. **Other Costs.** Other costs incurred in performance of the Work if and to the extent approved in advance in writing by Owner in its sole and unfettered discretion.

C. **Costs and Expenses Not To Be Reimbursed.** The Cost of the Work shall not include the following items:

- 1. Salaries and other compensation of Construction Manager's personnel, other than self-performance labor cost properly authorized, recorded and invoiced.
- 2. Expenses of Construction Manager's principal office and offices other than the Project site office.
- 3. Overhead and general expenses, except as may be expressly included in subsection B above.
- 4. Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Work.
- 5. Rental costs of machinery and equipment, except as specifically provided in subsection B above.
- 6. Costs due to the fault or negligence of Construction Manager, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, costs for the correction of damaged, defective, or

DESCRIPTION OF THE COST OF THE WORK

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nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.

7. Any costs not specifically and expressly described in subsection A or B above.
8. Costs which would cause the GMP to be exceeded (as the GMP may be adjusted pursuant to the terms herein for Change Order and Construction Change Directive).

**D. Discounts, Rebates and Refunds.**

Cash discounts obtained on payments made by Construction Manager shall accrue to Owner if (i) before making the payment, Construction Manager included them in an application for payment and received payment therefor from Owner, or (ii) Owner has deposited funds with Construction Manager with which to make payments; otherwise, cash discounts shall accrue to Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to Owner, and Construction Manager shall make provisions so that they can be secured. Amounts which accrued to Owner in accordance with the provisions of this subsection shall be credited to Owner as a deduction from the Cost of the Work.

[END OF SECTION 00092]



## Exhibit A

### City of Panama City Beach Administrative Campus

#### Hourly Wage Schedule - GAC Contractors, Inc.

<b>Position</b>	<b>Hourly Wage</b>
Vice-President	\$72.12
Project Manager	\$36.06
Senior Estimator	\$34.62
Estimator	\$17.50
Superintendent	\$52.50
Project Engineer (1)	\$25.00
Project Engineer (2)	\$21.63
Project Eng - Intern	\$12.00
Project/Business Director	\$30.00
Corporate Controller	\$86.53
Contract Administrator-DMP Advisor	\$25.00
1A Scheduler	\$17.00
Administrator (1) Billings	\$18.03
Administrator (2) Payroll	\$13.50
Administrator (3) Clerical	\$13.00
IT Administrator	\$28.85
Field Crew Supervisor	\$51.59

(Wages are not inclusive of 35% fixed markup)

SECTION 00091

FORM OF GMP AMENDMENT

**AMENDMENT NO. 1 TO AGREEMENT BETWEEN OWNER AND  
CONSTRUCTION MANAGER FOR OWNER'S ADMINISTRATIVE**

Pursuant to the Agreement, dated \_\_\_\_\_ (“Agreement”) between THE CITY OF PANAMA CITY BEACH, FLORIDA (“Owner”) and GAC CONTRACTORS, INC. (“Construction Manager”), with respect to the construction of the Owner's ADMINISTRATIVE CAMPUS (“Project”), the Owner and Construction Manager hereby agree to amend and modify the Agreement by this Amendment and establish a “Guaranteed Maximum Price,” above which the Construction Manager guarantees the actual Cost of the Work and Construction Manager's Fee will not to exceed and Contract Time for all the Construction Phase Services portion of the Work.

WITNESSETH

WHEREAS, the Pre-Construction Phase of the Agreement has been completed;  
and

WHEREAS, the Construction Manager has duly bid and presented to the City Council for acceptance all or substantially all of the components of labor and materials required to construct the improvements contemplated by the Agreement, excepting certain components which cannot be bid until later in the project and excepting Construction Manager's professional services to be performed by the Construction Manager in consideration of the Construction Manager's fixed fee as set forth in the Agreement; and

WHEREAS the Construction Manager has recommended award of each contract for which bids were solicited, and

WHEREAS, the Construction Manager has prepared detailed cost estimates for the labor and materials for which pre-construction bidding is impractical; and

WHEREAS, the Construction Manager has based its Guaranteed Maximum Price upon the award of all such contracts to the recommended bidder and its detailed cost estimates; and

WHEREAS the Construction Manager has submitted to the City a list of the hourly rates and estimated hours of its employees which may deliver Self-Performance

labor-only services during the Construction Phase, and agreed that those services will be billed on a time involved basis as part of the Cost of the Work, not to exceed the total amount of the Cost of the Work specified in this Amendment No. 1; and

WHEREAS the Construction Manager has submitted its Guaranteed Maximum Price and the City desires to accept that price,

NOW THEREFORE, in consideration of the mutual benefits contained in the Agreement and this Amendment No. 1, the Owner and Construction Manager agree as follows:

## ARTICLE 1

### SCOPE OF WORK

The scope of the Work consists of the construction of a \_\_\_\_\_, in accordance with the Agreement, this Amendment and the other Contract Documents listed as Attachments 1 through \_\_\_ below, which are hereby incorporated into and made a part of the Amendment by this reference:

<u>Attach. No.</u>	<u>Description</u>	<u>Pages</u>	<u>Date</u>
1.	List of Drawings and Specifications	___ through ___	_____
2.	Assumptions and Clarifications	___ through ___	_____
3.	Completion Schedule	___ through ___	_____
4.	Schedule of Values for Cost of Work*	___ through ___	_____
5.	List of Itemized General Conditions	___ through ___	_____
6.	List of Subcontractors and Major Suppliers	___ through ___	_____

\* To be set out in format consistent with modified AIA Application and Certification form to be provided by Owner.

## ARTICLE 2

### GUARANTEED MAXIMUM PRICE

2.1 Construction Manager's Guaranteed Maximum Price ("GMP") for the Work is \_\_\_\_\_ (\$ \_\_\_\_\_) composed of the following amounts and no other:



2.1.1 Cost of the Work as defined in the Agreement and actually incurred by CONSTRUCTION MANAGER, not to exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_). The CONSTRUCTION MANAGER guarantees that all costs or expenses that would cause the Cost of the Work to exceed the amount just stated shall be borne by the CONSTRUCTION MANAGER unless adjusted by the Owner in a Change Order.

2.1.2 General Conditions Expense as defined in the Agreement and actually incurred by CONSTRUCTION MANAGER, not to exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_). The CONSTRUCTION MANAGER guarantees that all costs or expenses that would cause the General Conditions Expense to exceed the amount just stated shall be borne by the CONSTRUCTION MANAGER unless adjusted by the Owner in a Change Order.

2.1.3 Construction Manager's Fee in the lump sum, fixed amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

2.1.4 Contingency Expense as defined in the Agreement and actually incurred by CONSTRUCTION MANAGER, not to exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_).

2.2 Monthly installment payment of the Construction Manager's Fee and reimbursement of the Cost of the Work and the General Condition Expenses shall be based upon the percent completion of the designated portion of the Work for each particular month.

2.3 In order to efficiently and timely address any unknown or unanticipated conditions that are within the scope of the required Work and are otherwise reimbursable without duplication as a Cost of the Work the parties have agreed to establish the not-to-exceed Contingency Expense set forth in this Amendment. Contingency funds shall be used to cover costs that may result from incomplete design and unanticipated costs that arise during construction that are not identified by the construction documents. Construction Manager shall not proceed with any portion of the Work which it intends to charge against this contingency without first obtaining Owner's express written authorization to proceed. The Construction Manager acknowledges and agrees that any work which is to be charged against the contingency allowance that does not receive such prior written approval from the Owner shall be deemed to be part of Construction Manager's basic Work compensated within the GMP and not chargeable against the Owner's Contingency Allowance. The Owner reserves the right, at its sole discretion, to withhold its consent on contingency expenditures. Further, any contingency expenditures become part of the Contract Documents and are incorporated by reference herein. Unused contingency remaining at the end of the job will be deducted from the Guaranteed Maximum Price. Construction Manager has no entitlement to any portion of any unused contingency. If upon completion of seventy five percent (75%) of the work, the remaining amount of Contingency exceeds one-half of the amount of the initial contingency, such excess shall be transferred to the Owner and reduce the Guaranteed Maximum Amount by the amount of the excess.

2.4 If the Construction Manager receives bids or ultimately contracts for portions of the Cost of the Work which are less than the amounts budgeted in the Guaranteed Maximum Price proposal approved by Owner for such portions included in the Cost of the Work, such buyout savings shall first be utilized to offset shortfalls of funds on other bid packages or contracts included in the Cost of the Work. If, after offsetting any shortfalls buyout savings remain, all buyout savings shall be transferred or returned to the Owner and reduce the Cost of the Work and Guaranteed Maximum Amount by the amount of the excess.

2.5 Construction Manager recognizes that this Contract includes work for trench excavation in excess of five feet deep. Construction Manager acknowledges the requirements set forth in Section 553.63 of the Florida Statutes titled Trench Safety Act. Construction Manager certifies that the required trench safety standards will be in effect during the period of construction of the Project and Construction Manager agrees to comply with all such required trench safety standards. The amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_) has been separately identified for the cost of compliance with the required trench safety standards; said amount is included within the Cost of the Work.

2.6 For purposes of the Owner's internal accounting and Construction Manager's applications for payment, the Construction Manager has divided the Cost of the Work between the construction phase services as follows.

i) Police Department facility and parking lot with associated entrance drive, lighting and stormwater collection:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_).

ii) Public Works facility, including plaza and parking lot with associated lighting and stormwater collection:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_).

iii) Fueling facility, stormwater basin facilities, and all remaining utilities (water, wastewater, reclaimed water, gas, electric, communications, etc.):

\_\_\_\_\_ Dollars (\$\_\_\_\_\_).

iv) Demolition and removal of abandoned facilities:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_).

**ARTICLE 3**

## CONTRACT TIME

3.1 The Construction Phase is divided into two consecutive tasks, first the concurrent construction of the two-story public works building and the separate, one-story police building, with associated campus infrastructure, and second demolition and removal of certain existing campus buildings. The Construction Phase Commencement Date for the Work is \_\_\_\_\_.

3.1.1 The total period of time beginning with the Construction Phase Commencement Date through the date required for Substantial Completion of the police building and necessarily associated campus infrastructure portion of the Work is \_\_\_\_\_ (\_\_\_\_\_) days (the "Police Building Time"). THE POLICE BUILDING SUBSTANTIAL COMPLETION DATE IS THEREFORE ESTABLISHED AS \_\_\_\_\_. In this case, Substantial Completion means that the building is AVAILABLE FOR FULL OCCUPANCY AND ALL INTENDED USES and entitled to a Certificate of Occupancy. The Owner shall be allowed twenty business days after Substantial Completion to vacate the police building for demolition. intends to occupy the police building after its substantial completion and before substantial completion of the public works building.

3.1.2 The total period of time beginning with the Construction Phase Commencement Date through the date required for Substantial Completion of the public works building and necessarily associated campus infrastructure portion of the Work is \_\_\_\_\_ (\_\_\_\_\_) days (the "Public Works Building Time"). THE PUBLIC WORKS SUBSTANTIAL COMPLETION DATE IS THEREFORE ESTABLISHED AS \_\_\_\_\_. In this case, Substantial Completion means that the building is AVAILABLE FOR FULL OCCUPANCY AND ALL INTENDED USES and entitled to a Certificate of Occupancy. The Owner shall be allowed twenty business days after Substantial Completion to vacate the public works building for demolition.

3.1.23 The total period of time beginning with the Construction Phase Commencement Date through the date required for Substantial Completion of the public works building and associated campus infrastructure remaining portions of the Work, including by way of example and not limitation, demolition and removal, parking lots and landscaping, is \_\_\_\_\_ (\_\_\_\_\_) days. The owner shall have a period of \_\_\_\_\_ (\_\_\_\_\_) days between substantial completion of the public works building to occupy that building before demolition and removal shall commence. 3.1.3 Taken consecutively and serially, the total period of time beginning with the Construction Phase Commencement Date through the date required for Substantial Completion of both buildings, all campus infrastructure, occupancy of the public works building and demolition/removal is \_\_\_\_\_ (\_\_\_\_\_) days (the "Contract Time"). THE FINAL, SUBSTANTIAL COMPLETION DATE OF THE WORK IS THEREFORE ESTABLISHED AS \_\_\_\_\_ (the "Contract Time").

3.2 Pursuant to this Agreement, the parties have established THREETWO

SUBSTANTIAL COMPLETION DATES and THREE LIQUIDATED DAMAGE RATES for reasons stated therein, which the parties acknowledge and agree apply to this Amendment and Construction Manager's responsibility to first complete the police building and necessarily associated campus infrastructure within the Police Building Time, to complete the public works building and necessarily associated campus infrastructure within the Public Works Building Time, and to complete all the remaining portions of the Work and then all the Work within the Contract Time as stated herein. Accordingly, the liquidated damage rates established in this Agreement shall be assessed from Construction Manager for each calendar day Construction Manager fails to achieve Substantial Completion for the designated portion of the Work within the respective time. The Police Building Time is less than the Contract Time, but it shall commence simultaneously with, and run concurrently with, the Contract time. Therefore, All Change Orders or Construction Change Directives shall be designated and directed to only one of the forgoing three components of the Work. Circumstances affecting two or three of those components shall be the subject of separate Change Orders or Construction Directives or both. a change of either shall change the other in like amount.

#### ARTICLE 4

##### **MISCELLANEOUS**

4.1 Except as expressly modified herein, the terms and conditions of the Agreement remain unchanged. In the event of a conflict between the terms of this Amendment and those of the Agreement, Owner and Construction Manager agree that the terms of this Amendment shall prevail and control.

4.2 The recitals first above stated are true, complete and not misleading.

4.3 There is no breach or default in any material term or condition of the Agreement, and neither party is aware of any circumstances that with the passage of time or the giving of notice would constitute such a breach or default.

4.4 Except as amended herein, the Agreement shall remain in full force and effect. In the event of a conflict between the terms, conditions and covenants of the Agreement and the terms, conditions and covenants of this Amendment No. 1, this Amendment shall control.

4.5 There are no other agreements, representations or understandings between the parties, oral or written, relating to the matters addressed in this Amendment No. 1 beyond the terms, conditions and covenants here written and in the Agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Amendment in two (2) copies each of which shall be deemed an original on the date first written above.

(SEAL)

OWNER:

CITY OF PANAMA CITY BEACH,  
FLORIDA

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

NAME: \_\_\_\_\_  
(Please type)

TITLE: \_\_\_\_\_

\_\_\_\_\_  
City Attorney (as to form only)

CONSTRUCTION MANAGER:

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

NAME: \_\_\_\_\_  
(Please Type)

NAME \_\_\_\_\_  
(Please Type)

ADDRESS: \_\_\_\_\_

**Attachment 1**  
**List of Drawings and Specifications**

See Attached

**Attachment 2**  
**Allowance**

See Attached

**Attachment 3**  
**Assumptions and Clarifications**

See Attached



**Attachment 4**  
**Completion Schedule**

See Attached

**Attachment 5**  
**Schedule of Values**

See Attached

**Attachment 6**  
**List of Itemized General Conditions**

See Attached

**Attachment 7**  
**List of Subcontractors and Major Suppliers**

See Attached

[END OF SECTION 00091]

PANAMA CITY BEACH – ADMINISTRATIVE CAMPUS COMPLEX

SECTION 00808

SALES TAX EXEMPTION ADDENDUM

1. Construction Manager and City entered into a contractan agreement dated \_\_\_\_\_, (the "ContractAgreement") for the performance of the WORK described therein, to which an executed copy of this Sales Tax Exemption Addendum ("Addendum") shall be attached thereto and incorporated therein.
2. Construction Manager and City desire to enter into an arrangement whereby certain purchases under the ContractAgreement can be made through the City as a means of taking advantage of the City's status of being exempt from sales and use taxes.
3. The City is exempt from sales and use taxes. As such it is exempt from the payment of sales and use tax on purchases of building materials or equipment necessary for the performance of work under construction contracts, provided the City determines it is to its best interest to do so, and provided the purchase of such building materials and equipment are handled in the manner hereinafter described.
4. The City has determined it is in its best interest to provide the opportunity to eliminate the payments of sales tax for building materials or equipment to be used in the construction of this project, and notifies the Construction Manager of its intent to do so.

**TERMS AND CONDITIONS**

1. The parties intend by this Addendum to comply with the procedures and elements described in Florida Department of Revenue Technical Assistance Advisements 01A-003 (January 8, 2001) and 00A-083 (December 21, 2000), and any conflict or ambiguity in this Addendum shall be resolved in favor of meeting the elements necessary to make tax exempt the purchases contemplated by this Addendum.
2. The City shall, at its sole discretion, have the option to purchase or lease directly from the supplier or vendor, any goods, building materials or equipment included in the Construction Manager's bid for the Contract.Guaranteed Maximum Price or General Conditions Expense ("Owner Direct Purchases"). Construction Manager shall, from time to time submit, update and keep current, for consideration by the City, a list of all goods, building materials and equipment to be purchased, organized by supplier or vendor. Such list shall include a brief description of the building materials and equipment and the name and address of the supplier or vendor. Suppliers or vendors reasonably anticipated to furnish building materials

and equipment with an aggregate purchase value of less than \$10,000 need not be listed. Construction Manager's initial list is attached hereto and incorporated herein. Building materials and equipment not required for the performance of the Contract shall not be purchased under this Addendum. The City reserves the right to delete or add items from this Addendum when it is in the City's best interest.

3. The City will be liable for the payment of all purchases Owner Direct Purchases properly made hereunder.
4. Construction Manager shall notify all suppliers or vendors not to make sales to the Construction Manager under this Addendum.
5. For each purchase approved by the City to be made under this Addendum, the Construction Manager shall furnish the City in writing information sufficient for the City to issue to the supplier its City purchase order for the requested building materials or equipment which shall include as an attachment the City's Certificate of Exemption. Suppliers and vendors will render statements for materials purchased to the City in care of the Construction Manager. After receiving and inspecting the materials when they arrive at the job site, verifying that all necessary documentation accompanies the delivery and conforms with the purchase order, Construction Manager will forward the invoices to the City's duly authorized representative for approval, processing and delivery to the City for payment. The City will process the invoices and issue payment directly to the supplier or vendor. Construction Manager will keep and furnish to the City all such records, summaries, reports of purchase orders and invoices, and reports of the status and use of goods handled under this Addendum, as the City may reasonably require.
6. The Contract Agreement provides that Construction Manager will perform the work Work under the Contract Agreement for the Contract Price as defined in the amount of \$[\_\_\_\_], as may be amended from time to time as provided in the Contract Agreement. Said amount, as amended, due Construction Manager under the Contract Agreement shall be reduced by the sum of all amounts paid by the City for materials and equipment purchased under this Addendum, including any shipping, handling, insurance or other, similar charges paid by the City, and all of the savings of sales and use tax on the purchase of such items.
7. The Construction Manager shall submit his proposal for base bid and proposals for each Alternate Guaranteed Maximum with the inclusion of all required taxes including applicable sales and use tax, the same as if tax were to be paid in the normal manner. Any sales and use tax savings will be effected during the performance of the Contract Agreement.
8. Construction Manager shall immediately notify all subcontractors and material and equipment suppliers of the City's intent to reduce the construction cost of the

Project by the purchase of building materials and equipment in the manner herein described and the Construction Manager shall not withhold hisits consent to the arrangement.

9. Administrative costs incurred by the Construction Manager with this Addendum shall be considered to be included in the Total Lump Sum Bid amount for the Work. Construction Manager's fee. No addition shall be added to the Contract Price because of the service provided by the Construction Manager in the purchase of building materials and equipment by the Cityassociated with Owner Direct Purchases.
10. All sales and use tax savings on the purchase of building materials and equipmentOwner Direct shall be credited to the City and the amount of the Contract Price shall be reduced by the full amount of savings which result from the omission of payment of sales and use tax.
11. By virtue of its direct payment of material and equipment invoices, the City further intends to benefit from any discounts offered for timely payment to the extent of one-half of the discount offered, the remaining one-half to accrue to the Construction Manager as an incentive for the Construction Manager to process invoices well within the discount period. The Construction Manager shall process invoices well within the discount period and shall pay any late penalties caused by its failure to facilitate the processing of invoices within the allotted time. The Guaranteed maximum price shall be reduced by any discount lost to the Owner due in whole or in part to Construction Manager's failure to process an invoice in time for the Owner to pay and receive the discount.
12. The Construction Manager, notwithstanding the terms and conditions of this Addendum, shall select, describe, obtain approvals, submit samples, coordinate, process, prepare shop drawings, pursue, receive, inspect, store, protect and guarantee the same as would have been the case if the tax saving procedures were not implemented.
13. The Construction Manager as bailee shall have the obligation of receiving, inspecting, storing and safekeeping all goods and materials purchased on behalf of the City pursuant to this Addendum.Owner Direct Purchases. Further, the Construction Manager shall be responsible for the cost of replacing or repairing any goods or materials lost, stolen, damaged or destroyed while in the Construction Manager's possession or control as bailee, as well as processing all warranty claims for defective goods and materials to the same extent as if such goods had been Construction Manager-supplied or purchased in the name of the Construction Manager. Construction Manager shall purchase and maintain Builder's Risk Insurance on all Owner Direct Purchases naming Owner as an additional insured.
14. Construction Manager shall maintain separate accounting records for all

transactions carried out under the authority granted to it under this Addendum. Such records shall be open to the City or its authorized agent during normal business hours of Construction Manager.

15. The City will take both legal and equitable title to the building materials and equipment received from the vendor when delivery is made by the vendor at the Project site. Without waiving or releasing Construction Manager from its obligations under paragraph 13 above, as equitable and legal owner of the materials and equipment purchased under this Addendum, the City shall bear the risk of loss thereto and shall have the insurable interest therein. Therefore, unless already provided for under the terms of the Contract Documents, Construction Manager shall cause the City to be insured or named as an additional insured as its interest may appear against any loss or damage to such goods to the extent of their full insurable value. All such insurance shall be in such form and through such companies as may be reasonably acceptable to City and Construction Manager shall provide City certificates thereof requiring each insurer to provide the City ten (10) days written notice in advance of cancellation or modification of coverage. Pursuant to the terms of the Contract Documents, the City will reimburse the Construction Manager for any additional premium amounts paid solely for such insurances against loss or damage.
16. Construction Manager shall be fully responsible for all matters relating to the procurement of materials and equipment covered by this Addendum, including but not limited to, overseeing that the correct materials and the correct amounts are received timely with appropriate warranties; for inspecting and receiving the goods; and for unloading, handling and storing the materials until installed. Construction Manager shall inspect the materials when they arrive at the Project site, verify that all necessary documentation accompanies the delivery and conforms with the City's purchase order, and forward the invoice to the City for payment if the goods are conforming and acceptable. Construction Manager shall verify that the materials conform to Drawings and Specifications and determine before installation that such materials are not defective. Construction Manager shall manage and enforce the warranties on all materials and equipment covered by this Addendum. Construction Manager shall be responsible to the City for its failure to fully and timely perform its obligations under this paragraph, and this Addendum generally.
17. When title to the materials and equipment covered by this Addendum passes to the City prior to being incorporated into the Work, the Construction Manager's possession of the goods is a bailment until such time as each of such goods is returned to the City by being incorporated into the Work.
18. The City shall not be liable for delays in the Work caused by delays in delivery of or defects in the goods covered by this Addendum, nor shall such delays or defects excuse Construction Manager in whole or in part from its obligation to timely perform the Contract Agreement.



19. In the event Construction Manager objects to the payment of any invoice for goods covered by this Addendum, Construction Manager shall at no additional cost to the City, provide all assistance, records and testimony necessary or convenient for the City to resolve the supplier's claim for payment.
20. This Addendum and the authority granted to Construction Manager hereunder may be revoked by the City at any time upon verbal or written notice to Construction Manager at its offices located at \_\_\_\_\_, during normal business hours.

[END OF SECTION 00808]

PANAMA CITY BEACH – ADMINISTRATIVE CAMPUS COMPLEX

SECTION 00100

GENERAL CONDITIONS

- |     |   |     |   |
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## 1.0 DEFINITIONS

- 1.1 Unless otherwise expressly noted, wherever used in the Contract Documents the following terms shall have the meanings indicated and shall be applicable to both the singular and plural thereof:
- 1.2 ADDENDA - Written or graphic instruments, issued by City or Architect prior to the execution of the Agreement, which modify or interpret any of the Contract Documents by additions, deletions, clarifications, or corrections.
- 1.3 ALLOWANCE – as described in Section 00092, Cost of the Work and General Condition Expense. Allowances are included in the Cost of the Work.
- 1.4 NOT USED
- 1.5 BONDS - Performance and Payment Bonds and other instruments or surety, furnished by the Construction Manager and the Construction Manager's surety in accordance with the Contract Documents.
- 1.6 CHANGE ORDER - A written order to the Construction Manager issued in accordance with the procedures set forth in the Contract Documents, authorizing an addition, deletion, or revision in the Work within the general scope of the Contract Documents, or authorizing an adjustment in the Contract Price or Contract Time.
- 1.7 CONSTRUCTION CHANGE DIRECTIVE – A Construction Change Directive is a written order prepared by the Architect and signed by the City, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Price or Contract Time, or both. The City may by Construction Change Directive, without invalidating the Agreement, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the Contract Price and Contract Time being adjusted accordingly.
- 1.8 CONTRACT DOCUMENTS – Collectively the Agreement, Payment Bond, Performance Bond, General Conditions, Supplemental Conditions, if any, Notice to Proceed with Pre-Construction Phase Services, Scope of Pre-Construction Phase Services, Trench Safety Act Certificate of Compliance, Public Entity Crimes Statement, Truth in Negotiation Certificate, Sales Tax Exemption Addendum, Release and Affidavit from Construction Manager, Release and Affidavit from Subcontractor, Application and Certificate for Payment, Certificate of Substantial Completion, Contract Change Order(s), Construction Change Directives, Field Orders, and the Drawings and Specifications being prepared by Architect (but only after being completed by Architect and approved in writing by City). If and to the extent City accepts the Construction Manager's Guaranteed Maximum Price proposal and the parties execute a GMP Amendment in accordance with the terms of the Agreement, the Contract Documents will also include the GMP Amendment and the documents incorporated therein. The Contract Documents are sometimes

referred to herein as the Agreement.

- 1.9 CONTRACT PRICE – Comprised of the Cost of the Work and Construction Manager's Fee, guaranteed by Construction Manager not to exceed the amount agreed upon in the GMP, as the total compensation payable by City to Construction Manager for the Construction Phase Services under the terms and conditions of the Contract Documents.
- 1.10 CONTRACT TIME - The total period of time beginning with the Construction Phase Commencement Date as authorized by the City and ending on the required date for Substantial Completion of the Work. The Contract Time is set forth with more specificity in Section 2 of the Agreement.
- 1.11 CONSTRUCTION MANAGER - The Construction Manager is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Construction Manager" means the Construction Manager or the Construction Manager's authorized representative.
- 1.11.1 CONTINGENCY EXPENSE – As described in SECTION 00091 Form of GMP Amendment. The Contingency Expense shall not exceed three percent (3%) of the estimated Cost of the Work specified in the
- 1.11.2 COST OF THE WORK - As described and defined in Section 0092, Cost of the Work and General Conditions Expense.
- 1.12 CITY or OWNER – The City of Panama City Beach, Florida, acting through its City Council and Charter Officers.
- 1.13 DRAWINGS - The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
- 1.14 ARCHITECT - The person, firm or corporation named as such in the Agreement.
- 1.15 FIELD ORDER - A written order effecting a clarification or change in the Work not involving an adjustment in the Contract Price or an extension of the Contract Time, issued by Architect or City to Construction Manager during construction.
- 1.16 GENERAL CONDITIONS EXPENSE – As described and defined in Section 0092, Cost of the Work and General Conditions Expense.
- 1.17 NOTICE TO PROCEED - Written communication issued by the City to the Construction Manager authorizing it to proceed with, and establishing the date for commencement of, the Pre-Construction Phase Services.

- 1.18 OWNER - Same as CITY; same as City of Panama City Beach, Florida.
- 1.18.1 OWNER DIRECT PURCHASE – As described and defined in Section 00808.
- 1.19 PROJECT – The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the City or by separate contractors, and is formally known as the “ADMINISTRATIVE CAMPUS COMPLEX”.
- 1.20 PROJECT ADMINISTRATION MANUAL (sometimes referred to herein as the “MANUAL”) – The City’s manual of forms and standard administrative procedures regarding project administration. Construction Manager acknowledges and agrees it has received a copy of the current Manual and shall incorporate any modifications or updates issued by the City into its copy of the Manual to ensure the Manual is kept up to date.
- 1.21 PROJECT REPRESENTATIVE -The Project Representative shall be the City’s representative with respect to the Project and may be a City employee or an outside consultant. The Project Representative shall have authority to transmit instructions, receive information, and interpret and define the City’s policies and decisions with respect to the Work. However, except as may be otherwise expressly authorized in writing by the City, the Project Representative is not authorized on behalf of the City to issue any verbal or written orders or instructions to Construction Manager that would have the affect, or be interpreted to have the affect, of amending or modifying the terms or conditions of the Contract Documents or modifying or amending in any way whatever the: (1) scope or quality of Work to be performed and provided by Construction Manager as set forth in the Contract Document; (2) the time within which Construction Manager is obligated to complete the Work; or (3) the amount of compensation the City is obligated or committed to pay Construction Manager as set forth in the Contract Documents.
- 1.21.1 SELF PERFORMANCE – Performance of Construction Phase WORK by Construction Manager through its own employees or agents.
- 1.22 SHOP DRAWINGS - All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Construction Manager, a Subcontractor, manufacturer, supplier or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.
- 1.23 SPECIFICATIONS - The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
- 1.24 SUBCONTRACTOR - An individual, firm, or corporation having a direct contract with Construction Manager or with any other Subcontractor for the

performance of a part of the Work at the site.

- 1.24.1 SUBCONTRACT – A contract between a Subcontractor and the Construction Manager or any other Subcontractor.
- 1.25 SUBSTANTIAL COMPLETION - That date certified by the Architect when the Work or an Owner specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Work or the Owner specified part thereof can be utilized by Owner for the purposes for which it is intended.
- 1.26 SUPPLEMENTAL CONDITIONS - Modifications to the General Conditions required by Owner, set forth in the Section 00800 series of documents.
- 1.27 SUPPLIER - Any person or organization who supplies materials or equipment for the Work for or on behalf of Construction Manager, including those fabricated to a special design, but who does not perform labor at the site.
- 1.271 SUPPLY CONTRACT – A contract between a Supplier and the Construction Manager (or a direct purchase by the Owner under the SECTION 000808 SALES TAX EXEMPTION ADDENDUM).
- 1.28 WORK - The term "Work" means the Pre-Construction Phase Services, the Construction Phase Services and other services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Construction Manager to fulfill the Construction Manager's obligations. The Work may constitute the whole or a part of the Project. CONSTRUCTION PHASE WORK means all labor and materials incorporated in, consumed by or associated with the Project other than Pre-Construction Phase Services.
- 2.0 ADDITIONAL INSTRUCTION AND DETAIL DRAWINGS
  - 2.1 From time to time, Construction Manager may be furnished additional instructions and detail drawings by the Architect as necessary to permit Construction Manager to carry out the Work required by the Contract Documents.
  - 2.2 Any such additional drawings and instructions supplied to Construction Manager shall be issued as a Field Order. The Construction Manager shall carry out the Work in accordance with the additional detail drawings and instructions.
- 3.0 SCHEDULES, REPORTS AND RECORDS
  - 3.1 The Construction Manager shall submit to the City such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the Contract Documents for the Work

to be performed.

3.2 Construction Manager shall prepare and provide its construction progress schedule ("Construction Schedule") prior to submitting its first Application for Payment, showing the order in which the Construction Manager proposes to carry on the Work, including dates at which the various parts of the Work will be started, estimated date of completion of each part and, as applicable, the dates at which special drawings will be required and dates for submission of Shop Drawings, the beginning of manufacture, the testing and the installation of materials, supplies and equipment. Further, the Construction Schedule shall not only include the overall progress schedule for the Work to be provided by Construction Manager hereunder, but also shall include reasonable time periods for Architect's performance, as accepted by Architect. The Construction Schedule and any other schedules required by the City hereunder shall be updated monthly. The Construction Schedule and all updates to it shall not exceed the time periods established in the Contract Documents and shall be subject to the City's and Architect's review and comment. Construction Manager's submittal of a satisfactory Construction Schedule and updates thereto and the City's acceptance of same shall be a condition precedent to the City's obligation to pay Construction Manager; provided, however, the acceptance of any such schedule or update by City shall not be deemed an admission by Owner that such schedule or update is reasonable, accurate or correct.

3.3 The Construction Manager shall also submit a schedule of payments, for Owner's review and approval that the Construction Manager anticipates will be earned during the course of the Work.

#### 4.0 INTENT OF THE CONTRACT DOCUMENTS, DRAWINGS AND SPECIFICATIONS

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

Price and/or Contract Time to the extent such change materially impacts the Contract Time and/or Contract Price.

- 4.2 Construction Manager shall perform the Work consistent with the intent of the Drawings, Specifications, and other Contract Documents, and Construction Manager shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the Work in accordance with the Contract Documents and all incidental items necessary to complete the Work in an acceptable manner, ready for use, occupancy or operation by the City.
- 4.3 Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts or extent of any part of the Work. In the event of a discrepancy between or among the Drawings, Specifications or other Contract Document provisions, Construction Manager shall be required to comply with the provision which is the more restrictive or stringent requirement upon Construction Manager, as determined by the City.
- 4.4 If during the performance of the Work Construction Manager discovers a conflict, error or discrepancy in the Contract Documents, including the Drawings and Specifications, Construction Manager immediately shall report same to Architect and Owner in writing, and before proceeding with the Work affected thereby, shall obtain a written interpretation or clarification from Architect. Work done by the Construction Manager after discovery of such conflict, error, or discrepancy without such written interpretation or clarification from Architect, shall be done at the Construction Manager's risk. Prior to commencing the Work, Construction Manager shall first take all necessary field measurements and verify the applicable field conditions. After taking such measurements and verifying such conditions, Construction Manager shall carefully compare such measurements and conditions with the requirements of the Contract Documents, taking into consideration all other relevant information known to Construction Manager, for the purpose of identifying and bringing to Architect's and City's attention all conflicts or discrepancies with the Contract Documents. Construction Manager is solely responsible for verifying all field measurements and conditions.
- 4.5 Construction Manager shall comply with the City's standard forms and procedures as set forth in the City's Project Administration Manual relating to Project administration. To the extent there is no form or procedure for a particular matter, then Construction Manager shall comply with the form or procedure reasonably required by the City. Once a standard form has been executed by Construction Manager and City as necessary, the executed copy shall become part of the Contract Documents.

## 5.0 SHOP DRAWINGS



- 5.1 The Construction Manager shall provide shop drawings as may be necessary for the prosecution of the Work as required by the Contract Documents. The Architect shall promptly review all shop drawings. The Architect's approval of any shop drawing shall not release the Construction Manager from responsibility for deviations from the Contract Documents. Any shop drawing which deviates from the requirements of the Contract Documents must be first authorized by a Change Order.
- 5.2 When submitted for the Architect's review, shop drawings shall bear the Construction Manager's certification that it has reviewed, checked and approved the shop drawings and that they are in conformance with the requirements of the Contract Documents.
- 5.3 Portions of the Work requiring a shop drawing or sample submission shall not begin until the shop drawing or submission has been approved by the Architect. A copy of each approved shop drawing and each approved sample shall be kept in good order by the Construction Manager at the site and shall be available to the Architect.
- 6.0 MATERIALS, SERVICES AND FACILITIES
- 6.1 It is understood that, except as otherwise specifically stated in the Contract Documents, the Construction Manager shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete and deliver the Work within the Contract Time.
- 6.2 Materials and equipment shall be stored by Construction Manager to ensure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection.
- 6.3 Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used cleaned and conditioned as directed by the manufacturer.
- 6.4 Materials, supplies, and equipment shall be in accordance with samples submitted by the Construction Manager and approved by the Architect.
- 6.5 Materials, supplies and equipment to be incorporated into the Work shall not be purchased by the Construction Manager or the Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest or lien is retained by the seller.

## 7.0 INSPECTION AND TESTING

- 7.1 All materials and equipment used in the construction of the Project shall be

subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the Contract Documents or required by applicable governmental law, rule or regulation.

- 7.2 The City, Architect, their respective representatives, agents and employees and governmental agencies with jurisdiction over the Project shall have access at all times to the Work whether the Work is being performed on or off of the Project site, for their observation, inspection and testing. Construction Manager shall provide proper and safe conditions for such access, and also for any inspection or testing thereof. Construction Manager shall provide the City and Architect with timely prior written notice (at least 48 hours) of the readiness of the Work for all required inspections, tests or approvals. In addition, authorized representatives and agents of any participating Federal or State agency shall be permitted to inspect all Work, materials, payrolls, personnel records, material invoices, and other relevant data and records.
- 7.3 The Construction Manager shall provide at the Construction Manager's expense all testing and inspection services required by the Contract Documents or any applicable governmental law, rule or regulation. Re-inspection and re-testing fees and costs of all testing failures shall be at the Construction Manager's expense.
- 7.4 If the Contract Documents or any applicable governmental law, rule, or regulation requires any portion of the Work to specifically be inspected, tested, or approved, Construction Manager shall assume full responsibility therefore, pay all costs in connection therewith and furnish the Architect the required certificates of inspection, testing or approval. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to the City and Architect.
- 7.5 Neither observations by Architect or the City, nor inspections, tests or approvals by the Architect or others shall relieve the Construction Manager from the obligations to perform the Work in accordance with the requirements of the Contract Documents.
- 7.6 If any Work is covered contrary to the written instruction of the Architect, it must, if requested by the Architect, be uncovered for the Architect's observation and replaced at the Construction Manager's expense.
- 7.7 If any Work that is to be inspected, tested or approved pursuant to the Contract Documents or any applicable governmental law, rule or regulation is covered without such inspection, testing or approval having been satisfactorily obtained by Construction Manager and without obtaining the written concurrence from Architect, Construction Manager shall uncover, expose or otherwise make available the Work for such observation, inspection or testing as directed by Architect, and Construction Manager shall be responsible for all such costs of uncovering, exposing, observation, inspection, testing, and reconstruction.

7.8 If the Architect considers it necessary or advisable that covered Work be inspected or tested by others that was not otherwise required to be tested or inspected by the terms of the Contract Documents or any applicable governmental law, rule or regulation, the Construction Manager, at the Architect 's request, will uncover, expose or otherwise make available for observation, inspection or testing as the Architect may require, that portion of the Work in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such Work is defective, the Construction Manager will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such Work is not found to be defective, the Construction Manager will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate Change Order shall be issued.

## 8.0 SUBSTITUTIONS

8.1 Whenever a material, article, or piece of equipment is identified on the Drawings or Specifications by reference to brand name or catalogue numbers, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function may be considered. The Construction Manager may recommend the substitution of a material, article, or piece of equipment of equal substance, quality, and function for those referred to in the Contract Documents by reference to brand name or catalogue number, and if, in the opinion of the Architect, such material, article, or piece of equipment is of equal substance, quality and function to that specified, the Architect may allow its substitution and use by the Construction Manager. If the Construction Manager based its Guaranteed Maximum Price proposal on "or equal" products and the City and/or Architect determine that one or more of the Construction Manager's proposed "or equal" products included therein fails to meet the requirements of the Contract Documents, Construction Manager may be required, at City's sole discretion, to provide products conforming with the requirements of the Contract Documents at no additional cost to the City per the City's direction.

8.2 If Construction Manager wishes to furnish or use a substitute item of material or equipment, Construction Manager shall certify that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. Construction Manager shall also certify that the evaluation and acceptance of the proposed substitute will not prejudice Construction Manager's achievement of Substantial Completion of the Work within the Contract Time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for the Project) to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any

license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. Construction Manager shall also provide an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Architect in evaluating the proposed substitute. Architect or Owner may require Construction Manager to furnish at Construction Manager's expense additional data about the proposed substitute. Further, Construction Manager shall reimburse Owner for the changes of Architect and Architect's consultants for evaluating each proposed substitute submitted after the effective date of the Agreement and all costs resulting from any delays in the Work while the substitute was undergoing review.

## 9.0 PATENTS

9.1 The Construction Manager shall pay all applicable royalties and license fees, and shall defend all suits or claims for infringement of any patent rights and save the City harmless from loss on account thereof, except that the City shall be responsible for any such loss when a particular process, design, or product of a particular manufacturer or manufacturers is specified. Provided, however, if the Construction Manager has reason to believe that the design, process or product specified is an infringement of a patent, the Construction Manager shall be responsible for such loss or claim unless the Construction Manager promptly gives such information in writing to the Architect and City.

## 10.0 SURVEYS, PERMITS, REGULATIONS, AND PROJECT LAYOUT

10.1 The City shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the Work together with a suitable number of bench marks adjacent to the Work as shown in the Contract Documents. From the information provided by the City, unless otherwise specified in the Contract Documents, the Construction Manager shall develop and make all detail surveys needed for construction such as slope stakes, batten boards, stakes for pipe locations and other working points, lines, elevations and cut sheets.

10.2 The Construction Manager shall carefully preserve benchmarks, reference points and stakes. Construction Manager is solely responsible for maintaining all benchmarks, reference points, and stakes, and is solely responsible for any mistake that may be caused by their loss or disturbance. The Construction Manager shall be held responsible for all mistakes that may be caused by the loss or disturbance of any such benchmarks, reference points or stakes.

10.3 The Construction Manager shall engage for the performance of Project layout and control, a Professional Land Surveyor registered in the State of Florida to practice land surveying. Said surveyor must carry Professional Liability Insurance in the amount of at least one million dollars (\$1,000,000) per

occurrence. The land surveyor employed for this Project must comply with the Minimum Technical Standards for Surveying and Mapping pursuant to Florida Statute 472.027.

- 10.4 Should the Construction Manager in the course of its Work find that the points, grades and levels which are shown upon the Drawings are not conformable to the physical conditions of the locality at the proposed work or structure, it shall immediately inform the Architect of the discrepancy between actual physical conditions of the locality of the proposed work, and the points, grades and levels which are shown on the drawings. No claim shall be made by the Construction Manager against the City for compensation or damage by reasons of failure of the Architect to represent upon the Drawings points, grades and levels conformable to the actual physical conditions of the locality of the proposed work.
- 10.5 All permits and licenses necessary for the prosecution of the Work shall be secured and paid for by the Construction Manager unless otherwise expressly noted in the Contract Documents. These shall include all building permits, burn permits, debris disposal permits, etc. All licenses, easements and variances for permanent structures or permanent changes in existing facilities shall be secured and paid for by the City, unless otherwise specified in the Contract Documents. The Construction Manager shall give all notices and comply with all laws, ordinances, rules, regulations and governmental permits and approvals bearing on the conduct of the Work as drawn and specified. If the Construction Manager observes that the Contract Documents are at variance therewith, the Construction Manager shall promptly notify the Architect and City in writing, and any necessary changes shall be adjusted as provided in Section 13 below.
- 11.0 PROTECTION OF WORK, PROPERTY, AND PERSONS
- 11.1 The Construction Manager is responsible for the safety and protection of all persons and property on or about the Project site during the progress of the Work, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. Further, it is Construction Manager's responsibility to protect from damage or loss all material and equipment to be incorporated into the Work whether in storage on or off the Project site. Construction Manager shall initiate, maintain and supervise all safety precautions and programs in connection with the Work and shall develop and implement, in accordance with the requirements of the Contract Documents, a safety plan for the Work. Construction Manager's safety plan shall include a hurricane protection plan. Construction Manager's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and final acceptance of same by the City has occurred.
- 11.2 The Construction Manager will comply with all applicable codes, laws, ordinances, rules, regulations and orders of the City and any public body having jurisdiction over the Work, including the Occupational Safety and Health

Administration (OSHA) and any State Safety and Health agency requirements and all of their safety codes, laws, ordinances, rules and regulations. The Construction Manager will erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. Construction Manager shall notify owners of adjacent property and of any underground structures or improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation or replacement of their property. The Construction Manager will remedy all damage, injury or loss to any property caused by the Construction Manager, any Subcontractor or anyone directly or indirectly employed by any of them or anyone of whose acts any of them be liable.

- 11.3 Barricades, Guards and Safety Provisions: To protect persons from injury and to avoid property damage, adequate barricades, construction signs, torches, red lanterns and guards shall be placed and maintained during progress of construction work and until it is safe for both pedestrians and vehicular traffic. Rules and regulations of local authorities regarding safety provisions shall be observed.
- 11.4 In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Construction Manager, without special instructions or authorization from the Architect or City, shall act to prevent threatened damage, injury or loss. The Construction Manager will give the Architect prompt written notice of any such emergency and to the extent the emergency was not caused by the fault or neglect of Construction Manager or anyone for whom Construction Manager is responsible, a Change Order shall be issued covering the necessary and reasonable changes and deviations involved.
- 11.5 At all times during the performance of the Work at the Project site, Construction Manager shall have designated, and located on a full time basis at the Project site, a qualified individual whose responsibility shall be to monitor and enforce Construction Manager's safety program at the Project site; such individual shall be deemed to be the Construction Manager's Project Superintendent. However, Construction Manager may designate by written notice to the City another individual, reasonably acceptable to the City, who shall be Construction Manager's safety representative at the Project site.
- 11.6 Alcohol, drugs and all illegal substances are strictly prohibited on the Project site and any City property. All employees of Construction Manager, as well as those of all Subcontractors and those of any other person or entity for whom Construction Manager is legally liable (collectively referred to herein as "Employees"), shall not possess or be under the influence of any such substances while on the Project site or any City property. Further, employees shall not bring on to the Project site or any City property any gun, rifle or other firearm, or explosives of any kind. Provided, however, to the extent explosives are reasonably required with respect to the performance of the Work, Construction Manager shall strictly comply with the Contract Documents and any and all rules and regulations of Owner or of any applicable governmental

agency as it relates to the storage, handling and use of such explosives.

## 12.0 SUPERVISION BY CONSTRUCTION MANAGER

12.1 The Construction Manager will supervise and direct the Work. Construction Manager shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Construction Manager will employ and maintain on the Project site on a full time basis a qualified superintendent acceptable to the City. The superintendent and his or her designees shall have full authority to act on behalf of the Construction Manager and all communications given to the superintendent or his or her designee shall be as binding as if given to the Construction Manager. The superintendent or his or her designee shall be present on the site at all times when any portion of the Work is being performed to ensure adequate supervision and coordination of the Work.

## 13.0 CHANGES IN THE WORK

13.1 The City may at any time during the progress of the Work, as the need arises and in its sole discretion, order changes within the general scope of the Work without invalidating the Agreement. Promptly after being notified of a change, but in no event more than fourteen (14) days after its receipt of such notification (unless the City has agreed in writing to a longer period of time), Construction Manager shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, no addition or changes to the Work shall be made except upon a properly issued Change Order, Construction Change Directive or Field Order. No officer, employee or agent of the City is authorized to direct any extra or changed work without a properly issued Change Order, Construction Change Directive or Field Order which complies with the purchasing requirements of City's Charter.

13.2 All changes to the Work must be authorized by means of a written Change Order that is mutually agreed to by the City and Construction Manager or a Construction Change Directive issued by the City or a Field Order issued by the City or Architect. If the change is to be accomplished through a Change Order, the Change Order, in the form set forth in the City's Project Administration Manual, shall be prepared by Construction Manager, reviewed by Architect and the City, and executed promptly by the parties after an agreement is reached between Construction Manager and the City concerning the requested changes. Construction Manager shall promptly perform changes authorized by duly executed Change Orders. The Contract Price and Contract Time shall be adjusted in the Change Order in the manner as the City and Construction Manager shall mutually agree. The Change Order shall identify the changed work. Also, where the Contract Price is based upon unit prices, a Change Order may be used for work for which quantities have been altered from those shown in the GMP Amendment, as well as decreases or increases in the quantities of installed units which are different than those shown in the

GMP Amendment because of final measurements. All changes must be recorded on an executed Change Order before they can be included in a monthly Application for Payment.

- 13.3 To the extent the Contract Price is based on unit prices, the City reserves the right to increase or decrease a unit price quantity as may be deemed reasonable or necessary in order to complete the Work contemplated by this Agreement, and the Cost of the Work (and if affected the General Conditions Expense) shall be equitably adjusted accordingly. Any such increase exceeding the amount of Contingency funds then available must be made the subject of a Change Order or Construction Change Directive.
- 13.4 If the City and Construction Manager are unable to agree on a Change Order for the requested change, Construction Manager shall, nevertheless, promptly perform the change as directed by the City in a written Construction Change Directive. In that event, the Contract Price and Contract Time shall be adjusted in the Construction Change Directive as determined by the City. If Construction Manager disagrees with the City's adjustment determination, Construction Manager must make a claim strictly in accordance with the terms of the Contract Documents or else be deemed to have waived any claim it might otherwise have had on that matter.
- 13.5 The City shall have the right to conduct an audit of Construction Manager's books and records, as well as those of its Subcontractors and Suppliers, to verify the accuracy of Construction Manager's estimates or claims with respect to Construction Manager's cost and time impacts associated with any Change Order or Construction Change Directive.
- 13.8 The Architect or City at any time may direct Construction Manager to make changes to the Work by issuing a Field Order, so long as such changes do not require or result in any adjustment to the Contract Price or Contract Time, and are generally within the scope of the Work. Construction Manager shall proceed with the performance of any changes in the Work so ordered by the Architect or City unless the Construction Manager believes that such Field Order entitles the Construction Manager to a change in the Contract Price or Contract Time, or both. In the event Construction Manager believes the Field Order requires a change to the Contract Price or Contract Time, it must provide written notice to the Architect and City within five (5) business days of receipt of the Field Order and before starting with any changed Work. Failure to provide such notice waives Construction Manager's right to claim such work requires a change in the Contract Price or Contract Time. Once Construction Manager has provided timely written notice, it shall proceed as directed by City in writing, and thereafter shall file a claim in accordance with the procedures required herein.

#### 14.0 CHANGES IN CONTRACT PRICE

- 14.1 The Contract Price may not exceed the Guaranteed Maximum Price without a



corresponding increase in the Guaranteed Maximum Price being authorized by a Change Order or Construction Change Directive issued in accordance with the terms of the Contract Documents. If the Change Order or Construction Change Directive provides for an adjustment to the Contract Price, the adjustment shall be based on one of the following methods: mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; or based on the Cost of the Work associated with such change along with an appropriate adjustment to Construction Manager's Fee in accordance with the terms of the Agreement.

## 15.0 TIME FOR COMPLETION AND LIQUIDATED DAMAGES

15.1 Time is of the essence in the performance of the Work under this Agreement. The date of beginning and the time for completion of the Work are essential conditions of the Contract Documents. The Construction Phase Commencement Date shall be established in the GMP Amendment. As noted in the Agreement, Construction Manager shall commence the Construction Phase Services within five (5) days after the Construction Phase Commencement Date. The Notice to Proceed with Pre-Construction Phase Services shall be issued within thirty (30) days of the execution of the Agreement by the City. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement of the City and Construction Manager. If the Notice to Proceed has not been issued within the thirty (30) day period or within the period mutually agreed upon, the Construction Manager may terminate the Agreement without further liability on the part of either party by providing the City written notice of such termination, in which event such termination shall be deemed a termination for convenience of the City as set forth in Section 17.5 below. Provided, however, notwithstanding anything in the Contract Documents to the contrary, in the event of such termination pursuant to this Section 15.1, Construction Manager acknowledges and agrees that no payments will be due Construction Manager nor shall the City make any payments to Construction Manager for any Work that would have been authorized under the Agreement once executed by both parties.

15.2 The Construction Manager will proceed with the Work at such rate of progress to ensure Substantial Completion within the Contract Time. It is expressly understood and agreed, by and between the Construction Manager and the City, that the Contract Time for Substantial Completion of the Work is a reasonable period of time. The Construction Schedule shall include the date the Work must be substantially completed by Construction Manager and all interim milestones required by the City. Substantial Completion of the Work shall be achieved when the Work has been completed to the point where the City can occupy or utilize the Work for its intended purpose. The Architect shall certify the date Substantial Completion of the Work is achieved. If the City has designated portions of the Work to be turned over to the City prior to Substantial Completion of the entire Work as provided in Section 15.3 below, the Architect shall certify the date as to when Substantial Completion of such

designated portions of the Work have been achieved. The entire Work shall be fully completed and ready for final acceptance by the City within 30 calendar days after Substantial Completion of the Work or thirty (30) days after Construction Manager's receipt of the punch list, whichever date occurs last.

15.2.1 Once the Construction Manager believes it has achieved Substantial Completion of the Work, it shall notify the City and Architect in writing and request a substantial completion inspection. Concurrent with its delivery of such written notice, Construction Manager shall submit its initial punch list for the City's and Architect's review. Any Work remaining to be completed or any defective work to be remedied shall be listed on the punch list. Once the substantial completion inspection has been made, Owner and Architect shall modify the Construction Manager's initial punch list to include all items to be completed or repaired by Construction Manager in order to achieve final acceptance of the Work. Thereafter, the Architect shall provide Construction Manager a copy of the final punch list. Such final punch list shall be in compliance with the Contract Documents and all applicable laws, including Section 218.735 of the Florida Statutes. Accordingly, if the Contract Price is less than \$10 million, Architect shall provide the final punch list to Construction Manager within 30 calendar days after Construction Manager has achieved Substantial Completion. If the Contract Price is \$10 million or more, Architect shall provide the final punch list to Construction Manager within 60 calendar days after Construction Manager has achieved Substantial Completion. Construction Manager acknowledges and agrees that the failure to include any corrective work or pending items not yet completed on the punch list does not alter the responsibility of Construction Manager to complete all the Work required under this Contract.

15.3 The City may take early occupancy of all or any portions of the Work, at the City's election, by designating in writing to Construction Manager the specific portions of the Work to be occupied and the date such occupancy shall commence.

15.4 The City and Construction Manager recognize that, since time is of the essence for this Agreement, the City will suffer financial loss if the Work is not substantially completed within the Contract Time, as said time may be adjusted as provided for herein. In such event, the total amount of the City's damages, will be difficult, if not impossible, to definitely ascertain and quantify, because this is a public construction project that will, when completed, benefit the public. It is hereby agreed that it is appropriate and fair that the City receive liquidated damages from Construction Manager, if Construction Manager fails to achieve Substantial Completion of the Work within the required Contract Time. Should Construction Manager fail to substantially complete the Work within the Contract Time, the City shall be entitled to assess, as liquidated damages, but not as a penalty, the amount for liquidated damages as specified in the Agreement for each calendar day thereafter until Substantial Completion is achieved. Construction Manager hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated

damages as a penalty, which the parties agree represents a fair and reasonable estimate of the City's actual damages at the time of contracting if Construction Manager fails to achieve Substantial Completion of the Work within the Contract Time.

15.4.1 In the event the Work is not fully completed within 30 days from the date of Substantial Completion, the City reserves the right to assess against Construction Manager its actual damages incurred as a result of such delay by Construction Manager.

## 16.0 CORRECTION OF DEFECTIVE WORK

16.1 Work not conforming to the requirements of the Contract Documents shall be deemed defective Work. If required by the City or Architect, the Construction Manager shall as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the defective Work has been rejected by the City or Architect, remove it from the site and replace it with non-defective Work in accordance with the Contract Documents and without additional expense to the City. Further, Construction Manager shall bear the expense of making good all work of other contractors performing work on the Project destroyed or damaged by such removal or replacement. Construction Manager shall bear all direct, indirect and consequential costs of such correction or removal (including, but not limited to fees and charges of Architects, architects, attorneys and other professionals) made necessary thereby, and shall hold the City and Architect harmless for same. Notwithstanding anything herein to the contrary, the City may determine, at its sole discretion, to accept defective Work. If such determination is rendered prior to final payment, a Change Order or Construction Change Directive shall be executed evidencing such acceptance of such defective Work, incorporating the necessary revisions in the Contract Documents and reflecting an appropriate decrease in the Contract Price. If the City accepts such defective Work after final payment, Construction Manager shall promptly pay the City an appropriate amount determined by the City to adequately compensate the City for its acceptance of the defective Work.

16.2 If the Construction Manager does not take action to correct defective Work or to remove and replace rejected defective Work or if Construction Manager fails to comply with any of the provisions of the Contract Documents within ten (10) days after receipt of written notice from the City or Architect, the City may correct and remedy any such deficiency at the expense of the Construction Manager. To the extent necessary to complete corrective and remedial action, the City may exclude Construction Manager from any or all of the Project site, take possession of all or any part of the Work, and suspend Construction Manager's services related thereto, take possession of Construction Manager's tools, appliances, construction equipment and machinery at the Project site and incorporate in the Work all materials and equipment stored at the Project site or for which the City has paid Construction Manager but which are stored elsewhere. Construction Manager shall allow the City, Architect and their

respective representatives, agents, and employees such access to the Project site as may be necessary to enable the City to exercise the rights and remedies under this Section. All direct, indirect and consequential costs of the City in exercising such rights and remedies shall be at Construction Manager's expense, and a Change Order or a Construction Change Directive shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Price. Such direct, indirect and consequential costs shall include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Construction Manager's defective Work. Construction Manager shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by the City of the City's rights and remedies hereunder.

17.0 SUSPENSION OF WORK, TERMINATION, AND DELAY

17.1 The City shall have the right to suspend the Work or any portion thereof for a period of not more than ninety (90) days or such additional time as agreed upon by the Construction Manager, upon giving Construction Manager written notice of such suspension to the Construction Manager. The City or Architect shall fix the date on which Work shall be resumed. The Construction Manager will resume that Work on the date so fixed unless otherwise directed by the City. Provided Construction Manager strictly complies with the Change Order and Claims procedures set forth in the Contract Documents, Construction Manager will be entitled to a Change Order adjusting the Contract Price and Contract Time, as provided in the Contract Documents, to the extent attributable to any such suspension, unless said suspension is due to the fault or neglect of Construction Manager or anyone for whom Construction Manager is responsible.

17.2 If, through no act or fault of the Construction Manager, the Work is suspended for a period of more than ninety (90) days by the City or under an order of court or other public authority, or the Architect fails to act on any request for payment within thirty (30) days after it is submitted, or the City fails to pay the Construction Manager any undisputed amounts within thirty (30) days of its approval, then the Construction Manager may after ten (10) days from delivery of a written notice to the City and the Architect and the City's failure to cure such default (or a maximum of sixty (60) days in the event the default cannot reasonably be cured within ten (10) days provided that the City commences to cure within ten (10) days and thereafter diligently and continuously pursues said cure) terminate the Agreement and recover from the City payment for all Work properly executed and reasonable termination expenses sustained. In addition, and in lieu of terminating the Agreement, if the Architect has failed to act on a request for payment or if the City has failed to make any payment within the aforesaid thirty (30) day periods, the Construction Manager may upon ten (10) days written notice to the City and the Architect stop the Work

until paid all amounts then due, in which event and upon resumption of the Work, a Change Order shall be issued adjusting the Contract Price and Contract Time as provided in the Contract Documents.

17.3 Construction Manager shall be considered in material default of the Agreement and such default shall be considered cause for the City to terminate the Construction Manager's right to continue to perform under the Agreement, in whole or in part, as further set forth in this Section, if Construction Manager: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform the Work as directed by the City or Architect or as provided for in the approved Construction Schedule; or (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work contrary to the requirements of the Agreement; or (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; or (9) fails to comply with any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (10) fails to supply sufficient skilled workmen or suitable materials or equipment; or (11) fails to promptly pay its Subcontractors and Suppliers; or (12) disregards the authority of the City or Architect; or (12) materially breaches any other provision of the Contract Documents. In rendering its decision as to whether one of the causes under Section 17.3 exist which would permit the City to terminate the Agreement, the City shall be entitled to rely upon the determination of the Architect concerning such matter.

17.3.1 In such event, and after giving the Construction Manager and its surety a minimum of ten (10) days from delivery of a written notice to cure any such default (or a maximum of sixty (60) days in the event the default cannot reasonably be cured within ten (10) days provided that Construction Manager commences to cure within ten (10) days and thereafter diligently and continuously pursues said cure), the City may at its option, and without releasing or waiving its rights and remedies against Construction Manager's sureties and without prejudice to any other right or remedy, terminate Construction Manager's right to proceed under the Agreement in whole or in part, and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, take assignments of any of Construction Manager's subcontracts and purchase orders that the City may designate, and finish the Work by whatever method the City in its sole discretion may deem expedient.

17.3.2 If Construction Manager's right to proceed under the Agreement is terminated, Construction Manager shall not be entitled to receive any further payment until the Work is finished. All monies expended and all of the costs, losses, damages and extra expenses, including all management,

administrative and other overhead and other direct and indirect expenses (including Architect and attorneys' fees) or damages incurred by the City incident to such completion (collectively "Completion Costs"), shall be deducted from the unpaid balance of the Contract Price. Upon the City's completion, if the unpaid balance of the Contract Price exceeds the Completion Costs, such excess shall be paid to the Construction Manager. If the Completion Costs exceed the unpaid balance of the Contract Price, Construction Manager shall pay promptly to the City on demand the full amount of such excess and interest thereon at a rate of 6% per annum until paid.

17.3.3 The liability of Construction Manager hereunder for Completion Costs shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by the City in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefor or re-letting the Work, and in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder. Further, in the event the City has exercised its right to terminate due to Construction Manager's default, Construction Manager shall be prohibited from bidding or otherwise seeking additional work from the City in accordance with the City's then current debarment policy.

17.3.4 The City may deduct from any payment, any sum owed by the City to Construction Manager, either under this Agreement or any other agreement between the City and the Construction Manager. Further, a default by Construction Manager under any other agreement with the City shall be deemed a default under this Agreement and a default under this Agreement shall be deemed a default under any other agreement between the City and Construction Manager.

17.4 Where the Construction Manager's services have been so terminated by the City, said termination shall not affect any right of the City against the Construction Manager then existing or which may thereafter accrue. Any retention or payment of monies by the City due the Construction Manager will not release the Construction Manager from compliance with the Contract Documents. Further, if after notice of termination of Construction Manager's right to proceed pursuant to Section 17.3, it is determined for any reason that Construction Manager was not in default, or that its default was excusable, or that the City is not entitled to the remedies against Construction Manager provided herein, then such termination shall be deemed a termination for the City's convenience and Construction Manager's remedies against the City shall be the same as and limited to those afforded Construction Manager under Section 17.5 below.

17.5 The City shall have the right to terminate this Agreement without cause upon ten (10) days from delivery of a written notice to the Construction Manager. In the event of such termination for convenience, Construction Manager's sole

and exclusive recovery against the City shall be limited to that portion of the Contract Price earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but Construction Manager shall not be entitled to any other or further recovery against the City, including, but not limited to, damages or any anticipated profit on portions of the Work not performed.

## 18.0 PAYMENT TO CONSTRUCTION MANAGER

18.1 At least ten (10) days before submitting the first Application for Payment, the Construction Manager shall submit to the City and Architect a schedule of values based upon the lump sum amount to be paid Construction Manager for the Pre-Construction Phase Services, prepared in such form and supported by such data to substantiate its accuracy as the City or Architect may require. This schedule, unless objected to by the City or Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment with respect to the Pre-Construction Phase Services. At the time it submits its Guaranteed Maximum Price proposal to Owner, Construction Manager also shall submit to Owner and Architect, for their review, a revised schedule of values based upon the Guaranteed Maximum Price proposal, listing the major elements of the Work and the dollar value for each element. That revised schedule of values, as further revised to reflect the final negotiated Contract Price, will be attached to the GMP Amendment and shall be used as the basis for Construction Manager's monthly Applications for Payment thereafter. This revised schedule of values shall be updated for the current month Change Orders and Construction Change Directives and submitted each month along with the Application for Payment. On or before the 25th of each month, the Construction Manager will submit to the Architect an Application for Payment filled out and signed by the Construction Manager covering the Work performed since the previous month's Application for Payment. The Application for Payment may also include the cost of such materials and equipment which are suitably stored either at or off the site to the extent such payment is approved by City as provided in Section 18.1.1 below. Invoices received after the 25th day of each month shall be considered for payment as part of the next month's Application for Payment. Construction Manager's Application for Payment shall be in such form and contain such detail and backup as the City reasonably may require.

18.1.1 If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at or off the site, the Application for Payment shall also be accompanied by such supporting data, satisfactory to the City, as will establish the City's title to the material and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect City's interest therein, all of which shall be subject to City's satisfaction. City has the discretion whether or not to pay for such unincorporated materials.

- 18.1.2 The Architect will, within ten (10) days after receipt of each Application for Payment, indicate in writing its recommendation as to that portion of the payment being requested by Construction Manager in the Application for Payment which Architect believes is due and payable. The City shall pay Construction Manager that portion of the Application for Payment approved by Architect and Owner within fifteen (15) days of the City's receipt of the Architect's payment recommendation.
- 18.1.3 City shall retain ten percent (10%) of that portion of the gross amount of each monthly Application for Payment approved by City for payment, until fifty percent completion of the Work. Upon fifty percent completion of the Work, the amount of retainage thereafter withheld by City from subsequent payments shall be reduced to 5% of that portion of the gross amount of each monthly payment request approved by City for payment. Provided, however, nothing in this Section 18.1.3 shall preclude or limit the City's right to withhold payment as otherwise permitted by the terms of the Contract Documents or as permitted by law.
- 18.1.4 Monthly payments to Construction Manager shall in no way imply approval or acceptance of the Work.
- 18.1.5 Each Application for Payment shall be accompanied by a claim release and waiver in the form set forth in the City's Project Administration Manual from Construction Manager for all materials, labor, equipment, services and other bills associated with that portion of the Work payment is being requested in that Application for Payment . Further, each Application for Payment shall be accompanied by a claim release and waiver in the form set forth in the City's Project Administration Manual from all Subcontractors and Suppliers evidencing their payment in full through the previous month's Application for Payment. Also, each Application for Payment shall be accompanied by an updated Construction Schedule, a list inventorying all stored materials, a monthly progress status report, and any other document reasonably requested by City. The City shall not be required to make payment until and unless such releases, documents and information are furnished by Construction Manager. Further, if Construction Manager is withholding any portion of a payment to any Subcontractor or Supplier for any labor, services, or materials for which the City has paid Construction Manager, Construction Manager agrees to refund such money to the City upon demand by the City.
- 18.1.6 Architect shall review each Application for Payment submitted by Construction Manager and shall make recommendations to the City as to the proper amounts, if any, which may be owed Construction Manager thereunder. Both Architect and the City shall have the right to refuse to approve payment amounts, or portions thereof, requested by



Construction Manager in an Application for Payment, or rescind any amount previously approved, and the City may withhold any payments otherwise due Construction Manager under this Agreement or any other agreement between the City and Construction Manager, to the extent it is reasonably necessary, to protect the City from any expense, cost or loss attributable to: (a) defective or deficient Work not properly remedied in accordance with the terms of the Contract Documents; (b) the filing or reasonable evidence indicating the probable filing of third party claims against the City attributable to the fault or neglect of Construction Manager; (c) Construction Manager's failure to make timely and proper payments to all Subcontractors and Suppliers; (d) reasonable evidence that the remaining Work cannot be completed for the unpaid Contract Price balance; (e) reasonable evidence indicating that the remaining Work cannot be completed within the remaining Contract Time; (f) Construction Manager's failure to satisfactorily prosecute the Work in accordance with the requirements of the Contract Documents; or (g) any other material breach of the requirements of the Contract Documents by Construction Manager. The City shall have the right, but not the obligation, to take any corrective action the City deems appropriate to cure any of the above noted items, at Construction Manager's expense, if such items are not cured by Construction Manager to the City's reasonable satisfaction within three (3) days after Construction Manager's receipt of written notice from the City.

18.1.7 Architect or City may reject an Application for Payment, in whole or in part, submitted by Construction Manager if such Application for Payment is not submitted in strict accordance with the requirements of this Article 18. In such event, Architect or City shall notify Construction Manager in writing within twenty (20) business days after receipt of such Application for Payment that such Application for Payment, or portion thereof, has been rejected and the reasons for such rejection. If Construction Manager resubmits a corrected Application for Payment correcting, in Architect's and Owner's sole determination, the deficiency specified in the rejection notice, then City shall pay Construction Manager the corrected portion of the Application for Payment within ten business days after the date the corrected Application for Payment is received by City.

18.2 Prior to Substantial Completion, the City, with the approval of the Architect, may use any completed or substantially completed portions of the Work. Such use shall not constitute an acceptance of such portions of the Work.

18.3 The City shall have the right to enter the Project site for the purposes of doing work not covered by the Contract Documents. This provision shall not be construed as relieving the Construction Manager of the sole responsibility for the care and protection of the Work, or the restoration of any damaged Work except such as may be caused by agents or employees of the City.

18.4 Upon completion and acceptance of the Work, the Architect shall issue a certificate attached to the final payment request that states the Work has been fully performed in accordance with the requirements of the Contract Documents and that Architect recommends final payment in the amount reflected in the attached final payment request. The City shall make final payment to Construction Manager within thirty (30) days after the Work is finally accepted by the City, provided that Construction Manager first, and as an explicit condition precedent to the accrual of Construction Manager's right to final payment, shall have furnished the City with a properly executed and notarized final release in the form set forth in the City's Project Administration Manual, as well as, a duly executed copy of the surety's consent to final payment and such other documentation that may be required by the Contract Documents or the City.

18.5 Late payments shall accrue interest from the date payment was due until payment is received at the rate of six percent (6%) per annum.

18.6 No error or oversight in the making of payment or completion certificates shall relieve the Construction Manager from its obligation to do and complete the Work in accordance with the requirements of the Contract Documents.

#### 19.0 ACCEPTANCE OF FINAL PAYMENT AS RELEASE

19.1 The acceptance by the Construction Manager of final payment shall be and shall operate as a full release and waiver of any and all claims by Construction Manager against the City arising out of this Agreement or otherwise relating to the Project, except those identified in writing by Construction Manager as unsettled in its final Application for Payment. Any payment, however, final or otherwise shall not release the Construction Manager or its sureties from any obligations under the Contract Documents or the Performance and Payment Bonds. Neither the acceptance of the Work nor payment by the City shall be deemed to be a waiver of the City's right to enforce any obligations of Construction Manager hereunder or to the recovery of damages for defective Work not discovered by the City or Architect at the time of final inspection.

#### 20.0 CONTRACT SECURITY

20.1 The Construction Manager shall within ten (10) days after execution of the GMP Amendment and prior to the start of any portion of the Construction Phase Services furnish the City with a Performance Bond and a Payment Bond in penal sums equal to 100% of the amount of the Contract Price and in the forms attached as Sections 00060 and 00070. Such Bonds shall be executed by the Construction Manager and a corporate bonding company licensed to transact such business in the State of Florida and named on the current lists of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570 and approved by the City. The expense of these Bonds shall be borne by the Construction Manager. If at any

time a surety on any such Bond is declared as bankrupt or loses its rights to do business in Florida or is removed from the list of Surety Companies accepted on Federal Bonds, Construction Manager shall within ten (10) days after notice from the City to do so, substitute an acceptable Bond (or Bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the City. The premiums on such replacement Bond shall be paid by the Construction Manager. No further payment shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable Bond to the City.

- 20.2 The Construction Manager and its Surety, for value received, hereby stipulate and agree that any and all claims, demands, actions or suits whatsoever, arising under this Agreement and/or bonds, shall be subject to the sole and exclusive jurisdiction and venue of the appropriate state court in and for Bay County, Florida. The Construction Manager and its Surety do agree, by execution of these documents, that the sole and exclusive jurisdiction and venue in said forum is proper and appropriate since performance of the underlying contract for which these documents are executed is to be accomplished within Bay County, Florida.

#### 21.0 ASSIGNMENTS

- 21.1 Construction Manager shall not assign this Agreement or any part thereof, without the prior consent in writing of the City, which consent shall be at City's sole discretion. If Construction Manager does, with City's written approval, assign this Agreement or any part thereof, Construction Manager shall not be released from any of its obligations or responsibilities under this Agreement.

#### 22.0 INDEMNIFICATION AND HOLD HARMLESS

- 22.1 To the maximum extent permitted by Florida law, Construction Manager shall indemnify and hold harmless the City and its officers and employees from any and all liabilities, claims, damages, penalties, demands, judgments, actions, proceedings, losses or costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, whether resulting from any claimed breach of this Agreement by Construction Manager or from personal injury, property damage, direct or consequential damages, or economic loss, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Construction Manager or anyone employed or utilized by the Construction Manager in the performance of this Agreement.
- 22.2 Construction Manager's obligation to indemnify and hold harmless under this Article 22 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the City or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

22.3 The obligation of the Construction Manager under this Article 22 shall not extend to the liability of the Architect, its agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, Construction Change Directives, Field Orders, designs or specifications.

## 23.0 SEPARATE CONTRACTS AND COOPERATION

23.1 The City reserves the right to perform other work related to the Project at the site by the City's own forces, have other work performed by utility owners or let other direct contracts for work to be constructed at the same time, and in connection with, the Work included in this Agreement. The Construction Manager shall cooperate with all other contractors in such a manner, and to such extent, as best to facilitate the completion of the entire Project in the shortest time possible, subject to, at all times, the approval of the Architect and Owner. It shall be the duty of each contractor to work with the other contractors, render such assistance, and to arrange its work in such a manner that shall allow the entire Project to be delivered complete and in the best possible condition. The Construction Manager shall afford other contractors and utility owners reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate the Work with theirs. If the proper execution or results of any part of the Construction Manager's Work depends upon the work of any other Construction Manager, the Construction Manager shall inspect and promptly report to the Architect any defects in such work that render it unsuitable for such proper execution and results.

23.2 If the performance of additional work by other contractors, utility owners, or the City is not noted in the Contract Documents prior to the execution of the Agreement, written notice thereof shall be given to the Construction Manager prior to starting any such additional work. If the Construction Manager believes that the performance of such undisclosed additional work by the City or others involves it in additional expense or entitles it to an extension of the Contract Time, the Construction Manager shall send written notice of that fact to the City and Architect within seven (7) calendar days of being notified of the other work and the Construction Manager may make a claim thereof as provided in Sections 13 and 14. If Construction Manager fails to send the above required seven (7) calendar days' notice, Construction Manager will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Time or adjustment to the Contract Price.

23.3 Construction Manager shall afford each utility owner and City's other contractors (or the City, if the City is performing the additional work with the City's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs. Construction Manager shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate

with such other work. Construction Manager shall be responsible for all damage to the work of others caused by the performance of its Work. Further, Construction Manager shall not in any way cut or alter the work of others without first receiving the written consent of that other person and Architect. If any part of Construction Manager's Work depends for proper execution or results upon the work of any other contractor or utility owner (or the City), Construction Manager shall inspect and promptly report to Architect in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Such report must be made within three (3) business days of the time Construction Manager first became aware of the delay, defect or deficiency. Construction Manager's failure to report within the allotted time will constitute an acceptance of the other work as fit and proper for integration with Construction Manager's Work, except for latent defects not discovered by Construction Manager.

- 23.4 The Construction Manager shall keep itself fully informed at all times regarding all details of the work of other contractors working at the site, and it shall be responsible for all delays that may result from its failure to install the Work in the proper manner and at the proper time.
- 23.5 The Construction Manager shall be responsible for coordinating the relocation of existing utilities (with the respective utility companies) as needed to construct the Project. Attention is called to the fact that Construction Manager is responsible for contacting all utility companies to obtain locations of all existing utilities or obstructions which it may encounter during construction. After location of utilities by the appropriate utility company, it is the Construction Manager's liability to protect all such utility lines, including service lines and appurtenances, and to replace at its own expense any which may be damaged by the Construction Manager's equipment or forces during construction of the Project. The City will pay fees charged by the utility company for relocating these utilities.
- 24.0 SUBCONTRACTORS, SUPPLIERS AND SELF-PERFORMANCE BY CONSTRUCTION MANAGER
- 24.1 All Construction Phase WORK shall be delivered by either a Subcontractor, Supplier or, if approved by the City, by Construction Manager's Self Performance, and no other person. Construction Manager shall review the design and shall determine how it desires to divide the sequence of construction activities. Construction Manager will determine and keep updated the cost breakdown and composition of bid packages for Subcontracts, Supply Contracts and Self Performance based on the current Construction Schedule, and shall promptly supply a copy of that breakdown and composition to the City and Architect for their review and approval as completed and updated. For all Subcontracts and Supply Contracts, Construction Manager shall bid that portion of the Construction Phase Work in accordance with the City's Charter and Florida Law, including without limitation public meetings to open bids and public records retention. However, at a minimum Construction Manager's bid process shall comply with the following: (1) Construction Manager must obtain at least

three (3) bids from bidders, pre-qualified by Construction Manager and approved by City; (2) all such bids must be in writing and shall be received and opened in the manner and at the location, date and time approved by City; and (3) all such bids received by Construction Manager shall be opened publicly and entered on a bid tabulation sheet and a copy of both the bids and the tabulation sheet shall be sent to City for its review, comment and approval prior to Construction Manager awarding the subcontract. Any and all Construction Phase Work proposed to be self-performed by Construction Manager must be approved in writing by City in its sole and unfettered discretion prior to commencement of such Work, and if and if such Work is in excess of \$10,000, it must be bid in the same manner as any other Subcontract or Supply Contract except that Owner must approve in writing the form of bid solicitation. . No purchase or contract may be split or divided to avoid the \$10,000 limitation. Subject to the forgoing, the Construction Manager may utilize the services of specialty Subcontractors on those parts of the Work which, under normal contracting practices, are performed by specialty Subcontractors. Construction Manager shall be solely responsible for and have control over the Subcontractors. All subcontracts are to be awarded to the lowest responsive and responsible bidder; provided, however, Construction Manager may award a subcontract to someone other than the lowest responsive and responsible bidder provided Construction Manager has first received City's express written consent to such award. City's consent to any such award will be at City's sole discretion. Whenever Construction Manager wishes to award a subcontract to someone who is not the lowest responsive and responsible bidder, Construction Manager must notify City in writing, setting out in detail the reasons and justifications for the suggested award.

24.2 Prior to submitting its first Application for Payment for the Construction Phase Services, Construction Manager shall submit to the City a list of the names, addresses, licensing information and phone numbers of the Subcontractors and Suppliers Construction Manager intends to use for each portion of the Work, as well as identifying in writing those portions of the Work it intends to perform with its own employees. The Construction Manager shall not use a Subcontractor or Supplier against whom the City has a reasonable objection. The list identifying each Subcontractor cannot be modified, changed, or amended without prior written approval from the City. Prior to submitting each Application for Payment for the Construction Phase Services, Construction Manager shall submit to the City a schedule of the names of the Subcontractors and Suppliers whose invoices are included in the request (including Self Performance), the amount to be paid to each, the total contract or approved amount for each, the amount previously paid, retainage if any, and the percentage of completion. Construction Manager shall continuously update that list, so that it remains current and accurate throughout the entire performance of the Work. Any and all work to be self-performed by Construction Manager must be approved in writing by the City in its sole and unfettered discretion prior to commencement of such Work.

24.3 The Construction Manager shall be fully responsible for and have control over the acts and omissions of its Subcontractors, and of persons either directly or

indirectly employed by them, as the Construction Manager is for the acts and omissions of persons directly employed by it.

- 24.4 The Construction Manager shall cause appropriate provisions to be inserted in all Subcontracts relative to the work to bind Subcontractors to the Construction Manager by the terms of the Contract Documents insofar as applicable to the work of Subcontractors and give the Construction Manager the same power to terminate any subcontract that the City may exercise over the Construction Manager under any provision of the Contract Documents. Further, each subcontract shall require that any claims by a Subcontractor for delay or additional cost must be submitted to Construction Manager within the time and in the manner in which Construction Manager must submit such claims to the City, and that failure to comply with such conditions for giving notice and submitting claims shall result in the waiver of such claims.
- 24.5 All subcontracts between Construction Manager and its Subcontractors shall be in writing and are subject to the City's approval. Further, all subcontracts shall (1) require each Subcontractor to be bound to Construction Manager to the same extent Construction Manager is bound to the City by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the Subcontractor, (2) provide for the assignment of the subcontracts from Construction Manager to the City at the election of the City upon termination of Construction Manager, (3) provide that the City will be an additional indemnified party of the subcontract, (4) provide that the City will be an additional insured on all insurance policies required to be provided by the Subcontractor except workers' compensation, (5) assign all warranties directly to the City, and (6) identify the City as an intended third-party beneficiary of the subcontract.
- 24.6 Nothing contained in this Agreement shall create any contractual relation between any Subcontractor or Supplier and the City. All subcontracts and purchase orders entered into by Construction Manager must be in writing, and upon demand from City, Construction Manager shall deliver to City a full and complete copy of any or all such subcontracts and purchase orders.
- 24.7 Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor will be bound. Each Subcontractor shall similarly make copies of such documents available to its sub-subcontractors.
- 24.8 The City and Architect are under no duty or obligation whatsoever to any Subcontractor, Supplier, laborer or other party to ensure that payments due and owing by the Construction Manager to any of them will be made. Such parties shall rely only on the Construction Manager's surety bonds for remedy of nonpayment by the Construction Manager.
- 25.0 ARCHITECT'S AUTHORITY

- 25.1 The Architect shall act as the City's representative during the construction period, shall decide questions which may arise as to quality and acceptability of materials furnished and Work performed, and shall interpret the intent of the Contract Documents in a fair and reasonable manner. The Architect will make visits to the site and determine if the Work is proceeding in accordance with the Contract Documents.
- 25.2 The Construction Manager will be held strictly to the intent of the Contract Documents in regard to the quality of materials, workmanship, and execution of the Work. Inspections may be at the factory or fabrication plant of the source of material supply.
- 25.3 The Architect and the City will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.
- 25.4 The Architect shall promptly make decisions relative to interpretation of the Contract Documents.

#### 26.0 LAND AND RIGHT-OF-WAYS

- 26.1 Prior to the issuance of the NOTICE TO PROCEED, the City shall obtain all land and rights-of-way necessary for carrying out and for the completion of the Work to be performed pursuant to the Contract Documents, unless otherwise noted in the Contract Documents.
- 26.2 The City shall provide to the Construction Manager information which delineates and describes the lands owned and rights-of-way acquired.
- 26.3 The Construction Manager shall provide at its own expense and without liability to the City any additional land and access thereto that the Construction Manager may desire for temporary construction facilities, or for storage of materials.

#### 27.0 GUARANTEE

- 27.1 The Construction Manager warrants to the City and Architect that materials and equipment furnished under the Agreement will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Construction Manager further warrants to the City that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. Further, any special warranty to be provided will be in such form as is acceptable to the City and shall not include any exclusions, exceptions or modifications except to the extent approved by the City in its sole discretion. Work not conforming to these requirements, including substitutions not properly approved and authorized, may



be considered defective. The Construction Manager's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Construction Manager, improper or insufficient maintenance, improper operation, or normal wear and tear from normal usage. If required by the Architect, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

- 27.2 Construction Manager expressly warrants to the City that it shall promptly correct, upon receipt of written notice from the City, any portion of the Work which is found to be defective or otherwise not in conformance with the requirements of the Contract Documents. The City will give notice of observed defects with reasonable promptness. Provided, however, in the event that any defective or non-conforming Work is determined by the City in its sole discretion to present an immediate threat to safety or security, the City shall be entitled to correct or replace such defective or non-conforming portions of the Work, and Construction Manager shall reimburse the City for all costs and expenses incurred by the City in correcting or replacing such Work. In the event that the Construction Manager should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, the City may do so and charge the Construction Manager the cost thereby incurred. The Performance Bond shall remain in full force and effect through the guarantee period. With respect to the correction or replacement of any defective or nonconforming Work, Construction Manager shall be liable for all damage to any part of the Work itself and to any adjacent property which is caused by such corrective or replacement work.
- 27.3 In addition to Construction Manager's other guarantee and warranty obligations under the Contract documents, if within three (3) years after the date of final acceptance of the Work by the City, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Construction Manager shall correct it promptly after receipt of written notice from the City to do so unless the City has previously given the Construction Manager an express written acceptance of such condition. The City shall give such notice promptly after discovery of the condition. If the Construction Manager fails to correct, or where more time is required begin and diligently pursue correction of, nonconforming Work within a reasonable period of time (not to exceed 10 days) after receipt of notice from the City or Architect, the City may correct or replace it in accordance with Section 27.2 above. This correction period is in addition to all other rights and does not limit the time period the City can seek to have the defective Work corrected.
- 27.4 Construction Manager shall obtain and assign to the City all express warranties given to Construction Manager by any Subcontractors or by Suppliers.

## 28.0 CLAIMS AND DISPUTES

- 28.1 The term "Claim" as used herein shall mean any and all demands made by one party hereunder against the other party, whether such demand be for money, time or the assertion of any right or obligation that arises out of the Contract Documents.
- 28.2 Initial notice of Claims by Construction Manager shall be made in writing to the City and Architect within seven (7) calendar days after the first day of the event giving rise to such Claim or such other time period as may be expressly provided in the Contract Documents. If Construction Manager fails to give such written notice within the required time period, Construction Manager shall be deemed to have waived the Claim. Written data supporting Construction Manager's claim shall be submitted to the City and Architect within thirty (30) calendar days after the occurrence of the event, or such other time period as may be expressly provided in the Contract Documents, unless the City grants additional time in writing, or else Construction Manager shall be deemed to have waived the Claim.
- 28.3 Construction Manager shall proceed diligently with its performance as directed by the City, regardless of any pending Claim, unless otherwise agreed to by the City in writing. The City shall continue to make payments of all undisputed amounts in accordance with the Contract Documents during the pendency of any Claim.
- 28.4 Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation between the President or Vice-President for the Construction Manager and the City Manager. Failing resolution, and prior to the commencement of depositions in any litigation between the parties with respect to the Project, the parties shall attempt to resolve the dispute through mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to submit to mediation as required hereunder, the other party may request a court of law to order mediation under Florida Statutes Section 44.102.
- 28.5 Any litigation between the City and Construction Manager (which term for the purposes of this Section shall include Construction Manager's surety), whether arising out of any Claim or arising out of the Agreement or any breach thereof, shall be brought, maintained and pursued solely and exclusively in the appropriate State courts of the State of Florida as set forth in Section 20.2. The City and Construction Manager each hereby waive and renounce any and all rights and options which they, or either of them, have or might have to bring or maintain any such litigation or action in the Federal Court system of the United States or in any United States Federal District Court. Venue of any such litigation between the City and Construction Manager shall lie and be only in the appropriate State courts in and for Bay County, Florida. Construction Manager consents and submits to the exclusive jurisdiction of any such court and agrees to accept service of process from the State of Florida in any matter to be submitted to any such court.

29.0 TAXES

29.1 The Construction Manager will pay all applicable sales, consumer, use and other similar taxes required by the laws of the place where the Work is performed.

30.0 CONTRACT TIME, SCHEDULE OF WORK AND TIME EXTENSIONS

30.1 Construction Manager shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its Subcontractors and Suppliers, as well as coordinating its Work with all work of others at the Project site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by Construction Manager or anyone for whom Construction Manager is liable. All Work under this Agreement shall be arranged and be carried out in such a manner as to complete the Work on or before the required date of Substantial Completion.

30.2 Should Construction Manager be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Construction Manager, and not due to its fault or neglect, including but not restricted to acts of God or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes, lockouts, unusually severe weather conditions by comparison with the ten-year Bay County, Florida average not reasonably anticipatable (to the extent Construction Manager was unable to perform any portion of the Work that was on the critical path of the approved Construction Schedule during those inclement weather days), Construction Manager shall notify City and Architect in writing within seven (7) calendar days after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Construction Manager may have had to request a time extension.

30.3 The Construction Manager is required to furnish adequate manpower at the Project to complete the Work within the Contract Time and in accordance with the Construction Schedule. Should payment of premium time, bonuses, or the like be necessary to attract sufficient manpower for the Project, such extra labor costs shall be borne by the Construction Manager without additional compensation from the City. Further, should the Construction Manager's Work, through no fault of the Architect, the City, or City's other contractors, fail to progress in accordance with the Construction Schedule, and if, in the opinion of the Architect, the Work cannot be substantially completed within the Contract Time, or if deemed necessary to protect this or adjoining work from damage, the Construction Manager shall work such additional time over the established hours of work, but excluding Holidays, as required to meet the schedule time without additional expense to the City. In such event, Construction Manager shall reimburse City for any additional costs incurred by the City associated with such overtime, including any additional costs of the Architect.

30.4 When so ordered in writing by the Architect or City, whether to advance the date

of Substantial Completion, or for any other reason for the City's benefit, the Construction Manager shall work overtime and or additional shifts. If the order for such acceleration is not the result of Construction Manager being behind the approved Construction Schedule, Construction Manager shall be entitled to a Change Order increasing the Contract Price by its actual net premium costs of such overtime and or shifts so ordered and so worked, including insurance and taxes applicable thereto, (without other overhead or profit). Such costs and expenses shall be subject to audit by the City. Notwithstanding the forgoing, any such increase shall be limited to the amount of Contingency funds then available unless the Change Order expressly states that the Guaranteed Maximum Price is increased by the amount of the excess.

30.5 When any period of time is referenced by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day recognized by the City as a legal holiday, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday or legal holiday. The term "business day" as used herein shall mean all days of the week excluding Saturdays, Sundays and all legal holidays observed by the City.

#### 31.0 USE OF SITE

31.1 The Construction Manager shall confine its use of the site for storage of materials, erection of temporary facilities and parking of vehicles to areas within its Agreement limits as directed by the Architect. The Construction Manager shall not unnecessarily encumber the site at any time.

31.2 Construction Manager acknowledges that areas of the site in which Work under this Agreement may be performed may be used by other contractors for storage of materials, erection of temporary facilities and parking of vehicles. Areas used by other contractors will be vacated, as directed by the Architect to permit Work under this Agreement, provided reasonable notice is given requesting such, all in accordance with the approved Construction Schedule.

31.3 No signs or advertisements shall be displayed on the site or building except with the written consent of the City.

31.4 Construction Manager hereby acknowledges that the City's operations on the Project site must remain in continuous operation while the Work is being performed. Construction Manager agrees to perform the Work in accordance with the Construction Schedule, which shall contain a general phasing plan to be agreed upon by the City and Construction Manager and as otherwise required by the needs of the City's operations at the Project site.

#### 32.0 TEMPORARY FACILITIES

32.1 The Construction Manager shall provide electric power and water as it may require for its construction purposes, and shall pay all costs incurred. At

completion of the Work, all temporary facilities shall be removed from the site. Upon Substantial Completion of the Work, Construction Manager shall cause all permanent utilities to be utilized by the City that were in Construction Manager's name during construction of the Project to be transferred over to the City's name.

32.2 The Construction Manager shall provide sanitary facilities for its workmen at all times. Sanitary facilities shall be of an approved chemical type with regular servicing and appropriately screened from public view, as approved by the Architect and all applicable health authorities.

33.0 CLEAN UP AND DISPOSAL OF WASTE MATERIALS AND HAZARDOUS MATERIALS

33.1 No burial of waste materials will be permitted on the site. The Construction Manager shall at all times keep the site free from accumulations of waste material or debris caused by its operations and shall immediately remove same when necessary or required by the Architect or the City. If Construction Manager fails to keep the Project site clean, the City has the right, after providing a twenty-four (24) hour written notice, to perform any required clean up and to backcharge Construction Manager for the costs of such clean up. At the completion of the Work, and before final inspection and acceptance of the Work, Construction Manager shall clean ditches, shape shoulders and restore all disturbed areas, including street crossings, grass plots, regrassing if necessary, to as good condition as existed before Work started, and remove all debris, rubbish and waste materials from and about the Project site, as well as all of Construction Manager's (and its Subcontractors') tools, appliances, construction equipment and machinery and surface materials, and shall leave the Project site clean and ready for occupancy by the City. Any existing surface or subsurface improvements, including, but not limited to, pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Construction Manager from damage during the prosecution of the Work. Any such improvements so damaged shall be restored by Construction Manager to condition at least equal to that existing at the time of Construction Manager's commencement of the Work

33.2 If Construction Manager encounters on the Project site any materials reasonably believed by Construction Manager to be petroleum or petroleum related products or other hazardous or toxic substances which have not been rendered harmless, Construction Manager immediately shall (i) stop Work in the area affected and (ii) report the condition to the City in writing. If the Work is so stopped and hazardous material is found, the Work in the affected area shall not thereafter be resumed except by Change Order. Any such Change Order shall include, but not be limited to, an equitable adjustment to the Contract Time and Contract Price as appropriate and in accordance with the terms of the Contract Documents. If no hazardous material is found after the Work is stopped, no Change Order is required to resume the Work in the affected area. Further, if

the hazardous material was generated or caused by Construction Manager or anyone for whom Construction Manager is responsible, or if Construction Manager failed to stop Work or give the written notice required above, no Change Order will be required for an adjustment in the Contract Time or Contract Price and Construction Manager shall indemnify the City and hold the City harmless for any costs incurred by the City with respect to such hazardous material generated or caused by Construction Manager or anyone for whom it is responsible or any increased costs incurred by City as a result of Construction Manager's failure to stop Work or give the required written notice.

#### 34.0 WARRANTY OF TITLE

34.1 No material, supplies or equipment for the Work shall be purchased by the Construction Manager subject to any chattel mortgage or under a conditional sale or other agreement by which a lien or an interest therein or any part thereof is retained by the seller or supplier. The Construction Manager warrants good title to all materials, supplies and equipment installed or incorporated in the Work and title to all such items shall pass to the City upon its incorporation into the Work or payment, whichever occurs first. Construction Manager shall, at all times, keep the site, together with all improvements and appurtenances constructed or placed thereon by it, free from any claims, liens or charges and further agrees that neither Construction Manager nor any person, firm, or corporation furnishing any material or labor for any Work covered by this Agreement shall have any right to a lien upon the Work, site or any improvements or appurtenances thereon. The Construction Manager shall not at any time suffer or permit any lien, attachment, or other encumbrances under the law of Florida or otherwise by any person or persons whomsoever to remain on file with the City against any money due or to become due for any work done or materials furnished under the Agreement or by reason of any other claim or demand against the Construction Manager. Such lien, attachment, or other encumbrance, until it is removed, shall preclude any and all claims or demands for any payment to Construction Manager under virtue of this Agreement.

#### 35.0 OWNERSHIP OF HIDDEN VALUABLE MATERIALS

35.1 All items having any apparent historical or archaeological interest or treasure or valuable materials discovered during any construction activities shall be carefully preserved and reported immediately to the City for determination of appropriate actions to be taken. Any increases to Construction Manager's time or cost of performance due to historical or archaeological items discovered on the site shall ENTITLE Construction Manager to a Change Order equitably adjusting the Contract Time and the Contract Price as appropriate and in accordance with the terms of the Contract Documents. Notwithstanding anything in the Contract Documents to the contrary, Construction Manager shall have no claim or entitlement to any such historical or archaeological interest or treasure or other valuable materials discovered, and all such items shall remain the property of the City. A Change Order issued under this sub-section which entitles Construction Manager to an equitable increase in the Contract Price shall increase the

Guaranteed Maximum Price without the Owner's consent; all other Change Orders require the Owner's consent and agreement.

36.0 AS-BUILT PLANS and DOCUMENTS TO BE KEPT AT THE SITE

36.1 Before final inspection the Construction Manager shall turn over to the Architect a set of drawings showing field changes and actual installed conditions. Construction Manager shall provide to the Architect two (2) hard copies and one (1) electronic copy of the as-built building plans, including a complete site survey of all installed below grade utilities, stormwater facilities and surface improvements in AutoCAD 2014. The site survey shall be certified by a P.L.S. registered in the State of Florida.

36.2 Construction Manager shall maintain at the Project site or such other place as may be expressly approved in writing by City, originals or copies of, on a current basis, all Project files and records, including, but not limited to, the following administrative records: Subcontracts and Purchase Orders; Subcontractor Licenses; Shop Drawing Submittal/Approval Logs; Equipment Purchase/Delivery Logs; Contract Drawings and Specifications with Addenda; Warranties and Guarantees; Cost Accounting Records; Payment Request Records; Meeting Minutes; Evidence of Insurance Requirements, Copies of Bonds; Contract Changes; Permits; Material Purchase Delivery Logs; Technical Standards; Design Handbooks; "As-Built" Marked Prints; Operating & Maintenance Instruction; Daily Progress Reports; Monthly Progress Reports; Correspondence Files; Transmittal Records; Inspection Reports; Bid/Award Information; Bid Analysis and Negotiations; Punch Lists; and a Construction Schedule (including all updates). The Project files and records shall be available at all times to the City and Architect or their designees for reference, review or copying.

37.0 SILENCE OF SPECIFICATIONS

37.1 To the extent the Work involves road or bridge construction, the apparent silence of the Contract Documents as to any details or the omission from them of a detailed description concerning any point shall be regarded as meaning that such portion of the Work shall be performed in accordance with the latest edition of the Florida DOT Standard Specifications for Road and Bridge Construction.

38.0 GRATUITIES

38.1 If the City finds after a notice and hearing that the Construction Manager, or any of the Construction Manager's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee, or agent of the City, the State, or other officials in an attempt to secure this Agreement or favorable treatment in awarding, amending, or making any determinations related to the performance of this Agreement, the City may, by written notice to the Construction Manager, terminate this Agreement for

Construction Manager default. The City may also pursue other rights and remedies that the law or this Agreement provides.

38.2 In the event this Agreement is terminated as provided in Section 38.1, the City may pursue the same remedies against the Construction Manager as it could pursue in the event of a breach of the Agreement by the Construction Manager. As a penalty, in addition to any other damages to which it may be entitled by law, the City may pursue exemplary damages in an amount (as determined by the City) which shall be not less than three nor more than ten times the costs the Construction Manager incurs in providing any such gratuities to any such official, agent or employee of the City.

#### 39.0 AUDIT AND ACCESS TO RECORDS

39.1 Construction Manager shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of three (3) years from the date of termination of this Agreement or the date the Project is completed, whichever is later or such longer period of time as may be required by law. Construction Manager shall require all of its Subcontractors to likewise retain all of their Project records and supporting documentation. The City, and any duly authorized agents or representatives of the City, shall be provided access to all such records and supporting documentation at any and all times during normal business hours upon request by the City. Construction Manager shall make all such Project records and supporting documentation available in Bay County, Florida. Further, the City, and any duly authorized agents or representatives of the City, shall have the right to audit, inspect and copy all of Construction Manager's and any Subcontractor's Project records and documentation as often as they deem necessary and Construction Manager shall cooperate in any audit, inspection, or copying of the documents. These access, inspection, copying and auditing rights shall survive the termination of this Agreement.

#### 40.0 EQUAL OPPORTUNITY REQUIREMENTS

40.1 For all contracts in excess of \$10,000, the Construction Manager shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

40.2 The Construction Manager's compliance with Executive Order 11246 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4 and its efforts to meet the goals established for the geographic area where the Agreement is to be performed.

#### 41.0 CHANGED CONDITIONS



41.1 Notwithstanding anything in the Contract Documents to the contrary, if conditions are encountered at the Project site which are (i) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (ii) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, and which reasonably should not have been discovered by Construction Manager as part of its scope of site investigative services required pursuant to the terms of the Contract Documents, then Construction Manager shall provide the City with prompt written notice thereof before conditions are disturbed and in no event later than seven (7) calendar days after first observance of such conditions. the City and Architect shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Construction Manager's cost of, or time required for, performance of any part of the Work, the City will acknowledge and agree to an equitable adjustment to the Contract Price or Contract Time, or both, for such Work. If the City determines that the conditions at the site are not materially different from those indicated in the Contract Documents or not of an unusual nature or should have been discovered by Construction Manager as part of its investigative services, and that no change in the terms of the Agreement is justified, the City shall so notify Construction Manager in writing, stating its reasons. Claims by Construction Manager in opposition to such determination by the City must be made within seven (7) calendar days after Construction Manager's receipt of the City's written determination notice. If the City and Construction Manager cannot agree on an adjustment to the Contract Price or Contract Time, the dispute resolution procedure set forth in the Contract Documents shall be complied with by the parties.

#### 42.0 COMPLIANCE WITH LAWS

42.1 Construction Manager agrees to comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, administrative orders, regulations and requirements applicable to the Project, including but not limited to those dealing with safety (including, but not limited to, the Trench Safety Act, Chapter 553, Florida Statutes). An executed copy of Construction Manager's Trench Safety Act Certificate of Compliance (the form of which is attached hereto as Section 00096) will be delivered to City with the executed GMP Amendment. If Construction Manager observes that the Contract Documents are at variance therewith, it shall promptly notify the City and Architect in writing. Construction Manager will provide a separate line item in its breakdown of the Contract Price identifying the cost of compliance with the applicable trench safety standards set forth in the Trench Safety Act.

#### 43.0 PUBLIC ENTITY CRIMES

43.1 By its execution of the Agreement and the Construction Manager's Public Entities Crime Statement, in the form set forth in Section 00097). Construction Manager acknowledges that it has been informed by the City of and warrants

that it is in compliance with the terms of Section 287.133(2)(a) of the Florida Statutes which reads as follows:

"A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

#### 44.0 INSURANCE

- 44.1 During the term of this Agreement, Construction Manager shall provide, pay for, and maintain, with companies satisfactory to the City, the types and limits of insurance required by the Contract Documents. All insurance shall be from responsible companies eligible to do business in the State of Florida. Simultaneously with the execution and delivery of this Agreement by Construction Manager, Construction Manager shall deliver to the City such documentation as may be necessary, including without limitation all required endorsements, to evidence the fact that Construction Manager has acquired and put in place the insurance coverages and limits required herein. In addition, certified, true and exact copies of all insurance policies required shall be provided to the City, on a timely basis, if requested by the City. Whether by endorsement or otherwise, these policies shall contain provisions that at least thirty (30) calendar days advanced written notice by registered or certified mail shall be given the City of any cancellation, intent not to renew, or any policy change that would result in a reduction in the policies' coverages, except in the application of the Aggregate Limits Provisions. The renewal of any insurance required to be maintained by Construction Manager hereunder shall be evidenced by providing the same documentation as was required for the original insurance, delivered to City at least ten (10) calendar days prior to expiration of current coverages so that there shall be no interruption in the Work due to lack of proof of insurance coverages required of Construction Manager under this Agreement.
- 44.2 Construction Manager shall also notify the City, in the same manner required in Section 44.1 above, within two (2) calendar days after Construction Manager's receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by Construction Manager from its insurer, and nothing contained herein shall relieve Construction Manager of this requirement to provide notice. In the event of a reduction in the aggregate limit of any policy to be provided by it hereunder, Construction Manager shall immediately take steps to have the aggregate limit reinstated to the full extent

permitted under such policy. If, at any time, City requests a written statement from an insurance company as to any impairment to any aggregate limit of any policy to be provided by it hereunder, Construction Manager shall promptly authorize and cause to be delivered such statement to City. All insurance coverages of Construction Manager shall be primary to any insurance or self-insurance program carried by the City applicable to this Agreement. Any such self insurance programs or coverages shall not be contributory with any insurance required of the Construction Manager under the terms of this Agreement. All insurance policies, other than the Workers Compensation policy and the Surveyor's Professional Liability policy, provided by Construction Manager to meet the requirements of this Agreement shall provide the Severability of Interest provision (also referred to as the Separation of Insureds provision). Companies issuing the insurance policy or policies shall have no recourse against the City for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Construction Manager. Construction Manager for itself and on behalf of its insurers, to the full extent permitted by law without voiding the insurance required under the Agreement, hereby waives fully for the benefit of City and the other additional insureds any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier issuing the required insurance or any other insurance (including any first party coverage) maintained by Construction Manager. Construction Manager will obtain a waiver of any subrogation right that its insurers may acquire against the additional insureds by virtue of payment of any such loss covered by such insurance.

- 44.3 All insurance policies to be provided by Construction Manager pursuant to the terms hereof shall be performable in Bay County, Florida and must expressly state that the insurance company will accept service of process in Bay County, Florida and that the exclusive venue and exclusive jurisdiction for any action concerning any matter under those policies shall be in the appropriate state court situated in Bay County, Florida.
- 44.4 The acceptance by the City of any Certificate of Insurance pursuant to the terms of this Agreement evidencing the insurance coverages and limits required hereunder does not constitute approval or agreement by the City that the insurance requirements have been met or that the insurance policies shown on the Certificates of Insurance are in compliance with the requirements of this Agreement.
- 44.5 Before starting and until completion of all Work required hereunder, Construction Manager shall procure and maintain insurance of the types and to the limits specified in the Contract Documents. Construction Manager shall require each of its Subcontractors to procure and maintain, until the completion of that Subcontractor's work or services, insurance of the types and to the limits specified in the Contract Documents, unless such insurance requirement for the Subcontractor is expressly waived or modified in writing by the City. Construction Manager shall not enter or otherwise occupy the Project site or commence any Work to be performed under this Agreement at the Site or any

other property of the City until all insurance required hereunder has been obtained by Construction Manager and such proof of insurance, as the same is required under this Agreement, has been delivered to City. Construction Manager shall require all property insurance policies related to the Work and secured and maintained by Construction Manager and its Subcontractors to include provisions providing that each of their insurance companies shall waive all rights of recovery, under subrogation or otherwise, against the City and any of its separate contractors and the agents, employees and subcontractors of any of them.

- 44.6 Should at any time Construction Manager or any of its Subcontractors not maintain the insurance coverages required in this Agreement, the City may terminate this Agreement for Construction Manager default or at its sole discretion shall be authorized to purchase such coverages and charge Construction Manager for such coverages purchased, to include a fifteen percent (15%) administrative fee. If Construction Manager fails to reimburse the City for such costs within thirty (30) calendar days after demand, the City has the right to offset those costs from any amount due Construction Manager under this Agreement. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under this Agreement. If the City exercises its option to purchase such required coverages, the coverages shall not be cancelled by Construction Manager and shall stay in force until the normal expiration date according to the terms and conditions of the insurance policy.
- 44.7 As may be required by City from time to time, the status of any insurance aggregate limits are to be confirmed in writing by the respective insurance companies. The amounts and types of insurance Construction Manager shall comply with all of the requirements of this Section 44 unless otherwise agreed to, in writing, by City.

[END OF SECTION 00100]

PANAMA CITY BEACH – ADMINISTRATIVE CAMPUS COMPLEX

SECTION 00098

TRUTH IN NEGOTIATION CERTIFICATE

In compliance with the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, **GAC CONTRACTORS, INC.** hereby certifies that wage rates and other factual unit costs supporting the compensation for the construction management services of CONSTRUCTION MANAGER to be provided under this Agreement, concerning **ADMINISTRATIVE CAMPUS COMPLEX** are accurate, complete and current as of the time of contracting.

**CONSTRUCTION MANAGER:**

GAC CONTRACTORS, INC.

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

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

Title: \_\_\_\_\_

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

[END OF SECTION 00098]